

BALANCING DUE PROCESS FOR THE ACCUSED
AND THE GOAL OF REDUCING RECIDIVISM IN TENNESSEE'S RECOVERY COURTS

by

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1 In response to the link between incarcerated individuals and substance abuse issues, many
2 states, including Tennessee, have developed specialized drug courts commonly known as
3 “recovery courts.” The goal of these courts is to provide an alternative to incarceration and to
4 reduce the likelihood of recidivism, which is the tendency of a convicted criminal to reoffend.

5 However, because of the specialization of these courts, only certain applicants, being those
6 with histories of substance use, need apply. Of those applicants, only a limited amount are selected
7 and even fewer are actually successful at completing the rigorous recovery court program. It is
8 worth considering whether the goals of the State may be outweighed by the concerns of
9 disqualified potential participants and the benefits that can be enjoyed by participants. A number
10 of factors, including the inaccessibility of this option, or something comparable, to all who are
11 criminally accused and the limitations placed on the application process, all factor into this
12 consideration.

13 Tennessee Recovery Courts have a responsibility to reduce the likelihood of recidivism,
14 balancing this goal of the State against the prejudicial effects encountered by potential participants
15 when determining their eligibility. To understand the vital role that recovery courts play in our
16 judicial system, a foundational understanding of their formation, structure, and goals is essential.

17 **A. Formation of Recovery Courts**

18 Tennessee recovery courts are statutorily based in Title 16 of the Tennessee Code,
19 specifically Chapter 22 titled “Drug Court Treatment Act of 2003.” These courts were developed
20 by the state legislature in response to drug use, drug addiction and crimes committed as a result of
21 said use and addiction.¹ The Tennessee General Assembly also recognized that because crimes

¹ Tenn. Code Ann. §16-22-102(a)

22 are committed due to drug use and addiction, a critical need exists specifically for criminal justice
23 programs to help reduce the incidence of use, addiction, and the crimes that occur as a result.²

24 Recovery courts serve a special place in the criminal justice system as an alternative for
25 eligible drug and alcohol-addicted offenders who may be referred to take part in the program in
26 lieu of the traditional means of case processing in the judicial system. Unlike most courts, the
27 Department of Mental Health and Substance Abuse Services administer the drug court treatment
28 program.³ This administration includes, but is not limited to, coordinating training for state drug
29 court treatment, supporting a state drug treatment mentor program, and awarding state drug court
30 treatment grants.⁴

31 Although statutorily formed by the General Assembly, administered by the Department of
32 Mental Health and Substance Abuse Services, and often run in conjunction with standard criminal
33 courts, recovery court programs operate under the principles established by the National
34 Association of Drug Court Professionals (NADCP), Drug Court Standards Committee.⁵ The ten
35 principles are enumerated by statute as follows:

- 36 (1) Drug courts integrate alcohol and other drug treatment services with justice
37 system case processing; (2) Drug courts use a nonadversarial approach, with
38 prosecution and defense counsel promoting public safety while protecting
39 participants' due process rights; (3) Drug courts identify eligible participants
40 early and promptly place them in the drug court treatment program; (4) Drug
41 courts provide access to a continuum of alcohol, drug, mental health and other
42 related treatment and rehabilitation services; (5) Drug courts monitor
43 abstinence by frequent alcohol and other drug testing; (6) Drug courts use a
44 coordinated strategy to govern responses to participants' compliance; (7) Drug
45 courts use ongoing judicial interaction with each drug court participant as an
46 essential component of the program; (8) Drug courts utilize monitoring and
47 evaluation to measure the achievement of program goals and gauge
48 effectiveness; (9) Drug courts employ continuing interdisciplinary education to

² *Id.*

³ Tenn. Code Ann. §16-22-105

⁴ *Id.*

⁵ Tenn. Code Ann. §16-22-104

49 promote effective drug court planning, implementation and operations; and
50 (10) Drug courts forge partnerships among the courts, public agencies and
51 community-based organizations to generate local support and enhance drug
52 court effectiveness.⁶

53 Each of these principles factor heavily into the structure of recovery courts, including their rigorous
54 nature and frequency of meeting after participants' entry.

55 **B. Goal of Recovery Courts**

56 Recovery courts are a determined and pointed solution to a nationwide problem. Of the
57 more than 2.2 million incarcerated individuals in the United States,⁷ approximately eighty-five
58 percent of those individuals have serious substance abuse problems, with an estimated 1.5 million
59 meeting the criteria for substance abuse addiction.⁸ The opioid epidemic continues to grow, only
60 adding to the issues that come with substance abuse, with the Centers for Disease Control and
61 Prevention (CDC) reporting that more people died from opiate overdoses in the U.S. in 2014 than
62 from car accidents.⁹ Some states have found themselves hit harder than others, including
63 Kentucky, where a five hundred percent (500%) increase in heroin overdoses was recorded from
64 2011 to 2012.¹⁰

65 Unfortunately, almost half (43.3 percent to 45.4 percent) of all prisoners who are released
66 nationwide return to prison within three years.¹¹ Tennessee's recidivism rates are even higher,
67 with three-year rates at 46.1 percent and four-year rates at 54.8 percent.¹² Studies show that in
68 2013, only 2.5 million of the 22.7 million Americans needing treatment for drug dependence

⁶ *Id.*

⁷ Glaze, L.E. (2010), "Correctional Populations in the United States, 2009," *Bulletin*, NCJ 231681, Washington, D.C., U.S. Department of Justice, Bureau of Justice Statistics.

⁸ "Behind Bars II: Substance Abuse and America's Prison Population" (2010), New York, N.Y., The National Center on Addiction and Substance Abuse at Columbia University.

⁹ Barbara Andraka-Christou, *Improving Drug Courts Through Medication Assisted Treatment for Addiction*, 23 Va. J. Soc. Pol'y & L. 179 at 181.

¹⁰ *Id.*

¹¹ "Drug Court Success," 51-MAR Tenn. B.J. 16.

¹² *Id.*

69 actually received treatment.¹³ Failure to treat drug dependence factors into recidivism, helping
70 deter previous offenders from similar behaviors in the future. The success rate of properly treating
71 drug dependence is proven to be similar to that of treating any other chronic disease when treated
72 appropriately.¹⁴

73 The general assembly generally recognized a need to reduce drug use and addiction, as
74 well as the crimes that result from that use and addiction, understanding the role the criminal justice
75 system should play in the reduction.¹⁵ However, the legislature recognized several specific goals
76 of recovery courts, including:

77 (1) To reduce the use of jail and prison beds and other correctional services by
78 nonviolent chemically dependent offenders by diverting them into rehabilitative
79 programs; (2) To reduce incidences of drug use and drug addiction among
80 offenders; (3) To reduce crimes committed as a result of drug use and addiction;
81 (4) To promote public safety through these reductions; (5) To increase the
82 personal, familial and societal accountability of offenders; and (6) To promote
83 effective interaction and the use of resources among local criminal justice
84 agencies and community agencies.¹⁶

85
86 Individual recovery courts for each county hone in on their goals even further, determining
87 mission statements and purpose statements of their own. The Montgomery County Recovery
88 Court, for example, has developed both a mission statement and a purpose statement. Their
89 mission to “promote judicial intervention and rehabilitation to substance abuse offenders in an
90 effort to reduce drug-related crimes among repeat offenders...thereby enhancing the quality of life
91 for their families and community” pairs perfectly with their purpose of providing “intense
92 supervision, treatment referral and job placement services to recovery court participants so they
93 can recover from their addiction, remain drug and alcohol free, and reduce the costs associated

¹³ *Improving Drug Courts Through Medication Assisted Treatment for Addiction* at 182.

¹⁴ *Id.*

¹⁵ Tenn. Code Ann. §16-22-102

¹⁶ *Id.*

94 with incarceration.”¹⁷ Their mission and purpose carry over into the intense, emotional work done
95 on a day-to-day basis with recovery court participants and graduates. Montgomery County
96 Recovery Court Coordinator, Cindy Richards, has worked in the “corrections” field since 1986,
97 spending the last seven years playing a vital role in the Montgomery County Recovery Court, after
98 one year of working with Davidson County’s residential, felony-only DC4 program.¹⁸ Including
99 Ms. Richards, the recovery court team for Montgomery County is made up of approximately
100 eleven members, with the Honorable Judge Raymond Grimes presiding and having played a key
101 role in initiating the recovery court in that county in 2005.¹⁹ The recovery court has placed a clear
102 focus not only on ensuring that a change be made among those most likely to offend again but on
103 attempting to affect an actual difference on the lives of these individuals and their families.

104 **C. Funding for Recovery Courts**

105 Despite the opioid crisis continuing to be addressed as a national issue that receives federal
106 funding, recovery courts are largely funded by the state’s budget.²⁰ For the July 2019 budget in
107 Tennessee, a \$1.7 million increase was included for recovery courts to expand capacity and add
108 additional courts.²¹ Fortunately, with the growing number of recovery courts across the state of
109 Tennessee, funding has exponentially grown, ranging from \$11.5 million in fiscal year 2013 to an
110 impressive \$31.1 million in the current fiscal year.²²

¹⁷ Montgomery County Recovery Court (2018). *Montgomery County Recovery Court* [Brochure].
Clarksville, TN: Author.

¹⁸ Interview with Cynthia “Cindy” Richards, Coordinator, Montgomery County Recovery Court, in
Clarksville, Tenn. (Jan. 9, 2020).

¹⁹ *Id.*

²⁰ Matthew Torres, *State to Expand Recovery Courts with New Budget* (June 14, 2019),
<http://www.newschannel5.com/news/state-to-expand-recovery-courts-with-new-budget>.

²¹ *Id.*

²² Tennessee Administrative Office of the Courts, *Judges, Court Staff Essential to Drug Court Growth*
(January 29, 2020), <http://www.tncourts.gov/news/2020/01/29/judges-court-staff-essential-drug-court-growth>.

111 Individual counties, however, may receive varying amounts of funding and from different
112 sources. Specifically, the Montgomery County Recovery Court is funded by the Tennessee
113 Department of Mental Health and Substance Abuse Services, fines collected pursuant to the Drug
114 Court Treatment Act, participant fees, and tax-deductible donations from the community.²³ As
115 discussed later, recovery court is subdivided into phases with participant fees being determined
116 based on what phase of recovery court the participant has reached.

117 Although the underlying issue here is being responded to with targeted policies and
118 additional resources at the national level, state and local governments still continue to not only
119 bear the burdens that come with untreated addiction, but the costs as well. Unfortunately, only
120 small amounts of congressional funding have trickled down to local courts to assist with the
121 programs being provided.²⁴ In fact, Tennessee’s state government has stepped in through the
122 Department of Mental Health and Substance Abuse to provide multiple forms of funding for
123 substance abuse treatment services for individuals involved in the criminal justice system who
124 have no other means to pay.²⁵ Recovery courts rely heavily on these funds for their participants
125 to receive the treatment they need, especially in earlier phases of the program where requirements
126 are especially rigorous and often costly.²⁶ This includes funding sources like Alcohol and Drug
127 Addiction Treatment (ADAT), which is available to offenders convicted of Driving Under the
128 Influence (DUI) who have been ordered by the court into treatment, as well as Supervised

²³ Alexander Harris, *Montgomery County Drug Court 10 Years Strong* (July 10, 2015),
<https://www.theleafchronicle.com/story/news/local/clarksville/2015/07/10/montgomery-county-drug-court-years-strong/29996149/>.

²⁴ National Judicial Opioid Task Force, *Convening, Collaborating, Connecting: Courts As Leaders In The Crisis Of Addiction* 9 (2019).

²⁵ Department of Mental Health and Substance Abuse Services, *Funding for Treatment*,
<https://www.tn.gov/behavioral-health/substance-abuse-services/criminal-justice-services/funding-for-treatment.html>.

²⁶ Interview with Cindy Richards (2020).

129 Probation Offender Treatment (SPOT), which pays for alcohol and drug treatment services and is
130 available for offenders sentenced to supervised probation who may be at risk of violating their
131 probation due to the their substance use.²⁷

132 Recognizing the critical role that state courts play as a partner and equipping them with the
133 necessary funding and resources in combatting this epidemic is vital to continued success.

134 **D. Entry to Recovery Courts**

135 For purposes of narrowly tailoring focus, this discussion will primarily center around the
136 recovery court program instituted in Montgomery County, Tennessee. The recovery court for
137 Montgomery County began in June 2005. It operates at the General Sessions Criminal level and
138 lasts an average of fifteen to eighteen months, depending on the charges, length of treatment, and
139 the participant’s level of compliance during the program.²⁸

140 Once a candidate is referred to the recovery court program, eligibility for potential
141 participants must be determined to foster their entry into the program. Candidates experience a
142 rigorous screening process for entry, beginning with referral. Potential participants are referred to
143 the program after being arrested on an alcohol or drug related charge.²⁹ Potential participants then
144 meet with the recovery coordinator to determine if they have a history of drug and/or alcohol abuse
145 and undergo screening to ensure they are Montgomery County residents.³⁰

146 Recovery court then conducts an observation of the potential participant and specifically
147 assess if they are a non-violent offender.³¹ The District Attorney conducts a separate review of

²⁷ *Funding for Treatment.*

²⁸ Montgomery County Recovery Court (2018). *Montgomery County Recovery Court* [Brochure].
Clarksville, TN: Author.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

148 the National Crime Information Center (NCIC) and signs off on the participant’s entry.³² The
149 potential participant then meets with their public defender, agreeing to the recovery court
150 guidelines and entering the program voluntarily.³³

151 Only after all other steps have been finished will the recovery court team vote on program
152 entry for the participant.³⁴ Upon entry to the program, all participants must comply with the
153 treatment agreement, beginning treatment with a desire to become drug and alcohol-free.³⁵ All
154 participants must be partnered with a “sponsor.”³⁶ This sponsor must have at least two years of
155 sobriety and acts as a mentor to them as they maneuver through the phases of the recovery court
156 program, including working the Alcoholics Anonymous (AA) twelve-step program that is
157 incorporated into the phases.³⁷ Participants then begin the five phases of the program leading to
158 graduation: Treatment (Phase I), Abstinence and On-Going Recovery (Phase II), Relapse
159 Prevention (Phase III), Self-Awareness/Maintenance (Phase IV), and Transition/Self-Reliance
160 (Phase V).³⁸

161 Recovery court participants work their way through each of the phases and gain eligibility
162 for promotion by achieving a certain number of sobriety days and benchmarks along the way.³⁹
163 Phase I, for example, requires that participants obtain treatment, stable housing, and employment,
164 while also passing mandatory random drug screens up to seven days per week and attending team
165 meetings at least three times per week and individuals meetings at least once per day.⁴⁰ Recovery

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Interview with Cindy Richards (2020).

³⁷ *Id.*

³⁸ *Montgomery County Recovery Court* [Brochure] (2018).

³⁹ Interview with Cindy Richards (2020).

⁴⁰ *Id.*

166 court staff are able to assist participants with securing funding from programs like SPOT and
167 ADAT, whose funds and the growth of recovery court programs have likely contributed to the
168 substantial increase in resources for those with substance abuse disorders, such as recovery homes
169 like the Oxford House. The Oxford House has been and continues to be an important resource for
170 the Montgomery County Recovery Court program.⁴¹ Further, its influence has spread noticeably
171 through other counties across the state, having gone from only six Oxford Houses in the State of
172 Tennessee in fiscal year 2014 to 102 houses this year for a total of 724 beds for individuals in
173 recovery.⁴²

174 Not only do the needs of recovery courts vary significantly even from county to county,
175 but so do the courts themselves. The Davidson County Drug Court Residential Program (DC4)
176 operates an impressive 108-bed criminal justice and drug treatment facility as the only recovery
177 court program in the country with its own dedicated residential substance abuse treatment
178 facility.⁴³ DC4 has combined their four-phase version of the recovery court model with a modified
179 therapeutic community, based largely on the 12-step model.⁴⁴ However, this program has the
180 added benefit of all substance abuse treatment occurring as part of the centralized court-affiliated
181 residential program rather than having multiple providers throughout the community for each
182 aspect of treatment.⁴⁵ Unfortunately, this program is only available to felony level offenders.⁴⁶

183 **E. Exclusivity of Recovery Courts and their Unavailability to Violent Offenders**

184 Recovery courts are a limited court, available only to a certain portion of the population.
185 According to the National Association of Drug Court Professionals' Adult Drug Court Best

⁴¹ *Id.*

⁴² *Judges, Court Staff Essential to Drug Court Growth* (2020).

⁴³ "Drug Court Success" at 17.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Interview with Cindy Richards (2020).

186 Practice Standards, the criteria for eligibility in recovery courts are based on empirical evidence
187 focusing directly on which offenders can be treated both safely and effectively, labeled as the
188 “target population.”⁴⁷ These Best Practice Standards specifically state that barring legal
189 prohibitions, offenders charged with “drug dealing or those with violent histories are not excluded
190 automatically from participation in the Drug Court.”⁴⁸ However, participants in recovery courts
191 across the state, by statute, shall: “(1) Not be a violent offender as defined in §16-22-103, (2) Be
192 substance abusing or chemically dependent, or both; and (3) Be willing to participate in a treatment
193 program.”⁴⁹

194 Violent offenders are defined as persons who are:

195 “convicted of an offense, during the course of which: (a) The person carried,
196 possessed or used a firearm or dangerous weapon; (b) There occurred the death of
197 or serious bodily injury to any person; or (c) There occurred the use of force against
198 the person of another; or [h]as one or more prior convictions for a felony crime of
199 violence involving the use or attempted use of force against a person with the intent
200 to cause death or serious bodily harm.”⁵⁰

201
202 Such a broad, expansive definition of “violent offender” as codified in the Drug Court
203 Treatment Act of 2003 has the potential to exclude an entire section of offenders who are either
204 currently being helped or are capable of being helped. Allowing a liberal interpretation of the term
205 violent offenders and the broad brushstrokes by which they are painted may lead to an unfortunate
206 insinuation by recovery courts that these offenders are somehow, in every situation, past the point
207 of rehabilitation. Providing an opportunity for as many to benefit from the structured environment
208 of recovery courts should be the goal of the courts and legislature, alike.

⁴⁷ Vol. 1 National Association of Drug Court Professionals, *Adult Drug Court Best Practice Standards 5* (2013 rev. 2018).

⁴⁸ *Id.* at 6.

⁴⁹ Tenn. Code Ann. §16-22-113

⁵⁰ Tenn. Code Ann. §16-22-103(4)(A)

209 The exclusivity of recovery courts from violent offenders may be at least partially rooted
210 in the mixed outcomes that have been reported for violent offenders who participate in recovery
211 court.⁵¹ It is most likely that these reported mixed outcomes are due to a failure or simple inability
212 of some recovery courts to meet both the needs and risk levels associated with violent offenders.⁵²
213 However, it is important to note that this is mere speculation, as there is “no empirical justification
214 for routinely excluding violent offenders from participation in Drug Courts.”⁵³ In fact, several
215 studies have found that recovery court participants charged with violent crimes or with histories
216 of violent crimes actually performed as well or better than other “nonviolent” participants.⁵⁴

217 Similarly, recovery courts have, in some jurisdictions, been permitted by appellate court
218 discretion to exclude potential participants who may require more intensive mental health and
219 psychiatric services than a given program is capable of providing.⁵⁵ Again, there is no empirical
220 justification for excluding those potential participants from recovery court who suffer with
221 substance abuse issues which co-occur with mental health or medical problems when adequate
222 services are available.⁵⁶ The Multisite Adult Drug Court Evaluation (MADCE) studied twenty-
223 three recovery courts nationally and found recovery courts to be effective regardless of mental
224 health conditions (although the severity of mental health problems in these studies are unclear due
225 to psychiatric diagnoses not being reported).⁵⁷

226 Despite potential participants’ violent charges, histories of violence, mental health issues,
227 and/or some co-occurring combination that pairs these with substance abuse issues, evidence

⁵¹ *Adult Drug Court Best Practice Standards* at 7.

⁵² *Id.* at 8.

⁵³ *Id.*

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* at 8.

⁵⁶ *Id.*

⁵⁷ *Id.*

228 shows that programs focused on reducing serious felony offenses, often violent ones, and mentally
229 ill offenders are the most cost-effective for communities. This stems from the high costs associated
230 with mentally ill offenders and their tendency to continuously drift in and out of the criminal justice
231 system, each time needing expensive care and resources.⁵⁸

232 **F. Recovery Courts in the Fight Against Maternal Opioid Use**

233 As stated, recovery courts were formed in response to the link between incarcerated
234 individuals and substance abuse issues. This has become a still more pressing issue to the judiciary
235 as the opioid epidemic continues to rise. Opioids, while including prescription painkillers such as
236 oxycodone and hydrocodone, also includes illicit drugs such as heroin and fentanyl.⁵⁹ The opioid
237 epidemic has formed a subpopulation of its own, spanning across racial lines, economic boundaries
238 and affecting even pregnant women.⁶⁰ In fact, approximately one in five women consume opioids
239 while pregnant, whether illicit or prescription.⁶¹

240 Recovery courts are an invaluable resource to offenders struggling with substance abuse
241 issues. However, limitations on entry for violent offenders may place a strain on the assistance
242 that can be provided to one of the largest groups that stand to benefit from recovery courts: opioid
243 addicted mothers. While it is commonplace and necessary for drug activities to be prosecuted,
244 there is considerable debate as to whether pregnant women should be prosecuted for their drug
245 use.⁶² This debate centers around whether criminal charges should be brought against pregnant drug
246 users due to the effect of the drug use on the fetus or newborn, which often results in Neonatal

⁵⁸ *Id.*

⁵⁹ Cara O'Connor, *A Guiding Hand or a Slap on the Wrist: Can Drug Courts be the Solution to Maternal Opioid Use*, 109 JCRLC 103, 107 (2019).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 105.

247 Abstinence Syndrome (NAS) upon birth.⁶³ Neonatal Abstinence Syndrome is a withdrawal
248 symptom that newborns experience when rapidly shut off from the drugs they experienced while
249 in utero.⁶⁴ Opioid exposure for a fetus can also affect the regulatory system resulting in high in
250 utero fetal mortality rates.⁶⁵

251 The South, as a region, has shown higher rates of addiction among pregnant women.⁶⁶ This
252 trend likely factors into the fact that Tennessee, South Carolina, and Alabama are the only three
253 states which have made pregnant illicit drug use a crime.⁶⁷ Both South Carolina and Alabama
254 have done so through their high courts' interpretations of preexisting child endangerment laws.⁶⁸
255 Tennessee, however, did so explicitly by statute.⁶⁹ This statute allowed the words "another",
256 "individuals", or "another person" to include a human or embryo at any stage of gestation in utero
257 when any such word is used to refer to the victim of any act made criminal.⁷⁰

258 This version of Tenn. Code Ann. §39-13-107 was passed in 2014 to prosecute women for
259 pregnant drug use. This "fetal assault" law amended the general assault statute to apply to the
260 illegal use of a narcotic by a pregnant woman if the child is born addicted to or harmed by the in
261 utero drug use.⁷¹ This law was only able to be passed with a sunset provision, however, and
262 expired automatically in July 2016. Since its expiration, similar laws have been proposed in the
263 state legislature, leading many to believe a comparable statute may be enacted in the future.⁷²

⁶³ *Id.* at 108.

⁶⁴ *Id.*

⁶⁵ *Id.* at 109.

⁶⁶ *Id.* at 110.

⁶⁷ *Id.* at 113-114.

⁶⁸ *Id.* at 114.

⁶⁹ *Id.*

⁷⁰ Tenn. Code Ann. §39-13-107 (2014).

⁷¹ *Guiding Hand* at 114.

⁷² *Id.* at 114-115.

284 sociodemographic factors.⁷⁶ This trend continues into DUI courts as well.⁷⁷ Most notable though
285 is the fact that demographic factors substantially matter in predicting recovery court success and
286 appear to be far more determinative than race alone, as black participants with more education
287 who are employed graduate at a higher rate than unemployed, less educated white participants.⁷⁸

288 Not only is a participant's ability to graduate important in gauging success, but their ability
289 to stay outside the criminal justice system after recovery court is as well. In an effort to track
290 success after recovery court, recidivism data is collected annually on all program participants, with
291 the Nashville Drug Court Support Foundation (NDCSF) requesting each July that community
292 corrections review all past program graduate arrests.⁷⁹ Nashville's DC4 program specifically
293 focuses on the needs of repeat criminal offenders who have histories of substance use problems
294 and long-term involvement in the criminal justice system.⁸⁰ In fact, program participants report
295 significant criminal histories, averaging 11.9 lifetime arrests, as well as significant histories of
296 substance use, using substances for an average of 17.9 years.⁸¹

297 Looking at data collected on individuals who participated in, completed, and graduated
298 from the two-year recovery court program common in Davidson County, the majority of
299 individuals (61.7 percent) were not convicted for any new offenses, with more than two-thirds
300 (67.8 percent) not being convicted for any new violent offenses or drug offenses.⁸² Program
301 completers showed promising recidivism rates even over time, with most individuals (87.8
302 percent) remaining arrest free one year after graduation, more than three-quarters (75.6 percent)

⁷⁶ *Id.*

⁷⁷ *Id.* at 24.

⁷⁸ *Id.* at 23.

⁷⁹ *Guiding Hand* at 18-19.

⁸⁰ "Drug Court Success" at 19.

⁸¹ *Id.*

⁸² *Id.* at 20.

303 remaining arrest free two years after graduation, and nearly two-thirds (64.8 percent) remaining
304 arrest free five or more years after graduation.⁸³ A requirement of graduation is also that
305 participants remain completely abstinent from substance use for one year, submitting to regular
306 urine screens. These post-graduation drug screens were negative at a rate greater than ninety-nine
307 percent.⁸⁴

308 Notwithstanding that these services are largely effective for the individuals who are
309 eligible, willing, and motivated enough to participate in recovery court programs, effective
310 recovery courts also tend to save significant amounts of money when compared with the status
311 quo incarceration typically realized by these offenders.⁸⁵ The Tennessee Department of
312 Corrections estimates report the cost of state incarceration as \$65.00 per day while, according to
313 an outside auditor, a day of services at DC4 has been calculated at only \$48.00 per day. In
314 Davidson County alone, using recovery court as an alternative to the county or state criminal
315 justice facilities has yielded total savings ranging from \$61 million to \$150 million depending on
316 how the potential savings are calculated (i.e., attempting to take reduced sentences into
317 consideration, not considering those individuals still participating or who dropped out before
318 completing, etc.).⁸⁶ These considerations in no way factor in the positive effect that recovery
319 courts are able to have on additional costs being incurred by the state and court systems. These
320 include, among other things, increased court dockets for courts and increased caseloads for
321 attorneys and social workers, especially when drug dependency issues begin with criminal court
322 cases that transfer over into juvenile court and family issues, as so often occurs.⁸⁷

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 21.

⁸⁶ *Id.* at 20.

⁸⁷ *Convening, Collaborating, Connecting* at 8.

323 Often forgotten is the lasting effect that recovery court has on its participants that cannot
324 be calculated or appreciated enough. Per the Montgomery County Drug Court Participant
325 Handbook, even after graduation, recovery court graduates are encouraged to call court staff if
326 they are struggling with their sobriety or if they are experiencing crisis situations. Approximately
327 two weeks prior to their graduation, participants perform an exit interview and complete a
328 questionnaire, which are often used for the recovery court staff to reach out to them randomly post-
329 graduation.⁸⁸ Similarly, Davidson County’s DC4 program has an alumni group that continuously
330 follows up and is a support group for graduates which is formed through probation, since all
331 participants in the DC4 program are felony level offenders.⁸⁹ No matter the county, these programs
332 play an enduring and irreplaceable role in recovery for individuals struggling with drug
333 dependence, giving them an opportunity for real recovery.

334 **H. Contention over Medication-Assisted Treatment**

335 It has been and continues to be heavily debated as to whether effective, lasting treatment
336 for drug dependence can occur without the use of medication-assisted treatment. The report issued
337 this year by the National Judicial Opioid Task Force (NJOTF) focuses heavily on both findings
338 and recommendations associated with ongoing opioid issues. Opioid Use Disorder (OUD) is
339 considered a chronic illness like any other, requiring continuing care so that patients can stabilize,
340 enter remission from the symptoms of the disorder and withdrawal periods, and eventually not
341 only establish but maintain recovery.⁹⁰

342 The NJOTF and those associated with studies on its behalf recognize that recovery courts
343 are in a unique position to assist with this continuing “care”, understanding that the threat of

⁸⁸ Interview with Cindy Richards (2020).

⁸⁹ *Id.*

⁹⁰ *Id.* at 15.

344 incarceration and deterrents are not always enough. Minnesota Judge Jill Eichenwald O'Connor
345 stated, “We know if you use opioids you have a significantly greater chance of dying. And yet,
346 people use opioids. They are willing to risk death. Why do we think risking prison is going to be
347 some kind of motivating deterrent? It’s just not.”⁹¹

348 With individuals suffering from OUD being thirteen times more likely to be involved in
349 the criminal justice system and many of these also suffering from mental health issues, it is vital
350 to address these issues in an effort to effectively reduce recidivism.⁹² The role that judges and
351 professionals in the criminal justice system must play given the current opioid crisis is one of
352 ensuring proper education as to the disease of addiction, its effects, treatment, recovery, and the
353 best way to address addiction within the criminal justice system.⁹³

354 Medication-assisted treatment (MAT) is the use of FDA-approved medications paired with
355 counseling and behavioral therapies for a “whole-patient” approach to treatment of substance
356 abuse.⁹⁴ The combination of behavioral therapy and medications to treat substance abuse issues
357 has faced some resistance given that the introduction of prescription drugs as part of a treatment
358 regimen for substance abuse can be construed as simply substituting one drug for another instead
359 of treating the issue. However, FDA-approved medications that are commonly used to treat opioid
360 addiction, including methadone, naltrexone, and buprenorphine, are proven to block the effects of
361 other narcotics while also preventing the risks and problems associated with withdrawal.⁹⁵ The
362 benefits and perceived complications associated with medication-assisted treatment are and

⁹¹ *Id.*

⁹² *Id.* at 16.

⁹³ *Id.* at 22.

⁹⁴ Substance Abuse and Mental Health Services Administration, *Medication-Assisted Treatment (MAT)* (September 9, 2019), <https://www.samhsa.gov/medication-assisted-treatment>.

⁹⁵ *Id.*

363 continue to be a point of contention for the criminal justice system and, specifically, for those
364 individuals tasked with decision making for recovery courts.

365 **I. Alternatives to Recovery Court**

366 Tennessee Supreme Court Administrative Office of the Courts Director Deborah Taylor
367 Tate acts as Co-Chair of the National Judicial Opioid Task Force (NJOTF), which was formed in
368 2017 and works to understand the impact the opioid crisis has had on all levels of the courts.⁹⁶
369 Tate states, “[i]nteraction with the courts is often the best opportunity for people to come in contact
370 with resources and treatment options, and we knew we needed to arm judges with real-life
371 solutions and tools to respond.” This mindset has resulted in Tennessee courts becoming leaders
372 nationally in establishing court programs and practices to address these issues directly.⁹⁷

373 One program created as an alternative to recovery courts is that of Circuit Court Judge
374 Duane Sloane, who began the Recovery Oriented Compliance Strategy docket in his East
375 Tennessee courtroom.⁹⁸ This “ROCS docket” serves drug offenders that are determined to not be
376 high risk enough to qualify for the resource-intensive programs that are recovery court, but that do
377 have an urgent need for treatment, usually pregnant women and mothers of small children.⁹⁹ This
378 population was previously highly underserved in Judge Sloane’s district. However, the
379 implementation of the ROCS docket as well as efforts by Judge Sloane to rally the community to
380 launch a residential facility specifically for women facing the removal of their children has brought
381 tremendous success, decreasing jail populations and increasing healthy births.¹⁰⁰

⁹⁶ Tennessee Administrative Office of the Courts, *Moving from “Tough on Drugs” to “Smart on Drugs”* (November 19, 2019), <https://www.tncourts.gov/news/2019/11/19/moving-“tough-drugs”-“smart-drugs”>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

382 Another successful alternative to recovery courts has been the establishment of Safe Baby
383 Courts throughout Tennessee, which assist parents with substance abuse issues in an effort to
384 provide more stable environments for children ages zero to three years old.¹⁰¹ This program began
385 as a single pilot program in one county and has now expanded to eleven additional counties due to
386 its success.¹⁰²

387 Veteran’s Treatment Court programs have proven themselves as valuable resources in local
388 judicial systems as well. These courts share many of the same key components as a regular
389 recovery court but are distinguished in that they are limited to only current and former members
390 of the military and are structured as a sort of hybrid of both the recovery court and mental health
391 court models.¹⁰³ These courts place an emphasis on accountability and treatment, and are proven
392 to reduce recidivism, restore families, and provide a second chance to service members struggling
393 after serving their country, often with co-occurring issues ranging from substance abuse to post-
394 traumatic stress disorder (PTSD) to traumatic brain injury (TBI).¹⁰⁴

395 Programs like Recovery Court, the ROCS docket, Safe Baby Court, and Veteran’s
396 Treatment Court have all been the brain child of or have been highly impacted by the judiciary.
397 This comes as no surprise considering the final report of the NJOTF, which concludes that judges
398 must “exert leadership and advocate for the availability of quality, evidence-based treatment
399 services as the best and most effective response to the opioid epidemic.”¹⁰⁵ The NJOTF has
400 asserted that courts cannot be successful without having access to comprehensive treatment
401 services, including “individualized assessments that contain mental health and behavioral health

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Tennessee Association of Recovery Court Professionals, *Veteran Treatment Courts*, TARCP.ORG, <https://tarcp.org/veterans-treatment-courts/veteran-treatments-courts>.

¹⁰⁴ *Id.*

¹⁰⁵ *Convening, Collaborating, Connecting* at 7.

