



“PEOPLE MAKE MISTAKES”

Stakeholders & Participants’ Perception of the Acceptability, Appropriateness, & Feasibility of Diversion & Deferred Prosecution Programs

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Abstract

Deferred prosecution programs (DPPs – also known as diversion) are a type of prosecutor-led diversion program that diverts individuals from traditional court proceedings to participate in specific program requirements in return for dismissal or expungement of their charge(s). Yet, there is no standardized DPP model applied across programs and jurisdictions and there is little research regarding the implementation outcomes of these varied programs. The current study contributes to the continuing process of DPP program implementation, evaluation, modification, and dissemination of evidence through a multi-site investigation of DPP stakeholder's perceptions of programming. Individual interviews and focus groups with program stakeholders and participants were conducted between November 2016 and May 2017 in three jurisdictions in three midwestern states. Stakeholders and participants found DPPs to be acceptable, feasible, and appropriate as based on their experiences of perceived benefits and challenges. While the national adaptation of DPPs is in its early stages, DPPs are expanding considerably as criminal justice jurisdictions seek to identify more efficient ways to process cases and reduce incarceration rates while enhancing public safety.

Keywords: *Deferred prosecution programs, qualitative, prosecutors, stakeholder perceptions, social work.*

With over 1.4 million people incarcerated in prisons across the United States (Carson, 2020), many initiatives have been developed to reduce the use of incarceration and limit the sheer number of new people who encounter the criminal justice system. Deferred prosecution programs (DPPs), also known as deferred prosecution agreements or diversion programs, divert individuals charged with certain criminal offenses from traditional court proceedings if they agree to participate in specific program requirements in return for dismissal or expungement of their charge(s). Although DPPs originated within the juvenile justice system, several DPPs targeting adults involved in the adult criminal justice system were in place by the 1970s (Balch, 1974) and have slowly expanded to address the issue of avoiding the incarceration individuals for first-time offenses (Labriola et al., 2018). Initial evidence of DPP implementation is promising and highlights the need for more rigorous evaluation (Labriola et al., 2018; Johnson et al., 2020; Rempel et al., 2018). However, the lack of a standardized model among DPPs, along with the limited empirical evidence on their efficacy, are barriers to their widespread adoption.

The current study contributes to the continuing process of DPP program implementation, evaluation, modification, and dissemination of evidence through a multi-site investigation of DPP stakeholders' perceptions and rationale for programming as well documenting the strategies for program implementation. This paper focuses on stakeholders' and clients' views of DPP's acceptability, appropriateness, and feasibility. Acceptability, appropriateness, and feasibility are implementation outcomes that help determine if an intervention or program approach is suitable for further testing or if modifications are needed before adopting the program on a large scale (Proctor et al., 2011). Implementation outcomes such as acceptability, appropriateness, and feasibility are understood as the "effects of deliberate and purposive actions to implement new treatments, practices and services" (Proctor et al., 2011, p. 65). These implementation outcomes are used to measure implementation success, they function as proximal indicators of implementation processes, and serve as intermediate outcomes of program effectiveness research (Proctor et al., 2011).

Background

DPPs are considered a "front-end" intervention that provides an early exit from the criminal justice system unlike widespread punitive models that default to incarceration adopted since the onset of mass incarceration. DPPs connect individuals with programs and community supports to address a range of needs and to provide opportunities for individuals to avoid deeper

involvement in the criminal justice system and the many consequences of having a criminal record (Orwat et al., 2019). The benefits of the programs extend beyond individual defendants by also addressing overburdened criminal court systems by enabling prosecutors to focus on cases deemed most urgent for public safety by reducing the volume and cost of cases that could instead be diverted (Orwat et al., 2019).

DPPs are often referred to interchangeably as diversion programming though they are more accurately described as a type of diversion led by prosecutors versus by judges or courts. DPPs differ from other forms of diversion programming in that they (1) are overseen by the prosecuting authority of a jurisdiction (Johnson et al., 2020), (2) can result in the dismissal of charges against the defendant (Orwat et al., 2019); and (3) are not necessarily limited to a specialized subset of defendants, unlike specialty courts (e.g., veteran's courts, mental-health courts, or drug courts), which are limited to defendants with certain qualifying disorders or military service records.

DPPs usually involve offering an individual the chance to avoid a criminal charge, conviction, or incarceration if they fulfill certain program requirements. The requirements are often tailored to meet an individual's needs, however DPP requirements typically involve completing behavioral health treatment for mental health or substance use disorders, engaging in community-based social services like behavior modification counseling (e.g., anger management courses), obtaining education or employment, or fulfilling community service hours (Center for Health and Justice at TASC, 2013; Orwat et al., 2019). If an individual fails to meet the requirements stated in their deferred prosecution agreement – signed by all parties prior to entrance into the DPP - then traditional criminal processing resumes.

History of DPPs

Deferred prosecution agreements were first developed in the 1930s for juvenile offenders and began to make their way into the adult criminal justice system in the 1970s. The first DPP was designed in 1936 by Conrad Printzlien, a former federal prosecutor who left office to become a probation officer (Rackmill, 1996). Troubled by the stigma that prosecution and conviction brought upon for youth with a minimal criminal background, Printzlien drew on his experiences as a prosecutor and probation officer to design a program where the two offices could work together to divert low-risk juvenile arrestees from the criminal justice system prior to arraignment (Rackmill, 1996, p.8). The plan, known as "The Brooklyn Plan" and named for

where it was first implemented, proved successful, and its use quickly spread to other cities across the country (Rackmill, 1996, p.8). By the late 1960s, DPPs were being used to divert both juveniles and adults at the state and federal level (Balch, 1974; Rackmill, 1996). However, by the latter part of the 20th century, likely a result of the shift toward more punitive approaches that led to mass incarceration, the programs' use had significantly declined (Zlatic et al., 2010). In the early 2000s, DPPs once again gained popularity through their use in the prosecution of corporate and so-called white-collar crimes (Copland, 2012). The emergence of the use of deferred prosecution agreements for corporations prompted other criminal justice stakeholders to call for their renewed use with individuals rather than limiting their application to corporate entities (Rosen, 2015). As of the 2020s, numerous jurisdictions have revamped or implemented DPPs to better meet the needs of individuals in a particular jurisdiction.

Types of DPPs

A standard model for deferred prosecution has yet to be established and jurisdictions turn to one another when possible for advice on how to implement such programs. Professional associations and private foundations are also beginning to provide guidance on models of DPPs. There are many reasons no standard model exists including the different circumstances underlying criminal charge types as well as a range of options for when a DPP may be implemented (Pettus et al., 2018). For example, DPPs can be prompted at different stages of case processing including pre-charge (before charges are filed), pre-plea (after charges are filed but before a plea agreement is entered), and post-plea (after a defendant has entered a guilty plea). Pre-charge DPPs offer defendants' entrance into the program prior to any formal charge(s) being filed. Successful program completion ensures charge(s) are withheld; traditional court proceedings are initiated for defendants who do not complete the program requirements. Pre-plea DPPs are initiated after charges are filed against a defendant. Successful program completion results in the dismissal of all charges; defendants who do not complete program requirements resume traditional court proceedings. Post-plea DPPs are offered to defendants after charges have been filed and under the condition that they enter a plea of guilty. Successful completion of the program ensures the individual can withdraw their guilty plea, and have their charge(s) dismissed; defendants who do not complete stated requirements proceed immediately to sentencing. Considerable variation exists across DPP programs including how the program is

configured, program length, eligibility criteria, and program elements which may be the key ingredients to achieving successful outcomes (Johnson et al., 2020).

In addition to variation in how and when DPPs are initiated with defendants, the requirements for each defendant may vary based on individual need. A recent review of 15 DPPs in eight states found that while five DPPs used a more consistent model across defendants – requiring all defendants to complete the same tasks – the other 10 DPPs tailored program requirements to the needs of each enrolled individual (Johnson et al., 2020). Some of these more tailored and flexible DPPs performed individual assessments to guide program requirements, adjusting not only the program requirements to meet an individual's needs but also the program intensity. This same review identified both cost efficiency and the desire to mitigate negative consequences for defendants as common program goals for prosecutors (Johnson et al., 2020). Early DPPs developed in the 1970s often focused on rehabilitation above all else, while newer programs designed and implemented in the 2010's emphasize rehabilitation as well as the opportunity to avoid collateral consequences of the charge (Labriola et al., 2018).

Impact of DPP and Study Purpose

Early research on the effectiveness of DPPs is limited which has been theorized as due to variation in program composition, requirements, and implementation (Labriola et al., 2018). A quasi-experimental study of the impact of five DPP programs in Illinois, Wisconsin, and Vermont found overall positive results (Rempel et al., 2018). More than half of jurisdictions had reduced recidivism (defined as re-arrest at two-years post-program enrollment) rates after implementing DPPs while simultaneously reducing the costs associated with traditional prosecution (Rempel et al., 2018). Another recent study of diversion included statistical analyses of diversion outcome variables (conviction rates, incarceration, and recidivism) and found that all four programs included in the analysis demonstrated a significant decrease in case conviction and jail sentences (Davis et al., 2021), which suggests generally positive results of the included programs. However, the majority of the existing body of literature from diversion researchers remains mostly research conducted on judge and court led diversion. Thus, while some specific types of diversion programs, such as speciality courts, are established as evidence-supported in the literature, research on other programs, such as prosecutorial diversion (aka DPP) have not progressed enough to provide a strong evidence-base yet (DeMatteo et al., 2013).

Because DPPs hold promise for reducing caseloads of prosecution and decreasing the collateral consequences of conviction and incarceration for defendants without decreasing public safety, it is critical to identify key program components and implementation factors which increase the likelihood of successful replication and national scaling. The current study advances the current state of knowledge by documenting implementation strategies and implementation outcomes of DPPs. Study participants include prosecutors and DPP program participants who report on the acceptability, appropriateness, and feasibility of DPPs in three jurisdictions across the nation, which in turn suggest key program components and implementation strategies relevant for future adopters of DPPs.

Study Methods

Study implementation occurred between 2016 and 2018 and was approved by the Institutional Review Boards (IRB) of Washington University in St. Louis and the University of Chicago. This study was not preregistered. Data used for the analysis are not available because they are qualitative data which might be potentially identifiable. The overall study had three aims. Aim 1 was to examine program elements and implementation factors for DPP dissemination and adoption. Aim 2 was to identify and test key ingredients of DPP's effectiveness at achieving the primary outcomes. Aim 3 was to design a multi-site RCT. This paper focuses on Aim 1, specifically program elements and feasibility, acceptability, and appropriateness implementation outcomes. The research questions guiding this paper are:

- 1) How do DPP stakeholders perceive the feasibility of DPP, including the ability to implement, sustain and attend DPPs?
- 2) How do DPP stakeholders describe the acceptability of DPPs, including finding it agreeable or satisfactory to their needs and/or goals?
- 3) How do DPP stakeholders report the perceived relevance or compatibility of DPPs within the context of their work setting, political environment, or life experiences?

Study Sites

The research occurred at prosecutor's offices that were at three different stages of adoption of deferred prosecution: a well-established site in operation for more than nine years (site 1), a developing site that has been in operation for about five years (site 2), and a site that had implemented a DPP for less than two years (site 3). The three sites represented one pre-charge program, two pre-plea programs, and three post-plea programs. These programs were

chosen because they varied in structure, capacity, target population, and founding date. This allowed the research team to develop an in-depth understanding of different approaches to DPPs.

Site 1. Site 1 is the earliest adopter of DPP and implemented its first program in 2007. The Site offers a DPP that allows defendants (herein referred to as clients to match study site language) to defer their judgment of conviction for their provable charge, excluding felony violent, sex, and drug offenses. The Site uses an actuarial risk assessment tool to determine whether people are referred to a program designed for those who are higher risk clients or those who are lower risk clients. The program lasts six months to one year, based on how quickly program requirements are met. Clients engage with individualized social services such as behavioral health treatment, cognitive behavioral therapy, anger management, and parenting classes. Accountability measures include drug testing, restitution payment, community service hours, electronic monitoring, restorative justice requirements (when appropriate), and completing short-term educational groups (e.g., a group addressing shoplifting).

Site 2. Site 2 implemented its first program in 2011 and offers three types of pre-plea DPPs: misdemeanor, felony, and drug deferred prosecution. In the misdemeanor DPP, non-violent clients must have victim approval and no prior felony conviction. After eligibility is determined, a licensed community health provider assesses clients for service needs. In the felony DPP, potential clients with a non-violent felony charge must also have victim approval and no violent charges in the past ten years. This 12-month program emphasizes education, employment, and community service, in addition to behavioral health treatment. In the drug DPP, potential clients are excluded for possessing large amounts of a controlled substance, and they may be eligible for the program up to three times. Although the level of intervention is based upon client need, the typical length for this program has not been measured. Though all three programs connect clients to relevant community services, the assessment, referral, and compliance monitoring processes are not yet standardized.

Site 3. The most recent adopter of DPP implemented their programs in 2015. Site 3 instituted three programs for misdemeanor, felony, and gun offenses. The misdemeanor DPPs are pre-plea programs in which cases can be dismissed after one year. Clients are only eligible for the program once, must have little to no prior criminal history, and must agree to engage with individualized rehabilitation and social services. Clients with drunk driving, domestic violence, firearms, and sexual offenses are excluded. In the felony DPP, clients are eligible if they have little or no prior criminal history and are currently charged with one of a designated list of non-

violent felony charges (e.g., theft and possession of a controlled substance). The gun related offenses DPP program requires that clients are willing to participate in programming and show signs that they will likely disengage from gun activity. Both the felony DPPs and gun related DPPs are post-plea programs.

Study Sample

The study sample consisted of 60 key stakeholders, including 40 professionals and 20 defendants from six DPPs across three jurisdictions in the Midwest. Stakeholders included prosecutors, public defenders, private attorneys, judges, probation officers, court personnel, community behavioral health and human service providers, and defendants. The inclusion criterion for program stakeholders was that they had at least three months of employment in their position relevant to implementing a DPP. Stakeholders were excluded if they had no direct involvement with future DPPs. Stakeholders were recruited into the study from the prosecutor offices and partnering organizations through email. Current and former DPP participants were recruited into the study via flyers posted at the prosecutors' offices.

Data Collection and Measures

The research team conducted 60 recorded interviews as well as court and meeting observations with an additional 75 stakeholders between November 2016 and May 2017. Data were collected on implementation outcomes. Implementation outcomes indicate how well a program has been designed and executed as planned and are key intermediate outcomes concerning program effectiveness (Proctor et al., 2011). This study assessed three implementation outcomes: acceptability, appropriateness, and feasibility of DPPs as defined by Proctor et al (2011). Acceptability is "the perception among implementation stakeholders that a given treatment, service, practice or innovation is agreeable, palatable or satisfactory" (p.67). Appropriateness is "the perceived fit, relevance, or compatibility of the innovation or evidence-based practice for a given practice setting, provider, or consumer" (p. 69). Feasibility is "the extent to which a new treatment, or innovation, can be successfully used or carried out within a given agency setting" (p.69).

Individual semi-structured interviews were conducted with current and former DPP clients. Stakeholders involved in program implementation or creation participated in semi-structured focus groups or individual interviews.

Focus groups and interviews with stakeholders.

The interviews and focus groups explored the acceptability of DPPs for each stakeholder by exploring their knowledge and experience with the DPP, their satisfaction with the program, and their recommendations to refine the program. They explored the feasibility of the DPPs by asking questions related to how the program functioned, the requirements of the programs, and available resources used within the programs. Appropriateness was by asking questions related to how the stakeholder viewed the compatibility of DPP with their organization and role, their perceived usefulness, and effectiveness of the program.

The interview guide used with all stakeholders included questions such as, "Who tends to be the key decision-makers that lead to the initial adoption of diversion programs?", "What would you say are the key ingredients to developing and maintaining an effective diversion program?", "How do you think other stakeholders would respond to a new deferred prosecution program?", "What do you perceive are the benefits to clients who participate in a diversion program (or a proposed deferred prosecution program)?"

Interviews with current and former clients.

The interviews with participants explored the acceptability of DPPs by focusing on the participant's experience while in the program. They explored the feasibility of DPP completion by participants and explored the appropriateness of DPPs through participants' thoughts about the program requirements and services participants needed to complete. The interview guide used with participants included questions such as "How did you learn about the program?" "What do you like and dislike about the program?" "Tell us about your specific experiences in the program and the services you received?" "What would you change about the program?"

Analysis

To enhance the validity of the interview and focus group data analysis, an independent team of two researchers conducted the analysis using a three-step approach and Dedoose 8.3.41 software. First, two researchers worked independently to analyze the transcripts with a priori thematic analysis-based coding (Padgett, 2008) for the DPP's acceptability, appropriateness, and feasibility. The researchers then compared created codes and came to a consensus on the code meanings (Miles & Huberman, 1994). Intercoder reliability was calculated at 89.4%, indicating high levels of intercoder reliability. Codes were categorized under the themes of acceptability, appropriateness, and feasibility. These themes were predetermined from implementation

outcome literature used to guide the study (Proctor et al., 2011). Quotes were then extracted from codes for each theme and then re-evaluated to ensure they captured the meaning of themes (Braun & Clarke, 2006).

Results

Study findings are organized by themes of acceptability, appropriateness, and feasibility of DPPs. These three themes were investigated to better understand stakeholders' and clients' experiences of their programs and the nuances of implementation. Through iterative, qualitative analysis, sub-themes were developed within each of these three deductive themes. These resulting inductive sub-themes are discussed within the context of the more general deductive themes. Quotes were selected from excerpts of interviews to help contextualize and communicate the essence of these sub-themes.

Acceptability

Study participants reported four primary concepts related to acceptability: communication, discretion, opportunity, and accountability. For example, prosecutors, judges, and defense attorneys consistently noted that *communication* between stakeholders is what is most needed to create a program that is acceptable for all parties involved. And, although collaboration is critical to success, prosecutors said that maintaining their *discretion* over who is offered DPP or not is an important aspect of their role to promote public safety. Defense attorney's similarly felt they were able to exercise discretion through the role of determining whether to advocate for DPP enrollment of their clients. Clients discussed as critical factors to acceptability, the *opportunity* to fix mistakes and the motivating nature of *accountability* that comes along with DPP programs. Prosecutors agreed that providing opportunities for second chances and creating opportunities in the community were major motivating factors in offering people DPP.

Collaboration. Prosecutors noted that communication between agencies is a requirement for DPP to succeed. One prosecutor explained, "*Implementation, the most important thing about implementation is collaboration in a county.*" While designing the program, prosecutors needed to gain the "buy-in" from other stakeholders, including public defenders, judges, probation, and service providers. Specifically, prosecutors noted that obtaining buy-in from public defenders can be difficult if their perception of the program is that it is not supportive or advantageous to

their clients. However, multiple defense attorneys liked that the program gave them a third option for clients besides just a plea or a trial and that getting the case dismissed at the end of the program was a great benefit for their clients. Stakeholders noted that trust developed across professionals during the DPP creation continues into the implementation phase. Stakeholders remarked that once the DPP has started, collaboration is still needed throughout each case to identify potential clients in the program, assess their needs, ensure services are completed, and track any sanctions a client may get.

Defense attorneys consistently noted that the inter-agency and inter-department collaboration was one of the factors that enabled the programs to be successful and for clients to have positive outcomes. Although they noted hesitancy in the early stages, participating defense attorneys agreed that collaboration was useful in ensuring the best services and successful DPP completion. One defense attorney highlighted the involvement of the district judge in this process:

[W]hen we're in our court, the judge will get off the bench and say, "Okay, I want to talk to everybody in back." And he does these mini staffings in the chambers. He is not afraid to get up and take his personal cell phone and call a client's mother, call a client's treatment provider [...] He is constantly, I hope he doesn't have to pay for the minutes because he is constantly picking up his cell phone and making a call on a client's behalf to make sure they succeed. He is as invested as the rest of us in making this a success.

The study participant further noted that the approach of this judge reflects the shared goals of each stakeholder to maximize client benefit, which oftentimes drives the collaboration between partners. The defense attorneys further noted that although this collaborative aspect was not a formal or structured process within the DPP, stakeholders generally cooperated with one another to most efficiently meet the goals of clients. Other stakeholders in the DPP process identified collaboration as a pivotal tool for the program. One stakeholder noted the surprising lack of conflict between groups that typically hold opposing viewpoints:

To have a District Attorney and a Public Defender and a case manager and a, I don't like the word offender, a client sitting together, it's not acrimonious, it's really big. I think that's what makes it work really well. Having all those pieces where everyone is invested in, no one wants this person to go to jail.

Discretion. The prosecutors explained that because the program is out of their office, they have a lot of power over DPPs. The prosecutors decide who is offered diversion and a DPP becomes in violation of the program expectations, they decide if the client can stay in the program or if they will be dismissed. A prosecutor described their power in these decisions:

If someone is in violation, we will work as team with our office having the ultimate discretion of whether or not they would continue in the program or whether or not it's time they get removed. It's not always a one strike you're out, it can be three strikes you're out type deal where we're working with them... Our main goal is to keep them in the program so they can get this felony off their record.

Prosecutors also discussed their changing of roles and thinking from traditional prosecution that focuses on punitive sanctions to embracing a rehabilitative program in-house and helping the clients. This change in roles often requires prosecutors to gain support from other attorneys in their office and some other prosecutors in the office are resistant. However, most prosecutors expressed that it was a rewarding role to allow clients to fix a mistake and that the program makes more of a difference than traditional prosecution. One prosecutor described this role transition by stating, “*If it's going to be effective, you have to be willing to let your traditional boundaries down.*”

Defense attorneys' perspectives on discretion are motivated by a desire to approach each individual's unique circumstances in DPPs holistically. Similar to prosecutors, one defense attorney described their discretion regarding programming as a new ideological shift away from a charge based system:

We definitely don't want to go back to a charge-based system where, "Oh this person has this charge so therefore this is our recommendation." Because that negates the individual-ness of our clients completely and just ends up being what we used before and that system didn't work, and resulted in the incarceration rates [being so high] that [this state] now is known as being a national leader.

From defense attorneys' perspectives, the acceptability of a DPP relies on positive outcomes and new, more flexible approaches than the rigidly structured punitive system that was previously in place. One defense attorney explained how they ensure that timelines for DPP completion are reasonable for a client's case:

We all have the same, the same goals. The only time I really negotiate is if the [lead prosecutor] thinks that we should transfer a case out, that the client's not going to complete their goals and I tend to say, "You know, let's give them one or two more months" [...]. I've never been overruled, so I feel like my advocacy on behalf of our clients is pretty effective in this arena.

In these cases, discretion is not necessarily something that is yielded to defense attorneys through the program's design. Instead, discretion is something that defense attorneys earned through negotiation, advocacy, and their collaboration.

Opportunity. DPP clients spoke highly of their respective programs and were appreciative of the approach overall. Clients consistently identified programming as an alternative to punitive charges and a new opportunity to experience personal growth. Throughout interviews, clients mentioned that they believed DPP to be a positive opportunity to make progress in life, fix mistakes, and to avoid jail time and the long-term consequences that criminal records cause. One client participant praised the program for allowing them to continue to meet their personal responsibilities such as work and caregiving, a sentiment expressed by many interviewees:

To keep me out of having a felony in my background, so that way I can actually ... I have a daughter to take care of, and I want to have a career, and I am trying to go back to school, but with a felony it will stop me. So it's an opportunity for me to continue growing.

Another program client described their experience as an opportunity for a second chance to rectify mistakes:

I would say, this is actually a good program, because it's a second chance program. Everybody makes mistakes, everybody deserves a second chance, it's actually a good program, it benefits you. If you succeed in the program, it comes off your record. It's better than just getting charged with something, doing jail time, and stuck on your record. You're limited to stuff when you have a background. So the program to me is very useful.

Prosecutors echoed the theme of implementing DPP programs in order to create opportunity for second chances or rehabilitation. Several prosecutors made comments similarly to the following

The general impetus for the program is certainly to give somebody a second chance I guess, or even a third or a fourth chance I guess in cases where people do have criminal backgrounds are again given the program. It's also, the program itself is designed to rehabilitate as opposed to punish. We don't send someone out to the side of the highway with a orange vest on to pick up garbage, the idea is to give them an opportunity to meet with the licensed professionals over at Presence and hopefully find some way to help themselves. So it's certainly more rehabilitative focused as opposed to punitive.

Accountability. Clients' descriptions of programming throughout interviews were resonate with gratitude. Many clients said that DPP provided them the chance to take accountability for their actions, address the consequences for the crime of their case, and embrace the responsibilities of DPP completion. Stakeholders also appreciated the accountability that DPPs provide, one stakeholder said, "I'm a huge believer in accountability because I think that's what makes a difference is knowing that someone is going to be checking. Someone cares about to be checking and seeing that you're doing something different." Throughout the interviews the theme of accountability occurred and the positive aspect of that support. Regardless of whether clients were most satisfied with the outcome, or the DPP process, each client identified a component of programming that they felt had long-term positive impacts on their lives. Clients commended the program for providing alternative consequences to jail, in addition to a compassionate approach to individual needs by saying things such as:

I think if we do something, we should pay for what we do in our actions. Giving us a chance to not go into jail, and just throwing us in jail like caged animals, instead of just listening to us and giving us this opportunity, I think it's a good thing [...] They actually care for each individual, you're just not a number or a case.

Appropriateness

Four themes emerged reflecting on the appropriateness of DPP programs from the perspectives of stakeholders and clients. Participants reflected on DPP programs as a more appropriate version of justice than incarceration for low level offenses. They described *justice* as

progressive thinking that prioritized wellbeing of clients over punitive methods like incarceration which are not perceived as ethical or effective with low level offenses. A subtheme of *success* was also identified for all stakeholders. Stakeholders said that *success* was when a client was making progress toward their individual goals and that this progress was recognized in addition to successful completion of program requirements in contrast to “status-quo rigid criteria that all must meet.” Clients further articulated that the *responsibility* for past actions and future goals that DPP required clients to take was a highly appropriate component of the programs. Similarly, stakeholders reported that their role in DPP was appropriate because they were helping clients to *foster change* – a theme many talked about.

Justice. Prosecutors discussed that justice no longer has to look like traditional prosecution sanctions and punishments. Instead, prosecutors said that their role in justice is to give people who make mistakes help by allowing them to avoid the negative consequences of a criminal charge. A prosecutor stated, “Sometimes justice means charging somebody with some serious crimes... sometimes justice means not charging somebody at all.” Prosecutors felt that they were able to hold this view and also uphold the rights of the victims because (in all three programs) the victims of crimes are contacted to get their input and permission before enrolling the client.

Prosecutors indicated that DPP gives clients an opportunity to change the clients' life trajectory and change the trajectory of the role of prosecution by incorporating services and second chances into their offices. The consensus across interviewees is that services that address client needs are more defensible and appropriate than incarceration. As one interviewee explained, using wrap-around services is an affordable alternative to making clients continue through the criminal justice system. They said, “*The genesis and the creation of this program was from that idea, let's stop incarcerating and let's give them services. It's a great cost-benefit analysis and it's the right thing to do.*” This perspective that social service programming is the most viable option compared to incarceration also rests on a concept of justice that includes moral direction. This interviewee and others mentioned that defense attorneys feel that DPPs are ethically “*the right thing to do*” for clients. Many defense attorneys we spoke with are self-driven to secure appropriate resources and programming for the client's specific needs. Though interviewees noted that avoiding incarceration is one of the goals of programming, addressing barriers to well-being in client's lives takes equal priority in the pursuit of justice.

Success. Prosecutors defined success broadly, and each defined the effectiveness of the program a little differently. There was agreement that the program's ultimate goal is to have the client complete the program and get their case dismissed or have the charge expunged from their record. The completion of the program and the removal of the charge was a practical success. However, some prosecutors also discussed internal success for clients; this internal and personal success was primarily clients learning something from the program. Other prosecutors pointed out that a successful outcome of the program is an individual receiving a referral to the right treatment that they need. While some prosecutors noted that the program's effectiveness lies in the completion of the program, others focused on it being a success for victims and the client. For example, some point out that restitution payments to victims tend to be completed more with DPPs than through traditional probation which ensures that the victims get their due process. A prosecutor said this about their view of DPP success:

I would say a successful outcome of the program, would be a victim who feels that they were justified in the court system, and an offender who feels like they were given a second chance and that it was a wake-up call for them.

For defense attorneys, success was uncovered as the other side of the coin to justice. These stakeholder's views stand in clear opposition to the traditional, objective measure of program completion without further arrest.

The purpose of the program is get the case dismissed. At least that's my perspective as their lawyer. The way we do that is by creating four goals together with the client and the service providers. The goals can vary. The general definition of a goal in this context is something to improve the life of the client.

Throughout interviews, clients often discussed the personal successes that the program helped them to achieve that they otherwise may not have reached. Most often, clients recognized service provision as what positively impacted them and allowed them to succeed:

In this program I actually gain more. I got me a house. I'm working on a job.[...] It's all good. [...]. I could have still been off of my feet, in a little bit of trouble or whatever. But instead, the program, they offered me this program, I got my own everything. Basically. I'm sorry to say. But it's true. I got my own everything.

Clients viewed program success as completing programming, avoiding punitive consequences, and accessing resources to better their well-being. In this client's example, they could secure their own house and job opportunities since they began the program. Success may look different for each client but typically involves meeting previously unaddressed needs and avoiding more severe punitive consequences.

The group of other stakeholders conceptualized client success from an internal perspective of clients. Instead of outlining specific metrics or objective goals, these stakeholders discussed success from the perspective of bettering client's perspectives regardless of the outcome. One stakeholder put client self-efficacy and motivation as a meaningful goal even in place of avoiding incarceration:

My goal is the clients always learn something, because I mean, we've had some in the past that, even when they failed, they've said, "You gave me the opportunity to make a choice, and I made the wrong choice." They own that, and they understand that.

Regardless, where they go on to the next piece, whether they're out of diversion and they go on regular probation, or they get sent to prison, the fact that they know they had a choice and they know they could have done something differently, to me that's a type of success as well.

Success with clients from this perspective is a matter of personal growth and betterment instead of task completion.

Responsibilities. Clients' perspectives on the appropriateness of program delivery and content were described through a lens of responsibility. Clients typically viewed the completion of the program as bolstering their personal responsibility instead of a punitive action taken against them. Clients discussed the ownership of responsibility for the actions that led to DPP involvement, the responsibility of being successful in the program, and the specific responsibilities they adopted to complete the program. One client discussed this experience of viewing programming as a necessary milestone of taking on responsibility so that they could continue living their life:

It's not necessarily an experience, it's just another added phase of your life. Do you know what I mean? Like having to set aside time, money, just a lot of stuff that you wouldn't normally do, but it has to be done in this very ... it's got to be one of your top priorities or else, like she said it, she will lock you up. She says that all the time. Like I said, it's not

necessarily an experience, just added responsibilities, but it is honestly added responsibilities. For me to be able to do that, as efficiently, and quick as possible, to get this out of the way, and get this over with, that way me, the victim, the court, everyone can get on. Water under the bridge, let's get it over with. That's pretty much that.

Clients consistently noted that programming felt possible to achieve and appropriate for their cases because the expectations and responsibilities were reasonable. They described many of the processes in very direct terms, such as the client above; they saw the program as something to complete as efficiently as possible. Prosecutors also described a sort of efficiency as the initial goal of getting people through programming and changing that approach if they need to, “We'll start at the least restrictive point we can, because we want people to take personal responsibility. We'll kind of move things along the continuum as people don't comply.”

Fostering Change. These various stakeholders asserted that their role was appropriate based on their ability to foster client change over arbitrary tasks or punishment. These stakeholders felt that clients were more likely to have lasting positive outcomes through DPP through positive motivation and meaningful tasks. One stakeholder highlighted the need for compassion and countering more negative narratives of DPPs:

People will make mistakes. We know that. That's why they're with us, but our goal is to try to redirect that behavior in a positive fashion. We've gone out of our way to find resources to try to assist people with sanctions or with the sanction being more of, not a reward, but a positive sanction if they take advantage of it to help them. I think we've found that, because a lot of our clients that have maybe gotten a sanction to do additional community service, even when that sanction stopped, like they did the four hours, they decided on their own to go back and offer more hours. They like what they're doing, and it makes them feel good.

This stakeholder took care to acknowledge that individuals make mistakes without endorsing the behaviors that often lead to DPP involvement. This quote is a succinct example of how diverse stakeholders view DPPs as future-focused for fostering change. Instead of relying on punitive action, stakeholders prioritize supportive actions to empower clients to find meaning in their goals for programming and the future. One stakeholder even noted, “*I think having case managers who are invested in helping foster change, not just enforcing rules is really*

important.” Stakeholders appear to believe that the largest benefit to programming is to have individuals in multiple roles that have a personal investment in client's success beyond arbitrary expectations or task completion. The goal beyond completion is to shift the overall trajectory of a client. Albeit some prosecutors noted with reservation, that some participants just are not able to do it for a myriad of reasons. One prosecutor said,

I don't know if it's just, you know, an inability to get it together. Maybe they have other issues going on in their life that this doesn't take priority. Although this could result in felony conviction which would cause so many more issues. I really think what it really comes down to is that they don't have a foundation for accomplishing these tasks and the structure it takes to get there.

Feasibility

Participants were asked to describe how feasible it is to implement or attend DPPs – in essence they were asked whether DPPs can be successfully carried out. In response, participants talked about four themes: red tape, program reach, program pressures, and available services. The subtheme of *red tape* was brought up by all attorney stakeholders and referenced the concerns they had with bureaucratic constraints put on DPP programs such as strict eligibility criteria along with the need of adequate funding, and staffing for program implementation. Prosecutors and defense attorneys also specific talked about *program reach* in which they explained that for feasibility, program implementation needs to have the support of the community to grow and expand DPP resources and also to ensure that there are enough available services in the community to be provided to clients. Clients discussed the types of *program pressures* and time commitments that came along with DPP program requirements while also displaying gratitude for the program structure. Other stakeholders discussed the importance of not only the quantity of *available services* but the quality *available services* for clients as a means to ensure the programs are successfully carried out.

Red Tape. Stakeholders indicated that bureaucracy is inherent in the existence of DPPs and although that is expected, the requirements established for the eligibility of clients for services create strict distinctions for acceptable cases. Prosecutors frequently noted that judges would often deny offering DPPs to individuals with a substance use history or violent charges. However, even when prosecutors were allotted the most lenient discretion for accepting cases, drug use history and violent charges were seen as less politically justifiable cases to divert.

Despite this, many prosecutors noted the need for similar compassion and comprehensive treatment for individuals with a substance use history or violent charges. Many prosecutors hoped their programs would eventually expand to include these cases in the current programming. It was noted that when separate programming was available for drug-related offenses, it was subject to similar issues of red tape.

The other thing that I don't like, [...] when people do have drug problems and we send them to treatment, if the county's funding it, there's only a certain number of places they can go to 'cause it's who the county contracts with. We send them there-some of these places are like a black hole, we have no idea what's going on. They could be getting very good treatment or could be taking crap.

Although there is an extensive collaboration within and between stakeholder groups, the continuum of care still defaults to the agency with oversight. This reinforces the rigid categories of eligibility. However, the consensus appears that these DPP sites are not able to provide the needed services for higher-level cases in the current structure of their programming. Prosecutors discussed the need for eligibility expansion, better resources, and new programming to effectively address drug use and violent charges. Prosecutors frequently noted shortcomings in the current system of formal assessment of client needs. Whether those assessments occurred within the prosecutor's office or outside case management, there were concerns about the appropriate fit of services to need. The current DPP program sites acknowledged that many of these barriers of bureaucracy are perhaps more accurately defined as a specific scope of services. The prototypical case for DPP programming is a non-violent first offense, and this is their current priority. One prosecutor explained this succinctly:

As far as their background goes, the ideal candidate has no background at all, so this is their first arrest ever and we really want to keep their background completely clean.

The 'red tape' of DPP programming that raises issues of funding, staffing, and eligibility is the same distinction that creates the current programming structure. So, although many interviewees noted these challenges, they also acknowledged the need to draw a line somewhere. They explained that in order to provide this opportunity - one that positively changes lives - to some individuals, there is an unfortunate but natural consequence of limiting it for others. Ultimately,

for DPP to be feasibly implemented, prosecutors feel that they must focus their resources on the most reasonable cases before expanded or adapting to others.

The feasibility of successfully implementing DPPs was also described as wrought with bureaucratic barriers for defense attorneys. Defense Attorneys discussed frustration around the processes of DPPs that are uncompromising to the lived experiences of clients. Despite these barriers being congruent across defense attorney anecdotes, the source of the demands varies. Judges, prosecutors, the court system, and program structure were all credited with boxing-in defense attorneys and rescinding the discretion they value in their role. One interviewee describes a disconnect in perspectives:

It's all those barriers, really candidly, our justice is blind to that our judges say this has to be the most important thing in your life. Well, really, it's the eviction notice I just got.

Defense attorney interviewees agree that other members of the court system frequently expect a client's main priority to be completing their programming requirements. However, as this defense attorney mentions, clients often have needs beyond the parameters of programming that are more pressing by their personal metrics. This sentiment was echoed by other interviewees about other criminal justice representatives:

I think that might be something too is just the court and the prosecutor and the PO need to be aware that they can't be the only priority. Every time they start to think that way, they're forgetting that this is a human being who's trying to survive in the world.

This defense attorney defines the barrier as an issue of dehumanization. They explain that when stakeholders expect that the client prioritizes their role and directions above all else, they are ignoring the inherently human need to survive in current circumstances; for clients in DPPs specifically, survival can require more effort to meet the demands of all stakeholders. This is especially true in cases such as the one described in the previous quote when basic needs like food, housing, or transport are not secured. One defense attorney described frustration with the lack of accommodation for the specific ways that program requirements are met:

It's that everything costs money. [...] My clients don't... They're just so worried about how much money they have to pay for these services [...] They offer anger management classes in jail. I've had clients who have said, "I have to do anger management on probation. Can I just stay in jail and try to complete it? Because I can't pay for it." That's

just sad. [...] If somebody's willing to stay in jail for an extra month to do anger management so that they don't have to pay for it? My goodness. Let them have that.

This quote provides a detailed example of how the differences in criminal justice stakeholders' perspectives may create tensions for successful program completion while also demonstrating the pragmatic differences between client ability to pay and comply and stakeholder's expectations about what is reasonable.

Program Reach. An important extension of program implementation is the reach of that program into the community. Prosecutors discussed their perception of their role concerning their community. They expressed long-term goals of expanding programming eligibility, providing more comprehensive services through the continuum of care, and emphasizing transparency between stakeholders. However, prosecutors expressed that these goals can only be achieved if the goals of the existing DPPs are met. One prosecutor explained the political nature of “not biting off more than you can chew”:

The political context is important though. [...] There's this element of messaging to the community that your priority is still public safety and that you want to do this in a measured and gradual way. The approach that you're taking is to take the best evidence of what works and try to develop the capacity within the system to actually do the things you say you're going to do. The worst thing you can do is make sort of a unilateral decision that, "Oh, I'm going to give 20% more people deferred prosecution agreements," then have absolutely no capacity in the community to divert them to something. Right?

For DPP to be seen and respected by community members, prosecutors feel they must commit to their original mission and deliver on that promise. Prosecutors expressed that completing these goals is an investment into the community. They perceived their responsibility to be to earn respect and credibility from the communities that they serve and part of that is having the services in the community needed to actually support the goals. One prosecutor described this community services relationship as part of the larger goal of program expansion and integration,

You have to develop that capacity within your community, within the system itself so we convinced the county board, for example, to invest about a million dollars into expanding pretrial services. Every year since then they've given us a very well-resourced pretrial services unit, which is a dramatic change. Their credibility is much greater. They do a

much better job of screening. They do a much better job of telling you when somebody's off the rails a little bit. They are able to direct people into services that actually address the issue, so you get better results and, with that, more credibility.

Overall, prosecutors want to reach and serve as many people as possible within their current eligibility criteria. This goal, though simply stated, includes extensive thought and foresight of community capacity and political perceptions. Even with limited eligibility in the current DPP structure, prosecutors want to hone their ability to successfully complete as many clients as possible. Similarly, even if they fall short of the fully integrated continuum of care that is hoped for, prosecutors are committed to effectively utilizing what is available for the betterment of their community

Program Pressures. Clients identified barriers to their overall success in the program and the feasibility of completing the program as required. The most common theme across these barriers was the pressure to complete responsibilities. Pressure to complete these tasks was often exacerbated by the requirement's time frame, cost, or rigidity. One client described their experience of compounding responsibilities that caused them to feel like there was always another requirement to avoid jail:

I keep going to court. I got to keep dropping. At first, I had to do some like community service, like that wasn't really stressful because I had ended up where I had to go to a class at first. She had to take me somewhere to find a job. I had to go to class every single day for like six weeks. It just was like, I had to constantly keep doing stuff, and then I constantly got to keep giving these people my money that I don't have so I don't get in trouble.

Many clients repeated that they often felt like they were not progressing through the program quickly enough. Clients described how pressured they felt by time-sensitive deadlines that were not supported by the program services. These clients do not blame the program design directly but reflect that they did not feel that they had the support or self-efficacy to complete these tasks through reasonable methods while enrolled in the program. This disconnect of the pressure to complete tasks efficiently without the necessary support was challenging for clients. However, the clear structure and programming requirements, which clients described as stressful at times, were viewed positively overall. Although clients may have expressed that the pressure of

timetables and different tasks posed challenges for them in programming, most also recognized the necessity of structure. One client considered the alternative to such a formal process, “Cause sometimes some people do need structure. 'Cause if you don't, there's no structure, it's a wild chaos.” Similarly, other clients saw this structure as a guide for successfully meeting the program's expectations, “they have they rules and boundaries. How you should follow those steps on how to follow though. As long you go through them steps, and rules and the terms you should be fine”.

Some clients noticed that the restrictions of the structure got more lenient with time and proven responsibility. Overall, clients expressed a tough-love view of the structure. Despite the tedious nature of program requirements, they overall perceived the DPPs as setting them up for success.

Somewhat in contrast to clients and public defenders, prosecutors felt that the strict program requirements were feasible if the requirements tailored off as the clients demonstrated commitment and success. For example, one prosecutor explained,

Towards the end of the treatment, they're working on getting a job, independent living, education, GED's, whatever it might be and it's very much a scaled transition. Where it starts off very intensely at the beginning and then scales back into a different phase. They'll have to report a little bit less. They'll have to drop a little bit. They're off restriction and then towards the end, as we're getting closer to graduating from the program, it's less strict.

Available services. For some stakeholders, they felt that the services offered by their agency were exceptional for feasible implementation of the DPPs and helping clients succeed during and after programming. They explained that for DPPs to be feasible, they had to have services available to clients, and these stakeholders felt having services available was not a problem. One program provider noted gave examples of the ample amount of services:

Specifically we provide parenting programs, life skills, job readiness, financial literacy. We provide family therapy, family therapists, for counselling, and we give everybody access to a caseworker, a social worker, just so they can connect to any resource that they would need, whether it's housing, medical, clothing, just different resources.

However, other stakeholders discussed the severe disadvantage of lacking resources for clients, such as those listed in the quote above. One stakeholder noted that their county's resources are so limited that it impacts their ability to provide appropriate treatment for their clients:

So our county doesn't have a dedicated human services department like every county in the state. [...] We don't have that here so it's all privatized. Granted most of them are nonprofits but we still have to navigate the insurance. [...] So kind of navigating that is difficult. And so I think that's the biggest part of the treatment for me.

Another stakeholder expressed frustration around the lack of services for clients, especially regarding substance use treatment:

Just the lack of services available to our clients is such a barrier for us. When someone's ready for help and ready for this and then we have either such a long wait or the quality quite frankly of some of the substance abuse treatment here and everywhere is really bad.

Despite various stakeholder perceptions of their local resources being either sufficient or insufficient, interviewees agreed that resource allocation is vital to the feasibility of delivering DPPs that have an expectation of completion of services. The availability of services often created tensions between treatment providers and the parameters of their roles. Even in regions with available services, many providers felt that their overall reach restricted their ability to change clients' lives and well-being. One provider explained that although they have some control over the services they could provide, it was typically a *possibility* instead of a guarantee. Another stakeholder expressed their distress regarding their ability to provide clients the necessary environment to promote real change. The essence of treatment providers' complaints is that the services they can provide based on the DPP and agency structure do not have the reach to affect the kind of meaningful change in clients' lives that they hope to provide. Some clients describe scenarios however, when even a little support goes a long way:

I feel like ... A lot of people may not say this, but it is really wrecking to go through, especially at the beginning. I know that I felt like my world was crushing apart. I felt like everything like everything was falling into pieces, and through this program, I do feel like it helped me put myself together. Because like you said, I wasn't in school, so I went back to school so I wouldn't have to community service. Now, I'm working and going to school full time. Even before finishing the program, the program is already happening.

Discussion

In 2021, common discourse continues to reflect prosecutors as resistant to criminal justice reform and prioritizing tough on crime approaches sometimes referred to as “lock the door and throw away the key.” The proliferation of DPPs as diversion opportunities away from conviction, sentencing, and incarceration suggests that prosecutors may in fact be very much in line with reform to current criminal justice approaches in the United States. The data in this paper similarly suggest a different orientation of prosecutors – at least for the prosecutors interviewed in these three states. This paper begins to empirically document the processes and reactions that are happening inside prosecutors offices as DPPs are being adopted and implemented.

By and large, DPPs are perceived as acceptable alternatives to prosecution by all stakeholder groups interviewed in this study. The essence of stakeholder opinion was that it was a new form of justice that created opportunity for people to rehabilitate themselves and be contributing members to communities while also holding clients accountable for their action. Stakeholders perceived incarceration as unnecessary and counterproductive when contrasted with DPPs. Stakeholders also described DPPs as appropriate mechanisms for processing people through the justice system while having the freedom to facilitate these individuals towards a more positive path and also honoring, and responding to the harm done to victims.

The greatest amount of variation in feedback and in stakeholder perspectives was related to the feasibility of DPPs. In this respect, study participants tied the feasibility of DPPs to other stakeholders in the criminal justice system (e.g., judges, public defenders) and to the community (e.g., public support, community capacity to meet the service needs of the clients). This is an important reality to empirically document as it indicates that, although DPPs may be prosecutorial led, their viability is interdependent on the criminal justice system and the community. To date, prosecutor led DPPs are typically not explained or conceptualized in its fashion. The results of the study suggest that more examination of the interdependent nature of these programs and more recommendation and guidance to communities and other criminal justice stakeholders beyond prosecutors should be provided.

We acknowledge that the results of this study do not generalize beyond the sample of stakeholders that we were able to obtain for the study and that the DPP clients interviewed may have been that were the most successful in the DPP programs. At the same time, this was an

unprecedented study in that it took place across three distinct jurisdictions. In addition these jurisdictions were at very different stages of implementing programs and also were in different sized communities (although all urban, there was large variation in the size of the urban areas). This study is similarly unique in that there were comprehensive stakeholder perspectives beyond the prosecutors themselves. Little to no research has documented how these programs are perceived or operate outside of the perspective of the prosecutors' themselves.

Research on DPPs are at the very early stages which creates numerous opportunities for advancing the empirical knowledge in the field. First, although there is large variation across programs, there are common factors that can be unifying factors (e.g, types of criminal charges allowed; pre-charge vs pre-plea programs) for multisite studies allowing us to figure out key programmatic features. Second, because many offices have yet to adopt DPP programs, there are opportunities for natural experiments across jurisdictions or time series analysis within jurisdictions. Third, the length and requirements of DPPs need examination in order to figure out what is the appropriate amount of program dosage that can achieve the same goals for clients while minimizing the disruption of clients being able to get their basic survival needs met. Finally, a spotlight on the role of community capacity and public opinion in the viability of alternative approaches is warranted based on the data gleaned from this study. Our conclusion from the analysis of these results is that DPPs are a promising intervention that are being adopted and are well positioned to researched, refined, and ultimately established as evidence-driven alternatives to sentencing and incarceration especially if and/or as researcher-prosecutor collaborations grow across the country.

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