

From: Sand, Robert [<mailto:Robert.Sand@state.vt.us>]
Sent: Monday, January 05, 2015 2:57 PM

Subject: pre v. post plea

Does anyone know if there is any research on the relative merits of drug courts based on whether they operate in a pre or post plea fashion?

From: Caroline Cooper [<mailto:ccooper@american.edu>]
Sent: Wednesday, January 07, 2015 8:19 AM

Subject: Re: post plea

Thanks, Bob.. I think you've given a good summary of the approach(es) that have been given though I still think New Hampshire should be a model of where the field should be going but, unfortunately, at this point is the exception. Can you send me anything you might have about the statute that provides for 'removal from the record'? even a copy of the statute? as well as the collegial effort to get it enacted that you referenced in your note? copies of any presentations Chief Justice Nadeau, Alex or others did? how you got the League of Women Voters engaged?, etc., so I can send it around?

From: Robert Gasser [<mailto:ragasser1@gmail.com>]
Sent: Wednesday, January 07, 2015 7:55 AM
Subject: post plea

Hello All I believe that post plea is the appropriate form for high risk high need. When the concept of DCs was introduced in NJ there was a great deal of resistance from Prosecutors who bought in only on Post Plea as they feared if later they had to reengage the case that evidence and witnesses would be difficult to find.

Here in NH we made a great effort to engage the legislature (highly partisan) to enact a law recognizing what a DC is and by granting what I call expungement but they call removal from the record of the felony to which the participant entered a plea to get into the program. This does not remove any prior felonies of record and takes place upon successful completion of the program and one year of good behavior. This was done through the leadership of Chief Justice Nadeau, Alex Casale , our local legislators, the League of Women Voters of NH., a graduate and participant all testifying. I was there also in support and impressed with the reception. Bob Gasser

From: "LaFazia, Jeanne" <jlafazia@courts.ri.gov>
Date: 01/06/2015 1:17 PM (GMT-05:00)
Subject: Re: pre v. post plea

There are also different motivations factors between participants in Veterans Courts and Drug Courts There are significant distinctions between these populations... Just another thought to add to the mix...

Sent from my iPhone

On Jan 6, 2015, at 9:27 AM, Clark, Stephanie <Stephanie.Clark@state.vt.us<<mailto:Stephanie.Clark@state.vt.us>>>>
wrote:

Hello Bobby and All,

The DUI docket in Windsor County is post-conviction, and separate from the political buy-in a post-conviction program helps to attain, our Team has had several discussions about whether the post-conviction status is also necessary for participant recovery. The hard-core alcoholic brings a unique mind-set to treatment court, and owning the offense and its consequences is thought by the Team to be an important element of treatment. When the docket started, the Team had a dedicated treatment provider who supported this view. I am not aware of any research specifically analyzing this question – and it may be out there for me to find - but it would be a great study and is certainly suggested by the DUI-normed assessment tools.

Just more food for thought on the leverage of a post-conviction program.

Stephanie A. Clark, Esq., Coordinator
Windsor County DUI Treatment Docket
Windsor Superior Court, Criminal Division

-----Original Message-----

From: LaFazia, Jeanne [<mailto:jlafazia@courts.ri.gov>]
Sent: Tuesday, January 06, 2015 5:09 AM
Subject: Re: pre v. post plea

We noted at the 2013 conference that Wes stated that most programs were now using post plea but we are Pre plea in our Veterans Court . There were a lot of reasons that pre plea worked better for us especially with misdemeanors but i suspect the success rate is not significantly altered by pre or post. I think with Felonies,post plea is often necessary because if the defendant winds up back in traditional prosecution you don't want additional problems with witnesses etc affected by time delay That is not an issue with misdemeanors as the time frame is often shorter We handle a significant number of DUIs pre plea but the contract usually provides for a sentence on an amended charge upon successful completion - DUIs are always a concern for everyone- I will be curious to see if anyone has specific research to the contrary Thanks for asking the question!

Sent from my iPhone

From: Caroline Cooper [<mailto:ccooper@american.edu>]
Sent: Monday, January 05, 2015 8:18 PM
To: Leis, Roberta Garson
Cc: Steven Collins (scollins@american.edu)
Subject: Re: FW: pre v. post plea

I think the point is that they need to offer some "carrot" -- so, for the 'high risk/high need', the realistic leverage would likely be post plea option but the critical point I think is that the option also ultimately permits the plea/conviction to be subsequently stricken the person is successful after whatever period is agreed to so that the individual doesn't have a felony conviction (see my update attached on collateral consequences of drug convictions).. Increasingly, prosecutors are making very advantageous plea offers on drug cases so whatever the program is, it necessarily needs to make a "better" offer. For DUI cases

however there is a different twist since there are major public policy/civic interest relevant to these programs. I would think this cases need to be in a post-plea setting.

(See attached file: stigma.pub.pol.paper.9.26.14.JD.updates-1. Final.11.1.14.11.2.14-1.doc)



stigma.pub.pol.pape
r.9.26.14.JD.updates

From: Robert P Ziemian [<mailto:robert.ziemian@jud.state.ma.us>]

Sent: Monday, January 05, 2015 4:40 PM

Subject: RE: pre v. post plea

Bobby,

I am not sure about the research on post and pre disposition, but because of the research that shows overwhelmingly that the biggest impact are on hi-risk/hi-need def., this population is of the type where DA's, in interest of public safety, demand post disposition, especially where victims are involved. One interesting alternative in some jurisdictions, with enabling legislation are, "conditional pleas" that allow for dismissal if successful. The only problem again is with this population, VOP's are often necessary for accountability reasons and that takes a disposition in most jurisdictions. I hope this makes sense.

From: Alex Casale [<mailto:acasale@co.trafford.nh.us>]

Sent: Monday, January 05, 2015 4:37 PM

Subject: RE: pre v. post plea

There is little distinction on pre / post plea programs in terms of success so long as you keep the populations of high risk and high need separate.

One of our DC's had that question a few weeks ago and this is the response I got from Terrence at NADCP.

The drug court standards indicate the following on page 7: *"Some evidence suggests Drug Courts may have better outcomes if they target offenders either on a pre- or post adjudication basis and do not mix these populations (Shaffer, 2006). Other studies have found no differences in outcomes regardless of whether these populations were served alone or in combination(Carey et al., 2012). It is premature to conclude whether it is appropriate to mix pre- and post adjudication populations in Drug Courts; however, Drug Courts must be mindful of the fact that the populations may differ significantly in terms of their risk or need levels. They should not be treated in the same counseling groups or residential facilities if their treatment needs or criminal propensities are significantly different."*

The only thing the research is clear on is that participants of different risk and need levels (i.e., high and low risk/need) should not be treated or housed together regardless of whether they are pre or post conviction.

From: dbmarlowe@comcast.net [<mailto:dbmarlowe@comcast.net>]

Sent: Monday, January 05, 2015 4:19 PM

Subject: Re: pre v. post plea

Broadly speaking, there are four legal models for adult Drug Courts:

1. Pre-plea: No plea is entered and the criminal case simply proceeds to trial if the participant is unsuccessfully discharged.
2. Post-plea / pre-adjudication: A plea (or stipulation of facts) is entered and held in abeyance pending completion of the program. If the participant is terminated, he or she proceeds to sentencing.
3. Post-conviction: Drug Court is a condition of probation or sentencing. Termination from Drug Court is equivalent to a v.o.p. and can lead to revocation of probation.
4. Re-entry: Drug Court is a condition of parole or conditional release from jail or prison. Termination from Drug Court is equivalent to a v.o.p. and can lead to revocation of parole or return to custody.

Studies indicate the pre-plea model is generally unsuccessful. Leverage is critical for success in Drug Court, and participants have nothing to lose on a pre-plea basis.

Pre-adjudication and post-conviction Drug Courts are about equally successful. Both provide leverage (especially for felony cases).

Re-entry Drug Courts have not been adequately evaluated. Early studies have produced mixed results.

Let me know if you have further questions.

Best Regards,

Doug