



# ISSUE BRIEF

## RACIAL AND ETHNIC DISPARITIES (RED) IN TREATMENT COURTS

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### THE HISTORY OF RACIAL AND ETHNIC DISPARITIES (RED) IN TREATMENT COURTS

Racial and Ethnic Disparities (RED) in policing practices, arrest and conviction rates, sentencing norms, and incarceration trends have continuously had a negative impact on racial and ethnic minorities.<sup>1</sup> Treatment courts, unfortunately, have also experienced RED in outcomes (e.g. minorities graduating programs at a lesser rate than Caucasians). To their credit, treatment courts have taken a proactive, advocacy approach in researching and eliminating the problem to assure equal access and effective treatments for all participants. The first treatment court was a drug court that began in 1989 in Miami-Dade County, Florida. Since then, drug courts have been rigorously evaluated, and in the past 30 years research has demonstrated that drug courts are more effective than traditional criminal justice interventions (e.g. probation) at reducing criminal recidivism rates for individuals who have substance use disorders.<sup>2</sup> As a result of the success of drug courts, other treatment court models were developed, such as mental health courts, family dependency treatment courts, veterans treatment courts, and DWI (driving while intoxicated) courts, to name a few.

Although research has continuously shown that treatment courts are effective, there is an unfortunate trend in some treatment courts where RED exist. These disparities are primarily present in participants who have access to the programs, completion rates, and criminal recidivism outcomes. It is important to mention, however, that the majority of research on RED is focused on adult drug courts, which is not surprising, considering they are the most common type of treatment court. The findings, however, from previous research and recommendations to eliminate RED in outcomes may be applicable to all types of treatment courts, as they operate under the same, or similar, key components (e.g. frequent status hearings with a judge, random and frequent drug testing, court-ordered counseling, offering sanctions and incentives). The presence of RED in treatment court outcomes is not a new phenomenon. Nearly 20 years ago, Brewster found in a Pennsylvania drug court that Caucasian participants were more



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The National Drug Court Resource Center (NDCRC) is housed at the Justice Programs Office, a center in American University's School of Public Affairs, and is funded by the Bureau of Justice Assistance. Issue briefs such as this are created to educate and inform the treatment court field about topics of importance. For more information please visit the National Drug Court Resource Center at [www.ndcrc.org](http://www.ndcrc.org).

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The Justice Programs Office, a center in American University's School of Public Affairs, supports the National Drug Court Resource Center, part of a BJA-funded drug court initiative. This issue brief was created to respond to significant issues identified during the provision of technical assistance to the field. For more information about accessing technical assistance services or to learn more about the AU Justice Programs Office, go to [www.american.edu/justice](http://www.american.edu/justice).



likely than African Americans to be successful in the program.<sup>3</sup> In a Texas drug court, 65.42% of Caucasian participants graduated the program, but only 52.17% of Hispanics and 45.71% of African Americans graduated the program.<sup>4</sup> Similarly, a recent study of more than 17,000 treatment court participants found that African Americans graduated less than other participants.<sup>5</sup> Specifically, the study found that African Americans had the lowest graduation rate (37.9%) in the sample, compared to that of Caucasian participants (54.7%), Hispanic participants (49.2%), and those who identified with another race and ethnicity (54.2%).

## SOLUTIONS

Finding solutions to address RED in treatment courts is a complex process and, while solutions may vary from court-to-court based on their individualized needs, there are multiple suggestions for solutions based on previous research. An important solution to eliminate RED in graduation and criminal recidivism outcomes is to first identify and rectify the factors that may contribute to the underrepresentation of racial and ethnic minorities in some treatment courts. Qualitative<sup>6</sup> and quantitative<sup>7</sup> studies have both suggested that when non-Caucasian participants are underrepresented in treatment courts, this may be a factor that contributes to RED in graduation and recidivism outcomes. For instance, African Americans in a Southern drug court felt that the program could have been improved by increasing the number of African Americans admitted into the program, as they felt that would increase camaraderie, friendships, and overall support

among themselves.<sup>8</sup> Treatment courts should assess for RED in admissions by using appropriate measurements (e.g. RED Program Assessment Tool) and develop strategies to eliminate barriers and improve equal access to their programs. To put this in perspective, as a general guide, best estimates are that some treatment courts should increase their admission of racial and ethnic minorities by approximately seven percent.<sup>9</sup>

Treatment courts should evaluate their eligibility criteria to determine whether any criterion may inadvertently exclude racial and ethnic minorities. Criteria that seem to commonly exclude some racial and ethnic minorities from treatment courts are having a criminal history, particularly prior felony convictions, or even less objective measures, such as suspected gang involvement, ability to pay program fees, or perceived level of motivation. Implicit bias is another factor that cannot be ignored, as it may impact stakeholders' decision on who is and is not admitted into the program.

It is recommended that treatment courts develop a comprehensive assessment to determine eligibility, which includes an individualized approach by interviewing potential participants. Also, treatment court teams should attend training to increase their awareness of implicit bias and eliminate its potential impact on the decision-making process. To reiterate, to improve equal access to treatment courts for all races and ethnicities, it is recommended that treatment courts assess for RED in their programs, evaluate their eligibility criteria, and attend training on implicit bias.

In addition to identifying and rectifying the factors that may contribute to the underrepresentation of racial and ethnic minorities in some treatment courts, it is recommended that treatment courts refer their participants to counselors and agencies who are using evidence-based interventions. Research has suggested that some treatment court participants may not be receiving best practices when it comes to treating their substance use disorders and mental illnesses.<sup>10 11</sup> In two qualitative studies, the majority of drug court participants who identified themselves as Caucasian, African American, Hispanic, or multiracial cumulatively felt that counselors used punitive and judgmental approaches in treating their substance use disorders<sup>12</sup> and they were not receiving adequate mental health care, most commonly for depression and anxiety symptoms.<sup>13</sup> Receiving adequate mental health care is essential for participants in all treatment courts, not only mental health courts. It is also essential in veterans treatment courts where many participants have posttraumatic stress disorder (PTSD) and family dependency treatment courts where many children will need trauma-informed care.

Additionally, when comparing and contrasting the lived experiences of Caucasians and African Americans in drug court, further evidence suggests that African Americans may be more likely to be dissatisfied with the quality of counseling they receive, as compared to Caucasians.<sup>14</sup> Specifically, the majority of African Americans felt that their counseling was more like an Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meeting, as compared to normative

counseling interventions (e.g. cognitive behavioral therapy), and they felt forced to accept culturally incompetent labels.<sup>15</sup> There is a trend, particularly with African Americans, that suggests that providing individualized, culturally-informed interventions is an avenue to eliminate RED in treatment court outcomes. It is common for treatment courts to refer participants to community support groups (e.g. AA, NA). Consistent with best practices, however, treatment courts should not mandate all participants to the same types of support groups. For instance, some African Americans will respond best by utilizing natural supports for their recovery, such as talking with a pastor or attending church, as compared to being mandated to attend community support groups.<sup>16</sup> Some African Americans in a Texas drug court actually felt that the format of AA and NA was inconsistent with their culture; hence, highlighting the importance of providing individualized, culturally-informed interventions.<sup>17</sup>

As mentioned previously, the majority of research on RED has been focused on adult drug courts, particularly with African Americans. Therefore, there are emerging interventions that have shown promise in serving African American participants, but more research is needed on other racial and ethnic minorities. One such intervention that has shown promise in improving outcomes for African American men is Habilitation Empowerment Accountability Therapy (HEAT). HEAT is a culturally-informed intervention designed for African American males between the ages of eighteen and twenty-nine.<sup>18</sup> HEAT curriculum is guided by a trauma-informed and strengths-based lens, meaning it addresses topics such as generational traumas experienced by African Americans and utilizes personal strengths in accomplishing treatment goals, such as maintaining abstinence from drugs, completing treatment court, and not recidivating.<sup>19</sup> Reentry court participants who received HEAT were more likely than comparison groups to graduate and complete parole, and, equally as important, participants who received HEAT reported being satisfied with the counseling they received and as having a good rapport with the counselor and group members.<sup>20</sup>

The St. Joseph County (Indiana) drug court is an example of a treatment court that priori-



ties racial and ethnic equality. Previous studies of this treatment court have shown equal graduation<sup>21</sup> and criminal recidivism<sup>22</sup> outcomes across race and ethnicity. The treatment court attributes their success to several factors. First, beginning in 2012, a researcher joined the drug court team. Indiana state law requires treatment courts do program evaluations at least once every three years, and this is an opportunity for programs to assess whether or not they are meeting their goals and objectives. It is recommended that treatment courts invite researchers from local colleges or universities to join their team, as this will provide an objective method to continuously assess for RED in outcomes. Second, the treatment court refers participants to counselors and agencies that provide a range of evidence-based treatments for substance use disorders and mental illnesses. The community mental health center, for example, where most participants are referred to, offers a range of culturally-informed treatments, such as a group for African Americans who have substance use disorders and histories of trauma. No one approach to treatment is best for all; therefore, it is important for treatment courts to refer participants to counselors and agencies that offer multiple modalities of treatment.

Third, program evaluations of the St. Joseph County (Indiana) drug court showed that racial and ethnic minorities tended to have more economic (e.g. unemployment), educational (e.g. no high school diploma), and other

barriers (e.g. no transportation) to being successful in the program, as compared to their Caucasian counterparts.<sup>23 24</sup> Therefore, the treatment court incorporated recovery coaches into their programming. Recovery coaches were an extra resource for participants who experienced these barriers. In addition to offering peer support for ongoing recovery, recovery coaches assisted participants in applying for jobs, earning their GED, and providing transportation to treatment court hearings and drug testing. Recovery coaching seems to be a promising adjunct to the traditional treatment court team. In this Indiana treatment court, they successfully treated substance use within their minority population by analyzing and utilizing research results. By having a researcher join the treatment court team and completing regular program evaluations, the treatment court team made informed decisions of referring participants to counselors and agencies that use evidence-based, culturally-informed interventions, and incorporated recovery coaches into their programming.

### **RESOURCES/TRAININGS OFFERED BY TRAINING AND TECHNICAL ASSISTANCE AGENCIES**

The National Drug Court Resource Center (NDCRC) in the Justice Programs Office at American University created the Racial and Ethnic Disparities (RED) Program Assessment Tool. The RED Program Assessment



was designed to capture information about treatment courts' operation and procedures, with an emphasis on examining areas where racial and ethnic disparities may exist. The RED Program Assessment is a series of open and closed-ended questions regarding the following categories: (1) Court Information, (2) Intake, (3) Assessments, (4) Demographics, (5) Team Members, (6) Training, (7) Drug/Treatment/Support, and (8) Evaluation and Monitoring. It is recommended that the entire treatment court team works in collaboration to complete the assessment. Teams should set aside approximately two hours to discuss and enter responses into the web-based form. Based on inputted responses, courts receive recommendations on how to alleviate racial/ethnic disparities in the program accompanied by

scores for the multiple sections. The overall benefit of the assessment is for treatment courts to create programs that are fair and equitable to all participants regardless of race and/or ethnicity. To register your court for an account, visit [www.ndcrc.org](http://www.ndcrc.org).

The National Association of Drug Court Professionals' (NADCP) National Drug Court Institute (NDCI) developed a training on equity and inclusion to address racial disparities, bias, and access and retention of participants to improve outcomes. Courts can also receive a training on equity and inclusion during an operational tune-up. To learn more about this training, visit their website at [www.ndci.org](http://www.ndci.org). Additionally, NADCP has an equity and inclusion toolkit that focuses on access to programming.

The Center for Court Innovation (CCI) offers an online module on Habilitation Empowerment Accountability Therapy (HEAT). HEAT is a cognitive behavioral approach designed for African American males between the ages of eighteen to twenty-nine who are involved in the criminal justice system. The approach utilizes culturally responsive practices and a strength-based model to engage participants in treatment. CCI is also working with treatment courts in Missouri to implement HEAT. In addition, CCI offers an online module on Cultural Competency. This module focuses on strategies to build a culturally proficient program. These modules can be found on their website [www.treatmentcourts.org](http://www.treatmentcourts.org).

## CONCLUSION

Treatment courts are effective criminal justice interventions that are beneficial to many, such as individuals who have substance use disorders and mental illnesses, veterans, children and families, and communities. For treatment courts to sustain their progress in reshaping the culture of criminal justice, it is essential that they assess for RED in their programs and provide programming that is accessible and beneficial for all the races and ethnicities. Program evaluation is a key component of the treatment court model,<sup>25</sup> and the RED Program Assessment Tool is an easy-to-use, practical method to transfer evaluation findings to treatment court practice. In addition to the RED Program Assessment Tool, treatment courts should incorporate qualitative research methods into their program evaluations. This may include having participants complete satisfaction surveys or facilitating individual interviews and focus groups with participants to learn their views on the strengths of the program and areas for improvement.

To date, qualitative research have offered a behind the scenes perspective of treatment courts and have given participants a voice in the services they received. This insight has provided an in-depth understanding of the factors that may contribute to RED in treatment court outcomes. These studies have offered concrete suggestions to eliminate RED in graduation and criminal recidivism outcomes, including: 1) referring

participants to counselors and agencies that use evidence-based, culturally-informed interventions and are trained in treating both substance use disorders and mental illnesses;<sup>26</sup> 2) inviting employers and vocational counselors to join the treatment court team;<sup>27</sup> 3) providing individualized treatment by encouraging participants to utilize their natural support systems (e.g. church) for their recovery;<sup>28</sup> and 4) rectifying the underrepresentation of racial and ethnic minorities in some treatment courts in order to promote camaraderie. With this said, there are two important things to highlight. First, the majority of qualitative research has been specific to African Americans in adult drug courts; therefore, little is known about the experiences of other races and ethnicities in other types of treatment courts. To address RED comprehensively, it is important that future research explore the phenomenon from multiple perspectives. Second, assessing for and rectifying RED in outcomes is complex and no one response will solve the problem. It is only throughout individual program evaluations that treatment courts will be able to create and sustain positive programming for the diverse populations they serve. The RED Program Assessment Tool is one resource that can assist treatment courts in creating and sustaining a positive culture of recovery and well-being for participants.

# ENDNOTES

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