

By ADAM KATZ

What comes to mind when you hear the words “specialty courts?”

- A. Rehabilitation in lieu of incarceration
- B. A non-adversarial setting
- C. Collaboration among differing representatives from the community to achieve a common outcome
- D. All of the above

The correct answer is D.

The common goal for all involved in a case assigned to Kane County’s specialty courts is to educate, treat, and motivate the defendant to live a lawful life, and also to live a productive and healthy life.

There often are differences of opinion as to the most effective means to achieve that goal. This article is a basic overview of the specialty courts in Kane County. It includes statutory requirements, how each court operates and why feedback from law enforcement is essential to their success.

### **Drug Rehabilitation Court**

Drug Rehabilitation Court, which began around 2001, is Kane County’s oldest and largest specialty court. It is codified as the Drug Court Treatment Act [730 ILCS 166](#).

By statute, drug court can function as pre-adjudicatory or post-adjudicatory.

Kane County’s drug court is post adjudicatory. This means that a defendant must either admit guilt or have been found guilty, and a requirement to successfully complete drug court is a condition of the sentence.

A defendant must satisfy the statutory requirements to apply to drug court. Specifically, the offense cannot be a crime of violence, which is defined in the statute, and the defendant cannot have been convicted of a crime of violence within the past 10 years, excluding time spent incarcerated.

Also, the defendant must admit to drug use or addiction and must demonstrate a willingness to participate in a treatment program, which includes aftercare, signing appropriate waivers, and agreeing to adhere to specified rules and policies.

The prosecutor does not have absolute veto power to thwart a defendant's drug court application. A defendant can be sentenced to drug court as a condition of probation even if the state does not acquiesce. There are limited circumstances in which the state, acting on its own, can prevent a defendant from being sentenced to drug court, such as when a defendant is charged with a Class 2 or greater felony offense under certain statutes listed in the Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act. Other instance where the state can thwart a drug court application is when the defendant previously on three or more occasions completed a drug court program, was discharged from or terminated from a drug court program.

The offense must allow for a sentence of probation because drug court is a condition of the sentence.

Kane County's drug court applies non statutory factors to determine eligibility:

Applicants must be Kane County residents during their time in drug court.

Probation officers often make unannounced home visits on participants, and the officers can conduct those visits within Kane County.

Applicants cannot be active within a street gang members

Applicants who are convicted sex offenders generally are not accepted. Drug court offers many activities for the participant and their family members outside of the courtroom. Gang members and sex offenders pose a public safety risk to all involved at these out of court functions.

### **Drug court application process**

When a defendant wants to apply for drug court it is first discussed between the defendant's attorney and the prosecutor who is assigned the file. When there is an agreement, the defendant completes an application and the file is sent to Courtroom 123 for a 9 a.m. Tuesday morning hearing. The prosecutor sends the file to ASA Lindsey Lachanski for review. The SAO sends a letter to the arresting agency notifying them of the application and seeking any objections.

We welcome feedback from police on this issue. First, the police may have had prior encounters with a defendant and have information about the defendant that never make its way into a police report. Sharing the information with the SAO will help us decide whether to agree to let the defendant apply.

Second, information you may have about a defendant as to why that defendant should not be accepted into drug court often will be fair game for you to present to a judge at a sentencing hearing. Depending on how compelling that information is could influence the judge's decision regarding drug court.

In cases where the State agrees to let the defendant apply, the defendant must first go through a lengthy application process. This consists of two rounds of interviews through the probation department to ensure that the applicant is a high enough risk and has a high enough need for drug court. Drug court takes only applicants who are of such high need and risk that it is unrealistic to expect that they can get the help to treat their addiction on their own in the community. If an applicant does not score high enough on the risk/need scale they will be deemed inappropriate for drug court and their case will return to its originating courtroom.

If the applicant successfully completes the screening process, then the SAO will make an offer to the defendant's attorney, which involves a disposition with drug court as a condition of probation. The offer will always include the treatment recommendations from the applicant's individual assessment. The defendant then will enter a plea on the underlying case(s) in Courtroom 123, and is placed on drug court probation for 18-24 months on average.

Drug court probation is very intensive and closely scrutinized. Team members consist of a judge, prosecutor, public defender, coordinator, supervisor, probation officers, treatment providers, the Kane County Diagnostic Center, and law enforcement. Everyone works together to ensure the defendant receives the necessary care and is held accountable.

Drug court is composed of five phases leading to graduation. The lower the phase, the more intense it is. In the first two phases for example, participants have court weekly, daily contact with their probation officers, are subject to random drug drops at specified locations, are subject to random home visits by probation officers, and are often completing some level of treatment, such as inpatient treatment or intensive outpatient treatment. Many who are in inpatient treatment are often required to go to a recovery home following discharge from treatment.

Defendants who violate the rules are sanctioned immediately. Sanctions are often therapeutic and punitive. Therapeutic sanctions can include being assessed for a higher level of treatment, an increased number of meetings, keeping daily journals to log food and beverage consumption, writing a research paper, increasing the number of random drops and increased home visits by the probation officer. Punitive sanctions can include house arrest, community service, jail time, expulsion from the program and resentencing to prison.

Defendants who successfully complete the program can look forward to a large graduation ceremony, which are held each May and October at Kane Branch Court.

### **Treatment Alternative Court**

Treatment Alternative Court started about 2005 and has a cap of 30 participants. It is codified in the statute as [730 ILCS 168/1](#) and named the Mental Health Court Treatment Act. The statute is relatively short.

There are many eligibility overlaps between TAC and Drug Court. Like in Drug Court, the defendant must be willing to participate in treatment, cannot have been convicted of a violent crime within the past 10 years, and the underlying offense cannot be a violent crime. Local rules include that participants must be residents of Kane County, and cannot be active gang members or convicted sex offenders.

The main difference between this statute and the Drug Court Treatment Act is that the prosecutor has no unilateral veto power to prevent a defendant from participating. However, not all applicants are accepted.

The TAC application process consists of four phases to ensure the applicant is a good fit. In Phase I, the state's attorney phase an ASA reviews the file and the applicant's background to ensure he meets statutory requirements. In Phase II, the coordinator phase, the TAC coordinator interviews the applicant and conducts assessments to ensure the applicant has a high enough risk and need for the program. In Phase III, the Kane County Diagnostic Center phase, a staff psychologist ensure that the applicant has a diagnosable and treatable mental illness. In Phase IV, the treatment provider phase. Kane County works with two primary treatment providers: Lutheran Social Services of Illinois and Ecker

Center in Elgin. The provider will determine if their facility meets the applicant's needs.

Once an applicant clears all four phases, they can officially plead into TAC. Like Drug Court, TAC is a post adjudicatory program. The TAC team consists of a judge, prosecutor, public defender, coordinator, probation officer, staff psychologist, treatment providers, and a law- enforcement representative. Team members work collaboratively to ensure that an applicant completes all program requirements while maintaining the integrity of the program. Applicants typically are placed on probation for 24 months. A requirement of probation is to successfully complete all terms of TAC.

TAC involves three phases. Each requires courtroom appearances, contact with the coordinator, treatment and therapy, random drug testing and remaining medication compliant. As an applicant makes it into later phases of the program, court appearances are less frequent and there is a greater focus on maintaining employment, community service, and establishing permanent housing to enable the participant to thrive post TAC.

TAC also imposes therapeutic and punitive sanctions for those who do not follow the rules. Repeated rules violations are grounds for dismissal from TAC and re-sentencing.

### **Veterans Treatment Court**

Veteran's Treatment Court, which started in 2018, is the newest specialty court, and it has the fewest number of participants. It is codified at [730 ILCS 167/1](#) and named the Veterans and Servicemembers Court Treatment Act.

To be eligible, the defendant must demonstrate a willingness to participate in a treatment program, cannot have been convicted of a crime of violence within the past 10 years, and the underlying offense cannot be a crime of violence. Locally, applicants must also be Kane County residents, and cannot be active gang members or convicted sex offenders.

In VTC the prosecutor lacks the unilateral power to block a defendant's application. A defendant is only ineligible if he or she does not satisfy the limited statutory requirements.

The statute defines a veteran as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under

conditions other than dishonorable. A servicemember is a person who is currently serving in the Army, Air Force, Marines, Navy, or Coast Guard on active duty, reserve status, or in the National Guard.

The VTC team consists of a judge, prosecutor, public defender, coordinator, treatment providers, and a representative from Hines VA Hospital. VTC participants also have mentors to assist them. The mentors are veterans who have endured many of the same struggles the participants now face. The team works collaboratively to ensure participants obtain the education, treatment and counseling they need to successfully complete the program.

VTC convenes on select Monday afternoons in Courtroom 123. Participants are in the program an average of 24 months. Once the veteran applies an assistant state's attorney reviews the application and the file to ensure statutory requirements are met. The ASA then passes the information to the VTC coordinator, who interviews the applicant and certifies eligibility.

Once accepted, the participant can plead into VTC. This includes a sentence that requires the successful completion of all VTC requirements.

VTC has three phases. The program consists of court appearances, random drug testing, and treatment to meet the applicant's needs.

Treatment could be for substance use disorder, mental health, or a combination of the two. Team members ensure the applicant receives any benefits to which they are entitled through the federal government. These benefits can be monetary, treatment at facilities exclusively for veterans/servicemembers and ensuring that counselors are tailored to the applicant's specific needs.

In the beginning phases, court appearances are weekly, and the focus is more on coping, treatment and counseling, and medication management. As the participant progresses, court appearances are less frequent and the focus shifts to living in the community while maintaining sobriety and good mental health. Participants can be therapeutically and punitively sanctioned for violating rules. Repeated violations or new criminal charges could lead to discharge from the program and being resentenced.

Kane County's specialty courts are an important component of the criminal justice system because they take high need/high risk individuals and provide intensive supervision. Often, individuals in specialty courts have previously been

on standard probation or to the prison, yet they continue to offend. Specialty courts provide individuals with intensive supervision, treatment, education, and hope to go forward living a healthy crime-free life. For those participants who are determined to make a change in their lifestyle, the reward from successfully navigating through a specialty court is the best investment they will ever make.