

REHABILITATING SOUTH CAROLINA’S DRUG COURT SYSTEM

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I. INTRODUCTION

Adult drug courts (drug courts) are specialized court docket programs for criminal defendants that provide an alternative to incarceration by allowing offenders to receive treatment for drug and substance abuse problems.¹ Ultimately, drug courts provide a solution to reduce the financial and socioeconomic burden on the criminal justice system from non-violent, drug-related offenses.² Drug courts are progressively evolving the criminal justice

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1. *Drug Courts*, U.S. DEP’T OF JUST. OFF. OF JUST. PROGRAMS (May 16, 2023), <https://www.ojp.gov/feature/drug-courts/overview> [https://perma.cc/Z4LL-FANA]; *What Are Drug Courts?*, U.S. DEP’T OF HEALTH & HUM. SERVS. (Dec. 16, 2023), <https://www.hhs.gov/opioids/treatment/drug-courts/index.html> [https://perma.cc/KPE9-P7YL].

2. See *What Are Drug Courts?*, NAT’L TREATMENT CT. RES. CTR., <https://nterc.org/what-are-drug-courts/> [https://perma.cc/MH7A-UBAP]; *What Are Drug Courts?*, *supra* note 1.

system in the United States, where defendants convicted of drug charges have traditionally faced periods of incarceration.³ By accepting the harsh reality that addiction is a debilitating disease, drug courts provide avenues to motivate treatment and rehabilitation among defendants without the drawbacks of traditional incarceration.⁴

South Carolina, “[b]y judicial order of the South Carolina Supreme Court,” established the first drug court in Lexington County in 1996.⁵ The South Carolina Supreme Court’s order specifically granted permission to the Eleventh Circuit Solicitor to hold “complete prosecutorial discretion, oversight, direct supervision, and control over” Lexington County’s drug court program.⁶ Since then, each judicial circuit in South Carolina currently operates at least one drug court program.⁷ Furthermore, over half of the counties in South Carolina operate a drug court program.⁸ Like most drug courts throughout the country, South Carolina’s drug courts operate on a local level, with solicitors and judges undertaking the role of operating and managing the drug courts within their respective jurisdictions.⁹

This Article analyzes South Carolina’s drug court system on a granular level, capturing the philosophical and procedural frameworks adopted by the drug court programs operating in each of South Carolina’s sixteen judicial circuits. This Article commends the progress of South Carolina’s drug court system but also acknowledges the glaring deficiencies that exist from a lack of governmental guidance, and poor transparency and accountability by individual drug court programs. Finally, this Article highlights the importance of enacting overdue legislation and implementing certain procedures at the circuit level that will inevitably improve the effectiveness of South Carolina’s drug court programs.

Part II outlines the catalysts that fueled the adoption of drug courts on a national level and provides a structural overview of drug court programs. Part III focuses on the drug court system in South Carolina by identifying the current drug court programs in each judicial circuit. Part III analyzes the proposed Drug Court Program Act and how it would standardize and guide

3. *See What Are Drug Courts?*, *supra* note 2.

4. *See id.*

5. *Drug Court*, S.C. ELEVENTH JUD. CIR. SOLIC.’S OFF. [hereinafter ELEVENTH JUD. CIR.], <https://solicitor11.sc.gov/Diversion-programs/DrugCourt> [https://perma.cc/UZV7-6MEX].

6. *Id.*

7. *See Adult Drug Court*, S. C. COMM’N ON PROSECUTION COORDINATION, <https://scprosecutors.sc.gov/adult-drug-court> [https://perma.cc/9U2P-YQUZ].

8. *See* S.C. COMM’N ON PROSECUTION COORDINATION, DIVERSION/INTERVENTION & TREATMENT PROGRAMS QUICK GUIDE 2022 2 (2022), <https://scprosecutors.sc.gov/sites/scprosecutors/files/Documents/Images/2022-Diversion-Quick-Guide-042822.pdf> [https://perma.cc/3XEH-QUHC].

9. *See Adult Drug Court*, *supra* note 7.

the operation of South Carolina's drug court programs. Part III also conducts a circuit-by-circuit comparative analysis of South Carolina's drug courts by examining the philosophical approaches, eligibility and enrollment requirements, and the treatment approaches among each drug court program. Part IV acknowledges the success of South Carolina's drug courts as it relates to recidivism rates and economic benefits, but also notes the need for more consistent data and transparency. Part V strongly recommends South Carolina's legislature to enact the proposed Drug Court Program Act that would provide necessary support and guidance to South Carolina's drug court programs. Part V also identifies the drawbacks to what is currently a fragmented drug court system in South Carolina and encourages South Carolina's judicial circuits to strive for greater transparency and accountability in operating drug courts. Part V concludes by stressing the timeliness and importance of these next steps to ensure the future success of drug courts as a promising alternative to the criminal justice system.

II. BACKGROUND

A. *History of Drug Courts*

Amid increasing criminal behavior related to substance abuse and the ensuing burden placed on the criminal justice system, Miami, Florida established the first United States drug court in 1989.¹⁰ The United States had declared a “war on drugs,” and criminal defendants largely exhibited similar characteristics: (1) substance use disorders that contributed to criminal behavior; (2) histories of repeated criminal activity; and (3) records of non-violent crimes.¹¹ Based on these findings, criminal justice practitioners realized that the criminal justice system was failing to reduce recidivism and to “address the underlying criminogenic needs of justice-involved individuals.”¹²

The Miami drug court adopted a simple—albeit progressive—philosophical approach to address these systemic shortcomings of the criminal justice system; this approach would ultimately become the prototype for future drug court programs.¹³ Miami's philosophy recognized that substance

10. NAT'L INST. OF JUST., U.S. DEP'T OF JUST., NCJ 211081, DRUG COURTS: THE SECOND DECADE 1 (2006) [hereinafter DRUG COURTS: THE SECOND DECADE], <https://www.ojp.gov/pdffiles1/nij/211081.pdf> [https://perma.cc/V8ZZ-XLXV].

11. KRISTEN DEVALL, ET AL., NAT'L DRUG CT. RSCH. CTR., *Highlights & Insights, in* PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON TREATMENT COURTS IN THE UNITED STATES 2 (2022).

12. *Id.*

13. Arthur J. Lurigio, *The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact*, 72 FED. PROB. 13, 15 (2008).

abuse and addiction drive criminal behavior.¹⁴ Accordingly, Miami’s drug court set out to provide treatment and recovery efforts to attack the root of the problem.¹⁵ Over time, Miami’s drug court model converted what was an adversarial criminal justice process into a wholistic approach based on therapy and rehabilitation.¹⁶

Drug courts received early support from national and political leaders, often in the form of “generous federal funding,” which contributed to their growth and momentum.¹⁷ Furthermore, early research on Miami’s drug court provided convincing evidence that this new program was working.¹⁸ When compared to nonparticipants, drug court participants had fewer rearrests and lower incarceration rates.¹⁹ Drug court participants were also less likely to be sentenced to prison than nonparticipants.²⁰ And even among those who were rearrested, their time-to-rearrest was two to three times longer compared to nonparticipants.²¹ The research also found economic benefits of drug court programs, which generate savings via reduced jail and prison use, lower crime, and decreased judicial costs.²²

At the end of 2021, 1,830 drug courts existed across the United States, with each state operating at least one drug court.²³

B. Structure of Drug Courts

While there is no universal structure for drug court programs, two methods are most common.²⁴ In the first instance, called the deferred-prosecution or preadjudication model, the defendant does not enter a plea.²⁵ Rather, the court defers prosecution while the defendant participates in a drug court.²⁶ The other common method, referred to as postadjudication, involves the defendant entering a guilty plea. The sentence is then deferred as the

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 16.

18. *See id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *See 2021 Treatment Court Count*, NAT’L TREATMENT CT. RES. CTR. (2021), <https://ntcrc.org/maps/interactive-maps/2021-treatment-court-count/> [<https://perma.cc/6W6G-UB6R>].

24. *What Are Drug Courts?*, *supra* note 2.

25. U.S. GOV’T ACCOUNTABILITY OFF., GAO-23-105272, ADULT DRUG COURT PROGRAMS: FACTORS RELATED TO ELIGIBILITY AND ACCEPTANCE OF OFFERS TO PARTICIPATE IN DOJ FUNDED ADULT DRUG COURTS 7 (2023).

26. *Id.*

defendant participates in drug court.²⁷ In both methods, the defendant's successful completion of the drug court program may lead to dropped or reduced charges.²⁸ Conversely, a defendant's failure to complete a drug court program leads to adjudication under the deferred prosecution model, or a reinstatement of the defendant's original sentence under the postadjudication model.²⁹

Because drug courts operate primarily on a local level, "drug courts vary in target population, program design, and service resources."³⁰ In 1997, the U.S. Department of Justice, in collaboration with the National Association of Drug Court Professionals, identified ten key components of drug court programs: (1) drug courts integrate alcohol and other drug treatment services with justice system case processing; (2) using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights; (3) eligible participants are identified early and are promptly placed in the drug court program; (4) drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services; (5) abstinence is monitored by frequent alcohol and other drug testing; (6) a coordinated strategy governs drug court responses to participants' compliance; (7) ongoing judicial interaction with each drug court participant is essential; (8) monitoring and evaluations measure the achievement of program goals and gauge effectiveness; (9) continuing interdisciplinary education promotes effective drug court planning, implementation, and operations; and (10) forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.³¹ Later research has shown that localities that fail to strictly adhere to these key components experience reduced effectiveness and cost-effectiveness of drug courts by as much as one half.³² Specifically, this reduction in effectiveness manifests in lower graduation rates and higher criminal recidivism among drug court participants.³³

The implementation method and overall design of drug court programs varies by jurisdiction, although most drug courts share similar procedures and

27. *Id.*

28. *See id.*

29. *See id.*

30. *Overview of Drug Courts*, NAT'L INST. OF JUST. (July 22, 2020), <https://nij.ojp.gov/topics/articles/overview-drug-courts#the-drug-court-model> [<https://perma.cc/J6W9-AKPY>].

31. BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST. & NAT'L ASS'N OF DRUG CT. PROS., NCJ 205621, *DEFINING DRUG COURTS: THE KEY COMPONENTS* iii (reprt. 2004) (1997).

32. NAT'L ASS'N OF DRUG CT. PROS., *ADULT DRUG COURT BEST PRACTICE STANDARDS 1* (2018).

33. *Id.*

adhere to the ten key components.³⁴ Most drug court programs take a three-stage approach that involves detoxification, stabilization, and aftercare.³⁵ The detoxification stage “works to eliminate the participants’ physical dependence on drugs.”³⁶ The stabilization stage seeks to improve participants’ ability to maintain sobriety.³⁷ In the aftercare stage, participants receive education or job training while maintaining a sober lifestyle.³⁸ Drug court programs often provide unique services for participants, including (1) participation over a series of months or years to establish and maintain long-term recovery strategies; (2) frequent and random drug tests; (3) clinical treatment for substance-use disorders; (4) individualized case management services, connecting participants to employment opportunities, community service, pro-social activities, and education; (5) required frequent appearances in court; (6) rewards for maintaining treatment plans and sanctions for failure to meet obligations; (7) support and encouragement from the drug court team.³⁹

Drug courts initially only served adults but have since expanded to include juvenile drug treatment courts, DUI and DWI courts, family treatment courts, mental health courts, veteran treatment courts, and tribal healing to wellness courts.⁴⁰ Still, adult drug courts comprise nearly half of the actively operating facilities in the United States.⁴¹ The amount of time that a participant will spend in a drug court program is generally flexible and tailored to the needs of the individual.⁴² However, eighteen months is a typical timeframe for completing most drug court programs.⁴³

34. See DRUG COURTS: THE SECOND DECADE, *supra* note 10, at 3.

35. See NAT’L ASS’N OF CRIM. DEF. LAWS., AMERICA’S PROBLEM-SOLVING COURTS: THE CRIMINAL COSTS OF TREATMENT AND THE CASE FOR REFORM 17 (2009).

36. *Id.*

37. *See id.*

38. *Id.*

39. *What Are Drug Courts?*, *supra* note 2.

40. *Drug Courts*, *supra* note 1.

41. *2021 Treatment Court Count*, *supra* note 23.

42. NAT’L ASS’N OF CRIM. DEF. LAWS., *supra* note 35, at 17.

43. *Id.*

III. DRUG COURTS IN SOUTH CAROLINA

A. Background

Overview of Population and Drug Courts within South Carolina's Judicial Circuits					
Judicial Circuit	Population of Circuit	Counties in Circuit	Population of Counties ⁴⁴	Counties with an Adult Drug Court ⁴⁵	Ratio of Drug Courts in Circuit to Circuit Population
First	263,406	Calhoun	14,179		263,406
		Orangeburg	83,094		
		Dorchester	166,133	✓	
Second	207,472	Aiken	174,150	✓	207,472
		Barnwell	20,414		
		Bamberg	12,908		
Third	181,136	Lee	16,153	✓	45,284
		Sumter	104,012	✓	
		Clarendon	30,913	✓	
		Williamsburg	30,058	✓	
Fourth	159,858	Chesterfield	43,683	✓	79,929
		Darlington	62,398		
		Marlboro	26,039	✓	
Fifth	489,317	Dillon	27,738		244,659
		Richland	421,566	✓	
		Kershaw	67,751	✓	

44. For population estimates as of July 1, 2022, see *QuickFacts: South Carolina; United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/map/SC,US/PST045222> [<https://perma.cc/9YB6-PFTR>].

45. S.C. COMM'N ON PROSECUTION COORDINATION, *supra* note 8.

Overview of Population and Drug Courts within South Carolina's Judicial Circuits					
Judicial Circuit	Population of Circuit	Counties in Circuit	Population of Counties ⁴⁴	Counties with an Adult Drug Court ⁴⁵	Ratio of Drug Courts in Circuit to Circuit Population
Sixth	156,963	Chester	31,931		156,963
		Fairfield	20,455		
		Lancaster	104,577	✓	
Seventh	401,952	Cherokee	56,121		401,952
		Spartanburg	345,831	✓	
Eighth	199,835	Abbeville	24,356	✓	199,835
		Laurens	67,965		
		Newberry	38,247		
		Greenwood	69,267		
Ninth	664,396	Berkeley	245,117	✓	332,198
		Charleston	419,279	✓	
Tenth	289,761	Oconee	80,180	✓	144,881
		Anderson	209,581	✓	
Eleventh	360,431	McCormick	9,764	✓	90,108
		Edgefield	26,932	✓	
		Saluda	18,938	✓	
		Lexington	304,797	✓	
Twelfth	165,171	Florence	136,721	✓	82,586
		Marion	28,450	✓	
Thirteenth	681,412	Greenville	547,950	✓	681,412
		Pickens	133,462		

Overview of Population and Drug Courts within South Carolina's Judicial Circuits					
Judicial Circuit	Population of Circuit	Counties in Circuit	Population of Counties ⁴⁴	Counties with an Adult Drug Court ⁴⁵	Ratio of Drug Courts in Circuit to Circuit Population
Fourteenth	292,701	Allendale	7,579		292,701
		Hampton	18,113		
		Colleton	38,599		
		Jasper	32,039		
		Beaufort	196,371	✓	
Fifteenth	447,823	Horry	383,101	✓	223,912
		Georgetown	64,722	✓	
Sixteenth	321,000	York	294,248	✓	321,000
		Union	26,752		

B. Legislation

Approximately sixteen years after South Carolina opened its first drug court in Lexington County, the first piece of drug court legislation was introduced to the South Carolina Senate.⁴⁶ Introduced by Senators Malloy, McConnell, Knotts, and Anderson, the legislation, appropriately named the Drug Court Program Act, purported to:

direct each circuit solicitor to establish a drug court program for adults and juveniles, to provide criteria for eligibility of persons charged with nonviolent offenses, to allow each circuit solicitor to establish an office of drug court program coordinator, to direct the commission on prosecution coordination to establish a state office of drug court coordination, to provide for fees for participation in a drug court program, to provide for annual reports detailing the activities of drug court programs to the commission on prosecution coordination with a copy provided to the sentencing reform oversight committee,

46. See S. 1317, 2012 Gen. Assemb., 119th Sess. (S.C. 2012).

and to provide for the appointment of drug court judges and compensation.⁴⁷

Before addressing the framework of South Carolina’s drug court programs, the proposed Drug Court Program Act importantly acknowledged that “drug court programs have proved successful in dealing with substance abuse in the criminal and juvenile justice systems.”⁴⁸ Furthermore, the drafters noted that the object and purpose of the legislation was ultimately “to set standards and procedures to facilitate the creation and continuation of [drug court programs] across [South Carolina], while leaving local jurisdictions the flexibility to tailor individual programs to local needs.”⁴⁹ As a result, the proposed legislation recognizes the successful track record of drug courts for effectively and proactively addressing substance abuse in the criminal justice system. The drafters also underscored the need for legislative direction as a means of helping to standardize drug court procedures in South Carolina. The implementation of such legislation is paramount to the future of South Carolina’s drug court system.

The original bill proposing the Drug Court Program Act failed to be enacted after stalling in the South Carolina Senate and House Committees on Judiciary.⁵⁰ Each of the six legislative sessions that followed, however, including the current legislative session, introduced nearly identical legislation, which has always been called the Drug Court Program Act.⁵¹ Although this would be the first statute to directly address the operation and structure of drug courts in South Carolina, drug courts are currently recognized by statute as diversionary programs under the administration of circuit solicitors.⁵²

Adopting the same language from the original legislation, the latest proposal of the Drug Court Program Act requires each solicitor to “establish a drug court program in his respective circuit for adults and juveniles who commit nonviolent crimes.”⁵³ The proposed bill provides each solicitor with supervisory authority over the circuit’s drug court program, and it also requires each drug court program to have a presence in each county within the jurisdiction.⁵⁴ Each drug court program must be based on the ten key

47. *Id.*

48. *Id.*

49. *Id.*

50. *See id.*

51. History of Drug Program Act, S.C. LEGISLATURE, <https://www.scstatehouse.gov/query.php> [<https://perma.cc/R946-V6Y3>] (Select “All Sessions” in “Select Session” field; then, perform a new search for “Drug Court Program Act.”).

52. S.C. CODE ANN. § 17-22-1120(B) (2010).

53. *See* S. 83, 2023 Gen. Assemb., 125th Sess. (S.C. 2023) (proposed § 17-22-1310(A)).

54. *Id.* (proposed § 17-22-1310(A)–(D)).

components from the National Association of Drug Court Professionals,⁵⁵ which this Article discussed earlier.

The proposed Drug Court Program Act provides three scenarios in which a defendant may be considered for a drug court program in South Carolina for a nonviolent offense.⁵⁶ The first instance involves the court withholding judgment and deferring proceedings based on the defendant's consent to participate in a drug court program.⁵⁷ This method is an example of the preadjudication model discussed earlier. In the second scenario, the defendant pleads guilty or *nolo contendere*, or the defendant is found guilty.⁵⁸ The court will withhold the judgment and defer further proceedings if the defendant consents to participate in a drug court program.⁵⁹ This method has been labeled as the quasi-adjudicatory model.⁶⁰ The final instance occurs when the defendant is found guilty and placed on probation, and the successful completion of a drug court program is a condition of the probation.⁶¹ This method is an example of the postadjudication model discussed earlier.

Conversely, the proposed Drug Court Program Act also provides scenarios for when a defendant may not be considered for a drug court program.⁶² If the defendant is currently charged with a violent crime or stalking as defined by statute, he may not be considered for a drug court program.⁶³ Even if the defendant is not being charged with a violent crime, the defendant may be barred from a drug court program if he has been released from incarceration in the previous five years for a violent crime or for harassment or stalking.⁶⁴ A defendant who is subject to a restraining order or a valid order of protection may also be prevented from participating in a drug court program.⁶⁵ Lastly, a defendant who has previously participated in a drug court program may be denied.⁶⁶

When a participant of a drug court program successfully completes the program under either the preadjudication model or postadjudication model, the proposed Drug Court Program Act provides that the defendant may qualify

55. *Id.* (proposed § 17-22-1310(D)).

56. *Id.* (proposed § 17-22-1320(A)).

57. *Id.* (proposed § 17-22-1320(A)(1)).

58. *Id.* (proposed § 17-22-1320(A)(2)).

59. *Id.*

60. Mitchell B. Mackinem & Carson A. Fox, *How to Start a Drug Court 4* (S.C. Ass'n of Drug Ct. Pros. Third Ann. Conf., 2001), <https://dc.statelibrary.sc.gov/server/api/core/bitstreams/c839770b-07e9-4d34-9aeb-622a0e55d8ea/content> [<https://perma.cc/RA8V-K3AR>].

61. S. 83, 2023 Gen. Assemb., 125th Sess. (S.C. 2023) (proposed § 17-22-1320(A)(3)).

62. *Id.* (proposed § 17-22-1320(B)).

63. *Id.* (proposed § 17-22-1320(B)(1)).

64. *Id.* (proposed § 17-22-1320(B)(2)).

65. *Id.* (proposed § 17-22-1320(B)(3)).

66. *Id.* (proposed § 17-22-1320(B)(4)).

to have the charge or charges dismissed.⁶⁷ If the defendant is an eligible candidate, the solicitor must proceed with a noncriminal disposition and terminate the nonviolent offense from the public record.⁶⁸ However, if the defendant fails to satisfy the requirements or leaves the drug court program, the solicitor must reinstate the nonviolent offense if the defendant participated in the preadjudication track; under the postadjudication method, the defendant's sentence is imposed; within the probation method, the Department of Probation and the Parole and Pardon Services are notified, and proceedings may begin to revoke the defendant's probation.⁶⁹

The proposed Drug Court Program Act would establish an Office of Statewide Drug Court Coordinator, which would assist the circuit solicitors with implementing and maintaining the drug court programs.⁷⁰ Importantly, the Drug Court Program Act establishes a mandatory reporting requirement, whereby each solicitor's office must submit an annual report to the Commission on Prosecution Coordination detailing the number of drug court participants; the number of participants to successfully complete the drug court program; the total amount of fees collected; and the revenue provided to the local and state governments for the prior fiscal year.⁷¹ The Drug Court Program Act concludes by empowering the Chief Justice of the South Carolina Supreme Court to appoint drug court judges.⁷²

C. *Circuit-by-Circuit Comparative Analysis of South Carolina's Adult Drug Courts*

1. *Philosophical Approaches*

Fourteen of South Carolina's sixteen judicial circuits maintain a website that contains public information pertaining to the circuit's drug court program, with the Third and Eighth Circuits being the exceptions. To understand each circuit's drug court program, it is important to begin with an analysis of the circuits' philosophical approaches to operating their respective drug courts.

Of the fourteen judicial circuits that provide public information on their drug courts, eleven circuits refer to their drug courts either as a means of promoting sobriety and healthier lifestyles or improving the quality of life

67. *Id.* (proposed § 17-22-1330(A)).

68. *Id.*

69. *Id.* (proposed § 17-22-1330(C)).

70. *Id.* (proposed § 17-22-1340(A)).

71. *Id.* (proposed § 17-22-1360(A)).

72. *Id.* (proposed § 17-22-1380(A)).

among its drug court participants and the community.⁷³ Ten circuits incorporate philosophical approaches that either acknowledge substance abuse as the driving force behind the criminal behavior or adopt the idea that drug courts marry the criminal justice and public health systems.⁷⁴ Another common theme, seen in seven of the circuits' philosophical approaches, was the idea that drug court programs either improve the productivity of participants' lives or reduce the cost to taxpayers and the criminal justice system.⁷⁵

Surprisingly, only four circuits' drug courts specifically mention the benefits to overall public safety as a theme in their philosophical approaches.⁷⁶ Notwithstanding this omission, a public safety benefit may be inferred as other circuits speak to the benefits of drug courts as including greater adherence to laws and improved community and individual productivity. Even more surprising, however, is that only four circuits reference lower

73. See *Adult Drug Court*, FIRST JUD. CIR. SOLIC.'S OFF. [hereinafter FIRST JUD. CIR.], <https://scsolicitor1.org/programs/adult-drug-court/> [https://perma.cc/T67L-YG4E]; *Adult Drug Court*, OFF. OF THE SOLIC. FOURTH JUD. CIR. [hereinafter FOURTH JUD. CIR.], <https://web.archive.org/web/20230528040939/https://www.solicitor4.com/adult-drug-court/> [https://perma.cc/KF5U-TYMG]; *Adult Drug Treatment Court Program*, FIFTH JUD. CIR. SOLIC.'S OFF. [hereinafter FIFTH JUD. CIR.], <https://www.scsolicitor5.org/diversion-programs/adult-drug-treatment-court-program/> [https://perma.cc/K6RP-KXUA]; *Drug Court Diversion Program*, SIXTH JUD. CIR. SOLIC.'S OFF. [hereinafter SIXTH JUD. CIR.], <https://www.scsolicitor6.org/drug-court> [https://perma.cc/ZB9L-B9F2]; *Alternative Courts*, NINTH JUD. CIR. SOLIC.'S OFF. [hereinafter NINTH JUD. CIR.], <https://www.scsolicitor9.org/alternative-courts.php> [https://perma.cc/8UR3-6C3W]; *Drug Court*, TENTH JUD. CIR. SOLIC. [hereinafter TENTH JUD. CIR.], <https://solicitor10.org/drug-court/> [https://perma.cc/97P7-DTTW]; ELEVENTH JUD. CIR., *supra* note 5; *Drug Court Program*, STATE OF S.C. TWELFTH JUD. CIR. [hereinafter TWELFTH JUD. CIR.], [https://files.florenceco.org/public/Solicitor/adult diversion/Adult Drug Court Brochure.pdf](https://files.florenceco.org/public/Solicitor/adult%20diversion/Adult%20Drug%20Court%20Brochure.pdf) [https://perma.cc/E7SW-Y9CJ]; *Drug Court*, OFF. OF THE SOLIC. THIRTEENTH JUD. CIR. [hereinafter THIRTEENTH JUD. CIR.], [https://www.greenvillecounty.org/solicitor/drug court.asp](https://www.greenvillecounty.org/solicitor/drug%20court.asp) [https://perma.cc/6GGK-WGC8]; *Treatment Courts*, Horry CNTY. GOV'T. [hereinafter Horry CNTY.], <https://www.horrycountysc.gov/departments/solicitor/courts/treatment-courts/> [https://perma.cc/W6BA-AER9]; *Adult Drug Court*, SIXTEENTH JUD. CIR. SOLIC.'S OFF. [hereinafter SIXTEENTH JUD. CIR.], <https://web.archive.org/web/20220816140818/https://scsolicitor16.com/diversion/drug-court/> [https://perma.cc/SW3K-E2L7].

74. See *Adult Drug Court*, SECOND JUD. CIR. SOLIC. [hereinafter SECOND JUD. CIR.], <https://www.scsolicitor2.org/drugcourt.php> [https://perma.cc/C8A7-GFLM]; FOURTH JUD. CIR., *supra* note 73; SIXTH JUD. CIR., *supra* note 73; *Drug Court*, SEVENTH JUD. CIR. SOLIC. [hereinafter SEVENTH JUD. CIR.], <https://www.spartanburgcounty.org/304/Drug-Court> [https://perma.cc/VM8U-6M53]; TENTH JUD. CIR., *supra* note 73; THIRTEENTH JUD. CIR., *supra* note 73; *Adult Multi-Disciplinary Court*, FOURTEENTH JUD. CIR. SOLIC.'S OFF. [hereinafter FOURTEENTH JUD. CIR.], <https://scsolicitor14.org/court-alternatives/> [https://perma.cc/ZW66-623M]; Horry CNTY., *supra* note 73; SIXTEENTH JUD. CIR., *supra* note 73.

75. See FIRST JUD. CIR., *supra* note 73; FOURTH JUD. CIR., *supra* note 73; FIFTH JUD. CIR., *supra* note 73; TENTH JUD. CIR., *supra* note 73; TWELFTH JUD. CIR., *supra* note 73; FOURTEENTH JUD. CIR., *supra* note 74; Horry CNTY., *supra* note 73.

76. See FIRST JUD. CIR., *supra* note 73; FOURTH JUD. CIR., *supra* note 73; FIFTH JUD. CIR., *supra* note 73; NINTH JUD. CIR., *supra* note 73.

recidivism—or a broader reduction in overall criminal activity—as an underlying theme in their philosophical approaches.⁷⁷

2. *Eligibility Requirements and Enrollment Processes*

Because South Carolina’s drug courts operate on a local level and without a statute that enumerates standardized procedures, each circuit has adopted its own eligibility and enrollment requirements. Thus, these procedures vary significantly from circuit to circuit; some drug court programs employ relaxed standards for eligibility and enrollment, while other drug court programs adopt stricter eligibility and enrollment procedures. For instance, the Tenth Circuit only requires evidence of a connection between the crime and the defendant’s drug addiction for the defendant to be eligible for its drug court program.⁷⁸ Under the postadjudication method, defendants in the Tenth Circuit must plead guilty to the charges and receive a sentence.⁷⁹ Successful completion of the Tenth Circuit’s drug court program satisfies the defendant’s sentence.⁸⁰

In addition to being nonviolent, the Fifteenth Circuit requires evidence indicating a defendant’s willingness to address their substance abuse as an eligibility requirement.⁸¹ The Fourteenth Circuit only provides that each defendant be “carefully screened to undergo professional substance abuse and mental health treatment.”⁸² The Fourteenth⁸³ and Fifteenth⁸⁴ Circuits are silent as to the referral and enrollment procedures.

The Second⁸⁵ and Eleventh⁸⁶ Circuits require that the defendant be nonviolent to be considered for enrollment, but the Eleventh Circuit will not consider drug dealers unless the drug dealing supported the defendant’s substance abuse.⁸⁷ Once these two qualifications are satisfied, the Eleventh Circuit mandates the defendant undergo a “rigorous screening process” before admission into the drug court program.⁸⁸ The drug court director, a treatment provider, and an assistant solicitor assist in this screening process.⁸⁹ Either the

77. See FIRST JUD. CIR., *supra* note 73; FOURTH JUD. CIR., *supra* note 73; SIXTH CIR., *supra* note 73; NINTH CIR., *supra* note 73.

78. TENTH CIR., *supra* note 73.

79. *Id.*

80. *Id.*

81. See HORRY CNTY., *supra* note 73.

82. FOURTEENTH CIR., *supra* note 74.

83. *See id.*

84. See HORRY CNTY., *supra* note 73.

85. SECOND JUD. CIR., *supra* note 74.

86. ELEVENTH JUD. CIR., *supra* note 5.

87. *Id.*

88. *Id.*

89. *Id.*

arresting law enforcement officer or victim of the crime is able to recommend the defendant for participation.⁹⁰

Both the Seventh⁹¹ and Ninth⁹² Circuits are among those that operate under more relaxed provisions for drug court eligibility and enrollment. The Seventh Circuit drug court requires defendants to be non-violent and current residents of the circuit.⁹³ The Ninth Circuit drug court mandates that defendants have pending criminal charges or probation violations along with a documented substance or alcohol disorder.⁹⁴ The Ninth Circuit incorporates an additional caveat for eligibility, requiring candidates who are not residents of the circuit to relocate to the area for the duration of the program.⁹⁵ The Ninth Circuit allows defense attorneys or other individuals to complete an application for enrollment on behalf of the defendant.⁹⁶

As for the judicial circuits with more stringent eligibility and enrollment standards, the First Circuit requires the defendant to be at least eighteen years old and qualify as alcohol- or drug-dependent.⁹⁷ The First Circuit's drug court denies applications from defendants with a prior conviction, or a current charge, related to a violent offense.⁹⁸ Ineligible participants also include defendants who are currently under probation or any type of court-mandated supervision.⁹⁹ Interestingly, a unique aspect of the First Circuit's drug court program denies eligibility to defendants with co-occurring psychoses who are deemed unstable even with medication.¹⁰⁰ An exception exists for defendants with co-occurring psychoses who consent to immediately receiving mental health services.¹⁰¹ If the defendant meets the aforementioned criteria and is referred to the drug court program by the First Circuit solicitor, the defendant will complete an application, which will be reviewed by the program director during an initial meeting with the defendant.¹⁰² Next, a provider with the Dorchester Alcohol and Drug Commission screens the defendant to ensure eligibility for the treatment program, namely that the defendant is substance dependent.¹⁰³ If the defendant passes these steps, they are accepted into the

90. *Id.*

91. *See* SEVENTH CIR., *supra* note 74.

92. *See* NINTH CIR., *supra* note 73.

93. SEVENTH CIR., *supra* note 74.

94. NINTH CIR., *supra* note 73.

95. *Id.* (select "Brochure" under either "Berkeley County" or "Charleston County").

96. *Id.* (select "Brochure" under either "Berkeley County" or "Charleston County").

97. FIRST JUD. CIR., *supra* note 73.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

First Circuit's drug court program pending the defendant's guilty plea to the current charges under the quasi-adjudicatory method.¹⁰⁴

The eligibility and enrollment model for the Fourth Circuit's drug court program resembles the First Circuit's drug court program with subtle differences. For a defendant to be eligible for the Fourth Circuit's drug court program, (1) a relationship must exist between the defendant's criminal activity and defendant's substance abuse; (2) the defendant's substance addiction must be clinically diagnosed; (3) the defendant must not be charged with a violent crime; and (4) the defendant must be referred to the drug court program by the prosecuting attorney.¹⁰⁵ The Fourth Circuit, however, adopts a postadjudicatory method, by which the defendant must plead guilty to the charge and have the circuit court judge enter a sentence.¹⁰⁶

Barring a few exceptions, the Fifth Circuit's drug court program characterizes eligible applicants as any defendant with a history of drug use and convictions for drug crimes or drug-related crimes.¹⁰⁷ The exceptions include defendants with probation or a prior conviction of a violent crime; pending charges that may jeopardize the defendant's ability to complete the drug court program; chronic mental illness; companion weapon charges; domestic violence charges; a history of drug dealing; lewd acts on, or criminal sexual conduct with a minor; traffic offenses; and gang affiliation.¹⁰⁸ Unlike the First and Fourth Circuits that require a member of the court to recommend the defendant to the drug court program, the Fifth Circuit allows a phone call to the Circuit's Adult Court Treatment Program to begin the application process.¹⁰⁹ The Fifth Circuit Solicitor's Office reviews applications and presents cases to the drug court judge, whereby the judge has the final authority on whether applicants are admitted to the drug court program.¹¹⁰ The Fifth Circuit adopts the quasi-adjudication method by which the defendant pleads guilty to the current charges, which are later dismissed if the defendant successfully completes the drug court program.¹¹¹

The eligibility and enrollment procedures of the Sixth Circuit are similar to the First Circuit with subtle differences. The Sixth Circuit's drug court program requires the defendant to be over the age of seventeen; this must be the defendant's first time participating in a drug court program in South Carolina; any prior charges of sexual offenses, trafficking, or violent crimes disqualifies the defendant; the defendant must be a resident of the Sixth

104. *Id.*

105. FOURTH JUD. CIR., *supra* note 73.

106. *Id.*

107. FIFTH JUD. CIR., *supra* note 73.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

Circuit with reliable means of transportation; and the defendant must have basic cognitive abilities and not be suffering from any conditions that would prevent participation in the program.¹¹² The Sixth Circuit provides that only an attorney, public defender, probation officer, or solicitor has authority to refer a defendant for participation.¹¹³ One of these parties must refer the defendant to the drug court program within ninety days of the defendant's arrest.¹¹⁴ The Sixth Circuit also requires the defendant's substance abuse to be diagnosed by a certified addictions counselor.¹¹⁵ The Sixth Circuit adopts the quasi-adjudication method, whereby the defendant pleads guilty to the charges.¹¹⁶ Upon successful completion of the drug court program, the defendant's charges will be dismissed, and the defendant's record will be eligible for expungement.¹¹⁷

The Sixteenth Circuit's drug court program mirrors the eligibility procedures of the Sixth Circuit.¹¹⁸ When comparing the two Circuit's enrollment processes, the only difference is that the Sixteenth Circuit follows the postadjudication method.¹¹⁹ Thus, the defendant pleads guilty to the charges, but the sentence is deferred pending the defendant's successful completion of the drug court program.¹²⁰ Upon successful completion of the drug court program in the Sixteenth Circuit, the court dismisses the defendant's charges.¹²¹

Similarly, the Twelfth Circuit's drug court program imposes eligibility and enrollment requirements that are nearly identical to those of the Sixth and Sixteenth Circuits.¹²² There are two differences: the Twelfth Circuit may accept defendants who have previously participated in a drug court program, and the Twelfth Circuit does not require proof of defendants' cognitive abilities.¹²³ Like the Sixth Circuit, enrollment in the Twelfth Circuit requires the defendant to plead guilty under a quasi-adjudication method.¹²⁴ The Twelfth Circuit is silent as to the means and timeline for referring defendants to the drug court program.¹²⁵

112. SIXTH CIR., *supra* note 73.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *See* SIXTEENTH JUD. CIR., *supra* note 73.

119. *See id.*

120. *Id.*

121. *Id.*

122. *See* TWELFTH JUD. CIR., *supra* note 73.

123. *See id.*

124. *See id.*

125. *See id.*

The Third,¹²⁶ Eighth,¹²⁷ and Thirteenth¹²⁸ Circuits fail to provide guidance on their drug courts' eligibility and enrollment procedures.

3. *Analyzing the Different Treatment Approaches of South Carolina's Drug Courts*

Although each judicial circuit's drug court program implements different requirements that participants must strictly adhere to, each drug court program adopts one of two frameworks: a phased approach to treatment or a non-phased approach to treatment. Beginning on the next page, the following two tables illustrate the differences in the two frameworks and detail each circuit's approach to treatment within that framework.

126. See *Solicitor's Office*, SUMTER CNTY. S.C., https://www.sumtercountysc.org/departments/s_-_z/solicitor_s_office/index.php [<https://perma.cc/N6PP-LCQS>].

127. See *Drug Court*, EIGHTH CIR. SOLIC.'S OFF., <http://www.scsolicitor8.org/diversion-programs/drug-court/> [<https://perma.cc/W9BQ-XNP3>].

128. See THIRTEENTH JUD. CIR., *supra* note 73.

Drug Court Programs that Adopt a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements
First ¹²⁹	17 to 22 Weeks	<p>Phase I Requirements: Minimum of 12 Weeks</p> <p>Before beginning Phase I, participants spend one to six weeks in a transitional phase, which helps prepare participants for the rigors of a drug court program. Phase I consists of random drug screenings along with a weekly minimum of nine hours of group therapy. Participants are also required to attend several twelve-step meetings per week.</p> <p>Phase II Requirements: Minimum of 12 Weeks</p> <p>In Phase II, participant will continue to undergo random drug screenings. The number of required group therapy sessions declines, but participant must continue to attend several twelve-step meetings per week.</p> <p>Phase III Requirements: Minimum of 12 Weeks</p> <p>Phase III aims to prevent relapse and incorporates aftercare. Participant is subject to a continuation of random drug screening and therapy appointments.</p> <p>Phase IV Requirements: Minimum of 12 Weeks</p> <p>Phase IV involves the same requirements as Phase III but tailors the treatment to participants’ individual needs.</p> <p>Requirements Throughout Treatment</p> <p>Throughout the drug court program, participants must agree to outpatient therapy, hair follicle testing, and bi-weekly reporting to court. Applicants must pay a \$100 non-refundable application fee. Accepted participants are required to pay \$150 per month for the duration of the drug court program.</p>

129. FIRST JUD. CIR., *supra* note 73.

Drug Court Programs that Adopt a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements
Fourth ¹³⁰	52 Weeks	<p>Phase I Requirements: Minimum of 16 Weeks In Phase I, participants must complete three sessions per week of group counseling.</p> <p>Phase II Requirements: Minimum of 16 Weeks In Phase II, participants must complete two sessions per week of group counseling.</p> <p>Phase III Requirements: 16 Weeks In Phase III, participants must complete one session per week of group counseling.</p> <p>Phase IV Requirements: 16 Weeks Phase IV involves a probationary period.</p> <p>Requirements Throughout Treatment Participants must agree to two to three weekly drug screenings; weekly group sessions with a treatment provider; attend two support group meetings per week; and be fully employed or actively seeking employment. Before graduating from drug court, participants must have a one-year record of sobriety. Participants without a high school diploma or GED are required to obtain one or the other to be eligible for graduation from the drug court program. Applicants pay a \$100 application fee. Accepted participants pay \$30 per week for the duration of the drug court program.</p>

130. FOURTH JUD. CIR., *supra* note 73.

Drug Court Programs that Adopt a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements
Fifth ¹³¹		<p>Phase I Requirements: Minimum of 16 Weeks</p> <p>In Phase I, participants attend an orientation session and receive an initial assessment and treatment plan. Participants attend three group sessions per week. Participants are required to partake in ninety meetings with Alcoholics Anonymous or Narcotics Anonymous over the span of ninety days. Participants attend at least two meetings per week with Alcoholics Anonymous or Narcotics Anonymous. Participants must appear before the drug court three times per month and be subject to random weekly drug screenings. Participants must maintain employment during Phase I.</p> <p>Phase II Requirements: Minimum of 16 Weeks</p> <p>Participants must receive approval from the drug court judge, program manager, and treatment provider to proceed to Phase II. If advanced to Phase II, the treatment provider reviews the treatment plan with participants, sets goals for participants, and creates a relapse prevention plan with participants. Phase II requires two group sessions per week, a minimum of three meetings per week with Alcoholics Anonymous or Narcotics Anonymous, and two appearances per month before the drug court. Participants are subject to random weekly drug screenings in addition to maintaining employment.</p> <p>Phase III Requirements: 12 Weeks</p> <p>Participants' advancement to Phase III depends on participants' motivation and progress as well as interviews with the drug court judge, program manager, and treatment provider. Only participants who have met specific goals of the treatment plan while living a consistent, drug-free lifestyle will proceed to Phase III. Phase III involves one group session per week, a minimum of four meetings per week with Alcoholics Anonymous or Narcotics Anonymous, and one appearance per week in drug court. Participants remain subject to random weekly</p>

131. FIFTH JUD. CIR., *supra* note 73.

Drug Court Programs that Adopt a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements
		<p>drug tests and must be able to maintain proof of employment.</p> <p>Phase IV Requirements: 12 Weeks</p> <p>Similar to Phase III, participants' ability to move to Phase IV depends on participants' motivation, progress, and another round of interviews with the drug court judge, program manager, and treatment provider. Phase IV is the aftercare stage, where participants attend individual sessions twice per month, partake in at least two meetings per week with Alcoholics Anonymous or Narcotics Anonymous, and appear before the drug court once per month. Participants are subject to two random drug tests per month and must maintain proof of employment.</p> <p>Requirements Throughout Treatment</p> <p>In addition to complying with the procedures and responsibilities throughout the program's four phases, participants must also meet the financial obligations to remain a member of the drug court program.</p>
Eleventh ¹³²	48 to 72 Weeks	<p>Phase I Requirements: 16 to 24 Weeks</p> <p>Participants in Phase I must attend three treatment groups per week, with each treatment group session lasting three hours. Participants are required to partake in two self-help meetings per week in addition to being present at each week's drug court session. Throughout Phase I, participants are subject to random drug screenings.</p> <p>Phase II Requirements: 16 to 24 Weeks</p> <p>In Phase II, participants attend two treatment groups per week. Participants are now required to attend three self-help meetings per week, but only have to participate in drug court sessions bi-weekly. Participants remain subject to random drug screenings.</p>

132. ELEVENTH JUD. CIR., *supra* note 5.

Drug Court Programs that Adopt a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements
		<p>Phase III Requirements: 16 to 24 Weeks</p> <p>In Phase III, participants attend one treatment group per week. Participants are now required to attend four self-help meetings per week, but only have to partake in drug court sessions every three weeks. Participants remain subject to random drug screenings.</p> <p>Phase IV Requirements</p> <p>The Eleventh Circuit's drug court program ends at Phase III and does not have a Phase IV.</p> <p>Requirements Throughout Treatment</p> <p>Defendants who apply to the drug court program must pay \$100 for the application fee. Participants also pay \$100 per month for the duration of the drug court program. Participants may be required to pay restitution to victims.</p>
Twelfth ¹³³	Minimum of 52 Weeks	<p>While the Twelfth Circuit's drug court program includes four phases, the Twelfth Circuit does not disclose the requirements for each phase. Broadly, the Twelfth Circuit's drug court program requires participants to attend all drug court sessions and required meetings and appointments. Additionally, participants must complete substance abuse treatment and are required to comply with random drug screenings. Participants must obtain or maintain employment during the drug court program and attend all self-help group meetings. Graduation from the drug court program requires successful completion of the four phases over a minimum of twelve months. Graduation is also contingent on participants achieving at least four consecutive months of sobriety.</p> <p>Requirements Throughout Treatment</p> <p>Defendants who apply to the drug court program must pay a non-refundable fee of \$140. Participants may also be responsible for paying some or all of the</p>

133. TWELFTH JUD. CIR., *supra* note 73.

Drug Court Programs that Adopt a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements
		costs of treatment, as well as any restitution to victims.

Drug Court Programs Without a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements of Treatment
Second ¹³⁴	52 - 104 Weeks	Participants must complete drug screens, attend drug court sessions, attend group therapy and counseling, pay restitution to victims, attend self-help meetings, and either retain lawful employment or pursue an education. Drug court sessions are held bi-weekly, and the drug court judge monitors participants' progress.
Third ¹³⁵	Unknown	The Third Circuit does not disclose specifics regarding the treatment process of its drug court program.
Sixth ¹³⁶	Varies	Participants are required to satisfy counseling obligations and attend weekly drug court sessions. During the drug court program, participants must pay \$20 per week, but this may be waived by the drug court judge.

134. SECOND JUD. CIR., *supra* note 74.

135. *See Solicitor's Office*, *supra* note 126.

136. SIXTH CIR., *supra* note 73.

Drug Court Programs Without a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements of Treatment
Seventh ¹³⁷	Minimum of 56 Weeks	Participants must attend bi-weekly drug court, partake in drug screenings, and attend treatment sessions and support group meetings. Throughout the entire treatment, participants must either maintain employment or provide community service. Participants owing restitution to a victim must pay it prior to graduation. Defendants applying for the drug court program must pay a non-refundable application fee of \$150. Participants pay \$25 per week for the duration of the drug court program.
Eighth ¹³⁸	Unknown	The Eighth Circuit does not disclose specifics regarding the treatment process of its drug court program.
Ninth ¹³⁹	Minimum of 60 Weeks	Participants must attend assigned drug court sessions and a minimum of two self-help meetings per week. Participants must comply with random drug screening. Participants are not allowed to miss any treatment sessions. Throughout the drug court program, participants have to attain or maintain employment. Participants must pay any restitution owed to victims before graduating from the drug court program. The drug court program requires an application fee of \$100.
Tenth ¹⁴⁰	72 Weeks	Participants must partake in case management, random drug screening, and attend regular drug court sessions and weekly counseling sessions. Participants must maintain full-time employment for the duration of the drug court program. Participants are fully responsible for the costs of the treatment received.

137. SEVENTH CIR., *supra* note 74.

138. *See Drug Court*, *supra* note 127.

139. NINTH CIR., *supra* note 73 (select “Brochure” under either “Berkeley County” or “Charleston County”).

140. TENTH CIR., *supra* note 73.

Drug Court Programs Without a Phased Approach to Treatment		
Judicial Circuit	Total Length of Treatment	Requirements of Treatment
Thirteenth ¹⁴¹	72 Weeks	Participants must adhere to one year of weekly outpatient counseling sessions and eighteen months of case management. Additionally, participants remain subject to random drug screening and are required to regularly attend drug court sessions. Participants must maintain full-time employment while members of the drug court program. Defendants must pay a non-refundable fee of \$150 to apply to the drug court program. Participants are also responsible for the cost of the drug court program, which is \$35 per week.
Fourteenth ¹⁴²	Unknown	The Fourteenth Circuit does not disclose specifics regarding the treatment process of its drug court program.
Fifteenth ¹⁴³	36 to 72 Weeks	Similar to the Fourteenth Circuit, the Fifteenth Circuit does not disclose specifics into the treatment process of its drug court program.
Sixteenth ¹⁴⁴	72 Weeks	Participants must adhere to therapy sessions, drug screenings, maintain full-time employment or receive education, and obtain a GED or high school diploma. Participants are expected to avoid contact with substance abusers and drug dealers. Participants may also be required to partake in therapeutic or rehabilitative methods depending on the individual needs of each participant.

IV. MEASURING SUCCESS OF SOUTH CAROLINA'S DRUG COURTS

“The overall goal of [drug] courts is to reduce criminal recidivism and assist participants with increased likelihood of long-term recovery.”¹⁴⁵ A study published in 2012 assessed ninety-two drug court programs¹⁴⁶ and found that defendants who did not participate in a drug court program reported

141. THIRTEENTH JUD. CIR., *supra* note 73.

142. *See* FOURTEENTH CIR., *supra* note 74.

143. *See* Horry CNTY., *supra* note 73.

144. SIXTEENTH JUD. CIR., *supra* note 73.

145. KRISTEN DE VALL, ET AL., NAT'L DRUG CT. RSCH. CTR., *Adult Drug Courts Brief, in* PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON TREATMENT COURTS IN THE UNITED STATES 33 (2022).

146. OJMARRH MITCHELL, ET AL., THE CAMPBELL COLLABORATION, DRUG COURTS' EFFECTS ON CRIMINAL OFFENDING FOR JUVENILES AND ADULTS 7 (David B. Wilson & Charlotte Gill eds., 2012).

a recidivism rate of 50%.¹⁴⁷ Compared to that control group, drug court participants reported general and drug-related recidivism rates of 38% and 37%, respectively.¹⁴⁸ Even more compelling, this reduction in recidivism lasted for at least three years following participants' entry into the drug court programs.¹⁴⁹ Other studies observed similar reductions in recidivism rates among drug court participants compared to non-participants. For example, two studies from 2006 and 2011 reported drops in recidivism rates among drug court participants by 14%¹⁵⁰ and 9%,¹⁵¹ respectively. Altogether, the evidence indicates that drug courts are a more effective, long-term solution at addressing and lowering criminal behavior than the traditional criminal justice system.

Drug court programs in South Carolina either disseminate sparse and inconsistent recidivism rates or fail to publish recidivism rates altogether. In 2018, however, the South Carolina Commission on Prosecution Coordination (SCCPC)—a state agency that provides staffing, education, and administrative and technical assistance to circuit solicitors¹⁵²—drafted a letter to the South Carolina House Oversight Committee.¹⁵³ In that letter, the SCCPC compiled information on each circuit's drug court programs, which included recidivism rates.¹⁵⁴

Disappointingly, however, only four of South Carolina's sixteen judicial circuits reported recidivism rates within their drug courts.¹⁵⁵ The circuits that either had the means or elected to disclose recidivism rates included the

147. *Id.*

148. *Id.*

149. *Id.*

150. JEFF LATIMER, ET AL., DEP'T OF JUST. CAN., A META-ANALYTIC EXAMINATION OF DRUG TREATMENT COURTS: DO THEY REDUCE RECIDIVISM? 9 (2006).

151. See Deborah Koetzle Shaffer, *Looking Inside the Black Box of Drug Courts: A Meta-Analytic Review*, 28 JUST. Q. 493, 508 (2011) (research data indicating a reduction in recidivism among drug court participants).

152. *About Us*, S.C. COMM'N ON PROSECUTION COORDINATION, <https://scprosecutors.sc.gov/about-us> [<https://perma.cc/SH2U-HS27>].

153. S.C. COMM'N ON PROSECUTION COORDINATION, SCCPC RESPONSE TO AUGUST 1, 2018, INFORMATION REQUEST (2018), [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20SCCPC%20to%20Subcommittee%20with%20attachments%20\(August%2015,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20SCCPC%20to%20Subcommittee%20with%20attachments%20(August%2015,%202018).pdf) [<https://perma.cc/P9L3-GAJD>].

154. S.C. COMM'N ON PROSECUTION COORDINATION, ATTACHMENT C - DRUG COURT COSTS & DIVERSION PROG. RECIDIVISM RATES (2018), <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Cost%20and%20Recidivism%20Rates%20for%20drug%20courts%20and%20other%20diversion%20programs.pdf> [<https://perma.cc/BW28-TL2K>] (table included in the SCCPC's August 15, 2018 letter to the S.C. House Oversight Committee).

155. *See id.*

Fourth, Twelfth, Fifteenth, and Sixteenth Circuits.¹⁵⁶ The Fourth Circuit reported an overall recidivism rate of 26.6% among its two drug courts.¹⁵⁷ The Twelfth Circuit, which contains a drug court in both of its counties, reported recidivism rates of 17% and 20% for those two drug courts.¹⁵⁸ The Fifteenth Circuit, which also operates a drug court in both of its counties, was the only Circuit to track participants' recidivism rates over different time periods following participants' graduations.¹⁵⁹ In the first county in the Fifteenth Circuit, the recidivism rate among participants who graduated in the last four to five years was 28%, whereas the recidivism rate among participants graduating in the last one to two years was 15%.¹⁶⁰ In the Fifteenth Circuit's second county, the recidivism rate among participants who graduated in the last four to five years was 18%; whereas, the recidivism rate among participants graduating in the last one to two years was 0%.¹⁶¹ Lastly, the Sixteenth Circuit reported a recidivism rate of 28%.¹⁶²

The twelve circuits that did not report recidivism rates among drug court participants cited various reasons for not doing so, including a lack of resources and funding, and misunderstandings of how to define or track recidivism.¹⁶³ Although unable to track recidivism rates, several of these circuits added comments to the SCCPC's report that they can only recall one or two, if any, participants who were rearrested following graduation.¹⁶⁴

Interestingly, the SCCPC's report also included data from circuits that compared the costs associated with drug courts to costs associated with a traditional prosecution track involving incarceration.¹⁶⁵ The Fourth Circuit noted that South Carolina on average expends \$19,935 per year to incarcerate one inmate, whereas the cost of operating a drug court with one participant amounts to \$7,317.50.¹⁶⁶ Although it is unclear from the report whether the Fourth Circuit is citing the cost to operate a drug court within its own jurisdiction or at a broader state or federal level, the data nevertheless indicates that the annual government expenditure required to operate a drug court program may be less than half of what is required for traditional incarceration. The Eleventh Circuit also highlighted the fiscal benefits of drug court programs, noting that a defendant who enters its drug court program

156. *Id.* at 2, 7–8, 9–11.

157. *Id.* at 2.

158. *Id.* at 7–8.

159. *Id.* at 9–10.

160. *Id.* at 9.

161. *Id.* at 9–10.

162. *Id.* at 10–11.

163. *See id.* at 1–3.

164. *See id.*

165. *Id.* at 2–3, 5–11.

166. *See id.* at 2.

saves approximately \$58 per day compared to the cost of incarcerating the defendant.¹⁶⁷ The Twelfth Circuit found that the cost of incarcerating the fifteen adults who recently and successfully completed its drug court program would have been greater than the combined cost of operating the Circuit’s adult and juvenile drug court programs.¹⁶⁸ The Twelfth Circuit added that “participants not only avoided [incarceration] but were employed full time while in Drug Court, paid taxes, paid child support, met other financial obligations and contributed to their communities and families.”¹⁶⁹ Similar to the Fourth Circuit, the Thirteenth Circuit found that the annual cost to incarcerate one individual is nearly double that of a person participating in its drug court program.¹⁷⁰ The Sixteenth Circuit even noted that its drug court participants altogether paid an average of \$53,391.39 per year in income taxes to the State of South Carolina.¹⁷¹ As the quantity of drug courts continues to increase and funding allows for drug courts to accept more participants, the economic benefits of drug court programs compared to traditional incarceration should benefit further from efficiencies and leveraging costs. In other words, the economic benefit of drug courts is likely greater than the current data indicates.

V. WHERE DO SOUTH CAROLINA’S DRUG COURTS GO FROM HERE?

South Carolina’s criminal justice system took a progressive leap forward in 1996 when South Carolina’s Supreme Court ordered Lexington County to establish the State’s first drug court. In that judicial order, the South Carolina Supreme Court created an initial framework for South Carolina’s drug court program. This new diversionary program provided nonviolent defendants—whose criminal behavior stemmed from a substance abuse disorder—a path to avoid incarceration by participating in a rigorous, rehabilitating program called drug court. The South Carolina Supreme Court placed the operational duties of this first drug court entirely under the supervision of the circuit solicitor. The early successes of Lexington County’s drug court, as well as the successes of drug courts across the United States, eventually led each judicial circuit in South Carolina to begin a drug court under the framework of Lexington County’s drug court. More than twenty-seven years later, however, South Carolina’s circuits continue to operate under this outdated and fragmented framework with minimal legislative guidance. As a result, South Carolina’s drug court programs have been slow to evolve and lack the

167. *See id.* at 6–7.

168. *See id.* at 7.

169. *Id.* at 7–8.

170. *Id.* at 8.

171. *Id.* at 10.

transparency and organization necessary to be highly effective diversionary programs for criminal defendants in South Carolina.

To address these shortcomings of South Carolina's drug courts, the first step must be to enact legislation that provides circuit solicitors and drug court judges with the proper guidance and necessary oversight to effectively operate drug court programs. This begins with the proposed Drug Court Program Act, which has stalled in South Carolina's current legislative session and failed to be enacted in the previous six legislative sessions dating back to 2011. This legislation would statutorily require each circuit's drug court program to maintain a presence in each county in the circuit; allow the creations of an Office of Drug Court Program Coordinator and an Office of Statewide Drug Coordinator specifically devoted to maintaining the circuits' drug court programs and assisting circuit solicitors; and importantly, mandate that each drug court program adhere to the National Association of Drug Court Professionals' key components.

The proposed Drug Court Program Act would establish the necessary resources to assist circuit solicitors with operating drug courts, expand the services of drug court programs to every South Carolina county, and ensure that each drug court program adheres to the key components which is the national standard for drug court programs. Furthermore, the proposed Drug Court Program Act would enumerate the requirements that must be met for a defendant to be eligible for a drug court program, and it provides specific guidance regarding the legal consequences of defendants who successfully or unsuccessfully graduate from drug court.

South Carolina's drug court programs currently lack the level of guidance and structure that would be required under the proposed Drug Court Program Act. South Carolina's drug courts essentially operate by trial and error, where circuits are practically left to their own resources and experiences when operating drug court programs. And without legislation that standardizes the most important processes, the operational structure and design of drug court programs in South Carolina will continue to vary widely. The combined effect has resulted in a drug court system that is highly fragmented and underachieving its potential. South Carolina's drug court system still resembles an experimental program, which is unacceptable after more than twenty-seven years since its founding. Despite these inefficiencies, the limited data illustrates the success of South Carolina's drug courts. However, it is time for South Carolina's legislature to enact the proposed Drug Court Program Act and alleviate these headwinds.

In addition to the lack of both government direction and standardization across South Carolina's drug court programs, the system would benefit from greater transparency that starts with consistently collecting and publicly publishing data on circuits' drug court programs. This is another strength of

the proposed Drug Court Program Act, which addresses this issue by requiring each circuit solicitor's office to submit an annual report on its drug court program. That report should include the total number of participants, the program's acceptance rate, the total number of participants who successfully graduated and failed the program, the amount of fees collected, and the total revenue generated to the government. Importantly, however, the drug court programs must be able to monitor defendants' progress after participating in a drug court program. This would enable drug court programs to accurately calculate recidivism, which is the best indicator of a drug court program's effectiveness. The SCCPC's report identifies the fact that an overwhelming majority of South Carolina's drug court programs lack either the capability or knowledge to track this data, which would provide the feedback necessary to evaluate a drug court program's strengths and weaknesses. Without this data, drug court programs are largely operating in the dark, making it a difficult job for solicitors to assess their own drug courts' deficiencies and strengths.

This heightened degree of transparency would also allow the SCCPC, or the Office of Statewide Drug Court Coordinator under the proposed Drug Court Program Act, to hold drug court programs accountable. Using this data to identify drug courts with lower recidivism rates would allow the SCCPC or Office of Statewide Drug Court Coordinator to share those drug courts' best practices with underachieving drug court programs. That data would also be beneficial to identify areas of improvement for drug court programs with higher recidivism rates.

Because drug court programs ultimately serve to rehabilitate participants, holding drug courts accountable by measuring participants' recidivism rates is a critical element of operating an effective drug court system. Only four circuits' drug court programs in South Carolina reference lower recidivism as a philosophical approach to drug courts. Reducing recidivism should be the focal point of each drug courts' mission statement rather than a side effect of participation. The drug court formula is straightforward: rehabilitation promotes a sober lifestyle and removes the driver of prior criminal behavior, which lowers or eliminates the risk of future criminal behavior.

Despite the lack of data and transparency around most of South Carolina's drug court programs, as well as the poor guidance provided by the government, the few circuits tracking recidivism rates among former drug court participants reveal encouragingly low recidivism. While much of this success is likely tied to the rigors and demands of the programs, South Carolina's drug court programs must strive to analyze the attribution from other factors including the programs' frameworks, coordinators, and treatment providers. This wholistic evaluation will further aid South Carolina's drug courts in developing more effective and proven procedures

for its drug courts. These practices should be readily shared with drug court programs experiencing lower graduation rates or higher recidivism rates.

The enactment of the proposed Drug Court Program Act is paramount to the future of South Carolina's drug court system. Doing so would provide the necessary support and guidance to effectively implement and operate South Carolina's drug court programs. It would bring stability to what is currently a fragmented system. Lastly, South Carolina's drug court programs must strive for greater transparency and accountability by collecting the necessary data to evaluate the drug court programs. These findings will reveal the strengths and shortcomings within each drug court program, which should be shared with other drug court programs. However, reducing recidivism should still be the main theme underpinning all drug court programs. A commitment to reducing recidivism should be highlighted and promoted in every drug court program's philosophical approach to treatment. Otherwise, rehabilitation efforts become futile, and many former participants are returned to the traditional criminal justice system. This cycle threatens the existence of a progressive and promising future under the drug court system.