

# DUI and Pleas in Abeyance

*Report to the Utah Legislature, October 2005  
by the Utah Commission on Criminal and Juvenile Justice*

Senate Bill 20 (SB20), Driving Under the Influence Amendments, sponsored by Senator Carlene Walker, passed during the 2004 General Session of the Utah Legislature. In part, this legislation outlines the circumstances under which a plea held in abeyance may be used in driving under the influence cases. Generally speaking, a plea held in abeyance indicates an agreement has been reached between the defendant and the judge in which charges against the defendant will be dropped or reduced upon the defendant's successful completion of the terms in the agreement. SB 20 restricts the circumstances under which a plea may be held in abeyance in the following ways:

- Plea in abeyance is not allowed for driving under the influence violations that are punishable as felonies or class A misdemeanors.
- A class B misdemeanor DUI violation may not be dismissed or reduced if the defendant has a prior DUI conviction or has had any prior DUI charges held in abeyance.
- A class B misdemeanor DUI violation may not be dismissed or reduced if, in the current case, the defendant negligently operated the vehicle in a manner proximately resulting in bodily injury to another or to an extent requiring reporting to a law enforcement agency.
- A class B misdemeanor DUI violation may not be dismissed or reduced if the defendant had a blood alcohol level of .16 or higher.

In cases where a plea in abeyance is used for a DUI, it is generally made pursuant to an education or treatment incentive program. This education or treatment incentive program must be approved by the prosecuting attorney. A plea in abeyance may also be used without an education or treatment program if evidentiary issues or other circumstances justify it.



Senate Bill 20 also requires the Commission on Criminal and Juvenile Justice (CCJJ) to study the use of pleas in abeyance involving DUI violations and report the findings to the Transportation Interim Committee no later than October 2005. Finally, the bill sunsets the use of pleas in abeyance in DUI cases on July 1, 2006.

This report fulfills CCJJ's responsibility to study the use of pleas in abeyance involving DUI violations. The first portion of the report includes data collection and analysis from justice courts in Taylorsville, Utah and Salt Lake City, Utah. The second portion of the report includes an analysis of current literature related to the issue at hand.

## **DATA ANALYSIS**

After consulting with those involved in the passage of SB 20 and with the DUI Subcommittee of the Utah Substance Abuse and Anti-Violence Coordinating Council, CCJJ researchers determined the best approach to studying the use of pleas in abeyance would be to compare two justice courts - one using pleas in abeyance on DUIs, another not using pleas in abeyance on DUIs. The primary measure would be successful completion of a treatment regimen ordered by the court. There is general agreement that getting appropriate DUI offenders into and completing treatment will have the most beneficial impact on future DUI behavior. Those courts using pleas in abeyance argue that their process is more successful in getting DUI offenders into and completing treatment. They also argue that by using the plea in abeyance process, they can get DUI offenders into treatment more rapidly, which can be important in curbing additional DUI offenses.

Proponents of pleas in abeyance contend that holding a dismissal or reduction out to the end of the process provides an incentive for offenders not only to engage in treatment, but also to complete the treatment ordered. Also, offenders who enter into this type of plea agreement generally waive their rights to legal counsel which, in theory, assists in getting offenders into treatment more rapidly because of the reduction in various legal hearings and maneuverings.

Those opposed to using pleas in abeyance for DUI offenders argue that a dismissal of a DUI at the end of the process devalues the seriousness of DUI offenses. They argue most DUI offenders, even

on their first arrest, have likely driven drunk many times before. They feel the wrong message is sent to these offenders, and to the community, when their DUI conviction is allowed to be dismissed. Even though the new law allows dismissed DUI convictions to be considered as if it were a prior conviction upon a subsequent DUI conviction, those opposed to this practice fear either that prosecutors, in practice, will not use these dismissed DUIs for enhancement purposes or that the courts will find the practice of using dismissed DUIs as though they were convictions to be unconstitutional. Those opposed also contend that by getting a final plea upfront they are just as capable of getting offenders into and through treatment without the need for a dismissal, and thus avoid the potential problems they contend may result from a dismissal.

The two sites selected for comparison were the Taylorsville Justice Court, which uses pleas in abeyance in some DUI cases, and the Salt Lake City Justice Court, which does not use pleas in abeyance for any DUI cases.

### **Data Collection**

CCJJ researchers spent over a year pouring through case files at the Taylorsville and Salt Lake City Justice Court locations. Treatment-related information was not automated in either location. This required researchers to pull and read individual case files. In many instances, the files were difficult to locate, and, once located, it was often difficult to determine if the offender had indeed completed treatment. In fact, in some cases, it was difficult to determine if the offender was even ordered to treatment.

The staff at each location was very cooperative in giving CCJJ researchers access to case files. At the Taylorsville site, files were provided incrementally as they were found. The layout of the files overall was not consistent, and it was difficult to discover when or if an offender was ordered into treatment. A private third party provides the bulk of DUI assessment and treatment services in Taylorsville, and it took some time for this provider to give information to CCJJ researchers relating to who had been ordered to treatment and who had completed treatment. In the end, this provider was cooperative in providing the necessary information.

Similarly, the Salt Lake City Justice Court was also cooperative in giving access to records for CCJJ research. Initially, it appeared all

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of the information needed would be available in an automated format. However, after months of attempts to access this automated information, it became clear we would not be able to discover the necessary information from the automated system. This, again, required CCJJ researchers to review individual paper-based case files. From these case files, it was difficult to determine who was ordered into treatment and who had completed treatment. After much work, and the assistance of employees of the court, we were able to extract this information from the case files reviewed.

In total, CCJJ researchers were confident in treatment outcomes for 123 cases from the Taylorsville site and for 105 cases that were randomly selected from the Salt Lake City site. Initially, researchers were interested in evaluating the time-lapse between initial arrest and treatment entry. This would help explore the contention that pleas in abeyance get DUI offenders into treatment more rapidly. However, it was evident early in the study this would not be possible for two primary reasons. First, information is so poor in case files that it is often difficult to determine if an offender completed treatment at all, let alone the date that he began treatment. Second, the volume of DUI cases handled in Salt Lake City was so much larger than in Taylorsville that it alone could be the reason it might take offenders longer to get into treatment if a difference was discovered between the two jurisdictions. Any time-lag discovered in Salt Lake City in terms of treatment start might also be explained by an over-loaded treatment delivery system.

### ***Data Analysis***

Once the data were collected, the analysis was basic. Comparison was made of treatment completion at the Taylorsville site and the Salt Lake City site. At the Taylorsville site, 95.8% of DUI offenders given a plea in abeyance successfully completed the ordered treatment. At the Salt Lake City site, 80.0% of the DUI offenders ordered into treatment successfully completed the ordered treatment. The difference in treatment completion between the two sites was found to be statistically significant.

An important observation about this difference should be noted. Taylorsville uses a “therapeutic justice” approach in serving DUI offenders, while the DUI offenders in Salt Lake City were not offered this approach. A therapeutic justice setting is much like a drug court. In a drug court process, many elements are employed

that make it very successful when compared to a standard court process. In this study, the drug court approach used in Taylorsville is a confounding factor. In short, it is difficult, if not impossible, to attribute the higher treatment success rate in Taylorsville to pleas in abeyance. More likely, the higher success rate is attributable to the overall drug court process. Whether the Taylorsville justice court could continue a drug court approach without using a plea in abeyance and still achieve similar success rates is unknown. It should be noted that Salt Lake City has recently begun a program called FOCUS that does not use a plea in abeyance, which is described in the “Further Research” section of this report.

What the data do demonstrate is that both in Salt Lake City and in Taylorsville, an overwhelming majority of DUI offenders ordered into treatment do successfully complete treatment. The analysis also reinforces other literature that suggests a drug court model can be effectively employed in the realm of DUI offenses. Taylorsville, in employing a drug court model, is very effective in getting DUI offenders into and completing treatment. However, the data analysis does not shed light onto the question of whether or not a plea in abeyance is critical in accomplishing the goals of a drug court approach.

## LITERATURE REVIEW

Because the data analysis was unable to provide needed information on pleas held in abeyance in DUI cases, CCJJ researchers turned to current research literature in an attempt to discover if other researchers have examined this issue. The following section provides additional information from research literature about drug courts, DUI courts, and their essential elements.

In the drug court model, a therapeutic jurisprudence orientation exists in which the principal court actors establish a consensus to treat offenders who participate in the program. These drug treatment courts often involve intensive case monitoring including frequent judicial reviews, substance abuse treatment, regular drug and alcohol testing, and various support services. This type of court experience is quite different from the traditional criminal court which has been characterized as an “assembly line” of justice. Drug courts operate under the assumption that illicit drug use is both a criminal justice problem and a public health concern. Thus, long-term solutions are presumed to be found in addressing

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the root causes of substance abuse and related criminal activity through rehabilitation, rather than attacking the issue from a primarily punishment-driven perspective. Under this model, relapse events are expected and met with sanctions that become increasingly severe with each episode of failure. A series of graduated sanctions are used to deal with program non-compliance as well.

The literature suggests that sanctions are most effective when applying principles of certainty (each infraction receives a sanction), celerity (sanctions are imposed as soon as possible after the infraction occurs), and severity (sanctions rise in severity in response to repeat infractions and consider the severity of the behavior).<sup>1</sup> When an infraction goes unnoticed, it lowers the credibility of the detection system, thus inviting additional attempts at testing its boundaries. Similarly, to have the greatest chance of reducing undesirable behavior, sanctions should be delivered as quickly as possible after an infraction occurs. Sanctions must also become increasingly severe as the offender becomes increasingly accustomed to them. If the intensity of punishment escalates too slowly, the offender may become habituated too quickly, and the judge risks exhausting his or her options before the desired behavior has been solidified. It is also crucial for similar sanctions to be applied in response to similar behaviors across drug court participants, and for the judge to clearly articulate the reasons for imposing each sanction. An offender will not learn to behave as expected if the demands placed upon him or her are excessive, or if he or she is unaware of what behaviors will trigger sanctions to be delivered. Unpredictable or uncontrollable sanctions can lead to a sense of futility in trying to satisfy expectations.<sup>2</sup> In other words, it is important for the offender to feel that he or she has been treated fairly, consistently, and with respect.

Another distinguishing characteristic of drug court is the adoption of non-adversarial roles by the key players. Traditional court roles

<sup>1</sup> Cissner, A.B., & Rempel, M. (2005). The State of Drug Court Research. Center for Court Innovation, p.4.

<sup>2</sup> Marlowe, D.B., & Kirby, K.C.(1999). Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research. National Drug Court Institute Review, p.vii-xvi.

are abandoned for the purpose of maintaining a supportive and therapeutic climate in the courtroom. This therapeutic jurisprudence approach rests on the idea that legal rules, legal procedures, and the roles of legal actors constitute social forces that can themselves produce therapeutic consequences. Thus, judges, prosecutors, defense attorneys, and substance abuse professionals work as a team to assist offenders in overcoming their drug and alcohol problems, employment issues, and other related difficulties. In drug court, the judge is allowed a more proactive role in which he or she becomes a positive reinforcer of good behavior. In fact, the research literature indicates a statistically significant relationship between this judicial monitoring function and drug court program completion. Supportive court comments appear to have explanatory power for offender success in drug court.<sup>3</sup> Behavioral theory lends credence to the idea that long term, punishment is most likely to be effective when used in combination with positive reinforcement.

The research advises that although the adversarial process includes harsh punishments, it is counterproductive and may actually limit the accountability of those accused of drug-related criminality. Taking the example of a relapse episode with an offender, in traditional adversarial proceedings a great deal of time is spent by the defense attorney using legal jargon in order to minimize the offender's role in the incident. In drug court, on the other hand, the offender is encouraged to disclose and take responsibility for all such incidents. A failure to do so may result in termination from the program. It is understood that honesty regarding drug and alcohol use, and even relapse, is part of the recovery process. Drug courts are an opportunity to combine treatment with close supervision, all while holding offenders accountable for their behavior. Further, drug courts offer courtroom practitioners the chance to develop expertise in this specific area of the law, thereby increasing their efficacy with drug-abusing offenders.

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<sup>3</sup> Senjo, J.D.S. (2001). Drug Court Implementation: An Empirical Assessment of Court Procedure on Offender Program Completion. *The Justice Professional*, p.264.



Institute wrote that “the goal of the DWI [DUI] court is to protect public safety by using the drug court model to address the root cause of impaired driving: alcohol and other substance abuse. The DWI court utilizes all criminal justice stakeholders (prosecutors, defense attorneys, probation, law enforcement, and others) along with alcohol or drug treatment professionals...and uses a cooperative approach to systematically change participant behavior...the judge employs a science-based response to participant compliance (or non-compliance) in an effort to further the team’s goal to encourage pro-social, sober behaviors that will prevent DWI recidivism.”<sup>4</sup>

What is not evident, even in the literature, is whether or not a plea held in abeyance is a necessary element of a drug/DUI court. In 1997, the United States Department of Justice’s Drug Courts Program Office published guidelines entitled “Defining Drug Courts: The Key Components.”<sup>5</sup> The ten components identified were considered, ideally, to be the very best practices, designs, and operations of drug courts. They are as follows:

- Drug courts integrate alcohol and other drug treatment services with justice system case processing
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights
- Eligible participants are identified early and promptly placed in the drug court program
- Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services
- Abstinence is monitored by frequent alcohol and other drug testing

<sup>4</sup> Huddleston, C.W., Freeman-Wilson, Judge K., Marlowe, D.B., & Roussell, A. (2005). Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States. National Drug Court Institute, 1(2), 11-12.

<sup>5</sup> Freeman-Wilson, Judge K., & Huddleston, C.W., (1999). DWI/Drug Courts: Defining a National Strategy. National Drug Court Institute, 7-8.



- A coordinated strategy governs drug court responses to participants' compliance
- Ongoing judicial interaction with each drug court participant is essential
- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness
- Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations
- Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

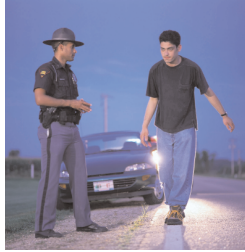
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Evident from this itemization, a plea in abeyance mechanism is not listed as an essential ingredient for an effective drug/DUI court. In fact, the available research is silent on this particular issue, which would seem to indicate that it is not largely considered to have a decisive influence, positive or negative, on offender success in the program.

More important than the mechanism used to get offenders into treatment, seems to be time spent in treatment. Several studies have found a positive relationship between time spent in treatment and offenders' success in the areas of reduced drug use, criminal activity, and other antisocial behavior. Studies have also found that there may be some minimum threshold necessary, likely three months, to observe positive results.<sup>6</sup>

To summarize, the factors most closely associated with an offender realizing success in a drug/DUI court approach include prompt placement into treatment following an arrest event. The drug treatment literature suggests that this greatly increases the chances of program completion occurring. Several studies have also linked more time spent in treatment with more favorable outcomes on

<sup>6</sup> Banks, D., & Gottfredson, D.C. (2003). The Effects of Drug Treatment and Supervision on Time to Rearrest Among Drug Treatment Court Participants. *Journal of Drug Issues*, 33(2), p.2.



drug use recidivism, criminal activity, employment, and other measures. Further, there may be some minimum threshold of time necessary to induce these positive outcomes. Three months, or 90 days, has been offered as the probable threshold amount of time required. Another fundamental component of success is the non-adversarial approach employed by the drug court model. To a certain extent, the decision making is a collaborative process in which the judge acts in consensus with the other court officers, along with treatment representatives. The overarching goal becomes one of treating, rather than simply punishing the offender. This establishes a therapeutic basis for all court proceedings. Related to this, is the unorthodox role that the judge plays in a drug court setting. The judge uses supportive comments as positive reinforcement for good behavior rather than just using intimidation to force offenders into compliance with rules. The research consistently cites this positive judicial feedback as integral to offender program completion. Also, the threat of sanctions must be balanced with the perceived fairness of sanctions. Punishments that will be delivered in the event of program non-compliance should be clearly articulated from the beginning, and must be consistently applied across all offenders in a drug court program. Lastly, sanctions must be delivered swiftly, reliably, and in carefully escalating degrees.

## **CONCLUSIONS**

Although the data analysis and literature review do not provide a definitive answer to the question of plea in abeyance utility in DUI cases, several conclusions can be drawn from the study. First, it is clear that both in Taylorsville and in Salt Lake City, most DUI offenders ordered into treatment are successfully completing treatment. The data clearly shows the Taylorsville site outperformed the Salt Lake City site in terms of treatment completion. However, it is doubtful that a plea in abeyance is the essential ingredient at the Taylorsville site that led to a superior performance.

Taylorsville employs a drug court approach in handling DUI offenders. As discussed previously, the drug court approach incorporates many elements which, together, lead to positive outcomes. The data analysis was unable to single out the plea in abeyance as a single or primary contributor to the Taylorsville success. However, the data analysis supports current literature in its

finding that using a drug court approach in DUI cases will yield successful results.

In evaluating the literature surrounding both drug courts and DUI courts, a few findings are worth noting. First, in none of the literature examined by CCJJ researchers was there any mention about the plea arrangement being a key component to the success of the approach. This can be evaluated in two ways. It could be argued that a DUI court should prove successful either with or without a plea in abeyance agreement. If we were to abolish its use, it shouldn't have a major impact on the outcomes being realized in Taylorsville. However, it could equally be argued that the literature doesn't indicate using a plea in abeyance is somehow harmful to the outcomes realized in drug court approaches. In fact, many drug courts in the nation are operating with a plea in abeyance approach.

## **FURTHER RESEARCH**

Although time did not permit in the current study, Salt Lake City's FOCUS program may provide an opportunity to further examine the utility of using pleas in abeyance for DUI offenders. This program was recently instituted in Salt Lake City and is comprised of three phases, lasting four months each. Offenders in Phase I of the FOCUS program meet with a case manager on a regular basis, attend victim impact panels, and are given random breathalyzer tests weekly. In addition, they are responsible for completing any treatment that was ordered. During Phase II, offenders continue to meet with a case manager and continue to fulfill any treatment requirements. They also begin meeting with a community review panel consisting of victims and other interested citizens. In the last phase, Phase III, offenders develop a strategic plan for avoiding future DUIs. Offenders also continue to meet with a community review panel, and must complete all of their assignments and pay the remainder of any fines or restitution owing. This program does not offer its participants a plea in abeyance. By examining the treatment outcomes from offenders engaged in this program, further light might be shed on the importance of using pleas in abeyance for DUI offenders. At the time this study was being conducted, the FOCUS program was just getting underway, and too few offenders would have an opportunity to complete treatment for consideration in this study.

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