

Pandemic Procedures: Adapting Problem-Solving Court (PSC) Operations and Treatment Protocols During COVID-19

Journal of Drug Issues
2022, Vol. 0(0) 1–9
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DOI: 10.1177/00220426221133037
journals.sagepub.com/home/jod



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Abstract

With an ongoing pandemic claiming hundreds of lives a day, it is unclear how COVID-19 has affected court operations, particularly problem-solving courts (PSCs) which have goals rooted in rehabilitation for participants in their programs. Even with practical recommendations from national organizations directing courts on how to manage COVID-19, whether and how PSCs met the needs of PSC participants during this time is underexplored. This study, drawn from a larger national study using a survey of PSC coordinators, examines the COVID-19 responses of PSCs to remain safely operational for participants. A sub-sample of survey respondents (n = 82 PSC coordinators) detailed how the COVID-19 pandemic led to changes to their court and treatment operations amidst the constraints of the pandemic. The courts' shifts in policy and practice have important impacts for court participants' treatment retention and success in the PSC program, and these shifts need more in-depth research in the future.

Keywords

pandemic, problem-solving courts, treatment, change, COVID-19

Introduction

There is heightened concern about the impact of COVID-19 on individuals in the criminal legal system, particularly for those individuals attempting to manage a substance use disorder (SUD) due to exacerbated health risks and/or underlying conditions (e.g., diabetes, respiratory diseases, and cardiovascular problems) (Walters, Seal, Stopka, Murphy, & Jenkins, 2020). Specifically,

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there is an increased risk of overdose and drug-seeking behavior among justice-involved individuals during the pandemic as a result of social isolation and economic strain. Moreover, there is an elevated exposure to COVID-19 due to individuals residing in communal living environments such as prisons/jails, residential treatment programs, and homeless shelters (Volkow, 2020; Wang, Western, & Berwick, 2020). Being justice-involved and experiencing a SUD often decreases individuals' ability to obtain access to needed health care services and treatment services which may exacerbate negative mental health experiences (Bao, Williams, & Schackman, 2020; CA Bridge, 2020; Jenkins et al., 2020; Walters, Seal, Stopka, Murphy, & Jenkins, 2020) and long-term health problems.

This research note seeks to fill a gap in our understanding of how problem-solving courts (PSCs), specialized courts devoted to using treatment, testing, and incentives/sanctions, responded to the COVID-19 pandemic. Eighty-two (82) PSC coordinators reported on the extent to which they shifted their court and treatment operations during COVID-19 to safely serve participants. Below, we provide an overview of the recommended responses to COVID-19 in courts, highlight how PSCs met the needs of court participants by shifting their operations and treatment provisions, and provide directions for future research on the need for safety procedures in justice programs and treatment services during public health crises.

Pandemic Operation Recommendations

The outbreak of the pandemic resulted in varying recommendations for justice and treatment agencies to provide safe services. PSCs received guidance from the National Association of Drug Court Professionals (NADCP) in collaboration with the National Drug Court Institute (NDCI), and the National Center for State Courts (2020a; 2020b); however, this information solely focused on how PSCs could meet ever-changing Centers for Disease Control and Prevention (CDC) guidelines while continuing to operate their programs. Organizations such as the American Society of Addiction Medicine (ASAM), NADCP, NCSC, the Center for Court Innovation (CCI) in collaboration with the Legal Action Center (LAC), and the Substance Abuse and Mental Health Services Administration (SAMHSA) provided navigation tools for PSCs including how to continue to provide medications for opioid and/or alcohol use disorders (e.g., CCI, 2020; SAMHSA, 2020). PSCs utilizing SUD treatments such as medication-assisted treatment (MAT) had additional challenges given that the medications are provided by external treatment providers, not the courts themselves, and therefore they could not directly alter how services were provided. For PSCs that support the use of medications, the recommendations included waiving in-person protocols for MAT prescriptions, increasing take-home or delivery doses of medications, and minimizing drug testing (CCI, 2020; NADCP, 2020). The following highlights the treatment-oriented operational shifts and changes to court session procedures within local PSC settings.

Traditional Courts

For the most part, traditional criminal or civil courts halted or suspended their operations during COVID-19. Some courts were essentially unable to meet general safety guidelines while maintaining operations with maximum caseloads. Many courts elected to either reduce or eliminate their in-person practices by ceasing all operations (Miller, 2020). Courts with available resources were able to remain in operation at larger capacities and continue to refer participants out to operating treatment services (Baldwin, Eassey, & Brooke, 2020). Other courts adopted all-virtual, limited in-person, or hybrid (i.e., virtual and limited in-person) formats to maintain operational consistency while reducing virus transmission and compliance with pandemic directives (Baldwin et al., 2020).

With the altered court operations, scant research has examined their effectiveness prior to and during the pandemic. In fact, the only known study of virtual strategies used in the criminal legal realm prior to the onset of COVID-19 examined pretrial video-based court proceedings used for bail hearings in Chicago, Illinois (Diamond, Bowman, Wong, & Patton, 2010). Diamond and colleagues (2010) found that defendants who appeared via video for their court hearings were subject to higher bail amounts. As the pandemic emerged and as it persists, the NCSC reported on the nation's very first remotely held jury trial over Zoom in Texas and jurors appeared to view the process rather positively, preferring it to in-person jury service (2020a). However, most courts appear to prefer to postpone jury trials instead of host virtual court sessions (2020b). Defendants appear to prefer remote hearings given that appearance rates increased during the pandemic with virtual court sessions (2020c).

Problem-solving Courts

Holistically, PSCs were somewhat neglected in the justice research examining the impacts of the pandemic. In one of the few studies on PSC procedure shifts during the pandemic, Zilius and colleagues (2020) conducted virtual interviews with 172 PSCs who had active Bureau of Justice Assistance (BJA) grants during the pandemic. They found that a common adaptation was a switch from in-person to virtual methods resulting in increased frequency of short-form communication (e.g., text, email) between staff and court participants. The challenges were in the form of developing new ways to arrest non-compliant court participants over video conference, unreliable and problematic technology resulting in inconsistent communication, and lack of engagement from distracted participants during video-based court sessions (Zilius et al., 2020). Overall, the flexibility and innovativeness of PSCs to manage participant behavior and progress resulted in fewer sanctions and more positive feedback for court participants (Zilius et al., 2020). In Hartsell and Lane's (2022) evaluation of Florida-based drug courts, switching to virtual operations was required during the COVID-19 pandemic. They found that the switch was actually convenient for court participants and members of the court team because of reduced transportation and transmission issues. They also report that the judges had more positive attitudes about shifting to virtual court sessions which made the new process more manageable for everyone. Challenges included privacy and rapport-building in a virtual space, lapses in drug testing, and disengagement in contactless treatment (Hartsell & Lane, 2022).

Given the unique goals of PSCs, using a team-based and service-oriented approach, courts faced additional challenges related to what they could offer court participants (Baldwin et al., 2020). PSCs specialize in a hands-on approach, but they sometimes found this difficult to achieve during the pandemic. PSC staff have been faced with decisions on whether to suspend all new intakes, create a waitlist of referrals, develop virtual intake processes, and cease all in-person graduations and termination hearings (Hardin & Sydow, 2020). This had several collateral consequences such as PSCs' funding being at risk, PSCs experiencing case backlogs, and PSCs having to deny eligible participants program entry (Baldwin et al., 2020). Decisions that affected the safety of court staff and participants as well as ensured operations were conducive to participants' continued participation were paramount.

Methodology

Our focus for this research note is on a sub-sample of court coordinators which are derived from a nationally representative sample of PSC coordinators who were surveyed about their court operations including their utilization of MAT from March 2019 to August 2020. Two COVID-19 specific questions were added to the original local court coordinator survey in April of 2020 as the pandemic began; the court coordinators that took the survey from April 2020 to August 2020

comprise the sub-sample. The main sampling frame was obtained from a compiled list of PSCs from various sources including American University's National Drug Court Resource Center (<https://ndcrc.org/>), a directory of 3400 PSCs provided by the National Association of Drug Court Professionals (NADCP), and publicly available information about PSCs through county and other government websites. The survey was administered to all courts with usable contact information in a mixed-mode manner by using three distribution strategies: (1) online web survey; (2) computer-assisted telephone interviews (CATI) through the University's survey lab, and (3) U.S. Postal Service mailed survey. All research protocols had approval from the University's Institutional Review Board prior to data collection.

The survey questions asked specifically about whether court operations were altered due to COVID-19 and the ways in which those court operations were altered. Due to the timing of these questions, only a limited number of participants accessed the version of the survey with COVID-19 questions for the last five months of data collection. For this research note, we will only analyze data from the responses to the PSC coordinator survey that included the COVID-19 questions to examine shifting operations of local courts due to COVID-19; Faragó and colleagues (2022) report on the overall study findings. A convenience sample of 82 local courts located in 10 states answered specific questions about their COVID-19 operations. There are no other distinguishable differences in data collection processes between this sample of local coordinators and the larger survey sample other than the point in time when they took the survey. Besides the 82 responses, another 37 respondents filled out a survey after April of 2020 but did not respond to the COVID-19 questions and the majority of other survey questions. The 82 respondents are the sub-sample used in our analyses. This is 9% of our larger study's sample of 849 local court coordinator respondents ($n = 767$ respondents without COVID-19 questions).

The data analysis consisted of two stages. First, we analyzed the descriptive statistics and frequencies of the COVID-19 sub-sample regarding shifting operations of PSCs. Then, we ran chi-square tests to determine whether there were any significant differences in the nature of the PSCs, and their coordinators, between the sub-sample and main sample on respondent demographics and court characteristics. This allowed us to explore whether the coordinators in either group responded in a similar manner.

Findings

As seen in Table 1, most court coordinators in this sub-sample operate courts in Medicaid expansion states located in only two of the regions—South and West. Responding court coordinators primarily operate substance use courts (e.g., adult drug courts, DUI courts) where they have four or more years of experience. The majority of court coordinators have a bachelor's degree, but a similar number have a graduate/professional degree, or some other type of degree like an associate's degree or high school degree. The age of most court coordinators falls between 35 years to 44 years of age, closely followed by those who are 45 years to 54 years of age, and there are fewer who are 55 years of age or older or younger than 34 years of age. Generally, court coordinators identify as white, while few identify as Black, Asian, another race, or Hispanic or Latine. Lastly, over two thirds of court coordinators identify as women. The 82 local court coordinators have similar demographics and characteristics to the other 767 survey respondents.

Pandemic Operations

Of the responding 82 local court coordinators, all ($n = 82$) indicated they altered their operations, and two suspended operations entirely. Table 2 highlights the extent of the changes courts made to

Table 1. Chi-Square Tests of Sub-sample and Main Sample Demographics.

Demographics	Sample		Chi-square test	
	COVID-19 sub-sample (n = 82) n missing = 7	Main sample (n = 767) n missing = 240	X ²	p
Age			2.1	.552
25 to 34 years old	7 (9%)	78 (15%)		
35 to 44 years old	28 (37%)	166 (32%)		
45 to 54 years old	23 (31%)	160 (30%)		
55 years or older	17 (23%)	123 (23%)		
Gender	n missing = 6	n missing = 238	.13	.714
Women	51 (67%)	366 (69%)		
Men	25 (33%)	163 (31%)		
Race	n missing = 12	n missing = 253	.40	.526
White	60 (86%)	425 (83%)		
Non-white	10 (14%)	89 (17%)		
Ethnicity*	n missing = 12	n missing = 284	8.0	<0.05
Hispanic/Latine	11 (16%)	30 (6%)		
Not Hispanic/Latine	59 (84%)	453 (94%)		
Education level	n missing = 13	n missing = 235	2.8	.247
Bachelor's degree	30 (43%)	241 (45%)		
Graduate degree	26 (38%)	228 (43%)		
Other degree	13 (19%)	63 (12%)		
Length of tenure	n missing = 0	n missing = 16	1.4	.243
3 years or less	27 (33%)	297 (40%)		
4 years or more	55 (67%)	454 (60%)		
Medicaid expansion state	n missing = 0	n missing = 0	2.5	.116
Yes	57 (70%)	465 (61%)		
No	25 (30%)	302 (39%)		
Court type*	n missing = 0	n missing = 0	4.5	<0.05
Substance use courts	72 (88%)	714 (94%)		
Other courts	10 (12%)	46 (6%)		
Region***	n missing = 0	n missing = 0	68.9	<0.001
Northeast	0 (0%)	57 (7%)		
Midwest	0 (0%)	183 (24%)		
South	33 (40%)	361 (47%)		
West	49 (60%)	166 (22%)		

*p < .05, **p < .01, ***p < .001.

adjust to serving court participants during COVID-19 by answering, “How have your court(s) altered operations?”

As seen in Table 2, over three quarters of respondents indicated that in-person court activity shifted to virtual format contact strategies (90%) and visits (93%) with the court team. One PSC coordinator indicated that in switching to virtual contact strategies in various forms (e.g., texting, phone calls, video conferencing, email), they also increased the frequency of contact with court participants to give more positive support because of the pandemic. Court coordinators indicated that new sanctions (40%) and new incentives (39%) were implemented (e.g., ankle monitoring, gift cards) during the pandemic to accommodate fewer face-to-face interactions. Almost half of the court coordinators (48%) indicated that court sessions were reduced in frequency.

Table 2. Problem-Solving Court Operation Shifts due to COVID-19 Pandemic Reported by Court Coordinators.

Operation Shift	Percentage of Court Coordinators (%)
Changing court procedures (n = 82)	
Rescheduled in-person visits to phone calls or virtual contact strategies	93
Rescheduled in-person court sessions to phone calls or virtual contact strategies	90
Reduced frequency of court visits	49
We are implementing new sanctions	40
We are offering new incentives	39
Altering treatment practices	
We are asking participants to self-report drug use or relapse issues	56
We have stopped drug testing for now	29
Participants need to pick up their own medications from a pharmacy or provider	23
Specific types of treatment are suspended	22
We are using a random dial system to alert participants of when drug testing will occur	21
Prescribing and dispensing additional quantities of take-home medications	7
We offer delivery of medications to their residence	2
We have identified a central place to pick up medications	4

Alternatively, treatment protocols were slightly changed during the pandemic (see [Table 2](#)). Specifically, 22% of court coordinators indicated that some types of treatment were suspended due to COVID-19; although, one respondent explained that access to Methadone was significantly reduced due to the pandemic. While 80% of the sub-sample indicated that their court authorizes and refers court participants to MAT, barriers to access led some courts to implement alternative means for treatment during the pandemic—finding an alternative location for court participants to pick up medications (4%), offering delivery of medications to court participants (2%), and prescribing additional quantities of medications (7%). Two court coordinators clarified that there were changes to court sessions, but there were no known changes in treatment protocols since they outsourced their treatment regimens to third-party providers. One coordinator indicated a switch to virtual (i.e., telecommunication) treatment options for court participants such as psychological counseling. Only one court coordinator indicated that their courts had to scale back treatment sessions for reasons unstated.

Changes in drug testing protocols appear to be impacted by the pandemic as well. Over half of PSCs in the sub-sample reported that they asked court participants to self-report their drug use (56%) and a quarter of courts stopped drug testing their participants during the pandemic entirely (29%). One court coordinator indicated that their court required increased drug testing of court participants via treatment providers, instead of in-house drug-testing.

Discussion

This research note on adapting to COVID-19 protocols within the realm of PSCs found that courts primarily switched to virtual or contactless methods of operation, including court operations, treatment services, and drug testing purposes. This is similar to the findings from [Zilius and](#)

colleagues' (2020) study regarding the use of virtual or contactless court procedures (Zilius et al., 2020). However, some courts in our study had to cease operations entirely or significantly reduce court and/or treatment operations. Drug testing practices appear to be the one area where service delivery was significantly altered given the inability to use virtual means and/or contactless options. However, it is important to acknowledge that PSCs were particularly resilient in their response to COVID-19 in efforts to continue meeting the needs of court participants by guiding them through court operations despite ongoing changes and supporting them throughout their treatment progress despite barriers to access. In this way, shifting operations in PSCs led to at least some positive outcomes such as increased appearances by court participants; so while overall progress may have been stunted, participants continued showing up. This also highlights the dedication of PSC staff and treatment providers to find new pathways to ensure courts were still serving their primary function and treatment was still received by court participants.

Limitations & Future Directions

The limitations of this exploration are that we added only two questions pertaining to pandemic procedures to an original survey of local PSC coordinators, and these questions reflected the more immediate responses to the pandemic given that the questions were present on the survey from April to August of 2020. Lastly, this relatively small sample of court coordinators who completed the COVID-19 survey questions may not be generalizable to the larger PSC community during this turbulent time.

Given this limited research, there is a great need to explore the impacts of shifting PSC operations and treatment services, specifically during turbulent crises, as they may have unforeseen negative impacts on court participants' lives and success and in the program. Moving forward, since some of the shifting operations have now been evaluated by researchers in some capacity, PSCs could collaborate with researchers to develop contingency plans to maintain operations and treatment in the event of future public health crises based on their experiences with COVID-19. It is important to continue studying what changes to PSCs have been sustained or abandoned, and the extent to which PSCs have returned to operations and services similar to before the pandemic. Beyond PSCs though, research on the impacts of COVID-19 must seek a better understanding of its implications for individuals moving through the criminal legal system. Specifically, it is important for researchers to explore: (1) the influence of the pandemic on the continued provisions of treatment modalities for justice-involved individuals; (2) the collaboration necessary between justice agencies and treatment providers during a pandemic to provide services to clients; (3) the mental health impact of virtual sessions, and (4) the extent of relapses/recidivism during the pandemic related to limited contact with the justice staff and treatment providers. The newfound innovations of operating virtually and participating in remote treatment services, as well as the damage of less social connection for individuals in the system with high needs, is ripe with new research avenues to examine.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This study was funded by a National Institutes of Health and National Institute on Drug Abuse grant (R01DA043476) that was awarded to Dr. Michael Gordon of Friends Research Institute.

Dr. Gordon collaborated with Drs. Faye Taxman and James Witte of George Mason University to conduct the Medication-Assisted Treatment (MAT) Utilization Survey of Problem-Solving Courts (PSCs). We would also like to thank our survey administrators, research assistants, and research participants, all of whom collectively helped make this study possible.

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