


LEGAL BOOTCAMP:

WHAT ACCOUNTABILITY COURT TEAMS
NEED TO KNOW ABOUT THE LAW



THE LAW: WHAT IS IT?

And why should we care...



Schoolhouse Rocks: Social Studies for Grownups

Executive

- Enforces the laws
- Police, prosecutors

Legislative

- Makes the laws
- Legislators

Judicial

- Interprets the laws
- Trial judges, appellate courts

The Basics: Law School 101 for Non-Lawyers

- The law is:
 - The United States Constitution
 - The Georgia Constitution
 - Statutes: OCGA § 15-1-15
 - Case Law/Appellate Legal Authority
 - *Binding versus persuasive, unpublished opinions*
 - Rules & Regulations
 - *Uniform rules, executive branch agency regulations, ethical codes of conduct*

CONSTITUTIONAL RIGHTS: WHAT ARE THEY?

- Fourth: The right of the people to be secure. . . against unreasonable searches and seizures, shall not be violated
- Fifth: No person shall . . . be deprived of life, liberty, or property, without due process of law
 - *nor deny to any person within its jurisdiction the equal protection of the laws.*
- Also Fifth: Nor shall be compelled in any criminal case to be a witness against himself
- Sixth: [T]he accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense
- Fourteenth: No State shall . . . deprive any person of life, liberty, or property, without due process of law

THE LAW AND ACCOUNTABILITY COURTS



CONSTITUTIONAL RIGHTS IN ACCOUNTABILITY COURTS

- Notice of violations
- Right to a hearing
- Right to an attorney
- Right to confront witnesses

HOW ARE ACCOUNTABILITY COURTS DIFFERENT?

- Constitution applies, because people's liberty is at stake
- Problem-solving, cooperative, not adversarial
- Team members may have codes of ethics they have to follow, such as judges, attorneys, and social workers

Judge

- Increased contact with participants
- Role model/guidance

Prosecutor

- Collaborative
- Non-adversarial
- Part of unified team

Defense Attorney

- Collaborative, non-adversarial
- Must still be zealous advocate for clients

LIFECYCLE OF A CRIMINAL CASE

- ARREST
 - *New charges*
 - *Probation violation*
 - *Both*
- CHARGED (or not)
 - *Prosecutor files indictment, accusation, petition to revoke probation*
 - *Accountability Court (pre-plea, charges may be dismissed if Defendant completes program)*
- PLEA OR TRIAL
 - *Guilty plea on new charges or an admission to a probation violation*
 - *OR: Not guilty plea, trial / hearing*
 - *Accountability Court (post-plea, conviction may be vacated, or portions of sentence suspended if Defendant completes program)*
 - *Pleas can be negotiated or non-negotiated*
- CONVICTION OR ACQUITTAL AFTER TRIAL
 - *Acquittal: No sentence, case is closed*
 - *Conviction: Judge determines the sentence*
 - *Accountability Court (Judge can sentence convicted Defendants to Accountability Court)*

ELIGIBILITY CRITERIA

No, we don't hand out roses

Developing Objective Eligibility and Enrollment Criteria

- **Written, evidence-based, objective enrollment criteria**
- Lessens the inclination of prosecutors to use the de-facto pre-adjudication veto they possess.
- Establishing written criteria regarding eligibility in your program, collaborating between the judge, prosecutor, defense attorney, and all team members, minimizes due process and equal protection concerns, and other constitutional challenges.
- Liability protection, equal protection
- Helps eliminate implicit bias (your gut is not good!)

The Referral Process

- Should follow the written, evidence-based, objective enrollment criteria
- Encourage all stakeholders to be active in the referral process
- Legal eligibility
- Clinical eligibility
- Practical considerations
 - *Housing, transportation*

Objective Eligibility: Equal Protection

- Fidelity to the model protects against EP challenges
- Can't burden suspect class – race, gender, disability ... health conditions? Citizenship (Alienage)? Pregnancy?
 - Health condition is not a suspect class
 - So, drug courts can exclude if there is a rational basis to exclude
 - Evans v. State, 293 Ga. App. 371 (2008) (finding no equal protection violation where exclusion was based on the program's lack of resources to handle “serious mental health issues” as well as the program's lack of access to HIV-related resources).
- Pregnant persons
 - Burdens only one gender—women are suspect class, strict scrutiny
- Alienage is a suspect class, so non-citizens cannot be excluded
 - People v. Espinoza, 132 Cal. Rptr. 2d 670 (Cal. Ct. App. 2003) (upholding exclusion where the substantial likelihood of the defendant's deportation would prevent him from completing the program)

THE PROSECUTORIAL VETO

A source of much controversy



Separation of Powers: Executive v. Judicial Branch

Pre-adjudication- Prosecutor

- Prosecutor has discretion over charging decisions
- Prosecutor decides when and whether to indict or charge
- Prosecutor decides whether to extend plea offers

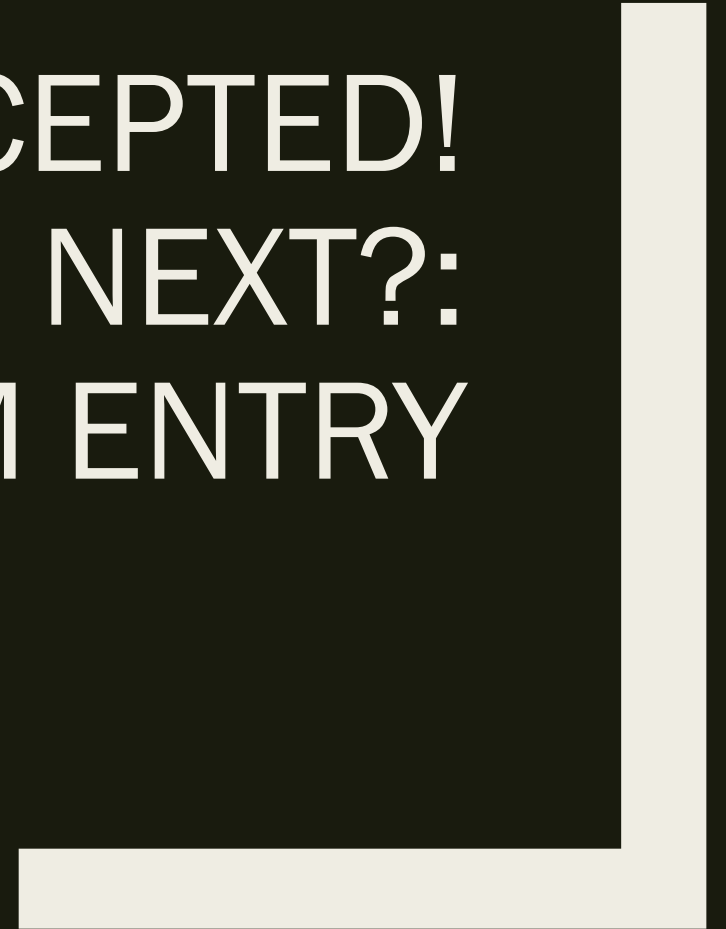
Post-adjudication- Judge

- Judge has discretion to determine sentence after a defendant has either been convicted, entered a plea of guilty, or revoked on a probation revocation.
- Prosecutor cannot veto a legally imposed sentence

Collaboration is Key!

- Prosecutors: remember that you have a non-adversarial role on the accountability court team and a duty to promote a sense of unity and collaboration.
- Make recommendations to the team based on the objective, evidence-based, written criteria.
- Consider all individuals who meet your criteria.
- Have objections to an individual who meets your criteria? Make arguments- don't veto.
 - *Make case-specific arguments to your team*
 - *Use the credibility you have earned through being a non-adversarial and unified team member*

CONGRATS! YOU'RE ACCEPTED!
WHAT HAPPENS NEXT?:
PROGRAM ENTRY



ENTRY INTO THE PROGRAM

- Don't plea until final referral decision
- Creative sentencing
- Waiver of rights
- The Contract/Agreement
- Transition plan
- Create a good handbook and update it regularly
- Transfer order

THE LAW OF SANCTIONS AND INCENTIVES

Carrots and sticks have never been so controversial



DUE PROCESS: REMEMBER THE REASON BEHIND THE RULE

- Looks different based on liberty interest implicated (jail v. no incarceration)
- No person shall . . . be deprived of life, liberty, or property, without due process of law

WHAT PROCESS IS DUE IN JAIL SANCTIONS?

- Participants should be made aware of the conduct forming the basis for the sanction
- Participants should be afforded the opportunity to admit or deny the conduct
- Participants should be afforded the opportunity to consult with an attorney if they wish to do so
- Participants can request a hearing if they deny the conduct or wish to be heard on the sanction

PRACTICAL TIPS FOR SANCTION HEARINGS

- Have a local attorney available on-call
 - *Private attorney OR representative from the Public Defender*
- Afford participants who are being issued a sanction time to speak with the attorney if they wish to contest the sanction
 - *Hearings conducted the same day if possible or ASAP*
 - *Type of hearing?*
- Have a court reporter available or utilize digital recording system

TERMINATION

You won't be back



TERMINATION HEARING REQUIRED

- No waiver of right to termination hearing at program entry
 - State v. Laplaca, 27 A.3d 719 (N.H. 2011) (rejecting waiver of the right to a hearing because it was impossible for the defendant to have knowledge of the allegations brought against him when the facts giving rise to those allegations had yet to occur)
- Same standard as probation revocation hearing
 - Wilkinson v. State, 283 Ga. App. 213 (2006)
 - Preponderance of the evidence standard
- Abuse of discretion standard on review (also Wilkinson)
- Participant should be afforded the opportunity to consult with an attorney and have one represent him/her on termination hearings.
- Participant may deny the conduct that forms the basis for the termination and request a hearing, or may agree to be terminated but request to be heard on disposition.

Other outcomes: graduation or honorable discharge

- Honorable discharge
 - *Renegotiate sentence*
- Graduation
 - *Cannot extend the person's sentence and cannot take people back in with no new charges after graduation*

BEST PRACTICE RECOMMENDATIONS

Hot tips and tricks



ETHICAL ISSUES: WHEN DO THEY ARISE

■ JUDGE

- *Judges may learn ex-parte information about participants in staffing*
- *Participants should sign waivers if the same judge who is on the team will be hearing the termination hearing OR judge must recuse*

■ PUBLIC DEFENDER'S OFFICE

- *No defined rule*
- *Conflict of roles (advocate v. advisor)*

LEGAL COMPLIANCE BEST PRACTICES

- Medical leave: admit pregnant people
- Confidentiality/HIPAA
- Grant Application and Administration Rules
- Employment HR Issues: know whether county or state policy applies
- Creative MOU drafting
 - *Require training*
- ADA versus Equal Protection, Limited English Proficiency

FRONTIERS IN THE LAW

It's a brave new world



HOT TOPICS

■ MAT

- Nationally accepted as best practice for Opioid Use Disorder
- Current NADCP view: failure to provide MAT may constitute denial of necessary medical treatment

■ Medical marijuana

- Still illegal under federal law!
- Arizona: Reed-Kaliher v. Hoggatt, 347 P.3d 136 (Ariz. 2015) & Polk v. Hancock, 347 P.3d 142 (Ariz. 2015) (Arizona MM Act prohibits a trial court from conditioning probation on refraining from possessing or using medical marijuana in conformance with AMMA)
- Montana: State v. Nelson, 195 P.3d 826 (Mont. 2008), (Montana Supreme Court held that the trial court exceeded its authority in imposing a probation condition that required the defendant to comply with federal drug laws rather than the state's medical marijuana statute)