



ADDICTED TO COURTS:

HOW A GROWING DEPENDENCE ON DRUG COURTS
IMPACTS PEOPLE AND COMMUNITIES

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INTRODUCTION

The 2009 U.S. National Survey of Drug Use and Health revealed that 21.8 million people—8.7 percent of the population over age 12—reported using illicit drugs in the month prior to being surveyed.¹ About 7.8 million people surveyed indicated they needed treatment; this is more than the prevalence of lung, breast and prostate cancer combined.² As addiction is a disease,³ an appropriate approach to a public health issue of this magnitude would be to substantially increase funding for treatment in communities. But this has not been the case.

Instead of providing treatment for people with addictions, over the last few decades there has been a war on people who use drugs, fought through the criminal justice system. Police made 1.6 million arrests for drug offenses in 2009; of these, more than four in five were for possession rather than sales of illegal drugs.⁴ In 2008, 29 percent of all admissions to state prisons—194,000—were for drug offenses.⁵

The explosion of prison populations, due in part to increasing numbers of people convicted of drug offenses, led some states and localities to explore alternatives to drug incarceration. One such alternative that was developed in the late 1980s was the drug court. As originally envisioned, drug courts would be a new model that would reduce the number of people in prison for drug offenses, help people with addictions, and improve public safety. Over 55,000 people enter drug courts annually.⁶

While drug courts may be a better justice system option than incarceration, they are

still a justice system approach to a public health issue. Drug courts also are not the most effective way to help people who are struggling with addiction, and in many ways, only serve to “widen the net” of U.S. criminal justice control, which now stands at about 7 million people either incarcerated or on probation or parole.⁷

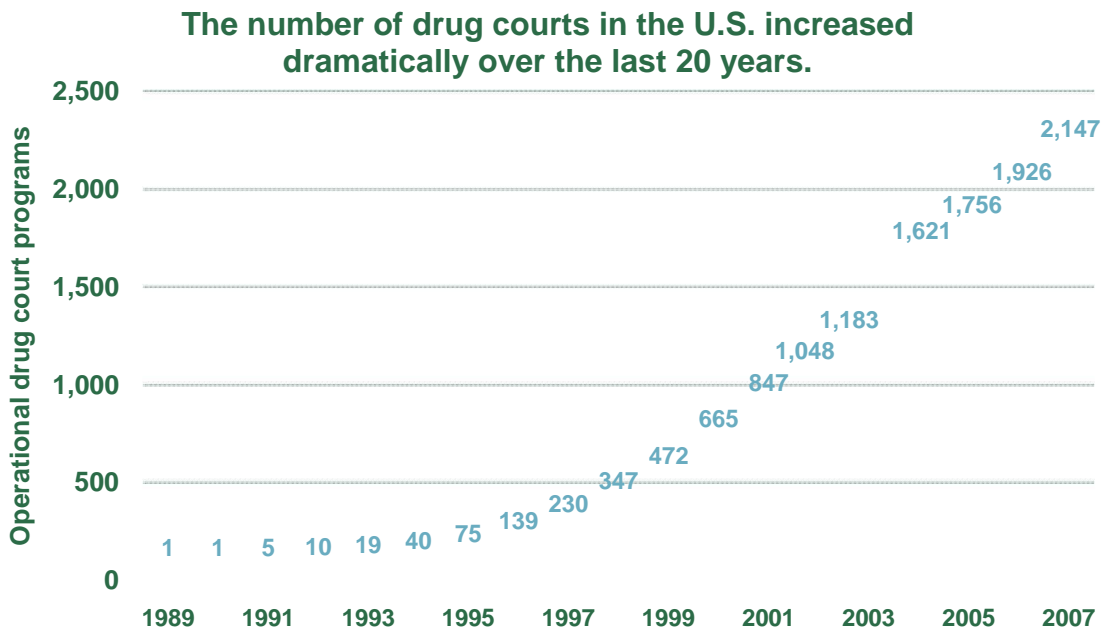
Certainly, drug courts can and do help some people who are drug dependent and who are engaged in illegal behavior. The questions that this report seeks to answer are why we have drug courts in the first place, whether we should continue to utilize and expand drug courts, and at what expense—in terms of both direct costs or opportunities foregone.

“By simultaneously treating drug use as a crime and as a disease, without coming to grips with the inherent contradictions of those two approaches, drug courts are not satisfying either the legitimate and compassionate interests of the treatment community or the legitimate and rational interests of the law enforcement community.”

Judge Morris B. Hoffman, “The Drug Court Scandal,” *North Carolina Law Review* 78 (2000). Pg.1477

BACKGROUND

The first drug court started in 1989 in Dade County, Florida as a way to work with people whose criminal justice involvement was likely due to an addiction.⁸ Today, the U.S. and its territories run 2,559 drug treatment courts and another 1,219 problem solving courts.⁹



Source: C. West Huddleston, III, Douglas B. Marlowe, and Rachel Casebolt, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States, Volume II, Number 1* (Washington, D.C.: National Drug Court Institute, May 2008)

What are drug courts?

While drug courts vary across localities and no drug court is exactly the same as the next, there are two main categories of drug courts: deferred prosecution programs (pretrial diversion method, or “pre-plea”) and post-adjudication programs (post sentencing method). People who enter a deferred prosecution program are diverted into the drug court system before being convicted. They are not required to plead guilty, and are only prosecuted if they fail to complete the

program. Alternatively, post-adjudication (“post-plea”) programs require participants to plead guilty to the charges against them, and have their sentences deferred or suspended while they are in the program. The sentence will be waived or reduced, and often the offense will be expunged from their record,* if he or she completes the program. The case will be returned to

* Expungement does not necessarily mean that there will be no record of the offense. Rather, a background check will show an addendum that the charge was expunged.

court and the person will face sentencing on their previously entered guilty plea if he or she fails to satisfy the program requirements.¹⁰

The original drug courts were almost solely pre-plea, but according to the National Drug Court Institute, only about 7 percent of today's adult drug courts are diversionary or pre-plea, compared to 59 percent that are post-conviction and another 19 percent that work both with people who are pre-plea or post-plea. In total, 78 percent of all adult drug courts have a probationary or post-plea condition.¹¹ The consequences associated with a post-plea program will be discussed later in this report.

Each drug court is different, perhaps because of differences in community needs or population. While the National Association of Drug Court Professionals and others have laid out guidelines for best practices in drug courts,¹² not every court across the country follows these standards, and both eligibility requirements and court processes vary nationally. Generally, people are eligible for drug courts when they've been charged with drug possession or a nonviolent offense, and must have either tested positive for drugs or have a history of substance abuse at the time of arrest.¹³

Standard drug court programs usually run between six months and one year, but many participants remain for longer because they must complete the entire program cycle in order to graduate. Program completion entails being drug

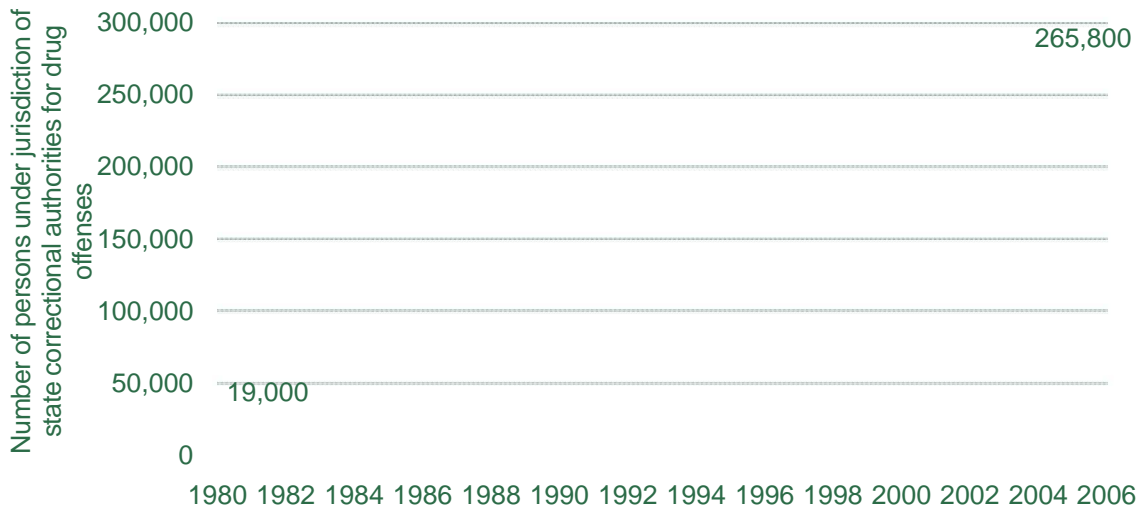
and arrest-free for a specified period of time and meeting such other obligations as securing housing or employment. Participants frequently meet with the drug court judge and other judicial and clinical staff in status meetings aimed at monitoring each individual's progress.¹⁴ Participants are regularly drug tested and receive rewards or face sanctions based on how well they follow the rules of the court. Rewards can include verbal praise, certificates or other tokens of approval, as well as moving to the next level of supervision, which may include less frequent visits to the court. Sanctions can include everything from verbal admonishment and writing essays to spending time in jail or being kicked out of the program and facing traditional sentencing.

Why do we have drug courts?

About a quarter of people in prison and jail[†] in the U.S.—over half a million people—are incarcerated for a drug offense.¹⁵ And about 28 percent of people in state prison and 5 percent of people in federal prisons for a drug offense were convicted of drug possession, not selling.¹⁶ With the dramatic increase in the prison population since the 1970s, states and localities have been struggling to manage the influx of people in prison, which was further exacerbated by harsher sentencing policies. These include mandatory

[†] Jail numbers estimated based on number of people in jail in 2009 (767,620) multiplied by the percentage of the jail population incarcerated for a drug offense based on 2002 numbers, the most recent year available (25%).

More than 12 times as many people are in prison for drug offenses as in 1980.



Source: Bureau of Justice Statistics, Key Facts at a Glance, *Number of persons under jurisdiction of state correctional authorities by most serious offense, 1980-2006* (Washington, D.C.: Department of Justice, Accessed January 2010) <http://bjs.ojp.usdoj.gov/content/glance/tables/corrtypab.cfm>

minimums and truth-in-sentencing laws, especially for drug offenses, including possession offenses. From 1980 to 2008, the number of people in state prisons for a drug offense increased 1,223 percent, accounting for 21.7 percent of overall state prison growth during this time.¹⁷ The most recent survey of people in prison showed that 53 percent of people in state prisons meet the criteria for substance abuse or dependence.¹⁸

“[Drug treatment courts] are less a diversion from prison than a diversion from other alternatives to prison.” Michael M. O’Hear

Drug courts were created at the height of this increase in drug incarceration to give states an option for working with people with drug addiction or who commit drug offenses. They were promoted as an

alternative to incarceration and a diversion method, recognizing that some people would have better outcomes with a treatment process rather than incarceration. Drug courts’ popularity continues to increase as a large number of people continue to be arrested every year for low-level drug offenses and other nonviolent offenses. And in the current budget crises, states can no longer afford to incarcerate people who are a low risk to public safety.

Drug use and criminal justice involvement appear to be linked. A 2004 Department of Justice study found that around 17 percent of people in prison committed their crimes to get money for drugs.¹⁹ Because of the lack of accessible, community-based substance abuse treatment, many people are only able to receive access to the treatment they need

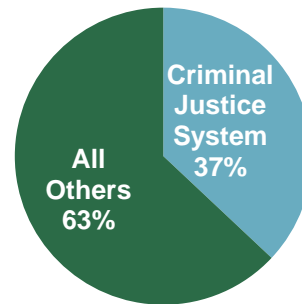
after being arrested—and even after they are arrested, they still are not guaranteed treatment programs, regardless of need.

According to the National Survey on Drug Use and Health, about 9 percent of people in the U.S. are classified with substance abuse or dependence for drugs and/or alcohol,²⁰ but less than a quarter of them receive treatment. For those who do receive treatment for a drug addiction, over a third, 37 percent, are referred by the criminal justice system.²¹ The criminal justice system is the largest single source of referrals to substance abuse treatment nationally; the proportion of substance abuse treatment admissions referred by the criminal justice system increased from 33 percent in 1992 to 37 percent in 2007.²²

Another reason for the proliferation of drug courts is the failure of probation departments to adequately address the needs of clients with addictions. Some of the same mechanisms drug courts use (treatment services, supervision, and case management) have traditionally been part of probation. But as the number of people on probation continues to grow and caseloads increase, probation departments complain that they do not have the resources or time to dedicate to their clients and provide the services their clients need to be successful and stay away from the criminal justice system.²³ Drug courts can be more resource intensive,[‡] but do basically the same thing as probation departments are tasked with doing—provide case management and treatment resources while under criminal

justice supervision. And often, probation and parole officers are more limited in the options they have to respond to either positive achievements or relapses than drug court judges.

The criminal justice system is the largest single source of referrals to substance abuse treatment nationally.



Source: The TEDS Report, “Substance Abuse Treatment Admissions Referred by the Criminal Justice System,” August 13, 2009.
www.oas.samhsa.gov/2k9/211/211CJadmits2k9.htm

[‡] See section on costs later in report.

TREATMENT THROUGH THE JUSTICE SYSTEM IS NOT MORE EFFECTIVE THAN OTHER TREATMENT.

A perception among drug court supporters is that drug courts are the most effective way to work with people with addictions who come into contact with the justice system. This is partially based on a belief that people need the threat of sanctions to be motivated into treatment. But national data and research from people who actually provide treatment tell a different story.

Front-end treatment for people before they become involved in the justice system can be even more effective than treatment through the justice system, which includes drug courts, and it improves public safety by reducing the “collateral damage” that addiction can cause to communities.

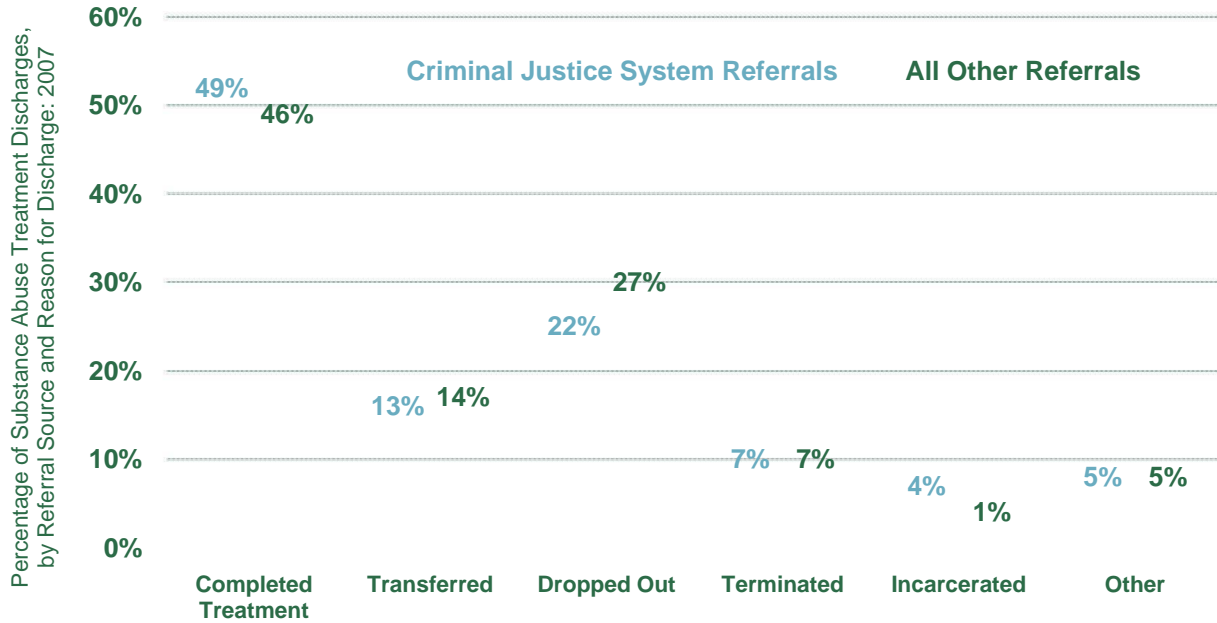
Claims that people with substance abuse problems need the added push of judicial supervision to succeed²⁴ are not supported data. Statistics from the Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Episode Data Set (TEDS) shows little difference in terms of success for people who are referred to treatment by criminal justice agencies and those from other sources.²⁵ About 49 percent of people who are referred to treatment by criminal justice agencies complete treatment and another 13 percent are transferred to another level of care. Taken together, 62 percent of people referred to treatment by the criminal justice system complete treatment or transfer to further treatment compared to 60 percent of people referred from other sources. People referred to

treatment by the criminal justice system are more likely to end up incarcerated than people referred from other sources, 4 percent versus 1 percent, respectively.

This small difference in results does not justify the significant costs (including monetary, societal and personal) of justice system involvement such as participating in a drug court. This is particularly true when substantial barriers prevent low-income communities from accessing treatment that could have kept them out of the justice system in the first place.

Data from the Substance Abuse and Mental Health Services Administration (SAMHSA) shows that people living in poverty are more likely than people with more resources to need but not receive treatment.²⁶ Of people living in poverty in 2006 and 2008 who needed substance abuse treatment, only about 18 percent received it. And people from this group with no health insurance coverage are more likely than those with insurance to need substance abuse treatment in the past year (14.9 percent versus 11.2 percent, respectively).

Outcomes for people who were referred to treatment by the criminal justice system are not much better than those from other sources.



Source: The TEDS Report, "Substance Abuse Treatment Admissions Referred by the Criminal Justice System," August 13, 2009. www.oas.samhsa.gov/2k9/211/211CJadmits2k9.htm. Figure 2.

A criminal conviction should not be treatment admission criteria.

For many people, involvement in the criminal justice system is the only way to have access to treatment for substance abuse disorders. Low-income communities that are already facing challenges associated with poverty and substance abuse are the most likely to be unable to afford private treatment or have access to whatever community-based resources are available.*

The problem with relying on the criminal justice system is twofold. Not only must people receiving treatment through the criminal justice system face the collateral consequences associated with such involvement, they often don't have the chance to address their addiction before being arrested for a drug-related offense. This further contributes to the disproportionate representation of lower-income people in the criminal justice system.

Short of providing health care to all people, research included in this report shows that prevention and treatment available in the community promotes public safety, supports positive life outcomes, and is cost-effective. In addition, with scarce public resources and often limited services available, treatment allocated to criminal justice referrals may be taking away chances for people in the community to receive the help they need without having to first be arrested.

People shouldn't have to wait until they are arrested for treatment, and treatment is not more effective if it comes with a criminal justice price tag.

* Sarah Lyons and Nastassia Walsh, *Money Well Spent: How positive social investments will reduce incarceration rates, improve public safety, and promote the well-being of communities* (Washington, D.C.: Justice Policy Institute, 2010) www.justicepolicy.org

DRUG COURTS ARE NOT THE BEST WAY TO IMPROVE PUBLIC SAFETY.

While treatment in the community before someone is justice-involved is critical, policymakers and practitioners must still manage the reality that people are arrested for offenses related to an addiction. Drug courts are only one of a number of options available for addressing people with addictions who come into contact with the justice system.

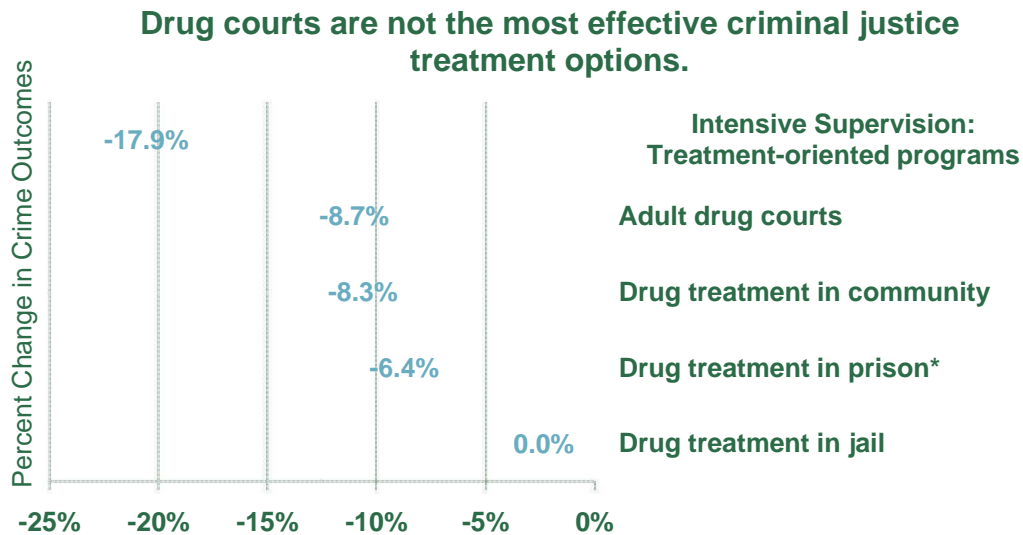
Drug court advocates often cite their programs' low recidivism rates. But to understand real effectiveness, we must ask, "Compared to what?" Research shows that treatment works—it reduces the likelihood that someone will engage in future illegal activity and promotes positive life changes.²⁷ However, treatment through the criminal justice system—and through drug courts—is not the only option, and some options may work better than others.

Recidivism rates are measured differently by each drug court program and the concurrent analyses of drug courts. Re-arrest and reconviction rates are the most common measures, but an average reduction is hard to come by, as they can range from a 4 percent decrease in recidivism to a 70 percent decrease in some places.²⁸

The Washington State Institute for Public Policy frequently issues reports that examine the effectiveness of programs for people involved in the criminal and juvenile justice systems. In one report, researchers conducted a meta-analysis of 545 studies on programs working with people in the justice system—including 57 drug court studies—to determine which

programs were the most effective in terms of reducing recidivism.²⁹ They reported that adult drug courts could reduce recidivism rates by around 8.7 percent. Drug treatment in the community is quite comparable, reducing recidivism by 8.3 percent. In contrast, intensive supervision programs focused on treatment reduced crime by about 18 percent. Drug courts, therefore, do not necessarily have the best public safety outcomes of all justice-related treatment programs.

One of the challenges with studies that look at drug court outcomes is that it is difficult to have an appropriate control group. Control groups that are made up of non-drug court participants can be problematic because of underlying characteristics of people in that group, including possible reasons for their not being offered drug court (nature of their crime or addiction, criminal history, resources, etc.). In addition, with evidence of "cherry picking" participants for drug courts, those who were admitted to the programs may already be more likely to succeed than their counterparts in the control groups.³⁰



*Therapeutic communities or outpatient

Sources: Elizabeth K. Drake, Steve Aos, and Marna G. Miller, “Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State,” *Victims and Offenders*, 4:170–196. Table 1, www.wsipp.wa.gov/rptfiles/09-00-1201.pdf

Additionally, many of these studies are based on people who complete drug court—a variable fraction of those who enter it³¹—possibly making them more likely to succeed outside, as they have been able to follow the strict rules of a court for months and even years in some courts. Still, a number of studies that looked at longitudinal outcomes reaching to three years after participation in the drug court found little to no difference in recidivism rates for participants versus non-participants like people on probation;

the Baltimore³² and Maricopa County³³ Drug Courts showed little difference in re-arrest rates, and participants in a Las Cruces, New Mexico DWI Court had similar traffic reconviction rates.³⁴

As drug courts continue to be one of the most expensive options for addressing the addiction issues of people in the justice system outside of prison, we should be putting the bulk of our resources where we get the most return.

Project H.O.P.E.: Not a drug court

Project H.O.P.E. (Hawaii Opportunity Probation with Enforcement) was started by Judge Steven Alm in 2004 as an alternative to traditional probation. The program mandates drug abstinence through drug testing and gradually escalating punitive sanctions. The premise of the program is similar to traditional probation, with the main difference being swift and sure repercussions for violating the rules of probation, which are handed down directly by a judge, and include a few days to a week in jail. Each participant receives a warning hearing at the start of the program that lays out the requirements of the program and sanctions for noncompliance.

Rather than a team approach to case management with drug courts, H.O.P.E. relies heavily on probation officers, and only when a person violates the guidelines of the program do they see a judge. With the program's focus on reducing drug use, strict drug testing is a main component, and unlike drug courts which provide treatment to all participants, drug treatment is only provided for the individuals who cannot stop using drugs on their own. Participants' noncompliance to the program standards result in their arrest, a court appearance and frequently jail time. Unlike drug courts, H.O.P.E. participants do not have to fit into specific categories of offenses or backgrounds—they accept people with varying levels of addiction and criminal histories, including violent offenses and focus on those considered “high-risk.”¹

While short-term results have been favorable when compared to traditional probation,² a main concern with the Project H.O.P.E. program is the lack long-term evidence to support its effectiveness. To date, only one non-peer-reviewed evaluation of H.O.P.E.³ has been completed. The use of jail time as a deterrent for drug use is also problematic, as the effectiveness of punishment alone has never been found long term, and no other non-incarcerative sanctions have been tried.⁴ Finally, Project H.O.P.E. is more expensive than traditional probation; H.O.P.E. costs about \$2,500 per participant, including the costs of treatment, compared with about \$1,000 for routine probation supervision.⁵ However, additional expenses of the program are accrued through jail time for sanctions handed down by the judge.

As programs like Project H.O.P.E. continue to gain interest in other states, it is important to consider research concerning the most effective aspects of reforms or initiatives that ensure that people receive the treatment and services they need to have the best long-term outcomes.

¹ Vera Institute of Justice, *More Than the Sum of Its Parts: Why Hawaii's Opportunity Probation with Enforcement (HOPE) Program Works* (Washington, D.C.: 2010) www.vera.org/files/HOPE%20Policy%20Brief.pdf

² Mark A. R. Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton University Press, 2009); Mark Kleiman, “Smarter Punishment, Less Crime: Why reducing incarceration and victimization should be complementary goals,” *The American Prospect*, December 6, 2010.

www.prospect.org/cs/articles?article=smarter_punishmean_less_crime

³ Angela Hawken and Mark Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE* (Washington, D.C.: National Institute of Justice, 2009)

www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf

⁴ See, for example, Andres Rengifo and Christine Scott-Hayward, *Assessing the Effectiveness of Intermediate Sanctions in Multnomah County, Oregon* (New York: Vera Institute of Justice, July 2008)

www.vera.org/content/assessing-effectiveness-intermediate-sanctions-multnomah-county-oregon; California Society of Addiction Medicine, *Proposition 36 Revisited*, Accessed January 2011. www.csam-asam.org/prop36article.vp.html; J.S.Goldkamp, M.D. White and J.B. Robinson, “Do drug courts work? Getting inside the drug court black box,” *Journal of Drug Issues* 31, no. 1 (2001): 27-72.

⁵ Angela Hawken and Mark Kleiman, “H.O.P.E. for Reform: What a novel probation program in Hawaii might teach other states,” *The American Prospect*, April 10, 2007. www.prospect.org/cs/articles?article=hope_for_reform

DRUG COURTS ARE NOT AS COST-EFFECTIVE AS OTHER OPTIONS.

Many studies about drug courts boast of their money-saving capabilities. However, drug courts carry hidden costs, including the lost opportunity to invest taxpayer dollars in ways that might be more effective. For example, drug court spending may reduce the amount available for other, non-justice strategies that, as outlined below, can provide a better return on investment.

Less costly, more effective practices are ignored in favor of drug courts.

At their inception, drug courts were meant to be an additional alternative to incarceration, not a way to avoid reforms in other areas of both the justice and public health systems. Over the last 20 years, drug courts have become a work-around and a distraction from making reforms in areas that could save jurisdictions money in the long run. Instead, drug courts draw scarce public dollars away from areas of reform such as:

- **Probation:** As the number of people under the supervision of the criminal justice system has increased, probation departments have increasingly been overwhelmed with large caseloads and reduced staffing.³⁵ Rather than increasing funding for probation and the accompanying treatment services that are proven ways to help keep people in the community, criminal justice dollars are being directed toward drug courts, which can be more expensive

per person[§] and carry with them potentially harsher sanctions and requirements.

- **Treatment services in the community:** If less was spent on resource-intensive drug courts, treatment funding could increase to serve the already large numbers of

[§] Cost numbers vary by locality. The Sentencing Project reports that the average cost per person for drug court is \$4,300. Ryan S. King and Jill Pasquarella, *Drug Courts: A Review of the Evidence* (Washington, D.C.: The Sentencing Project, 2009). The Washington State Institute for Public Policy estimates that drug courts cost \$11,227 per participant. Robert Barnoski and Steve Aos, *Washington State's Drug Courts for Adult Defendants: Outcome Evaluation and Cost-Benefit Analysis* (Olympia, WA: Washington State Institute for Public Policy, 2003). Multnomah County, Oregon estimates costs around \$5,927 per participant. Shannon Carey and Michael Finigan, *A Detailed Cost Analysis in a Mature Drug Court Setting: A Cost-Benefit Evaluation of the Multnomah County Drug Court* (Portland, OR: NPC Research, Inc., 2004). Reports of traditional probation are around \$1,000 per participant. Mark A. R. Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton University Press, 2009); Mark Kleiman, "Smarter Punishment, Less Crime: Why reducing incarceration and victimization should be complementary goals," *The American Prospect*, December 6, 2010.

people under justice supervision who need but do not receive treatment, and for those in the community who are currently not able to receive treatment due to inadequate funding of services for people with limited financial or insurance resources. Research presented in this report shows that treatment services are a far more cost-effective way of improving public safety, reducing the number of people in prison, and improving life outcomes.

- Prevention and research:** While it is difficult to separate out spending by substance because people often use substances together, the National Center on Addiction and Substance Abuse at Columbia University estimated total government spending on drug use, excluding alcohol and tobacco, was estimated at around \$18.7 billion in 2005—\$16.4 billion in federal spending, \$1.9 billion in state and \$342 million in local health care spending.³⁶ This includes \$40 million in federal spending and \$138 million in state spending on drug courts. Less

than 2.5 percent of all substance abuse and addiction spending is for prevention, treatment and research, which shows a focus on addressing the consequences of substance abuse rather than prevention and harm reduction.

Attention and funds directed at drug courts exemplify a continued reliance on the criminal justice system as a way to address a public health problem. Drug courts only reduce incarceration of and provide treatment to people *who already are in contact with the justice system*, doing nothing to help people avoid addiction-related criminal justice contact in the first place.

Reforms in these areas could drastically reduce the number of people in prison, while improving public safety and the health of communities. But to accomplish these reforms, public officials must prioritize funding for them; and in times of limited resources, this may mean reducing funding for drug courts.

Spending on Substance Abuse and Addiction				
Budget Sector	State Spending		Federal Spending	
	\$ in Millions	% of substance-related spending	\$ in Millions	% of substance-related spending
Burden*	\$127,545	94.0%	\$229,887	96.5%
Taxation/Regulation/Interdiction	\$4,984	3.7%	2,720	1.13%
Prevention/Treatment/Research	\$3,235	2.4%	5,543	2.3%

*Includes spending in health, child/family/housing assistance, public safety, justice, primary/secondary education, mental health, developmental disabilities and workforce.
 Source: National Center on Addiction and Substance Abuse at Columbia University, *Shoveling Up II: The Impact of Substance Abuse on Federal, State and Local Budgets* (New York, NY: 2009)

Drug court money is spent on people who least benefit.

For people who would be prison-bound if not for entering drug court, savings can be considerable—annual costs of sending one person to prison average \$22,650,³⁷ compared to an average of \$4,300 per person for a year of drug court.³⁸ If everyone who entered drug court was not given a jail sanction, successfully completed the drug court program, and went on to become a law-abiding resident, drug courts would be one of the most cost-effective means of working with people with drug problems who are involved in the criminal justice system. But this is not the case:

- Not everyone who is offered and accepts drug court would otherwise have gone to prison. (See section below on selection of drug court participants)
- In some courts, the average number of days spent in jail as sanctioned by the drug court judge can be as high as 50 or more,³⁹ at an average cost of around \$68 per day.⁴⁰
- Only a fraction of people who enter drug court will successfully complete it. From 33 to 75 percent of participants will be kicked out of drug court⁴¹ and be sentenced for the original offense, frequently more harshly than they would have if they had never attempted drug court.⁴²

Compounding the total cost of drug courts is that people who could have accessed treatment in the community or diversion program, for example, are

potentially subject to the collateral consequences of a conviction. Some of the more prominent of these consequences include loss of food stamp benefits, decreased opportunities for student loans and employment, and denial of public housing, all of which increase the chances that a person will not be able to successfully stay out of prison in the future. In addition, sanctions for violating drug court rules, like failing drug tests, can send people to jail. Finally, failing to successfully complete

the drug court program can mean a prison sentence, which in turn has been shown to be counterproductive to both individual recovery and improved public safety.

Drug courts do not provide the best public safety value.

For those who do complete drug court, a number of studies have shown cost-benefits, but not necessarily the most benefits per dollar when compared to alternatives. The Washington State Institute for Public Policy conducted a cost benefit analysis of certain drug treatment programs, including drug courts, drug treatment in the community and treatment in prison (either therapeutic community or outpatient).⁴³ This analysis considered a number of studies to develop an average cost-benefit analysis, including a review of 57 studies on drug courts. They found that all three of these

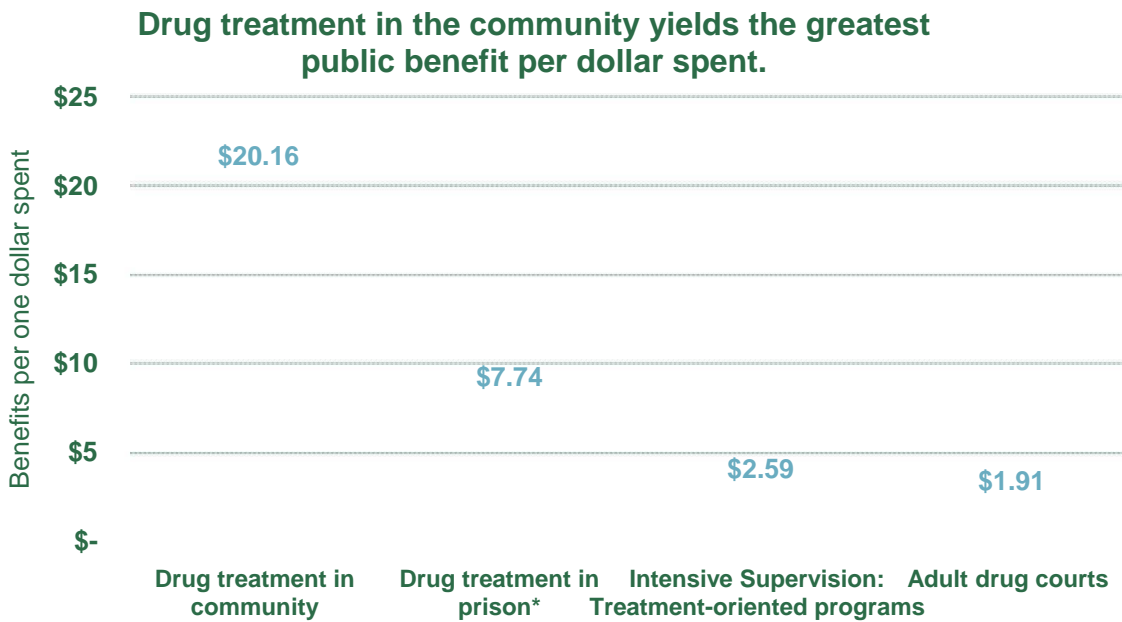
\$68
Average
cost per day
to use jail as a
sanction for a
relapse while in drug
court

treatment types can reduce recidivism and are cost effective—that is, the benefits outweigh the costs. But drug treatment in the community was by far the most cost-effective.

Researchers found that drug treatment in the community can reduce recidivism by 8.3 percent and produces \$21 in benefits to victims and taxpayers in terms of reduced crime for every dollar spent.⁴⁴ Drug treatment in prison produced only \$7.74 in benefits, and drug courts less than \$2 in benefits for every dollar spent. In other words, treatment in the community is about 10 times more cost-effective than

Treatment in the community is about 10 times more cost-effective than drug courts; it costs considerably less and is almost equally as effective as drug courts in reducing recidivism.

drug courts; it costs considerably less and is almost equally as effective as drug courts in reducing recidivism. In addition, treatment in the community allows people to stay with their families and contribute to their communities while also having more lifetime earnings—and therefore paying more taxes—than if they had received a conviction.⁴⁵



*Therapeutic communities or outpatient

Sources: Elizabeth K. Drake, Steve Aos, and Marna G. Miller, “Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State,” *Victims and Offenders*, 4:170–196. Table 1, www.wsipp.wa.gov/rptfiles/09-00-1201.pdf

DRUG COURTS WIDEN THE NET OF CRIMINAL JUSTICE CONTROL.

Despite drug courts' intention of being an alternative to incarceration for people with substance abuse problems, even the existence of a drug court can bring more people into the criminal justice system.

At their inception, drug courts were reserved for people who were arrested for a drug offense, or for a minor offense that may be a result of their addiction. Before drug courts, people may have had their case dropped or diverted to a community treatment program, but now judges and prosecutors have a criminal justice option, and may be more likely to use it in lieu of treatment referrals that come without the added burden of entanglement in the justice system.⁴⁶ People who usually qualify for drug court—those with low-level and nonviolent offenses—are frequently the same people who would otherwise receive short prison sentences or probation, frequently less daunting than a stint in drug court.⁴⁷

As an example, Judge Morris B. Hoffman at the Denver District Court found that the number of drug filings increased three times in the two years following the implementation of drug court.⁴⁸ Not all of the people charged entered drug court, but the number of drug admissions to prison doubled. This program was designed to reduce incarceration, especially for people with drug offenses; but instead the number of people with drug offenses going to prison doubled. This example shows that law enforcement may be using potential access to treatment as a reason to arrest people with drug

addiction who may not be receiving treatment in the community.

“It is clear that the very presence of drug courts is causing police to make arrests in, and prosecutors to file, the kinds of ten- and twenty dollar hand-to-hand drug cases that the system simply would not have bothered with before.”

Judge Morris B. Hoffman

Arresting more people for low-level, nonviolent offenses or drug offenses will result in more people ensnared in the justice system, regardless of whether they participate in drug courts. More arrests can lead to more convictions and more incarceration, dramatically increasing costs associated with the justice system, as well as the social costs on individuals and communities associated with criminal justice involvement.⁴⁹

With short-term detention as one sanction for non-compliance, drug courts also carry the potential to increase administrative and detention costs for local jails. These incarcerative sanctions may lead people to spend more time in jail than they would have if they'd received a traditional sentence,⁵⁰ especially since so many people in drug courts are charged with low-level offenses. One Santa Clara,

California drug court reported that people who completed the drug court program spent an average of 51 days in jail.⁵¹ In Baltimore, Maryland, participants spent an average of 55 days in jail for noncompliance.⁵²

While the use of jail sanctions to instill compliance in drug courts is common, it is not necessarily effective. One study compared two Maricopa County, Arizona drug court programs—one that threatened legal sanctions like jail time and the other that was prohibited from using jail sanctions—to examine the effects on program retention and

completion. The analysis found no differences in retention or completion between the two courts, concluding that

“Ultimately, when drug courts imprison failing participants, they punish them not for their underlying crimes, but for their inability to get with the program.” Josh Bowers, University of Chicago Law School

the threat of jail as a legal sanction may not be an effective way in which to motivate participants’ compliance.⁵³

“There is no evidence for the efficacy of jail sanctions. Although there is research evidence supportive of drug courts in general, the use of jail time as a ‘sanction’ to enforce treatment compliance is not supported. Drug courts around the nation have been using this tool for over 15 years, yet not a single study isolates the impact of jail sanctions in generating improved treatment outcomes.”

The California Society of Addiction Medicine

Emerging Specialty Courts

Due to the popularity of drug courts, many states and localities have expanded on this model to address other social issues experienced by people involved in the justice system. The emergence of “specialty” or “problem solving” courts are meant to tailor the courts to specific issues with the aim of providing better and more fair treatment to people who come before the court. Here are some of the current specialty courts in place around the country.

Tribal Healing and Wellness Court

A component of the tribal justice system, the Tribal Healing and Wellness Courts were created to address alcohol and drug misuse in tribal communities. It is based on the traditional drug court model, but is tailored to the unique needs of the tribal community and incorporate culture and tradition. The court is comprised of justice officials, as well as tribal elders and traditional healers to allow for a tribe-specific approach to treatment that addresses community needs and tribal customs.⁵⁴ Eighteen states currently offer these courts.⁵⁵

Reentry Court

Started in 2000 by the Office of Justice Programs’ Reentry Court Initiative, reentry drug courts were created to aid the unique process of moving from prison into the community. The program generally includes people released on parole who have been specifically selected for the program as a condition of their release, but some participants are compelled to participate by sentence or court order. In addition to court monitoring of participants, the reentry court is sometimes combined with the drug court to provide treatment services as well as other social services like helping people find jobs and housing.⁵⁶

DWI Court

A post-conviction court system, the DWI court works with people who have multiple driving while impaired (DWI) convictions. Participants are provided with an inpatient or outpatient drug treatment program while being monitored by the court with both home and field visits. Frequently, Alcoholics Anonymous meeting attendance is also required in addition to counseling through the courts and urinalysis and blood alcohol content (BAC) testing.⁵⁷ According to the National Association of Drug Court Professionals, as of December 2009, there were 172 designated DWI Courts and another 354 Hybrid DWI/Drug Courts in operation—a Hybrid DWI/Drug Court is one that started out as a Drug Court that now also takes people convicted of DWIs—bringing the total number of specialized courts working with people convicted of DWIs to 526.⁵⁸

Juvenile Drugs Court

The juvenile drug court is a special docket within a juvenile court that is assigned to a designated judge and involves intensive treatment and supervision services for youth with delinquency or status offenses who are considered drug-involved. Service areas include substance abuse treatment, mental health, primary care, family, and education. A team is assembled by the court and assigned to determine the best ways to address the problems of the youth and his or her family.⁵⁹

Family Dependency Treatment Court (Family Drug Court)

Family dependency treatment court is a specific docket within a juvenile or family court that includes selected cases of child abuse or neglect related to parental substance abuse. The

justice system partners with Child Protective Services and treatment personnel in order to ensure the safety of the children and provide parents the appropriate and necessary substance abuse treatment.⁶⁰

Veterans Treatment Court

The Veteran Treatment Court is a hybrid of drug and mental health courts, designed to address the rising number of veterans struggling with addiction, mental illness, or co-occurring disorders appearing in the justice system, most of whom have experienced combat-related trauma. The court program provides participants with treatment for substance abuse and/or mental health issues while also partnering with local Veterans Affairs offices to connect the veterans with available benefits.⁶¹ Twenty-one states currently offer veterans courts. **See text box on page 25 for further information on veterans courts.**

Mental Health Court

Mental health courts were created in response to the overrepresentation of persons with mental illness in the justice system. The court is currently an all voluntary program that diverts selected people who have undergone a specialized screening and been found to have a mental illness. Mental health courts place participants into a court-supervised program where they receive treatment and case management while being monitored by the court.⁶²

Community Court

The community courts deal with quality of life crimes within a community, such as prostitution, vandalism, or petty theft. The court was created with the goal of addressing the underlying reasons for the participant's behavior, while also having the damage of the crime compensated. Persons involved in the court are sentenced to community service in order to pay back the community while also being offered social services such as drug and mental health treatment. In the community court, more than just court officials are involved—entire communities become involved in the justice system to find the best way to hold the person accountable, but ensure positive life outcomes.⁶³

Domestic Violence Court

The domestic violence court has been designed to address the issues that have been associated with domestic violence crimes. The court cooperates with social services to ensure protection and support is offered to the victim of the domestic violence. Court monitoring of participants is also a part of the court, used to ensure protective orders and treatments are being followed.⁶⁴

Gambling Court

Gambling court operates through existing drug courts, selecting specific cases involving people who have a pending criminal charge and suffer from pathological or compulsive gambling disorders that may have resulted in illegal activity. Participants engage in judicially supervised treatment through a multitude of services such as Gamblers Anonymous, debt counseling, and if necessary drug or alcohol treatment, and more.⁶⁵

Truancy Court

Truancy courts are designed to identify and assist with the underlying causes of truancy occurring in a child's life. These courts take place either on school grounds or as a part of a special court docket within the juvenile court. Weekly progress reports are submitted regarding the child's progress that the court reviews to decide what services need to be provided such as counseling or special testing.⁶⁶

Prostitution Court

Prostitution courts address the unique needs of people engaged in illegal prostitution or solicitation. These courts work to help people make changes in their lives through supervision by the courts, case management, social services and mental health or substance abuse treatment, if needed. Prostitution courts have been initiated in Baltimore, Maryland, Cook County, Illinois and Dallas, Texas and continue to expand across the country.

Homelessness Court

Homelessness courts work with people who are homeless who were arrested for mostly nonviolent, public order offenses like littering, jaywalking, trespassing, sleeping on park benches and warrants related to arrests for these offenses. Participants may be asked to participate in substance abuse or mental health treatment, if needed, and in job training or other programs that are meant to benefit the participant.⁶⁷

Back on TRAC: Treatment, Responsibility, Accountability on Campus

First piloted in 2006 at Colorado State University, Back on TRAC: Treatment, Responsibility, and Accountability on Campus is a national initiative that partners higher education with the judicial system. The program redesigns existing college campus drug programs to take after the drug court model. Back on TRAC is targeted at college students using illegal substances who have come to the attention of the university, giving them the opportunity to voluntarily enter the program or face traditional consequences. Tailored to specifically cater to the college environment, the program incorporates drug treatment and compliance monitoring while avoiding a disturbance to the students' education.⁶⁸

Specialty courts have been growing in numbers over the past few years. Today there are around 1,219 specialty courts and 2,559 drug courts in the U.S.				
	12/31/2004	12/31/2005	12/31/2006	12/31/2007
Adult Drug Treatment Courts	811	985	1,115	1,174
Juvenile Drug Courts	357	386	408	455
Family Drug Courts	153	196	229	301
Designated DWI Courts	176	74	81	110
Reentry Courts	68	44	20	24
Tribal Healing and Wellness	54	65	67	72
Campus Courts	1	1	1	6
Federal District drug courts	1	4	5	5
Total	1,621	1,756	1,926	2,147

Source: C. West Huddleston, III, Douglas B. Marlowe, and Rachel Casebolt, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States, Volume II, Number 1* (Washington, D.C.: National Drug Court Institute, May 2008) www.ndci.org/sites/default/files/ndci/PCPII1_web%5B1%5D.pdf; Analysis of NADCP Drug Court Map, accessed January 2011, www.nadcp.org/learn/find-drug-court

DRUG COURTS DO NOT TREAT EVERYONE EQUALLY.

Many drug courts, especially those that receive federal funding,⁶⁹ do not accept people with violent offenses, or with any criminal history,⁷⁰ accepting instead people with “lesser” offenses or “first-time offenders.”

Drug courts “cherry pick.”

Drug courts that receive federal discretionary grants are required to focus on people accused of nonviolent offenses and those without a violent record.⁷¹ Yet research shows that drug courts have the greatest benefit for people who have more prior felony convictions and have previously failed other dispositions.⁷² The Urban Institute’s Justice Policy Center estimated that of the 1.5 million people arrested for a drug offense who are at risk of substance abuse or dependence, just over 109,900—about 7 percent—met current eligibility requirements for drug court, and only about half were enrolled in a drug court program.⁷³ Note that not everyone arrested for a drug offense uses or abuses drugs, and treatment may not be an appropriate option for everyone arrested for a drug offense.

Since people of color are more likely to have a felony conviction on their record at the time of an arrest related to drug abuse,⁷⁴ they are more likely to be excluded from consideration for drug court participation. There is also some evidence that sanctions are higher for people of color who violate the rules of the drug court program,⁷⁵ and that African Americans are less likely to graduate from drug court than whites⁷⁶—in some courts

African Americans are 30 percent more likely than whites to be dropped from the program.⁷⁷

A driving force behind “cherry picking” is the need to show success. If a program doesn’t work, it may be defunded. By picking the easier cases—people without prior or significant criminal records and with lesser addictions⁷⁸—courts are able to ensure more success and continuation of the program.⁷⁹ As people with the fewest previous convictions⁸⁰ and those with “lesser” addictions⁸¹ are the most likely to succeed, the number of graduates and success rates look better for courts that focus on this population. This leaves the people who may benefit most from drug court without access to treatment to help them live a successful life. If courts accept people with more challenging situations or addictions, they will have to adjust their requirements, treatment options and sanctions to best meet their needs.

**Only
7%**
of people
arrested for a
drug offense
who are at risk of
substance abuse
will qualify for
drug court

New Jersey Drug Courts: Alternatives to Incarceration for People who are Prison-Bound

New Jersey has shown that there is an alternative way to manage drug courts so that they don't "net-widen," and instead concentrate on reducing incarceration. In 1997, with the aid of federal grants, New Jersey established a Drug Court Initiative in Camden, Mercer and Passaic counties. Using New Jersey Statute 2C:35-14⁸² as a guideline for drug court eligibility, any person who is ineligible for probation due to a conviction for a crime that is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility may be sentenced to a term of "special probation" for a term of five years in accordance with this statute. A person who is not prison-bound but fits specific criteria, including drug or alcohol dependence, no history of a violent offense, and not deemed a risk to society if placed in treatment, may also be eligible for drug court. People who violate probation or receive a new offense while on probation may also be eligible. In 2008, restrictions on eligibility for people who have been convicted of two or more prior offenses were amended to allow more flexibility in admissions.

Aside from the unique eligibility requirements that focus more on people who are prison-bound and less on those who may be eligible for just probation, the New Jersey drug courts typically run in the same way as other drug courts around the country—though some may argue that they require more work than typical drug court programs. The courts require a guilty plea for participation and do not offer expungement of records after successful completion, and people are on probation for three to five years. Originally, participants were required to participate in a minimum six-month period of residential treatment; however, in August 2008, the statute was amended to allow judges to decide the appropriate treatment response based on the needs of the individual, and the five-year supervision requirement was amended to permit judges to release people early who had done well in the program.

Since 2002, New Jersey drug courts have enrolled over 9,000 participants, with a retention rate* of about 59 percent.⁸³ As of June 2010, the drug court program had graduated 1,307 participants and terminated 3,255. More than 87 percent of graduates were employed at the time of graduation and graduates had a re-arrest rate of 16 percent and a re-incarceration rate of 4 percent.

New Jersey receives the highest level of annual state funding for adult drug courts of any state in the nation—more than \$21million was appropriated for drug courts in FY2006.⁸⁴ The average annual cost for active drug court participants in New Jersey is approximately \$11,379. Starting in 2001, funding for drug treatment through these courts is channeled through the Division of Addiction Services, rather than the courts and the Department of Corrections.⁸⁵

*Retention rates are calculated by the number of new admissions divided by the number of graduates and active cases.

People of color and those of lower income are more likely to be kicked out of drug court.

A number of studies have examined the social and demographic factors associated with success or failure in drug court.⁸⁶ Most studies say that people with more resources are more likely to succeed in drug court⁸⁷ and that those who are unemployed⁸⁸ or under-educated⁸⁹ tend to do worse.

“The most likely treatment failures are genuine addicts and members of historically disadvantaged groups, who thereafter receive harsh termination sentences that often outstrip conventional plea prices.”

Josh Bowers, University of Chicago Law School

Studies also found that age correlates with drug court retention—those who are older do better.⁹⁰ A report from the Urban Institute found that the oldest participants have the best outcomes.⁹¹ These findings may have further implications for youth who participate in juvenile drug courts

rather than receiving community-based treatment. The same study from the Urban Institute also found that whites have lower rates of recidivism after graduating from a drug court program than people of color,⁹² indicating that race may also be a factor in successful completion of drug court, although this may be more related to social factors than race or ethnicity.⁹³

One of the reasons why people of color and those from poorer communities may be less likely to be accepted into drug court or successfully complete drug court is their increased likelihood of being arrested,⁹⁴ which can lead to program termination.⁹⁵ People from poorer communities and communities of color are more likely to be under some sort of police surveillance, whether they are under criminal justice control or not.⁹⁶ This increased surveillance can lead to more arrests and dismissal from drug court.

Are Specialty Courts Creating Two Systems of Justice: One for the “Deserving” and One for All Others?

“Each of these courts – termed ‘boutique courts’ by the more cynical among us – is touted as a new innovation in therapeutic jurisprudence, and evaluations are being done to assess their impact in relation to more standard case processing for these populations. At a broad level, they can be seen as structural attempts to infuse more discretion back into a justice system that has been systematically stripped of it during the preceding decades. What is most interesting, however, is that the courts are being established for groups of individuals who are seen as ‘deserving’ of better processing and more individualized attention from the justice system. Individuals with substance use problems or mental health disorders can be assumed to be less ‘criminal’ than others who might have done the same illegal act. Veterans ‘deserve’ more careful and helpful treatment by the courts because of the sacrifices they have endured and the government’s role in creating many of the situations that might have increased their chances of involvement in crime... Although we see these approaches as modern, they are in many ways an extension of our long standing pattern, from the Elizabethan Poor Laws forward, of linking the provision of services to moral standing; to separate out the morally ‘deserving’ from the ‘undeserving’ and to distribute resources and punishment accordingly.”

Edward P. Mulvey, Presidential Address, American Psychology-Law Society/Division 41, Vancouver, BC. March 20, 2010

Bad things happen when people are kicked out of drug court.

Despite some notable successes in drug court, the vast majority of drug courts have high failure rates—most of the people who start drug court do not successfully complete it. A study by the Government Accountability Office found that drug court graduation rates generally range from about one in four to about two in three.⁹⁷ While graduating from a drug court may result in an expungement—but not overall deletion—of a criminal conviction, failing drug court leads to both a criminal conviction and possibly a harsher sentence—including a possible prison sentence—than a participant would have received had he not attempted and failed drug court.⁹⁸

Collateral consequences of conviction

Having a felony conviction on your record, whether it is for a drug offense or other offense, can be extremely detrimental to a person's future. People with criminal records are frequently

discriminated against in the work place, and often face housing discrimination and loss of public benefits.⁹⁹ Students who receive a drug conviction can be barred from receiving federal financial aid for their education.¹⁰⁰ People who are kicked out of a post-plea drug court will be convicted on the original offense and face a number of these collateral consequences.

Harsher sentences

Research and personal accounts of drug court participants and their lawyers show that many people who fail drug courts receive harsher sentences from judges than they would have originally received if they'd never tried and failed at drug court.¹⁰¹ Although very few studies compare the outcomes of drug court participants who fail to people traditionally adjudicated,¹⁰² evidence from some drug courts suggests that people who fail drug courts receive longer sentences—in some cases even two to five times longer—than people who never attempted drug court.¹⁰³

“Drug courts see addicts as sick patients and their crimes as symptomatic of illness only as long as participants respond to care... addiction controls addicts’ behavior at the time of the crime (at least to a degree), and addicts therefore deserve less punishment and more rehabilitation; but addicts control their addictions at the time of treatment, and they therefore deserve greater punishment if they fail to exercise control.”

Josh Bowers, University of Chicago Law School

Veteran Courts: Helping or Hurting our Heroes?

The U.S. has over 23 million veterans of armed services, including 1.64 million and counting from the current wars in Iraq and Afghanistan.¹⁰⁴ As of 2004, the most recent year available, around 140,000 people in prison reported serving in the U.S. Armed Forces, 99 percent of whom are men.¹⁰⁵ About 20 percent of veterans in state prisons and 26 percent in federal prisons reported seeing combat duty. About a third of veterans in state prisons were “first-time offenders” and more than half (57 percent) were incarcerated for a violent offense. Just over half of both combat and noncombat veterans reported a history of mental health problems, and 55 percent of veterans in state prisons reported ever receiving treatment for substance abuse.

Recognizing the high number of people with veteran status coming before the courts, and the unique challenges of working with people in the justice system who are veterans and may have seen combat that led to their mental health or substance abuse problems, Judge Robert Russell created the first Veterans Treatment Court in 2008.¹⁰⁶ The veterans treatment court is a hybrid between drug and mental health courts, designed to address the rising number of veterans struggling with addiction, mental illness (including PTSD from combat), or co-occurring disorders appearing in the justice system. The court program provides participants with treatment for substance abuse and/or mental health issues while also partnering with local Veterans Affairs offices to connect the veterans with available benefits, veteran mentors and support groups. Twenty-one states currently offer veterans courts.¹⁰⁷

The majority of these courts require a guilty plea and focus on people charged with nonviolent offenses,¹⁰⁸ although some courts are expanding to include domestic violence cases. In this way, the courts, while trying to specialize in helping a specific group of people, still have the consequences of other forms of drug courts, including a criminal conviction, even if they complete the program; sanctions for not following the rules of the program, including incarceration; and traditional sentencing if the veteran fails to complete the program. Many veterans from the Iraq/Afghanistan wars may be opting out of drug courts for the same reasons that others opt out—because the requirements are so burdensome that they would rather serve a short time in jail or prison. In addition, the stigma associated with a mental health diagnosis that sometimes comes with participation in veterans courts can not only lead to challenges within the military community,¹⁰⁹ but also when searching for employment during and after the program.

While veterans courts appear to be a step in the right direction in working with people who have served our country through the military, these courts may not be the best or most effective option for working with people, and may even widen the net of people involved in the justice system. More research needs to be done on the effectiveness of these programs on working with people and keeping them out of the justice system in the future. In addition, with growing numbers of service members and veterans coming from communities of color, the racial impact of veterans courts—and all drug courts—should be examined further to ensure that people are being treated fairly.

RECOMMENDATIONS

The research and data show that providing treatment in the community has better outcomes and is more cost-effective than treatment in the criminal justice system for people with addictions. Expanding access to treatment outside the justice system to people who need it can help increase public safety, save money and improve life outcomes for individuals. Policymakers should expand treatment services through the public health system so people can get the help they need without having to be arrested. Changing the way we think about drug use and drug policies that bring so many people into the justice system can have a positive and lasting impact on individuals, families and communities.

Invest in front-end treatment and services. Providing treatment in the community before a person becomes involved in the criminal justice system can be an effective way to defeat a problem before it starts. Community-based treatment is truly an investment in public safety, one that will reduce incarceration and its economic and social costs.

Implement “real” diversion policies and alternatives to incarceration. Largely as a result of increasing prison and jail populations, states and localities across the country created or are in the process of implementing diversion programs that keep people—mostly those convicted of low-level and drug offenses—out of jail and prison.

- **California** has been using these programs for a decade through the Proposition 36 program, which diverts people with first- and second-time drug offenses to treatment rather than prison.¹¹⁰ Prop. 36 participants have outcomes similar to drug court participants and the program has been shown to save an estimated \$2,861 per participant, while having no adverse effects on public safety.
- **South Carolina** passed a bill last year authorizing probation and other alternatives to incarceration for people convicted of a first or second time drug offenses.¹¹¹ The package is estimated to save \$350 million, the cost of building a new prison which would otherwise be necessary.¹¹²
- **Hawaii** passed a bill a few years ago that created diversion programs for people convicted of first-time, nonviolent drug offenses, and was also made treatment available for people convicted of first-time, nonviolent property offenses whose offense was considered a result of a drug problem.¹¹³ A person sentenced under this law may petition for expungement of their record after successful completion of treatment and probation.
- **Colorado** passed a bill last year emphasizing diversion to substance abuse and mental health treatment for people charged with low-level drug possession.¹¹⁴
- **Texas** has been making a number of reforms in recent years, including a bill in 2003 that required that all people convicted of drug possession with less than a gram of drugs be sentenced to probation instead of incarceration.¹¹⁵ In 2007, the state’s budget allocated \$241 million for residential and non-residential treatment-oriented programs for people convicted of nonviolent offenses, along with enhancing in-prison treatment programs.¹¹⁶

Collect better data on drug courts. National level data on drug court participation and success is hard to come by, making national evaluations of the effectiveness of drug court difficult to measure. More data can lead to better evaluations and recommendations for best practices in drug court, and provide policymakers with information necessary to choose where to spend scarce funds.

Focus court treatment programs on those who would have gone to prison. If a person would have received a prison sentence, then a drug court program can act as a true diversion, saving the state money and protecting public safety through a more intensive period that includes both treatment and supervision.

Evaluate current drug court policies and practices. Drug court administrators should continuously evaluate policies on participant eligibility that may lead to “cherry picking” and practices that lead to higher failure rates for certain groups, especially those with lower income or people of color. More evaluation will lead to more fair and effective programs.

ADDITIONAL READING

For additional information on drug treatment courts, please visit the following reports:

Drug Policy Alliance, *Drug Courts Are Not the Answer: Toward A Health-Centered Approach to Drug Use* (2011). www.drugpolicy.org

National Association of Criminal Defense Lawyers, *America’s Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform* (Washington, D.C.: 2009) www.nacdl.org/drugcourts

The Sentencing Project, Ryan S. King and Jill Pasquarella, *Drug Courts: A Review of the Evidence* (Washington, D.C.: 2009). http://sentencingproject.org/doc/dp_drugcourts.pdf

Vera Institute of Justice, Reginald Fluellen and Jennifer Trone, *Do Drug Courts Save Jail and Prison Beds?* (New York, NY: 2000). www.vera.org/download?file=267/IIB%2BDrug%2Bcourts.pdfNACDL

About the Justice Policy Institute

Justice Policy Institute is a national organization focused on reducing the use of incarceration and the justice system and promoting healthy, equitable and safe communities.

About the author

Nastassia Walsh is a research associate at the Justice Policy Institute. In her five years working for JPI, Walsh has had the opportunity to work on a number of different collaborations and projects, both nationally and in states. She has presented on the issue of drug courts at the *2009 International Drug Policy Reform Conference* in Albuquerque, New Mexico and at *New Directions: A Public Health and Safety Approach to Drug Policy* in Washington, D.C. Walsh joined JPI shortly after earning her Master's Degree in forensic psychology from Marymount University, where she studied psychological principles in the law and injustices in the criminal justice system. She also holds a Bachelor of Science degree in psychology and justice studies from Arizona State University.

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- ² American Cancer Society, www.cancer.org/cancer/cancerbasics/cancer-prevalence
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- ⁴ FBI, Uniform Crime Report, *Crime in the United States, 2009* (Washington, D.C.: FBI, 2010) Table 29, www2.fbi.gov/ucr/cius2009/arrests/index.html
- ⁵ Heather C. West, William J. Sabol, and Sarah J. Greenman, *Prisoners in 2009*, Table 10 (Washington, D.C.: Department of Justice, 2010) <http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf>
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- ⁷ Bureau of Justice Statistics, *Key Facts at a Glance: The number of adults in the correctional population has been increasing* (Washington, D.C.: Department of Justice, Accessed February 2011) <http://bjs.ojp.usdoj.gov/content/glance/corr2.cfm>
- ⁸ *Drug Courts: The Second Decade* (Washington, D.C.: National Institute of Justice, 2006) www.ncjrs.gov/pdffiles1/nij/211081.pdf
- ⁹ National Association of Drug Court Professionals, *About NADCP*, Accessed February 2011. www.nadcp.org/learn/about-nadcp
- ¹⁰ Ryan S. King and Jill Pasquarella, *Drug Courts: A Review of the Evidence* (Washington, D.C.: The Sentencing Project, 2009). http://sentencingproject.org/doc/dp_drugcourts.pdf
- ¹¹ C. West Huddleston, III, Douglas B. Marlowe, and Rachel Casebolt, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States, Volume II, Number 1* (Washington, D.C.: National Drug Court Institute, May 2008) www.ndci.org/sites/default/files/ndci/PCPII1_web%5B1%5D.pdf, pages 4-5
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