

Drug War **FACTS**

Drug Courts and Treatment as an Alternative to Incarceration

In recent years Drug Courts have become a popular, widely praised and rapidly expanding alternative approach of specialized courts that deal with drug offenders and sometimes with people charged with nonviolent crimes who are drug users. Drug Courts substitute mandatory treatment for incarceration. Because drug courts are new, much of the research on their effectiveness is recent, incomplete and inconclusive. Although Drug Courts have been much applauded, some concerns about their fairness and effectiveness have been expressed. These include:

- **Providing coerced treatment at a time when the needs for voluntary treatment are not being met creates the strange circumstance of someone needing to get arrested to get treatment.**
- **People who are forced into treatment may not actually need it. They may just be people who use drugs in a non-problematic way who happened to get arrested. Arrest may not be the best way to determine who should get treatment services.**
- **Drug Courts are a much less expensive way of handling drug cases in the criminal justice system, thus they may result in more people being arrested and processed, many of whom would not have been arrested or would have been diverted. Thus, drug courts may be expanding the number of people hurt by the drug war.**
- **Drug Courts are creating a separate system of justice for drug offenders, a system that does not rely on the key traditions of an adversary system of justice and due process, a system where the defense, prosecution and judge work as a team to force the offender into a treatment program.**
- **Drug Courts only rely on abstinence-based treatment. For example, methadone is not available to heroin addicts. In addition, they rely heavily on urine testing rather than focusing on whether the person is succeeding in employment, education or family relationships.**
- **Drug courts also often mandate twelve step treatment programs which some believe to be an infringement on religious freedom.**
- **Drug Courts invade the confidentiality of patient and health-care provider. The health-care provider's client is really the court, prosecutor**

and probation officer, rather than the person who is getting drug treatment.

- 1. According to the nonprofit thinktank the RAND Corporation, "Subsidized by \$33 million in funds disbursed pursuant to the 1994 federal crime act, over 700 drug courts are now in operation by local jurisdictions across the country."**

Source: Drug Policy Research Center, "What Makes Drug Courts Succeed or Fail?", DPRC Newsletter (Santa Monica, CA: RAND Corporation, June 2000), p. 4.

- 2. "The last decade has seen the rapid growth of specialized court forums in the states. The first drug court was created in Dade County, Florida in 1989; all but ten states followed that example within the next decade."**

Source: Rottman, David, et al., Bureau of Justice Statistics, State Court Organization, 1998 (Washington, DC: US Department of Justice, June 2000), p. 207.

- 3. Drug courts offer court-supervised treatment as an alternative to incarceration for low-level drug offenders. Most target first-time drug offenders, while others target habitual offenders.**

Source: Marc Pearce, National Center for State Courts Information Service, "Drug Courts: A Criminal Justice Revolution", Report on Trends in the State Courts 1998-1999 Final Report (Williamsburg, VA: National Center for State Courts, 1999), pp. 8-12.

- 4. In 1996, there were a total of 9,794,149 arrests reported to the FBI, and 7,600,241 arrestees. Of these, 66.6% -- 5.01 million people -- were drug users. Also in 1996, there were a total of 2,166,630 drug arrests, and 1,678,174 arrestees. Of these, 82% -- 1,379,624 offenders -- were estimated to be drug users.**

Source: Anglin, M. Douglas, et al., National Evaluation Data and Technical Assistance Center, Drug Use Prevalence Estimates among Adult Arrestees in California, Texas, and the US: Final Report (Los Angeles, CA: UCLA Drug Abuse Research Center, June 28, 1999), pp. 39-43.

- 5. In an article published in the University of North Carolina Law Review**

in June 2000, Colorado Judge Morris B. Hoffman wrote, "Although many studies and many kinds of studies have examined drug courts, none has demonstrated with any degree of reliability that drug courts work."

Source: District Judge Morris B. Hoffman, Second Judicial District (Denver), State of Colorado, "The Drug Court Scandal", North Carolina Law Review (Chapel Hill, NC: North Carolina Law Review Association, June 2000), Vol. 78, No. 5, p. 1480.

6. **Recidivism Rates Compared**

City	Traditional Court	Drug Court
Denver, CO	58.0%	53.0%
Multnomah County, OR (Portland)	1.53 ^a	0.59 ^a
Oakland, CA	1.33 ^a	0.75 ^a
Riverside, CA	33.0%	13.4%
Travis County, TX (Austin)	41.0%	38.0%
Wilmington, DE	51.1%	33.3%

^aExpressed not as a percentage, but rather as the average number of arrests suffered during the follow-up period."

Source: Belenko, Steven & Dumanovsky, Tamara, Bureau of Justice Assistance, US Department of Justice, "Special Drug Courts: Program Brief 2", (Washington, DC: US Department of Justice, 1993), and Granfield, Robert & Eby, Cindy, "An Evaluation of the Denver Drug Court: The Impact of a Treatment-Oriented Drug Offender System 10" (1997), as cited by District Judge Morris B. Hoffman, Second Judicial District (Denver), State of Colorado, "The Drug Court Scandal", North Carolina Law Review (Chapel Hill, NC: North Carolina Law Review Association, June 2000), Vol. 78, No. 5, p. 1496.

7. The State of Arizona's Drug Treatment and Education Fund "was established in January of 1997 to expand services for drug offenders and to utilize probation for non-violent drug offenders." According to a report on the first year of operation, a total of 2622 offenders were served by the program. Of that number, 932 completed their programs, of which number only 61.1% -- 568 offenders -- completed successfully.

Source: Arizona Supreme Court, Adult Services Division, Administrative Office of the Courts, State of Arizona, Drug Treatment and Education Fund Legislative Report Fiscal Year 1997-1998 (Arizona: Arizona Supreme Court, March 1999), p. 9.

- 8. A study of Arizona's Drug Treatment and Education Fund estimates that the program saved more than \$2.5 million statewide in fiscal year 1998.**

Source: Arizona Supreme Court, Adult Services Division, Administrative Office of the Courts, Arizona, Drug Treatment and Education Fund Legislative Report Fiscal Year 1997-1998 (Arizona: Arizona Supreme Court, March 1999), p. 7.

- 9. The state's study of Arizona's diversion program, offering treatment in place of incarceration, contains this important caveat: "Not enough time has elapsed since program inception for the collection of data to accurately reflect recidivism rates."**

Source: Arizona Supreme Court, Adult Services Division, Administrative Office of the Courts, State of Arizona Arizona, Drug Treatment and Education Fund Legislative Report Fiscal Year 1997-1998 (Arizona: Arizona Supreme Court, March 1999), p. 6.

- 10. "Even offenders who do not succeed in drug court appear to be less criminally active than they were previously. This may be due to the benefits of treatment or the supervision, sanctions, intensive surveillance, and specific deterrence of the drug court."**

Source: Gebelein, Richard S., National Institute of Justice, "The Rebirth of Rehabilitation: Promise and Perils of Drug Courts" (Washington, DC: US Department of Justice, May 2000), p. 5.

- 11. "To facilitate an individual's progress in treatment, the prosecutor and defense counsel must shed their traditional adversarial courtroom relationship and work together as a team. Once a defendant is accepted into the drug court program, the team's focus is on the participant's recovery and law-abiding behavior -- not on the merits of the pending case."**

Source: National Association of Drug Court Professionals Drug Court Standards Committee, "Defining Drug Courts: The Key Components"

(Washington, DC: US Department of Justice), January 1997, on the web at <http://www.ojp.usdoj.gov/dcpo/Define/key2.htm>, last accessed August 9, 2000.

- 12. Treatment options must be carefully considered by the courts. Various Federal court rulings have determined that offering only AA and NA programs, because of their religious basis, violates the establishment clause of the US Constitution. Ruling in the case of Kerr v. Farrey in the 7th Circuit Federal Court of Appeals, Judge Diane P. Wood wrote, "We find, to the contrary, that the state has impermissibly coerced inmates to participate in a religious program." Judge Wood further notes that "the Court of Appeals of New York has recently come to the same conclusion we reach today in Matter of David Griffin v. Coughlin," and that "Our conclusion is thus in harmony with that of other courts that have considered similar questions."**

Source: Ruling in the United States Court of Appeals for the Seventh Circuit No. 95-1843 James W. Kerr, Plaintiff-Appellant, v. Catherine J. Farrey and Lloyd Lind, Defendants-Appellees, Judge Diane P. Wood, Decided August 27, 1996, from the web at <http://www.kentlaw.edu/7circuit/1996/aug/95-1843.html>, last accessed August 9, 2000.

- 13. It is possible that managed care will become a barrier to the success of drug courts and treatment as alternative to incarceration. The National Institute of Justice notes, "The premise of managed care, increasingly the norm, is that the least treatment required should be provided. This is at odds with research on substance abuse treatment, which has shown that the longer a person remains in treatment, the more successful treatment will be. Furthermore, managed care assumes the patient will aggressively pursue the treatment he or she deems necessary. Because most drug court clients initially prefer not to be treated, they are likely to welcome a ruling by the health care provider or the managed care insurer that treatment is not needed. Finally, drug court clients frequently encounter delays in obtaining treatment funding or must cobble together bits and pieces of various programs because the "exhaustion" rules of health care plans limit treatment."**

Source: Gebelein, Richard S., National Institute of Justice, "The Rebirth of Rehabilitation: Promise and Perils of Drug Courts" (Washington, DC: US Department of Justice, May 2000), p. 6.

- 14. "An individual who has an out-of-control addiction commits about 63 crimes a year. Assuming this could be reduced to 10 for someone who is in or has completed treatment, and multiplying it by the 200 offenders in Delaware's probation revocation track who comply with all requirements, a single drug court may prevent more than 10,000 crimes each year."**

Source: Gebelein, Richard S., National Institute of Justice, "The Rebirth of Rehabilitation: Promise and Perils of Drug Courts" (Washington, DC: US Department of Justice, May 2000), p. 5.

- 15. In a recent law review article, Colorado Judge Morris B. Hoffman writes, "Reductions in recidivism are so small that if they exist at all they are statistically meaningless. Net-widening is so large that, even if drug courts truly were effective in reducing recidivism, more drug defendants would continue to jam our prisons than ever before."**

Source: District Judge Morris B. Hoffman, Second Judicial District (Denver), State of Colorado, "The Drug Court Scandal", North Carolina Law Review (Chapel Hill, NC: North Carolina Law Review Association, June 2000), Vol. 78, No. 5, p. 1533-4.

- 16. "As the results of more sophisticated evaluations become available, preliminary success rates will not be sustained. As less tractable groups participate, rates of compliance and graduation will decline and recidivism will rise."**

Source: Gebelein, Richard S., National Institute of Justice, "The Rebirth of Rehabilitation: Promise and Perils of Drug Courts" (Washington, DC: US Department of Justice, May 2000), p. 5.

- 17. James L. Nolan Jr., an assistant professor of sociology at Williams College, notes "Likewise, in a study conducted by W. Clinton Terry, professor of criminal justice at Florida International University, no real differences were found between the recidivism rates of those who completed and those who dropped out of Broward County's Drug Court treatment program. Only a 4 percent difference in the number of felony rearrests and a 1 percent difference in the number of misdemeanor rearrests were found between the two groups."**

Source: Nolan, James L., *The Therapeutic State*, (New York, NY: New York University Press, 1998), p. 104.

- 18. James L. Nolan Jr. discusses the 1993 American Bar Association study of drug courts in his book *The Therapeutic State*. The study found that among offenders who were sent to the Drug Court, 20% were rearrested for a drug offense and 32% were rearrested for any felony offense within one year of the sampled arrest. Among pre-Drug Court defendants, 23% were rearrested for a narcotics offense and 33% for any felony offense within one year. He further notes, "Again, they found little difference between the samples. Drug offenders sent through the Drug Court were rearrested, on average, 324 days after their first court appearance, whereas drug offenders sentenced prior to the Drug Court were rearrested, on average, 319 days after their first court appearance."**

Source: Nolan, James L., *The Therapeutic State*, (New York, NY: New York University Press, 1998), p. 105.

- 19. "In identifying target populations, drug courts need to be sensitive to class and race bias. Unless care is taken, diversion courts may tend disproportionately to work with white and middle-class substance abusers."**

Source: Gebelein, Richard S., National Institute of Justice, "The Rebirth of Rehabilitation: Promise and Perils of Drug Courts" (Washington, DC: US Department of Justice, May 2000), p. 5.

- 20. In the Arizona study of treatment as an alternative to incarceration, the demographics of those referred to treatment differed from the racial composition of the Arizona state corrections system.**

Demographic Group	Anglo	African-American	Hispanic	Native American
Received Diversion to Treatment	59.9%	9.2%	24.6%	4.6%
General Prison Population	45.7%	14.6%	33.7%	4.6%

Source: Arizona Supreme Court, Administrative Office of the Courts, Adult Services Division, "Drug Treatment and Education Fund Legislative Report, Fiscal Year 1997-1998", March 1999, p. 5; prison population stats from the Arizona Department of Corrections on the web at <http://www.adc.state.az.us:81/Who.htm>.

21. David Rottman of the National Center for State Courts noted in an article for the American Judges Association's Court Review, "Specialized forums like drug or domestic violence courts require a judicial temperament in interacting directly with litigants and an openness to insights from fields like mental health.

"It is unclear that legal training is the best preparation for judging in specialized contexts."

Source: Rottman, David B., "Does Effective Therapeutic Jurisprudence Require Specialized Courts (and do Specialized Courts Require Specialist Judges?)", *Court Review* (Williamsburg, VA: American Judges Association, Spring 2000), pp. 25-26.

22. "When a drug court judge steps down, it is not always possible to find a sufficiently motivated replacement. Without a highly motivated judge, the drug court approach simply does not work."

Source: Gebelein, Richard S., National Institute of Justice, "The Rebirth of Rehabilitation: Promise and Perils of Drug Courts" (Washington, DC: US Department of Justice, May 2000), p. 6.

23. In a recent law review article, Colorado Judge Morris B. Hoffman writes, "By existing simply to appease two so diametric and irreconcilable sets of principles, drug courts are fundamentally unprincipled. 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. They are, instead, simply enabling our continued national schizophrenia about drugs."

Source: District Judge Morris B. Hoffman, Second Judicial District (Denver), State of Colorado, "The Drug Court Scandal", *North Carolina Law Review* (Chapel Hill, NC: North Carolina Law Review Association, June 2000), Vol. 78, No. 5, p. 1477.

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