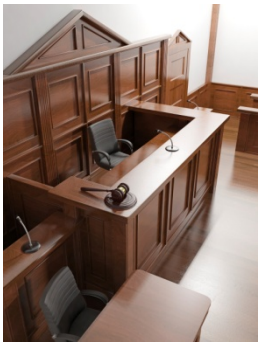
JUSTICE POLICY INSTITUTE

ADDICTED TO COURTS:

How a Growing Dependence on Drug Courts Impacts People and Communities

MARCH 2011



INTRODUCTION

Of the 9 percent of people in the U.S. who are classified with substance abuse or dependence on drugs and/or alcohol,[1] less than a fourth receive treatment. For those who do, over a third (37 percent) are referred by the criminal justice system.[2] The criminal justice system is the largest source of referrals to substance abuse treatment nationally.

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, over the last few decades there has been a war on people who use drugs, fought through the criminal justice system.

The problem with relying on the criminal justice system to address substance misuse is twofold. Not only must people receiving treatment through the criminal justice system face the collateral consequences associated with such involvement, they often are not able to address their addiction before being arrested for a drug-related offense due to a lack of community-based treatment options. This further contributes to the disproportionate representation of lower-income people in the criminal justice system.[4]

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.

Drug courts widen the net of criminal justice control.

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.[5] Today, the U.S. and its territories run 2,559 drug treatment courts and another 1,219 "problem solving" courts.[6] Despite drug courts' intention to be 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.

Before drug courts, those arrested for a drug offense or low-level offense related to their addiction 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.[7] People who usually qualify for drug court frequently would otherwise receive short sentences or probation; long drug court sentences can be daunting and may increase risk of failure and longer sentences later.[8]

Treatment through the justice system is not more effective than other treatment.

Data from the Substance Abuse Mental Health Services Administration (SAMHSA) Treatment Episode Data Set (TEDS) shows little difference in success rates for people who are referred to treatment by criminal justice agencies versus those treated through other sources.[9] 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 were more likely to end up incarcerated than people referred from other sources, 4 percent versus 1 percent, respectively.

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.[10] 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.[11]

Drug courts are not the best way to improve public safety.

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.[12] However, treatment through the criminal justice system—and through drug courts—is not the only option, and some options may work better than others.

A study by the Washington State Institute for Public Policy 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.[13] Drug courts, therefore, do not necessarily have the best public safety outcomes of all justice-related treatment programs.

Drug courts are not as cost-effective as other options.

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,[14] compared to an average of $4,300 per person for a year of drug court.[15] 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.
- 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,[16] at an average cost of around $68 per day.[17]
- 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 court[18] and be sentenced for the original offense, frequently more harshly than they would have if they had never attempted drug court.[19]

Researchers found that drug treatment in the community produces $21 in benefits to victims and taxpayers in terms of reduced crime for every dollar spent.[20] Drug treatment in prison produces only $7.74 in benefits, and drug courts less than $2 in benefits for every dollar spent.

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,[21] 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.[22] In Baltimore, Maryland, participants spent an average of 55 days in jail for noncompliance.[23]

Drug courts do not treat everyone equally.

Federal guidelines require that drug courts that

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.

receive federal funding through discretionary grants focus on people accused of nonviolent offenses and those without a violent record.[24] Yet, research shows that drug courts have the greatest benefit for people who are considered to be the harder cases, those who have more prior felony convictions and who had previously failed other dispositions.[25]

Most studies say that people with more resources are more likely to succeed in drug court.[26] In Addition, the Urban Institute found that whites have lower rates of recidivism after graduating from a drug court program than people of color,[27] 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.[28]

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 for 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.

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. These initiatives should be encouraged.

Collect better data on drug courts. National level data on drug court participation and success is hard to come by, making 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.

The 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. To read the full report, ***Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities***, please visit www.justicepolicy.org.

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