



Drug Courts

A Review of the Evidence

Ryan S. King and Jill Pasquarella

April 2009



For further information:

The Sentencing Project

514 Tenth St. NW

Suite 1000

Washington, DC 20004

(202) 628-0871

www.sentencingproject.org

This report was written by Ryan S. King, Policy Analyst, of The Sentencing Project, and Jill Pasquarella, Research Intern.

The Sentencing Project is a national non-profit organization engaged in research and advocacy on criminal justice policy issues.

The Sentencing Project is supported by the generosity of individual contributors and the following foundations:

Morton K. and Jane Blaustein Foundation

Criminal Justice Policy Foundation

Ford Foundation

Bernard F. and Alva B. Gimbel Foundation

Herb Block Foundation

JK Irwin Foundation

Ralph E. Ogden Foundation

Open Society Institute

Public Welfare Foundation

Anonymous Donor at Rockefeller Philanthropy Advisors

Elizabeth B. and Arthur E. Roswell Foundation

Sandler Family Foundation

Restorative Justice Program, General Board of Global Ministries,
United Methodist Church

Wallace Global Fund

Copyright © 2009 by The Sentencing Project. Reproduction of this document in full or part in print or electronic format only by permission of The Sentencing Project.

INTRODUCTION

In 1989, officials in Miami-Dade County, Florida established the nation's first drug court. This special court was designed to bring drug treatment more fully into the criminal justice system, treating offenders with a history of drug abuse for their addiction, while simultaneously ensuring supervision, and sanctions when needed, from the courts. The movement for an alternative court to sentence drug offenders emerged from the rapidly evolving reality that the nation's decision to address drug abuse through law enforcement mechanisms would continue to pose significant challenges for the criminal court system. In 2004, 53% of persons in state prison were identified with a drug dependence or abuse problem, but only 15% were receiving professional treatment.¹ Drug-related crime continues to present a costly burden to American society, one that supply reduction efforts have failed to stem. In 2001, the Office of National Drug Control Policy estimated that in 1998 illegal drug use cost Americans \$31.1 billion in criminal justice expenses, \$30.1 billion in lost productivity and \$2.9 billion in costs related to property damage and victimization.²

Since 1989, drug courts have spread throughout the country; there are now over 1,600 such courts operating in all 50 states. The drug court movement reflects a desire to shift the emphasis from attempting to combat drug crimes by reducing the supply of drugs to addressing the demand for drugs through the treatment of addiction. Drug courts use the criminal justice system to address addiction through an integrated set of social and legal services instead of solely relying upon sanctions through incarceration or probation. This report surveys a range of research conducted on drug courts to date. Its aim is to outline general findings on the workings and efficacy of drug courts nationwide and to highlight potential concerns and areas where more research is needed.

¹ Christopher J. Mumola and Jennifer C. Karberg, *Drug Use and Dependence, State and Federal Prisoners, 2004*, Bureau of Justice Statistics, NCJ 213530, 2006.

² Steven Belenko, *Economic Benefits Of Drug Treatment: A Critical Review of the Evidence for Policy Makers*, Treatment Research Institute at the University of Pennsylvania, 2005, p. 2.

Despite general indications of drug court efficacy, nearly two decades after their introduction a number of questions remain. Because drug courts are designed and operated at the local level, there are fundamental differences that make cross-jurisdictional comparisons difficult. While the general framework may be portable from program to program – a diversion program for certain categories of low-level defendants who have demonstrated a linkage between their drug abuse and criminal offending – specific selection criteria, protocols for adjudication, means of supervision and revocation procedures can differ dramatically. The localism that defines drug court design complicates efforts to identify best practices. However, we can identify specific elements from different drug courts that are critical ingredients for a successful program. The foundation of a vibrant and sustainable drug diversion program rests both on indicators of success and learning and adapting to emerging challenges.

HOW DO DRUG COURTS WORK?

A number of elements define the operation of drug courts, although with variation based on background of the defendant population, legal issues, and other factors. Below are some elements common to all drug courts.

Legal Framework

There are generally two models for drug courts: deferred prosecution programs and post-adjudication programs. In a deferred prosecution or diversion setting, defendants who meet certain eligibility requirements are diverted into the drug court system prior to pleading to a charge. Defendants are not required to plead guilty and those who complete the drug court program are not prosecuted further. Failure to complete the program, however, results in prosecution. Alternatively, in the post-adjudication model, defendants must plead guilty to their charges but their sentences are deferred or suspended while they participate in the drug court program. Successful completion of the program results in a waived sentence and sometimes an expungement of the offense. However, in cases where individuals fail to meet the requirements of the drug court (such as a habitual recurrence of drug use), they will be returned to the criminal court to face sentencing on the guilty plea.

Eligibility Criteria

Though eligibility requirements differ by court, generally defendants must be charged with drug possession or a non-violent offense and must have tested positive for drugs or have an established substance abuse problem at the time of arrest.³ For drug courts receiving federal funding through the Bureau of Justice Assistance, there is a requirement to exclude persons with a current or prior violent offense. While the

³ A growing percentage of courts, however, have begun accepting offenders with prior convictions for violent offenses into their programs. Reginald Fluellen and Jennifer Trone, *Do Drug Courts Save Jail and Prison Beds?* Vera Institute of Justice, 2000, p. 5.

exclusion of persons with a history of violent offending, whether required by state or federal regulations, is premised on public safety grounds, there is some question as to whether such an exclusion truly serves the interest of public safety. In particular, the definition of a violent offense can include the mere possession of a weapon at the time of arrest, even if it was not presented, brandished, or used. Also, persons who are currently facing charges for a drug offense may be denied entry into the drug court because of a past, wholly unrelated offense. These narrow criteria for drug court participation have consequences for the potential overall diversionary impact of the programs.

Programming and Sanctions

Programs typically run between six months and one year, though many participants remain in the program for longer. Participants must complete the entire program cycle in order to graduate. Successful completion in all programs is contingent upon remaining drug-free and without arrests for a specified period of time. Participants must attend frequent status hearings with the judge who, along with judicial and clinical staff, monitors the progress of each individual.

A participant who is non-compliant with any of the drug court protocols can be sanctioned through a variety of means, including increased status hearings, drug tests or jail time. This is a key juncture in which both program design and judicial discretion have a demonstrable impact in shaping outcomes. Some situations, such as an individual refusing to continue participation in a treatment program, will result in termination and likely lead to the individual being taken into custody. But for persons who have violated the terms of their drug court sentence by relapsing, for example, a judge can exercise discretion in determining how to proceed. This may include modification of the treatment or imposing some type of sanction, including a brief period of incarceration. For a drug court system to be a viable diversion instrument for individuals who have a history of substance abuse, it must factor relapse and a flexible cadre of judicial responses into its design.

After two decades of implementation, research shows that many drug courts reduce recidivism and save taxpayer dollars. Evidence from a number of studies (collecting data from between 1 and 95 drug courts) shows that drug court graduates are rearrested less than comparison groups.⁴ The reduction in rearrest rates is the primary contributor to cost-savings for the majority of reporting drug courts.⁵

Recidivism

Graduates of drug courts are, according to current evaluations, less likely to be rearrested than persons processed through traditional court mechanics. Findings from drug court evaluations show that participation in drug courts results in fewer rearrests and reconvictions, or longer periods between arrests.

- An analysis of research findings from 76 drug courts found a 10% reduction in rearrest, with pre-adjudication courts experiencing a 13% decline in rearrest.⁶
- An analysis of 30 drug court evaluations found an average 13% decline in the rate of reconvictions for a new offense.⁷
- A meta-analysis of 57 studies estimated that participation in a drug court program would produce an 8% decline in crime relative to no treatment.⁸
- A Government Accountability Office report found that 13 of 17 courts reporting on post-program recidivism measured reductions between 4 and 25 percentage points in rearrests and reconvictions.⁹

⁴ National Institute of Justice, *Drug Courts: The Second Decade*, 2006, p. 7; Belenko, 2001, pp. 30-31; Government Accountability Office, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, 2005, p.44.

⁵ Belenko, 2005, p. 44 – 46; Belenko, 2001, p. 42- 43.

⁶ Shaffer, p. 4.

⁷ Barnoski & Aos, p. 4.

⁸ Steve Aos, Marna Miller, and Elizabeth Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*, Washington State Institute for Public Policy, 2006, p. 9.

⁹ Government Accountability Office, p. 52.

- An evaluation of drug courts in Florida and Missouri, which tracked drug court participant progress for 24 months, found a substantially lower rearrest rate for drug court graduates relative to the comparison group: 12% vs. 40% in Florida and 45% vs. 65% in Missouri.¹⁰ These represent a reduction in rearrest rates of 70% and 31%, respectively.
- Six drug courts in New York State averaged a 29% reduction in rearrest measured over 3 years following participants' initial arrest.¹¹
- Recent research suggests that these reductions in rearrest extend beyond the first few years following treatment. An evaluation of the Multnomah County, Oregon drug court found a 24% reduction in drug arrests for participants thirteen years after initial entry into the program.¹²

While it is generally accepted that drug courts effectively reduce rearrest rates relative to simple probation or incarceration, there is some reason to be cautious when interpreting these results. Some studies show little or no impact from drug court participation and it can be difficult to specify which components of the program or the research design may be contributing to these results.

For example, are the evaluation models appropriately specifying relevant factors that may impact outcomes, but are external to the treatment design? Gender, age, race, socioeconomic background, criminal history, and substance abuse history have all been shown to impact treatment outcomes.¹³ Many of these variables are not accounted for in analyses of drug court effectiveness. Operationalizing drug court variables can be difficult and outcome measures may be reflecting the interaction of these variables with the treatment modality.

¹⁰ Belenko, 2001, p. 30 – 35.

¹¹ Michael Rempel, Dana Fox-Kralstein, Amanda Cissner, Robyn Cohen, Melissa Labriola, Donald Farole, Ann Bader, and Michael Magnani, *The New York State Adult Drug Court Evaluation: Policies, Participants, and Impacts (Executive Summary)*, Center for Court Innovation, 2003, p. 2.

¹² Michael W. Finigan, Shannon M. Carey, and Anton Cox, *The Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs*, NPC Research, 2007, p. 28.

¹³ Michael Rempel and Christine Depies Destefano, "Predictors of Engagement in Court-Mandated Treatment: Findings at the Brooklyn Treatment Court, 1996-2000," *Drug Courts In Operation: Current Research*, 2001, pp. 91-93.

Additionally, definitions of recidivism and the length of time that recidivism is measured differ among the studies, making an absolute comparison difficult. Some drug court evaluations have measured rearrest rates without distinguishing between participants currently under supervision and those who have completed the program. This is important because drug court participants who graduate tend to have much lower recidivism rates than drug court dropouts.¹⁴ Some studies suggest that among drug court dropouts, time spent in treatment had little if any effect on post-program recidivism.¹⁵ This suggests that drug courts experiencing a less than desired effect on rearrest rates may want to focus on addressing the program design to encourage higher rates of retention.

Researchers have also noted that the composition of drug court participants needs to be addressed appropriately in developing a court model. For example, an evaluation of California's Proposition 36 diversion program for low-level drug offenders found that almost half of the persons who were receiving treatment for the first time had been using drugs for more than 10 years, and one in five had been using for more than 20 years.¹⁶ While the Proposition 36 is not a drug court model, it does illustrate that some treatment programs may be working with a population with a mature drug using history, which are unlikely to respond to the same programming as a population that has been using drugs for a shorter period. Thus, any evaluation of drug court outcomes must consider the drug abuse history of the people entering the program.

¹⁴ Government Accountability Office, p. 62.

¹⁵ Rempel, et al., p 5.

¹⁶ Darren Urada and Douglas Longshore, *Evaluation of the Substance Abuse and Crime Prevention Act, Final Report*, UCLA & Integrated Substance Abuse Programs, April 2007.

Cost Savings

Evaluations of the net costs and benefits of drug courts nationwide generally find that drug courts save taxpayer dollars compared to simple probation and/or incarceration, primarily due to reductions in arrests, case processing, jail occupancy and victimization costs. While not all persons diverted to drug court would have otherwise been sentenced to prison, for those individuals who are incarcerated, the average annual cost is estimated to be \$23,000 per inmate, while the average annual cost of drug court participation is estimated to be \$4,300 per person. A number of key evaluations have reported the following:

- In 2005, the Government Accountability Office found that seven drug courts evaluated had net benefits of between \$1,000 and \$15,000 per participant due to reduced recidivism and avoided costs to potential victims.¹⁷
- Evaluations of 11 drug courts in Oregon, Washington, Kentucky and Missouri found substantial cost savings. The Oregon drug court was estimated to save \$3,500 per participant due to reduced recidivism and incarceration. Six drug courts in Washington saved an average of \$6,800 per participant based on reduced rearrests and victimization costs.¹⁸
- A study of five drug courts in Washington found \$1.74 in benefits for every dollar invested in drug courts.¹⁹ This benefit results from reduced court costs associated with a decline in recidivism.
- A study in St. Louis found that the initial cost of drug courts (\$7,800 per graduate) exceeded that of someone completing simple probation (\$6,300 per person), but two years after the completion of the program, drug court graduates were realizing a net savings of \$2,600 per person resulting from lower jail costs, reduced crime victimization, and healthcare costs.²⁰

¹⁷ Government Accountability Office, p. 7

¹⁸ Belenko, 2005, pp. 44-45

¹⁹ Barnoski and Aos, p. 11.

²⁰ Belenko, 2005, p. 45

- A 1997 national survey of court administrators in 97 drug courts reported savings of as much as \$400,000 per year accumulated from the reduction in pre-trial stays and jail beds alone.²¹
- The Multnomah County evaluation found that ten years of operating a drug court resulted in \$9 million in savings based on case processing alone. Taking into account factors such as reduced recidivism and jail time and the savings due to reduced victimization, the court saved taxpayers \$88 million.²²
- Two counties in Michigan reported cost savings of \$1 million over a two-year period (or \$3,000 per participant) from fewer rearrests, less probation supervision time and fewer new court cases.²³

The Effect of Sanctions

A 1997 publication released by the National Association of Drug Court Professionals (NADCP) documents the 10 key components to a successful drug court design.²⁴ Component #6 outlines the use of rewards and sanctions as instruments to address compliance problems. The NADCP recognizes that “addiction is a chronic, relapsing condition” and that abstinence from drug abuse “is a learning experience, and each relapse to [alcohol and other drug] use may teach something about the recovery process.”²⁵ In order to account for relapse and other violations that will likely occur during a course of treatment, the NADCP recommends that court administrators use a system of graduated responses. Developing a system of both graduated rewards and sanctions recognizes that “there is value in . . . incremental progress toward the goal” of abstinence.²⁶ A participant who faithfully makes all court appearances and meets the obligations of the court may be rewarded with an acknowledgement of accomplishment.

²¹ Fluellen and Trone, p. 1

²² Finigan, et al., pp. 45 and 50

²³ Michigan Supreme Court, *Michigan Drug Treatment Court Performance Review*, Michigan Supreme Court, State Court Administrative Office, 2007, p. 1.

²⁴ The National Association of Drug Court Professionals, *Defining Drug Courts: The Key Components*, January 1997.

²⁵ Ibid, p. 23.

²⁶ Ibid.

In programs such as the Washington, D.C. drug court, participants who meet certain milestones receive a certificate at a public ceremony at the court. In addition, people who are currently in the program can attend the graduation ceremony to witness first-hand the ultimate goal of completing treatment. In contrast, persons who repeatedly miss required court appearances or fail drug testing, for example, may be subject to a range of sanctions. These may run the gamut from a warning by the judge, increased supervision by the court, or a limited stay in jail. While the aim of the drug court is to keep the treatment protocol flexible enough to address the violation while keeping the person in the program, repeated violations can result in expulsion from the drug court program and the commencement of conventional court proceedings.

In practice, courts tend to implement sanctions and rewards for a variety of reasons and under different circumstances. Regarding sanctions, the National Institute of Justice as well as a New York State drug court evaluation noted that many courts do not have a formal system under which sanctions are imposed, nor are records kept for when and why sanctions are enforced.²⁷ This is problematic when attempting to evaluate the efficacy of a drug court intervention. An evaluation of drug courts in Kings, Queens, and Suffolk Counties in New York found that “none routinely follow a ‘graduated sanctions’ model, where successive infractions are met with increasingly severe sanctions” and drug court personnel “frequently make individualized decisions based on what they believe will be more effective.”²⁸ While flexibility should be a hallmark of a well-designed drug court, running a court in the manner described above threatens inconsistent and arbitrary outcomes. Of the three courts studied in-depth on sanction use in New York, certain infractions were always met with the same sanction regardless of how many violations a participant had committed. For example, an arrest or the issuing of a warrant to a participant was always met with jail time in the Brooklyn court.²⁹ Jail sanctions were the most

²⁷ National Institute of Justice, p. 17; see also, Rempel, et al., p. 6

²⁸ Rempel, et al., p. 6

²⁹ Ibid.

common form of sanctions used in the reporting courts in New York City, with most stays 11 days or less.³⁰

The utility of relying upon sanctions as a means of ensuring program compliance presents a nuanced picture. Some evaluations have noted the following:

- A GAO evaluation of 16 drug courts found that the severity of sanctions was not an accurate predictor of program completion.³¹
- An evaluation of a Clark County, Nevada drug court documented that imposing any sanction was associated with a higher rearrest rate and lower graduation rates.³² The evaluation did not establish, however, whether the higher failure rate was related to the use of sanctions or to the profile of the participants.
- A Washington, DC pre-trial diversion court for drug offenders reported lower rates of drug use and rearrest among persons who were subjected to regular judicial supervision, drug testing, and potential sanctions compared to traditional processing of drug defendants.³³
- A study of a court-mandated drug treatment program in Brooklyn, NY found the strongest predictor of treatment success was the threat of “legal coercion.” Those individuals who faced more severe consequences in terms of potential incarceration should they fail to complete the treatment program achieved better retention rates.³⁴

³⁰ Michael Rempel, Dana Fox-Kralstein, Amanda Cissner, Robyn Cohen, Melissa Labriola, Donald Farole, Ann Bader, and Michael Magnani, *The New York State Adult Drug Court Evaluation: Policies, Participants, and Impacts*, Center for Court Innovation, 2003(a), p. 68.

³¹ Government Accountability Office, p.62

³² National Institute of Justice, p.7

³³ Adele V. Harrell, Shannon E. Cavanagh, and John Roman, *Findings from the Evaluation of the D.C. Superior Court Drug Intervention Program*, The Urban Institute, 1998, pp. 134-145.

³⁴ Rempel and Destefano, p. 107.

The data on sanctions presents a mixed picture. It may be that sanctions alone are not effective predictors of success, but in conjunction with other program elements can play an important role in leading to elevated retention rates. There is also some evidence suggesting that the implementation of sanctions is uneven in many courts, which might explain differential outcomes. Any consideration of the role of sanctions in a drug court environment provides important insight into intermediate steps that drug court administrators may take to avoid future rearrest. If sanctions are correlated with reduced program retention and elevated rearrest rates, the need for sanctions early on in treatment may be seen as an indicator that a participant is at a higher risk of failure. This provides the drug court administrators with the opportunity to revisit the treatment program and make any necessary adjustments in the interest of preventing future problems. Developing a flexible, graduated sanction program is a crucial contributor to a successful drug court program, because “even those who are eventually successful in drug court tend first to relapse, warrant, and violate other program rules.”³⁵ Thus, the sanction process should be seen as an opportunity to adjust treatment to limit subsequent relapse, rather than the first step on the path to an eventual termination of drug court participation and a likely sentence to custody.

The Role of the Judge

One of the unique aspects of the drug court model is the frequency with which judges interact with participants. The drug court judge’s role is a continuing partnership with the participants that does not end at adjudication. The relationship is less formalistic than in traditional courtrooms and is individualized based on the judge’s supervision of an individual’s progress.³⁶ As with other metrics used to

³⁵ Rempel, et al., 2003(a), p. 65.

³⁶ The appropriateness of placing judges in this role has been called into question by some commentators. Judge Morris Hoffman of the Denver District Court in Colorado contends that judges are not social workers and that placing them in such a position stretches them beyond their appropriate judicial function. While the coercive nature of drug court treatment is one of the most heralded aspects leading to its successes, Judge Hoffman asserts that the judicial branch should simply not be forcing medical treatment upon individuals in return for more lenient sentences. The criminal

determine the effectiveness of a drug court intervention, there remains some mixed evidence as to the role that a judge should play in the drug court process.

- The GAO report in 2005 noted that the demeanor and conduct of the judge did not predict a participant's success or failure.³⁷
- However, a series of studies have found that, while the judge did not appear to have an impact on program attendance, drug use, or criminal activity among drug court participants, there was an effect when examined by type of client.³⁸ Higher risk drug court participants (those with prior failed treatment episodes, for example) experienced a benefit from more intense judicial involvement, while lower risk participants did not receive any benefit. In one study, "[o]ver 80 percent of participants with a prior drug treatment history graduated from the program when there were assigned to bi-weekly hearings, compared to less than 20 percent of those assigned to as-needed hearings."³⁹

Thus, it appears that a judge may play an important role in determining drug court outcomes, but that the impact differs based on the client base. This is additional evidence in support of a drug court model that permits the staff to craft an individualized response of graduated sanctions based on each client's personal drug abuse and criminal history.

In addition, courts with a longer history of implementation have had the opportunity to monitor a number of judges as they cycle through the system. The evaluation of the Multnomah County drug court has done the most to evaluate some of the effects of multiple and rotating judges. They report the following:

justice system, he contends, should be an end in itself, not an end to something else. Morris B. Hoffman, "The Drug Court Scandal," *North Carolina Law Review*, June 2000, p. 1477.

³⁷ Government Accountability Office, p.62

³⁸ Douglas B. Marlowe, David S. Festinger, and Patricia A. Lee, "The Judge is a Key Component of Drug Court," *National Drug Court Institute Drug Court Review*, Vol. 4 (2), 2004, pp. 1-34.

³⁹ *Ibid*, p. 18.

- Judges serving multiple rotations on the court had better results in terms of reductions in rearrests.⁴⁰
- Participants who saw one or two judges only were far less likely to be terminated early and less likely to miss treatment sessions.⁴¹

In addition to the data from the Multnomah County drug court suggesting that the judge plays a key role in shaping the outcomes of clients in treatment, a focus group study of participants and staff in three New York drug court programs pointed to the importance of the judge in program success.⁴² By and large, judges were described as caring and compassionate, but strict when appropriate. Participants stated that the “hands-on role of the judge” and “intensive monitoring and drug testing” were helpful in retaining them in the program. In addition, the rewards and sanctions offered by drug court judges were important components to a successful completion of the program.

Treatment

Few evaluations have provided analysis on how the modality of treatment that drug court participants receive impacts their rates of success. The diverse range of participants accepted by drug courts makes it difficult to analyze practices nationwide, though it has been suggested that drug courts may not best serve those with the most serious addictions or those who use the hardest drugs. This is of significant concern in light of the findings from California’s Proposition 36, which suggest that there is a substantial population of individuals with mature drug use histories who have never received any treatment. Thus, a person with a drug-using past of this type will likely need a very different treatment protocol than someone who has only been using drugs for a limited time. It is crucial to disentangle failures

⁴⁰ Finigan, et al., p.39

⁴¹ National Institute of Justice, p.10-11; Amanda B. Cissner and Michael Rempel, *The State of Drug Court Research: Moving Beyond ‘Do They Work?’*, Center for Court Innovation, 2005, p. 11.

⁴² Donald J. Farole, Jr. and Amanda B. Cissner, *Seeing Eye To Eye?: Participant and Staff Perspectives on Drug Courts*, Center for Court Innovation, 2005, pp. 14-16.

of drug treatment due to an individual's reticence to complete treatment from those resulting from persons who were simply placed in a program that was inappropriate for their needs.

Criminologists Faith Lutze and Jacqueline van Wormer argue that for those who do have serious drug addiction problems, drug courts may not be an effective solution. For these persons, more intensive and long-term inpatient treatment would be the preferred strategy. Treatment specialists recognize that addiction is a complex bio-behavioral disorder; in curing addiction, patients often experience many relapses into drug use as they attempt to break their pattern of abuse.⁴³ In drug courts, relapses are dealt with both through treatment and punishment. Eventually, a participant with a number of relapses or who has failed to comply with protocol will be dismissed from the program and subject to prosecution.

Research on drug courts reflects this reality; studies have noted that even those who graduate from drug court programs experience relapses and commit other violations of their program during their recovery.⁴⁴ Meanwhile, persons using more serious drugs and with the most severe addiction problems may be left out of drug court programs because of their criminal history. New practices of admitting higher-level offenders are an improvement from past models. The GAO reports that three-quarters of courts nationwide admit repeat offenders and 16% admit offenders with a history of violent crime.⁴⁵ The question remains then, as to whether those who graduate drug court treatment tend to be those with less serious addictions, while those with significant addiction problems end up in jail?⁴⁶

There is also a concern about the time it takes to place an individual in a drug court program (the lag between being assigned to a drug court and beginning active

⁴³ Faith E. Lutze and Jacqueline van Wormer, "The Nexus Between Drug and Alcohol Treatment Program Integrity and Drug Court Effectiveness," *Criminal Justice Policy Review*, Vol. 18, No. 3, 2007 p. 226-245.

⁴⁴ Rempel, et al., 2003(a), p.65.

⁴⁵ Fluellen and Trone, p. 5.

⁴⁶ Hoffman, p. 1476.

treatment) and the length of the treatment protocol. A study of a treatment court in Brooklyn found that a critical predictor of success was whether a defendant was placed in treatment within 30 days.⁴⁷ This is of particular concern in light of the fact that some drug court programs suffer from a scarcity of treatment slots. This is even more of a challenge for women, who Rempel and DeStefano found, were likely to have to wait twice as long as men for an open treatment slot. If a drug court cannot overcome capacity issues, the likelihood of relapse will increase before an individual is even able to begin treatment. The length of time in treatment is also crucial to success.⁴⁸ Some studies suggest that a minimum stay of 90 days is necessary for a successful outcome. If drug courts are scrambling to find available slots, it is likely that the duration of treatment will suffer.

Lutze and van Wormer suggest that drug courts need to take better account of the multifarious needs of clients with substance abuse problems. Continual drug addiction is the result of a series of factors, including a patient's environment, socio-economic status and opportunity. Treatment for drug addiction then, should respond to the complex needs of participants. Medical and legal assistance should be combined with counseling and social services that address the root causes of drug abuse.⁴⁹

Impact on Prison Population

The Vera Institute of Justice is also concerned that the use of sanctions has resulted in participants spending more time in jail than they would have had they never enrolled in the drug court program. Because most individuals who enter drug court are convicted of non-violent offenses, many would have experienced short, if any, periods in jail. Participants who are punished with sanctions sometimes end up with multiple stays in jail.⁵⁰

⁴⁷ Rempel and DeStefano, p. 112.

⁴⁸ Ibid, p. 88.

⁴⁹ Lutze and van Wormer

⁵⁰ Fluellen and Trone, p. 6

In addition to diverting persons convicted of low-level drug offenses from the traditional criminal court system, drug courts were also intended to limit admissions to prison of people suffering from drug abuse. However, there is a growing concern that instead of providing an alternative sentencing route for arrestees, drug courts actually increase the number of people arrested on drug charges.⁵¹ Some studies suggest that since drug courts provide an additional venue in which to process offenders, law enforcement officials are able to make more arrests of lower level offenders.

In the Denver District Court, Judge Morris Hoffman notes that arrest numbers for drug crimes increased almost three-fold in the two years following the establishment of the drug court. Judge Hoffman contends that the drug court enabled police officers to make arrests that they would not have considered before.⁵² He implies that police officers are encouraged to make arrests for low-level drug offenses for which they would not have previously because of a perception that the drug court is an additional resource for adjudicating claims, as opposed to a diversion meant only for those who would have been arrested anyway.

Additionally, there is some evidence suggesting that drug courts may be exacerbating existing racial disparities in the prison system. Marquette Law School Professor Michael O'Hear identifies four reasons why drug courts may not address racial disparity in incarceration and could make it worse.⁵³ First, because drug court participation requires an individual to enter the criminal justice system, racial disparities in arrest patterns remain unaffected. Second, the narrow eligibility criteria tend to disqualify persons whose offenses would otherwise result in a prison sentence and those with a longer criminal history, thereby disadvantaging African Americans. Third, even successful drug court programs have a high failure rate and African Americans experience a higher rate of failure than whites due to socioeconomic

⁵¹ Michael O'Hear, "Rethinking Drug Courts: Restorative Justice As A Response To Racial Injustice," *Stanford Law & Policy Review*, 20, 2009, pp. 101-137.

⁵² Hoffman, pp. 1502 - 1503

⁵³ O'hear, pp. 117-120.

disadvantaged. Finally, drug court failures can result in *more* time in jail or prison than simply being adjudicated in the conventional criminal court process. One study found that persons who failed drug court were sentenced to terms two to five times longer than persons sentenced in traditional criminal court.⁵⁴

⁵⁴ Ibid, p. 119.

CONCLUSION & RECOMMENDATIONS

Research to date has consistently reported that drug courts are achieving important benefits. Still largely unknown, however, are the practices which lead to success or failure of a drug court. Of great concern is the contention that drug courts could be increasing the number of people arrested for drug crimes, instead of decreasing in the long term the number of people processed in the criminal justice system. Research has not yet focused on determining whether drug court participants would have ended up in the criminal justice system if not for the drug court. Increased and uniform tracking of participants' criminal history may answer some concerns about the net-widening effects of the drug court. It would also be helpful for future research to look at the effects of a pre-plea versus a post-plea model and the use of sanctions. Research should continue to monitor the rearrest and reconviction rates of both graduates and dropouts, distinguishing between within program rates and post-program rates. It will continue to be useful to know the demographic of graduates along with the rates of recidivism in the years that follow their graduation.



THE
**SENTENCING
PROJECT**
RESEARCH AND
ADVOCACY FOR REFORM

514 TENTH STREET, NW SUITE 1000

WASHINGTON, DC 20004

TEL: 202.628.0871 • FAX: 202.628.1091

WWW.SENTENCINGPROJECT.ORG