

# Retaining Offenders in Mandatory Drug Treatment Programs: The Role of Perceived Legal Pressure

## Introduction

Massive increases in arrests as well as jail and prison commitments over the past decade have fueled a spate of programs that use drug treatment as an alternative or adjunct to traditional criminal justice sanctions. Long-standing efforts, such as TASC (Treatment Alternatives for Safer Communities) programs, have undergone expansion, and several new models have been tried and evaluated, including specialized drug courts, and a variety of programs emphasizing case management and intensive supervision.<sup>1</sup>

The proliferation of treatment diversion models has been spurred, in part, by several studies that have compared the success of individuals legally mandated to drug treatment with persons who enter programs voluntarily. Many of these studies and recent surveys of compulsory treatment research call for expanded use of coercion, and suggest that legal pressure can enhance treatment retention and reduce return to drug use and crime.<sup>2</sup> The notion that legal coercion can induce treatment success is compelling to policymakers striving to maintain public safety while reducing the costs of incarceration.

The currency of this message in some academic and policy circles has tended to overshadow the fact that "[r]esearch on the performance and outcomes for addicts coerced into treatment...has not produced consistent findings."<sup>3</sup> These inconsistencies and the lack of practical information about how legal pressure affects clients contributes to the resistance shown by some judges, prosecutors, and other policymakers less likely to embrace diversion programs.

In this context, identifying specific mandatory treatment programs and practices that maximize the benefits of legal pressure is important to the long-term viability of justice-driven drug treatment programs. This paper presents results from a research study that tested whether participants of a specialized treatment diversion program that features uniquely coercive elements showed greater retention in treatment than similar offenders mandated to treatment from more conventional sources, such as courts and probation agencies. The study also examined differences among mandated clients in their perceptions of legal pressure, and the effects of these perceptions on retention. This paper discusses prior research on legal pressure and treatment retention, the study's methods and samples, results, and the implications for use of mandatory treatment programs.

## Background to the Study

**Retention and Legal Pressure.** One of the more reliable findings in research on substance abuse treatment is that retention predicts success – that is, longer stays in treatment are associated with reduced drug use and crime, and improved vocational and social stability.<sup>4</sup> Consensus about the importance of retention underlies the widespread interest in using the threat of legal sanctions to compel offenders to enter and remain in treatment.

A consensus has also emerged from recent research on compulsory treatment programs: Persons coerced into treatment under the threat of legal sanctions do at least as well as those who enter voluntarily.<sup>5</sup> Agreement on this point, however, belies the inconsistent findings in past research, some of which indicate that coerced clients stay longer and show better outcomes than voluntary clients,<sup>6</sup> while other studies find that a legal mandate has little or no impact on retention or other outcomes when other factors are controlled.<sup>7</sup>

These discrepant results can at least partly be traced to research designs that do not distinguish between the types and levels of coercion found in the criminal justice system. Different dimensions of legal pressure, such as surveillance and monitoring, or the immediacy or aversiveness of the consequence for treatment failure, have been cited by several authors.<sup>8</sup> However, there has been almost no research examining the differential effects of these factors, or the way they are applied in diverse justice and treatment settings.

An important exception is the few studies that have compared outcomes of individuals classified into two or three different levels of coercion (from low to high) using legal or supervision criteria.<sup>9</sup> Finer distinctions along the continuum of legal pressure were suggested in a paper by George De Leon, who observed that a voluntary client, while not formally mandated, may be legally involved and thus perceive legal pressure, while one who is legally referred may not perceive any coercion or pressure.<sup>10</sup> In this research, we expanded on this notion by developing a perception of legal pressure (PLP) scale designed for use by treatment clients mandated by the criminal justice system.

The final PLP questionnaire used in this research included 34 items that could be scored and summed to obtain an overall PLP score that ranged from 48 to 105, with high scores associated with greater perceived coercion. The items could be grouped in four broad categories or components of legal pressure. One of these was the extent to which the respondent had been given **information** about and understood the conditions of the treatment mandate. Questions also addressed the respondents' views that those conditions were closely **monitored**, and could and would be **enforced**. Finally, questions addressed the respondent's views about the **severity** of the legal consequences for failing in treatment.

**A Mandatory Treatment Model.** The Kings County (Brooklyn) District Attorney’s Drug Treatment Alternative to Prison (DTAP) program presented an unusual opportunity for assessing these factors and the role of legal pressure in treatment retention. DTAP has program components that may be uniquely coercive, such as the threat of a legally-mandatory prison term for non-compliance and a special enforcement squad assigned to the program. DTAP also has an exceptional record of participant retention and completion. Of the 739 defendants who have entered the program since it began in 1990, 64% have stayed a year or more – a rate 2-4 times greater than the rates reported in the literature for the kinds of long-term residential programs used by DTAP.<sup>11</sup>

DTAP is designed as a treatment alternative for repeat, nonviolent defendants charged in a strong “buy and bust” case for felony drug sale to an undercover police officer. The defendant is given the option of deferring prosecution and entering a residential drug treatment program for 15 to 24 months. Those who complete the program have the charges against them dismissed; dropouts face prosecution on the original charges, which bring a mandatory prison term under New York sentencing statutes. The charges are dropped if the person completes the 15 to 24 month program. All DTAP treatment is delivered by well-established, community-based providers who operate comprehensive drug-free programs known as traditional therapeutic communities, or TCs. The TCs used by DTAP admit a diversity of clients, including individuals referred from other criminal justice sources, voluntary clients, and persons under informal pressure from family or employers to attend treatment.

## Research Overview

**Design and Methods.** The quasi-experimental research design involved two groups of legally-mandated treatment clients: 86 participants of the DTAP program and a statistically matched group of 75 other legally-mandated clients attending the same four residential TCs used by DTAP. The comparison group included 21 individuals mandated to treatment from New York City Probation, 20 from New York State Parole, 23 from the local TASC agency (nearly all of whom were court-mandated), and 11 from a variety of other legal sources (most were direct court referrals).

Extensive personal history, status and program data were collected in interviews with research subjects conducted at admission to treatment and about eight weeks thereafter. Clients’ perceptions of legal pressure and other measures of motivation for treatment were also assessed in these interviews. The study’s central outcome measure, retention in treatment, was tracked for all subjects for at least six months after admission; those entering the research early were tracked for about 20 months. Descriptive information was also gathered in interviews with 41 administrators and field staff in the mandating agencies and treatment programs. The interviews focused on practices and policy

regarding identification, referral, and monitoring of criminal justice-referred clients, and the agencies' enforcement practices and capacities.

**Hypotheses.** The research was designed to test two central hypotheses:

- (1) DTAP participants stay in treatment for longer periods and show greater retention rates when compared to a matched sample of other legally-mandated clients attending the same treatment programs; and
- (2) Legal coercion, as measured by the Perceived Legal Pressure scale, significantly and independently predicts treatment retention of legally-mandated treatment clients (i.e., retention in both study groups).

A number of supplementary research questions were also explored in the study:

- Do DTAP participants show higher levels of perceived legal pressure than comparison group clients?
- Are there differences within the comparison sample regarding levels of perceived legal pressure (and were these differences predictable given the policies of the programs represented in this sample)?
- Are certain aspects of legal pressure (as reflected by individual or grouped PLP items) more or less predictive of retention?
- Can perceived legal pressure be operationalized and reliably measured with the PLP scale, and is there any evidence of the scale's validity?
- How can mandated treatment programs be improved to maximize retention?

## Study Participants and Programs

**Participants.** Displayed in Table 1, background data on the study subjects show them to be typical of criminal justice-involved treatment clients in New York City: They have serious drug and criminal histories, low socioeconomic status, and a relatively high incidence of medical and psychological problems. Compared to other clients, DTAP participants are somewhat more likely to be Latino heroin users, with less prior experience in drug treatment.<sup>12</sup>

**The Criminal Justice Treatment Programs.** While similarities were evident, descriptive data gathered in interviews pointed to important differences in the policies and practices of DTAP and the three major criminal justice mandating agencies represented in the comparison sample (TASC, Probation, and Parole).

Before entering treatment, DTAP candidates must sign agreements in court which spell out the conditions of participation and the consequences of failure. Upon admission, treatment staff are encouraged to reinforce these messages and DTAP closely monitors participant progress through monthly written reports prepared by TC staff. Participants who are at risk of leaving or being expelled are encouraged to consult with their defense attorney about the legal consequences of termination, and a DTAP liaison is always available to field calls from treatment staff and attorneys. The liaison is informed

immediately if someone absconds from the program. DTAP has a special warrant enforcement team that checks participants' community ties, and searches for and apprehends absconders. DTAP participants who fail in one treatment program are rarely allowed an opportunity to attend another TC.<sup>13</sup> DTAP failures are sentenced to the same mandatory prison term (typically minimum sentences of one and a half or two years) they would have gotten if DTAP was not offered to them.

Structured interviews with TASC staff suggest that this program is similar to DTAP in some respects. TASC case managers receive monthly reports on client progress from treatment staff and are informed immediately if a client leaves treatment or is at risk of failure. TASC emphasizes monitoring and case management, with weekly phone calls from their case managers to treatment facilities, periodic visits to these facilities, and frequent appearances in court during a client's stay in treatment. Of the programs represented in the study, TASC comes closest to using a graduated sanctions policy, employing intermediate responses such as more frequent reporting or short jail stays to relapses and other signs of failure. TASC also emphasizes direct motivational appeals to clients, mixing messages of support with frequent reminders about the legal consequences of failure.

Like other programs in the comparison group, TASC differs from DTAP in working with a significant number of first-time felony and misdemeanor clients who are not subject to mandatory prison terms; about 40% of the TASC clients were involved in these kinds of lower level cases. Nonetheless, interview data indicated that TASC case managers invoked threats of similar magnitude to those reported for DTAP. One other important distinction is that TASC has no independent enforcement capacity and relies on standard police warrant squads. Also, TASC is much more likely than DTAP to place individuals who initially falter or fail at one treatment program into a second and third program.

While Probation and Parole have developed sophisticated, DTAP-like case monitoring and response protocols with providers of outpatient drug treatment (which is used for the great majority of their mandated cases), they have no formal agreements with the residential programs in this study. Probation and Parole monitoring is generally not routinized with these providers, but rather is dictated by the individual field officer supervising the client. With regard to enforcement of treatment conditions and second chances at treatment, Probation appears most similar to TASC. Parole appears to rank between DTAP and these agencies in their enforcement practices and capacity. The legal consequences of treatment failure for probationers and parolees in the study ranged considerably, although they were generally less severe than those faced by DTAP clients.

## **Results: DTAP and High Retention Rates**

Retention rates for DTAP participants and the comparison sample were found to be similar in multivariate analyses, disproving the study's first hypothesis. As expected, DTAP retention was much higher than retention rates reported in the general literature for long-term residential drug treatment. Unexpectedly, however, the comparison sample's rates were equally high.<sup>14</sup> At six months post-admission, for example, the retention rate in the DTAP sample was 77%, while in three of the four TCs, the comparison sample's rate was 73%.<sup>15</sup>

There is little in the overall sample description – serious drug and criminal histories, low socioeconomic status, relatively high prevalence of medical and psychological problems – to account for such high retention. It is possible that the treatment programs we studied (which were initially selected as DTAP sites because of their reputed quality) are especially effective at retaining clients. Another plausible explanation for both sample's high retention is that these individuals comprise a sub-group of all criminal justice-involved treatment clients who experience a relatively high level of legal pressure. To be included in the research, persons had to be able to identify a legal consequence they might incur if they failed in treatment, and a legal agent who was ostensibly monitoring their treatment status. These individuals accounted for no more than 20-33% of the adult residents in the TCs taking part in this study, despite the widespread belief that half or more of the clients in long-term residential programs have justice system involvement.

**Diffusion of DTAP Effects?** Still, the question remains, if DTAP has “uniquely coercive” program components, why did the comparison sample show the same retention outcomes? One possible answer is that the high retention in both groups reflects a generalizing or diffusing of DTAP practices and effects to the comparison sample clients who attended the same TCs as DTAP participants. This interpretation was anticipated to some extent by statements from treatment personnel who reported in interviews that distinctions between criminal justice programs were not particularly salient to line staff and that the varying policies of these programs infrequently surfaced in day-to-day dealings with residents. DTAP's strong apprehension and enforcement response to absconders may generalize to the other criminal justice programs. DTAP cases may serve as examples for all legally-mandated clients, thereby enhancing the credibility of threats made by judges, TASC, probation, and parole officers.

Of course, diffusion could work both ways – the presence of TASC's case managers, for example, may have a favorable impact on DTAP and other participants. There is no way to confirm this diffusion explanation given the mixing of mandated clients in these treatment programs.

## Predicting Retention in Drug Treatment

The study's second hypothesis, that perceived legal pressure would be an important predictor of treatment retention, was confirmed by statistical analyses that isolated the unique impact of PLP scale scores on different measures of retention. The PLP score was the most powerful predictor in three of the four multivariate analyses, and among the most powerful in the fourth.

Two of the multivariate models (both logistic regressions) tested whether the odds of staying in treatment changed depending on whether an individual viewed legal pressure as low, moderate, or high. One analysis showed that the odds of someone with a moderate score staying in treatment for at least 90 days were over five times the odds of someone with a low score being retained for this long. At 180 days, those scoring in the moderate range had three times the odds of being retained compared to those with low PLP scores. These multivariate findings upheld the simple bivariate results depicted in Figure 1: At 90 days, the attrition rate for the low scoring group was 38%, compared to 16% for moderate scores and 4% for high; at 180 days, the rates were 50% for the low scoring group, 22% for moderate, and 7% for high scores.

Several other factors were also strong predictors of attrition in this research, including psychological problems, poor education and employment history, and younger age. Users of crack cocaine were also prone to failure, especially during the first few weeks or months of treatment. Prior prison sentences was the only criminal history variable consistently associated with attrition. Two general measures of motivation, measures of the quantity and type of services received in treatment, and of perceptions about staff and program environment were not associated with retention when other factors were controlled.<sup>16</sup>

Overall, the combination of predictors assessed in this study did quite well in predicting days in treatment when compared to previous studies of retention. Studies of retention have often used multiple regression, a multivariate statistical technique, to assess the extent to which predictor variables can account for or explain how long clients stay in treatment. In past studies, the combination of predictors often accounts for no more than 5-10% of retention, and anything over 20% is considered quite high.<sup>17</sup> In the multiple regression done for this study, the predictors together accounted for 37% of study clients' length of stay.

**PLP Results.** Our findings indicate that the PLP measure was partly responsible for this improved predictive model, suggesting that measures of legal pressure are important in trying to understand and improve treatment retention. Additional analyses of the PLP measure itself yielded evidence in support of the scale, although it was also apparent the PLP needs continued development. Inter-item analyses and a factor analysis showed there to be no dimensional or subscale structure to the scale, and indicated the need to drop some PLP questions or items and improve others. Analyses that assessed the *overall* measure's validity showed generally favorable results. The overall scale had good

distribution and reliability, with a standardized internal consistency coefficient (Cronbach's  $\alpha$ ) of .78.<sup>18</sup>

As expected, DTAP participants did score significantly higher than the comparison group on the PLP, and Figure 2 shows that PLP scores conformed with the anticipated pattern for comparison group subjects, with TASC clients scoring near to DTAP participants' PLP scores, and probation, parole, and other court-mandated clients showing lower scores. While nothing definitive can be said about PLP subscales or dimensions, it is still instructive to review the items that were most highly related to retention, and to assess their magnitude in specific programs, such as DTAP or TASC.

Listed within descriptive categories, the items that were most predictive of retention (days in treatment up to six months) are shown in Table 2. About half of the information and enforcement items included in the measure were predictive of retention. By contrast, only two of the twelve monitoring items and one of the seven severity items were related to retention. These findings suggest that providing information to mandated clients about the conditions of treatment participation and consequences for failure, and convincing them that they will be enforced, are effective coercive strategies. There is no support in these early results for imposing or threatening clients with long jail or prison terms as a way to enhance retention in treatment. Individuals who reported that they expected to serve prison sentences of three years or more for failing in treatment were no less likely to drop out than individuals who said they expected lesser penalties for failure.

The findings are not so clear about whether perceptions about monitoring of treatment compliance play an important role in retention. The fact that very few of the monitoring items predicted retention may simply be more evidence of the diffusion of DTAP, TASC and other programs with strong monitoring components to all legally-mandated clients in this research. If monitoring is viewed as equally strong by all clients, it will have little distinct, measurable impact on retention.

**Program Assessment with the PLP.** While potentially useful as a way of assessing the effects of different types or components of legal pressure on retention, the PLP's most immediate, pragmatic value may be as a program-specific diagnostic tool. By assessing a given program's score on each PLP item and the item's association with retention, strengths and weaknesses can be identified, and recommendations can be made for improving retention through adding, reinforcing, or revising coercive program components.

What do the PLP scores reveal about the programs in this research? With regard to DTAP, the findings suggest that the program's use of participation agreements is its most effective coercive component. DTAP participants had significantly higher scores on two PLP items about signing agreements, both of which were predictive of retention (one of these is listed in Table 2). On the other hand, DTAP participants did not score high on the enforcement and monitoring items that were predictive of retention. DTAP



participants did score higher on some severity items, but these were not associated with retention. This pattern of scores on individual PLP items explains, in part, why DTAP participants did not have higher retention rates, even though they scored highest on the PLP and the PLP was found to be predictive of retention. DTAP participants' high overall scores were partly due to high scores on PLP items (severity items) that are *not* predictive of retention.

DTAP participants' moderate scores on several enforcement items were surprising, given the program's strong record of apprehending failures and enforcing consequences, and rarely offering second chances at treatment. Comparing DTAP and TASC results on the apprehension and enforcement items illustrates how perceptions can override objective indicators of program practices. It is remarkable that, despite the program having no enforcement capacity, TASC clients had the highest rates of agreement with the statement that "going after mandated clients who fail [is a priority for my criminal justice agent]." Apparently, the program's cajoling and threats delivered in frequent meetings between the client, TASC staff, and the judge creates the perception of effective enforcement. TASC's use of intermediate responses (e.g., increased phone calls, program visits, and court appearances) for those still in treatment but at risk for dropout may also be viewed as a form of early, in-treatment enforcement.

These results do not speak to the long-term effects of different enforcement practices. After several months in treatment, mandated clients may come to distinguish programs that cannot or do not apprehend and punish failed cases, thus affecting later retention and completion rates. The results also do not speak to larger ethical and credibility questions that arise whenever courts or programs threaten dire legal sanctions with little intention of carrying them out. While TASC and other programs represented in the comparison sample are not *institutionally* committed to such a policy, they run the risk of being viewed as disingenuous in their approach to enforcement.

## Summary and Conclusions

This study offers support for mandatory treatment programs and for the notion that progressively higher levels of perceived legal pressure can increase treatment retention. Expanding use of these programs – particularly those which provide clear mandates to participants and convince clients that they face certain, but not necessarily severe, legal consequences – is recommended by the findings. These principles are perhaps most clearly reflected in the graduated sanctions policies of some drug courts, where participants are told in advance how they can gain or lose points toward fulfilling their treatment mandate, and the court ostensibly responds to pre-established point standards with punishments and rewards.<sup>19</sup>

One finding suggested that, at least in the short run, mandated clients can *perceive* that consequences will be enforced, even if there is little capacity or will to apprehend

absconders and sentence failed cases to prison terms. There needs to be research about the effects of different enforcement practices on long-term retention, and comparisons of programs that carry out strong enforcement policies with programs that emphasize frequent enforcement messages and intermediate in-treatment responses to clients at risk of failure. Programs that combine both approaches may have the best retention outcomes. To improve long-term effectiveness, programs that cannot afford a strong enforcement component should consider pooling resources to fund a shared enforcement capacity. The findings also suggest that DTAP might improve its retention performance by making participants more aware of the program's enforcement record.

Overall, results concerning DTAP were supportive, but did not show that the program had unique impacts on retention. DTAP participants had the same retention performance as a matched group of other mandated clients. Both groups, however, had exceptionally high retention rates when compared to ones reported in the general treatment literature. This may be due to a diffusion of DTAP (and perhaps TASC) program effects to other mandated clients, or possibly to the effectiveness of the treatment facilities represented in the study.

At minimum, these findings point to the need for better definitions of mandated clients, and for more research comparing this apparent sub-group of more serious or formally mandated clients with other 'criminal justice-involved' clients and voluntary clients. If our retention findings are replicated in future studies, they have important implications. Expanded use of programs that formally mandate offenders to long-term residential treatment could substantially increase overall TC retention rates. Additionally, expanded use of these programs should go a long ways toward dispelling the notion – still common among many judges, prosecutors, policymakers, and the public – that treatment is ineffective because of high dropout rates.

This research also provides empirical support for conceptual principles underlying the Perception of Legal Pressure Scale and the importance of legal pressure in understanding retention. While further work on the PLP is needed, the scale appears promising as a method for assessing the effectiveness of different program strategies aimed at retaining substance abusing offenders in treatment.

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252. On case management programs: Martin, S., & Inciardi, J. (1993). Case management approaches for criminal justice clients. *Drug Treatment and Criminal Justice*, 27:81-96. Newbury Park: Sage Publications.

<sup>2</sup> Leukefeld, C. G. & Tims, F. M. (1990). Compulsory treatment for drug abuse. *The International Journal of the Addictions*, 25: 621-640.

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<sup>4</sup> Gerstein, D.R., & Harwood, H.J. (Eds.) (1990). *Treating Drug Problems, Vol 1*. Washington: National Academy Press.

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<sup>12</sup> The comparison group selection process assured this sample to be equivalent to the DTAP sample on all but a few items (marked by asterisks in Table 1); in subsequent multivariate analyses, statistical controls were employed for these items.

<sup>13</sup> Although not the focus of this research, it should be noted that, in addition to the threat of punishment for failure, DTAP emphasizes the rewards it extends for completing the program, which include specialized vocational and housing assistance along with the dismissal of charges that triggered the DTAP admission.

<sup>14</sup> Comparison subjects attending one of the TCs had much lower rates than any of the other study participants, and analyses showed that any group differences could be attributed to this one treatment facility. There was no ready explanation for this lone difference.

<sup>15</sup> The 77% and 73% rates reported here are adjusted rates and include the estimated 8% of each sample pool who dropped out within a few days of admission to treatment and could not be recruited for the research. Note that these rates are even more impressive given that they reflect retention in the *same* TC in which the client first entered. The retained group does include a small number of individuals who left or were discharged and then readmitted to the TC (actual numbers were not available from the TCs, but estimates placed this at less than 10% of the dropouts). This reportedly occurred more frequently with comparison clients than the DTAP group.

<sup>16</sup> However, a subscale of one of these measures, designed to assess the extent to which the person's life circumstances (friends, family, income, employment situation) support staying in treatment, did predict retention. See De Leon, G., Melnick, G., Kressel, D. & Jainchill, N. (1994). Circumstances, motivation, readiness, and suitability (the CMRS scales): Predicting retention in therapeutic community treatment. *American Journal of Drug and Alcohol Abuse*, 20(4): 495-515.

<sup>17</sup> Condelli, W.S. (1994). Domains of variables for understanding and improving retention in therapeutic communities. *The International Journal of the Addictions*, 29:593-607.

<sup>18</sup> Response formats ranged from simple counts of monitoring and enforcement agents, to ratings of agreement with statements, and responses to hypothetical scenarios. In one section of the measure, for example, respondents were asked to use a five-point scale to rate their agreement or disagreement to such statements as: "Having to do time in jail or prison would not really be all that hard for me right now." In another section, they were asked to estimate the chances (from zero to 100) that someone in the criminal justice system would find out if they were using drugs once a month.

<sup>19</sup> Tauber, J.S. (1993). The importance of immediate and intensive intervention in a court-ordered drug rehabilitation program. An Evaluation of the F.I.R.S.T. Diversion Project After Two Years. Presented to the President's Commission on Model State Drug Laws, Philadelphia, P.A.