

**Drug Courts
Are Not the
Answer:**

**Toward a
Health-Centered
Approach
to Drug Use**

**A Drug
Policy
Alliance
release.**

We are the Drug Policy Alliance
and we envision new drug policies
grounded in science, compassion,
health and human rights.

Please join us.

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Executive Summary

This report seeks to address the lack of critical analysis that stymies the policy discussion on drug courts, to foster a more informed public debate on the 20-year-old criminal justice phenomenon, and to encourage policymakers to promote drug policies based not on popularity but on science, compassion, health and human rights.

This report attempts to answer two questions: 1) What impact have drug courts had on the problem they were created to address: the deluge of petty drug arrests that began to overwhelm courts and fill jails and prisons in the 1980s?; and 2) How do drug courts compare with other policy approaches to drug use in terms of reducing drug arrests, incarceration and costs as well as problematic drug use?

To answer these questions, the Drug Policy Alliance analyzed the research on drug courts, other criminal justice programs and non-criminal justice responses to drug use. We also received input from academics and experts across the U.S. and abroad. This comprehensive review of the evidence reveals the following:

- **Drug courts have not demonstrated cost savings, reduced incarceration, or improved public safety.** Oft-repeated claims to the contrary are revealed to be anecdotal or otherwise unreliable. Evaluations are commonly conducted by the creators of the programs being evaluated, and the result is research that is unscientific, poorly designed, and cannot be accurately described as evidence.

Drug courts often “cherry pick” people expected to do well. Many people end up in a drug court because of a petty drug law violation, including marijuana. As a result, drug courts do not typically divert people from lengthy prison terms. The widespread use of incarceration – for failing a drug test, missing an appointment, or being a “knucklehead” – means that some drug court participants end up incarcerated for *more time* than if they had been conventionally sentenced in the first place. And, given that many drug courts focus on low-level offenses, even positive results for individual participants translate into little public safety benefit to the community. Treatment in the community, whether voluntary or probation-supervised, often produces better results.

- **Drug courts leave many people worse off for trying.** Drug court success stories are real and deserve to be celebrated. However, drug courts also leave many people worse off than if they had received drug treatment outside

the criminal justice system, had been left alone, or even been conventionally sentenced. The successes represent only some of those who pass through drug courts and only a tiny fraction of people arrested.

Not only will some drug court participants spend more days in jail *while in drug court* than if they had been conventionally sentenced, but participants deemed “failures” may actually face longer sentences than those who did not enter drug court in the first place (often because they lost the opportunity to plead to a lesser charge). With drug courts reporting completion rates ranging from 30 to 70 percent, the number of participants affected is significant. Even those not in drug court may be negatively affected by them, since drug courts have been associated with increased arrests and incarceration in some cases.

- **Drug courts have made the criminal justice system more punitive toward addiction – not less.** Drug courts have adopted the disease model of addiction but continue to penalize relapse with incarceration and ultimately to eject from the program those who are not able to abstain from drug use for a period of time deemed sufficient by the judge. Unlike health-centered programs, drug courts treat as secondary all other measures of improved health and stability, including reduced drug use and maintenance of relationships and employment.

Some people with serious drug problems respond to treatment in the drug court context; not the majority. The participants who stand the best chance of succeeding in drug courts are those without a drug problem, while those struggling with compulsive drug use are more likely to end up incarcerated. Participants with drug problems are also disadvantaged by inadequate treatment options. Drug courts typically allow insufficiently trained program staff to make treatment decisions and offer limited availability to quality and culturally appropriate treatment.

Based on these findings, the Drug Policy Alliance recommends better aligning drug policies with evidence and with public health principles by:

- Reserving drug courts for cases involving offenses against person or property that are linked to a drug use disorder, while improving drug court practices and providing other options for people convicted of drug law violations;
- Working toward removing criminal penalties for drug use to address the problem of mass drug arrests and incarceration; and
- Bolstering public health systems, including harm reduction and treatment programs, to more effectively and cost-effectively address problematic drug use.

Introduction

Most drug courts have done a poor job of addressing participants' health needs according to health principles, and have not significantly reduced participants' chances of incarceration. They have also absorbed scarce resources that could have been better spent to treat and supervise those with more serious offenses or to bolster demonstrated health approaches, such as community-based treatment.

Forty years after the United States embarked on a war on drugs, national surveys reveal that a large majority of Americans now believe that drug use is a health issue.¹ This social development has manifested in significant policy change. Several states have passed legislation requiring public and private health insurers to cover drug and mental health treatment on par with treatment for other chronic health conditions. On the federal level, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and the even more expansive Affordable Care Act of 2010 promise to make drug treatment much more accessible within the mainstream health care system.

Nevertheless, U.S. policy remains dominated by a punitive approach to drug use. This legacy of punishment – and its inherent conflict with a health-centered approach – has persisted throughout the 20-year-old drug court experiment.

There is no doubt that drug courts – programs that seek to reduce drug use through mandated treatment and close judicial oversight – were created and continue to be run with unflagging dedication and concern for the health and wellbeing of individuals and communities. Nor is there any doubt that drug court judges and their staffs have helped change, even save, many lives. Most drug court judges have felt deep satisfaction in being able to help participants overcome chaos, illness and despair. There is, indeed, no shortage of success stories. Many participants have had dramatic, life-altering experiences in drug courts. Criminal justice sanctions do indeed deter some people from using drugs, and some people will stop their drug use when faced with the threat of such sanctions. These observations, however, do not end the discussion.

Most interventions help at least some people, and drug courts are no exception. But it is important to consider the full range of drug court impacts, both positive and negative, on all participants as well as on the criminal justice and other systems. It is also important to consider drug court outcomes within the larger context of potential policy options and practices to reduce drug arrests, incarceration and problematic drug use. In this light, the benefits of drug courts pale considerably.

The issue is not whether drug courts do some good – they undoubtedly do – but whether the proliferation of drug courts is good social policy as compared with other available approaches to addressing drug use. This report finds that, based on the evidence, drug courts as presently constituted

Introduction

continued

provide few, if any, benefits over the incarceration model on which they seek to improve. Alternatives to incarceration for drug possession remain essential, but better alternatives must be adopted and incarceration for drug law violations should be reduced through sentencing reform.

Sitting squarely within a framework of drug prohibition,² most drug courts have done a poor job of addressing participants' health needs according to health principles, and have not significantly reduced participants' chances of incarceration. They have also absorbed scarce resources that could have been better spent to treat and supervise those with more serious offenses or to bolster demonstrated health approaches, such as community-based treatment.

Most drug courts have limited their own potential to improve public safety by focusing largely on people who use drugs but have little, if any, history of more serious offenses. Many people end up in drug court because of a drug law violation – many appear to be for marijuana.³ (The National Drug Court Institute found marijuana to be the most prevalent drug of choice among participants in at least 25 percent of drug courts surveyed nationwide in 2007.⁴) In fact, a 2008 survey of drug courts found that roughly 88 percent exclude people with any history of violent offending, and half exclude those on probation or parole or with another open criminal case.⁵ Moreover, about one-third of drug court participants do not have a clinically significant substance use disorder.⁶ The same survey found that 49 percent of drug courts actually exclude people with prior treatment history and almost 69 percent exclude those with both a drug and a mental health condition.

This report examines drug courts in light of the criminal justice and health issues they were designed to address. It takes as a premise that punishing people who have neither done harm to others, nor posed significant risk of doing harm (such as by driving under the influence), is inappropriate, ineffective and harmful to individuals, families and communities. The report also recognizes that, whether the chronic health issue in question is hypertension, diabetes or drug use, punishing people for straying from their treatment plans, falling short of treatment goals, or relapsing, is contrary to core health principles.

The central thesis of this report is that there is an urgent need for a non-criminal, health-centered approach to drug use. This approach must be founded on the understanding – as evidence consistently demonstrates – that the benefits of punishment-oriented treatment programs for most people

whose illegal activity is limited to petty drug possession are outweighed by the negative consequences. These negative consequences include the lost opportunities of failing to dedicate criminal justice resources to more significant public safety matters and of failing to pursue effective, health-oriented policy interventions in response to drug use.

A health-centered approach would ensure that drug use or the perceived need for treatment should *never be the reason* that people enter the criminal justice system, and that the criminal justice system should *never be the primary path* for people to receive such help. Individuals' drug problems can be addressed, families and communities preserved, public health and safety improved, and money saved by providing assistance to people not only after but *before* drug use becomes problematic, *before* families fall apart, *before* disease spreads, *before* crimes are committed and *before* drug use becomes fatal.

While there is no basis in principle or evidence-based policy for bringing people into the criminal justice system (whether to jail or drug courts) solely for a drug possession offense, drug courts may be appropriate for people who have committed other offenses that require accountability, restitution and possibly incarceration. With this in mind, this report includes several relevant findings and recommendations.

The *Drug Courts and the Drug War* section of this report describes the evolution of drug courts and puts them in the context of current drug arrest practices and sentencing policies.

The next section, *Understanding Drug Courts: What the Research Shows*, provides a careful review of drug court research. It finds that claims about drug court efficacy are methodologically suspect, that the impact on incarceration is often negligible, and that costs are underestimated.

Mixing Treatment and Punishment: A Faulty Approach explores how combining principles of treatment and punishment distorts the delivery of effective legal and health services; how this distortion further enmeshes people in the criminal justice system for their drug use; and how punishment will always dominate in this arrangement.

The *Toward a Health-Centered Approach to Drug Use* section presents a framework for reducing the role of the criminal justice system in what is fundamentally a health issue and for expanding effective approaches that minimize the harms of drug use. It also includes recommendations for improving drug court practices by, among other things, focusing them away from people facing petty drug charges.

Drug Courts and the Drug War

Drug courts emerged as a direct response to the rapid escalation of the war on drugs in the 1980s and 1990s. The era saw bipartisan support for stepped-up enforcement of low-level drug laws and enhanced criminal penalties for the possession and sale of small amounts of illicit substances.⁷ In turn, millions of petty cases flooded the court system and people charged with minor drug law violations received harsh sentences that drastically increased the number of people in jails and prisons.

Judges in courtrooms across the country became frustrated as the same individuals repeatedly appeared in court on petty drug charges or faced lengthy prison sentences for minor drug violations. Out of this frustration grew multiple efforts to turn the criminal courtroom into a site for therapeutic intervention, where judges aimed to reduce drug use through court-based interventions and court-supervised treatment.⁸

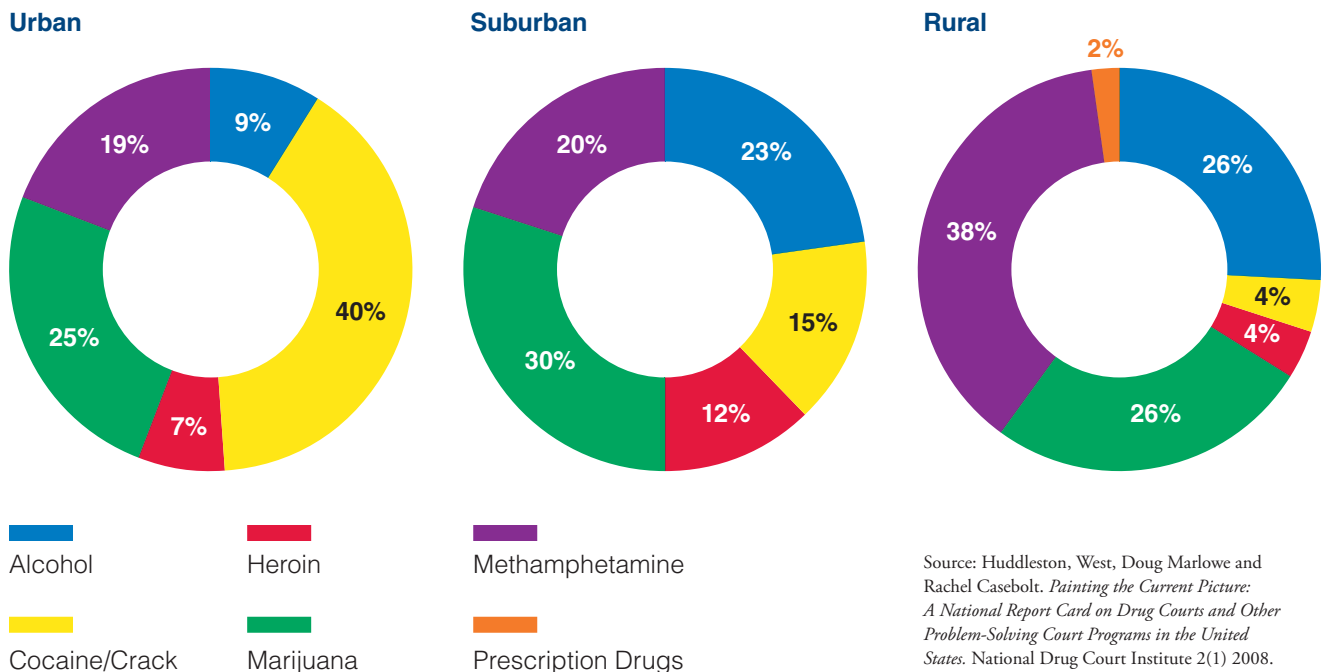
Drug courts are an application of therapeutic jurisprudence theories in which the judge does not ask whether the state has proven that a crime has been committed but instead whether the court can help to heal a perceived pathology.⁹ Drug courts adopted the disease model¹⁰ that posits that people struggling with drugs have a chronic disease that reduces their ability to control their behavior.¹¹

Because drug courts are developed locally, they tend to vary significantly in their rules and structure. (Indeed, drug courts are better understood as a category of approaches rather than a single type.) Typically, however, drug court eligibility is limited to people arrested on a petty drug law violation or property offense.¹² As noted previously, many of these appear to be marijuana violations. The prosecutor exercises wide discretion in determining who is actually referred to drug court. (Even where eligibility is met, about half of drug courts report rejecting eligible individuals because of capacity reasons.¹³) In most cases, participants must plead guilty as a prerequisite to entrance. Upon pleading guilty, they are mandated to treatment or other social service programs. Abstinence is monitored through frequent drug testing. Positive drug tests and other program violations are punished with sanctions, including incarceration and removal from the program.

In drug court, the traditional functions and adversarial nature of the U.S. justice system are profoundly altered. The judge – rather than lawyers – drives court processes and serves not as a neutral facilitator but as the leader of a “treatment team”¹⁴ that generally consists of the judge, prosecutor, defense attorney, probation officer and drug treatment personnel. The judge is the ultimate arbiter of treatment and punishment decisions and holds a range of discretion unprecedented in

Primary Drug of Choice Among Drug Court Participants

Percentage of Surveyed Drug Courts that Ranked Each Drug as the Leading Drug of Choice Among Participants



Today, nearly 6 in 10 people in a state prison for drug law violations have no history of violence or high-level drug sales.

the courtroom,¹⁵ including the type of treatment mandated, whether methadone prescription is acceptable (and at what dosage) and how to address relapse. The defense lawyer, no longer an advocate for the participant's rights, assists the participant to comply with court rules.¹⁶

The expansion of drug courts and other criminal justice programs that mandate treatment in the community (as opposed to behind bars) over the last twenty years reflects a growing sentiment that incarceration is not an appropriate, effective or cost-effective response to drug use. At first glance, their expansion might suggest that U.S. policies toward drug use have become more compassionate and health-oriented; yet the dominant policy response to drug use in the U.S. remains one of criminalization and punishment.¹⁷

From both an international and an historical perspective, current U.S. drug laws are abnormally severe. Following President Reagan's call for a major escalation of the war on drugs in 1982, annual drug arrests tripled to more than 1.8 million in 2007¹⁸ (before declining to 1.6 million in 2009¹⁹). This increase primarily involved not serious drug trafficking or sales, but possession; 79 percent of the growth in drug arrests during the 1990s was for marijuana possession alone.²⁰ The number of people incarcerated for drug law violations has increased 1,100 percent since 1980.²¹ Today, nearly 6 in 10 people in a state prison for drug law violations have no history of violence or high-level drug sales.²²

The U.S. locks up hundreds of thousands of people annually for drug law violations that would not warrant imprisonment in many European and Latin American countries, where incarceration for drug possession alone is comparatively rare.²³ Even for drug law violations that warrant imprisonment in Europe, sentences are generally longer in the U.S.²⁴ For example, a large-scale trafficking offense in Sweden (considered to be one of the strictest European countries with respect to drugs) merits a *maximum* prison sentence of 10 years.²⁵ In the U.S., by comparison, for over two decades until 2010, distribution of just 50 grams of crack cocaine (the weight of one candy bar) triggered a federal mandatory *minimum* prison sentence of 10 years.²⁶ Even after the 2010 federal crack sentencing reform, distribution of just 28 grams of crack cocaine triggers a mandatory minimum sentence of 5 years.²⁷

In the U.S., the consequences of a criminal conviction, particularly for a drug law violation, are severe and life-long. People convicted of a felony, whether or not they are ever incarcerated, face significantly diminished employment opportunities and much lower lifetime earnings. They may be prevented from voting and/or prohibited from accessing student loans, food stamps or other public assistance.

Criminal justice policies have not only limited the freedoms and opportunities of people convicted of low-level drug violations, but have also determined *who gains access* to limited publicly funded treatment resources.

The country's treatment system has not expanded proportionately to meet the growth in criminal justice referrals to treatment, which accounted for about 38 percent of participants in publicly funded treatment programs by 2007 – including 162,000 people ordered to treatment for marijuana that year.²⁸ As a result, treatment access for people seeking treatment voluntarily outside of the criminal justice system has diminished.²⁹ The proportion of treatment capacity available to the hundreds of thousands of people who seek treatment voluntarily each year (on their own volition or on the recommendation of a loved one, health provider, employer or other non-criminal justice source) fell from 65.1 percent in 1997 to 62.5 percent in 2007.³⁰

According to a 2007 Substance Abuse and Mental Health Services Administration (SAMHSA) study, treatment spending fell from 2.1 percent to 1.3 percent of all health spending between 1987 and 2003. During that time, private insurance payments for treatment declined by 24 percent, while public

spending on treatment increased 7.5 percent annually (more slowly than other health spending), likely to pay for treatment mandated by the criminal justice system.³¹

In addition to capacity limitations that lead to lengthy waiting lists, many people seeking treatment voluntarily (i.e., without a criminal justice mandate) face significant barriers. Federal government data find that 37 percent of people who want but do not receive treatment simply cannot afford it, while another 15 percent don't know how to access it.³² This suggests that people with more resources are better able to get treatment when they want it, while those with fewer resources have fewer treatment opportunities outside of the criminal justice system.

Stopgap Approaches to Systemic Problems

Drug courts have flourished at the expense of support services that are more accessible and that are more effective at improving health and reducing crime.³³ The focus on drug courts has distracted attention from the real, systemic issues that drive the scale and cost of incarceration for drug law violations³⁴ – primarily aggressive policing strategies and draconian sentencing laws.³⁵

Even if drug courts were dramatically expanded to scale to cover all people arrested for drug possession, between 500,000 and 1 million people would still be ejected from a drug court and sentenced conventionally every year.

For people with few resources, the criminal justice system has become a primary avenue to treatment programs. Nonetheless, many who enter the criminal justice system do not actually receive such services. People who are in prison and have a history of regular drug use are today less than *half as likely* to receive treatment while incarcerated as in 1991.³⁶ The criminal justice system may ultimately provide the least help to the people with the greatest need.

The country's more than 2,100 drug courts were estimated to have roughly 55,000 participants in 2008,³⁷ representing a tiny fraction of the more than 1.6 million people arrested on drug charges every year.³⁸ That is, there is one drug court for every 26 drug court participants – and, for every one drug court participant, there are 29 other people arrested for a drug law violation who are not in a drug court.

Although drug courts tend to describe their participants as “drug-involved,” this tends to obscure the reality that an overwhelming number of drug court participants wind up there for a drug law violation – often petty possession. Most drug courts continue to exclude even the lowest-level sellers and the vast majority of courts exclude people with any prior conviction or current charge for a violent offense (due partly to an ill-advised federal funding requirement).³⁹

With drug court completion rates ranging widely from 30 percent to 70 percent,⁴⁰ it is probably optimistic to assume that even 25,000 people will complete a drug court program each year.* The rest are deemed to have “failed.” Even if drug courts were dramatically expanded to scale to cover all people arrested for drug possession, between 500,000 and 1 million people would still be ejected from a drug court and sentenced conventionally every year.⁴¹ As this report discusses, however, drug courts should not focus their resources on those arrested for simple drug possession.

Absent policies to stem the flow of people into (and retention within) the criminal justice system for petty drug law violations, drug courts and other criminal justice-based treatment programs will not meaningfully reduce the imprisonment of people who use drugs.⁴²

* According to the Government Accountability Office (GAO), drug court completion rates are not directly comparable because “drug court programs have different program completion requirements, the rates were measured over varying time periods, and study designs can affect the completion measures.” There is thus no single average rate of completion.

Disparate Impacts on People of Color

Drug law enforcement practices and sentencing policies have had profound, disparate impacts on people and communities of color. By 2003, African Americans were arrested for drug law violations at a rate 238 percent higher than whites⁴³ and African Americans and Latinos comprised two-thirds of people incarcerated for drug law violations⁴⁴ – even though they use and sell drugs at rates comparable to whites.⁴⁵

Mass arrests and incarceration of people of color – largely due to drug law violations⁴⁶ – have hobbled families and communities by stigmatizing and removing substantial numbers of men and women. In the late 1990s, nearly one in three African-American men aged 20-29 were under criminal justice supervision,⁴⁷ while more than two out of five had been incarcerated – substantially more than had been incarcerated a decade earlier and orders of magnitudes higher than that for the general population.⁴⁸ Today, 1 in 15 African-American children and 1 in 42 Latino children have a parent in prison, compared to 1 in 111 white children.⁴⁹ In some areas, a large majority of African-American men – 55 percent in Chicago, for example⁵⁰ – are labeled felons for life, and, as a result, may be prevented from voting and accessing public housing, student loans and other public assistance.

Unfortunately, drug courts may actually exacerbate existing racial disparities in the criminal justice system. First, drug courts may increase the number of people of color brought into the criminal justice system. An increase in drug arrests (an effect called net-widening) has been documented following the



establishment of drug courts.⁵¹ Second, the number of people of color incarcerated may increase; net-widening brings in many people who do not meet narrow drug court eligibility criteria.⁵² Third, African Americans have been at least 30 percent more likely than whites to be expelled from drug court⁵³ due in part to a lack of culturally appropriate treatment programs,⁵⁴ few counselors of color in some programs⁵⁵ and socioeconomic disadvantages.⁵⁶ Finally, people who do not complete drug court are often given a sentence that is significantly longer – in one drug court, even two to five times longer – than if they were conventionally sentenced in the first place (often, because they have forfeited the opportunity to plead to a lesser charge).⁵⁷

Understanding Drug Courts: What the Research Shows

Drug courts are some of the most-studied criminal justice programs in recent years. Unfortunately, most of the existing research suffers major methodological shortcomings that render oft-cited drug court data unreliable and misleading. Attempts to generalize the findings of numerous drug court evaluations – in studies called meta-analyses – have been hamstrung by the lack of credible data in the original research. Moreover, drug court evaluations, which are often conducted by program developers (rather than independent researchers), largely focus on identifying best practices and improving outcomes rather than fundamental policy questions, such as whether a particular drug court reduces crime, incarceration and costs and, if so, whether the drug court does so better than other policy options.

As one researcher testified at congressional hearing in 2010, “Over half of the criminal justice programs designated as ‘evidence-based’ programs in the National Registry of Evidence Based Programs include the program developer as evaluator. The consequence is that we continue to spend large sums of money on ineffective programs (programs that do no good, and in certain circumstances actually do harm). It also means that many jurisdictions become complacent about searching for alternative programs that really do work.”⁵⁸

This appears to be true of drug courts. A close analysis of the most reliable research studies finds that on the whole drug courts, as currently devised, may provide little or no benefit over the wholly punitive system they intend to improve upon. Although many individuals will benefit from drug courts each year, many others will ultimately be worse off than if they had received health services outside the criminal justice system, had been left alone, or even been conventionally sentenced.

Finding: Drug Court Research Is Often Unreliable

Despite the large number of studies on drug courts, the poor quality of that research has led many to conclude that there is insufficient evidence to demonstrate that drug courts reduce crime and drug use. As John Roman, senior researcher at the Urban Institute, put it: “The central criticism is that they employ convenience samples or compare drug court participants with drug court failures, in effect stacking the deck to ensure that the study finds a positive effect of drug court.”⁵⁹ Meta-analyses (i.e., studies that aggregate and analyze data from multiple drug court evaluations) have been conducted in an attempt to provide more generalized and reliable data; however, meta-analyses’ output is ultimately limited by the quality of the data that went in.

A 2006 meta-analysis report oft-cited by drug court supporters as conclusive evidence that drug courts reduce recidivism, for example, warns that “The overall findings tentatively suggest that drug offenders participating in a drug court are less likely to reoffend than similar offenders sentenced to traditional correctional options. The equivocation of this conclusion stems from the generally weak methodological nature [of] the research in this area.”⁶⁰ Of the 38 studies included in the meta-analysis, only four used “random assignment to conditions” in order to protect against bias. A separate 2006 meta-analysis also frequently relied upon by drug court proponents as proof of drug courts’ efficacy found that the studies it depended on for its analysis had measured recidivism rates only for drug court participants who successfully completed the program – a group that accounted, on average, for only 50 percent of those who originally enrolled.⁶¹

The poor quality of the research has led federal Government Accountability Office (GAO) analysts and other researchers to conclude that the drug court research lacks critical insight into what happens to participants once they are expelled or graduate, and provides limited evidence as to whether drug courts change behavior and lessen recidivism and re-arrest.⁶²

In an attempt to produce more reliable findings on drug court outcomes, the National Institute of Justice funded a five-year, national drug court study – the Multi-Site Adult Drug Court Evaluation (MADCE) – that aims to address many of the shortcomings of existing drug court research. Preliminary results of MADCE, which appears to be better designed than previous studies, were released in 2009 and 2010, and are considered in this report.

Although many individuals will benefit from drug courts each year, many others will ultimately be worse off than if they had received health services outside the criminal justice system, had been left alone, or even been conventionally sentenced.

Understanding Drug Courts: What the Research Shows

continued

Finding: Drug Court Outcomes Are Not Markedly Better Than Probation

Unsound drug court studies have repeatedly claimed that drug courts reduce drug use and criminal behavior, but significant methodological shortcomings call their positive findings into question. Indeed, preliminary results of the lengthiest and largest study so far, the MADCE, find that drug court participation did not lead to a statistically significant reduction in re-arrests.⁶³

Drug court evaluations that have reached more positive conclusions than the MADCE study have, in most cases, failed to account for the practice of “cherry-picking,” tend to use improper comparison groups, and frequently fail to include follow-up data. Ultimately, most drug court studies are so poorly designed that they reveal only the obvious: that the successes succeed and the failures fail.⁶⁴

Cherry-picking is the selection of people deemed more likely to succeed. Many drug courts cherry-pick participants for at least two reasons. First, prosecutors and judges may cherry-pick defendants because of the limited capacity of the drug court combined with the political importance of achieving high success rates. Second, some drug courts may opt to knowingly enroll persons who do not need treatment, but for whom drug court participation is seen as the only way to avoid a criminal record for a petty drug law violation. This may not be an insignificant occurrence. As mentioned previously, about one-third of drug court participants do not have a clinically significant substance use disorder.⁶⁵

As a result of cherry-picking, people who suffer from more serious drug problems are often denied access to drug court.⁶⁶ This, in turn, gives rise to misleading data because it yields drug court participants who are, on the whole, more likely to succeed than a comparison group of conventionally sentenced people who meet drug court eligibility criteria but who are not accepted into the drug court.

The use of non-equivalent treatment and comparison groups may be the most prevalent and serious flaw in drug court research. For example, many studies use a treatment group comprised either of graduates only or of graduates and those still in drug court, electing not to count the many who have dropped out or been ejected from the program. That treatment group is then compared with either a group that was

ineligible for drug court, that was eligible but opted for conventional sentencing, or that was expelled from or dropped out of drug court.⁶⁷ Although these biases can be mitigated to some extent by statistically accounting for people’s background and risk factors, including motivation and drug use severity, most drug court evaluations do not account for these biases.⁶⁸

A 2005 Government Accountability Office (GAO) analysis of drug court research attempted to extract conclusions based on studies that met *very basic* reliability standards. The GAO’s review found some positive drug court impacts on recidivism while participants remained in the program (in comparison with conventional sentencing), limited evidence that reductions in recidivism endure after program participation, and no evidence that specific drug court components (including incarceration sanctions) affect recidivism or program completion. The GAO concluded that drug courts’ impacts on drug use are mixed.⁶⁹

Three U.S. drug court program evaluations have used more reliable, controlled designs: Maryland’s Baltimore Drug Court, Arizona’s Maricopa County Drug Court and New Mexico’s Las Cruces DWI Court. These three programs randomly assigned people either to drug court or conventional probation. The studies of these three programs are the most rigorous drug court evaluations available. Importantly, even these studies fall far short of establishing the efficacy of drug courts under controlled conditions. Nor do they come close to illustrating that drug courts are typically effective in practice.

For example, Baltimore’s drug court participants were less likely to be re-arrested than the control group of probationers during the first two years after the initial arrest.⁷⁰ After three years, however, this difference became statistically insignificant, with a stunning 78 percent of drug court participants being re-arrested.⁷¹ Overall, drug court participants averaged 2.3 re-arrests, compared with 3.4 for the control group⁷² – a difference that is statistically significant but which may not warrant the substantial resources invested.

Maricopa County’s drug court did not reduce recidivism or drug use after 12 months.⁷³ A 36-month follow up study (which unfortunately excluded nearly 20 percent of original study participants) found that, although Maricopa County drug court participants were less likely to be re-arrested than the control group, there was no difference in the average number of re-arrests between the groups – probably because a portion of drug court participants had a higher number of re-arrests.⁷⁴