

**Testimony
of
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Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to speak today about drug courts and pre-trial diversion. I am a senior researcher at the Justice Policy Center at the Urban Institute, where for more than a decade we have engaged in extensive research on the impact of drug courts and other pre-trial interventions on crime and public safety. However, the views expressed are my own and should not be attributed to the Justice Policy Center, the Urban Institute, its board, or its funders.

Drug Courts and Diversion

Drug use creates a substantial burden on both the American economy and America's social fabric, causing harms to users, their families, their communities, and all taxpayers who pay for law enforcement. In the past two decades, the use of alternatives to incarceration for drug-involved offenders has grown from experimental programs to business as usual, albeit at a modest level of investment compared with the costs of jails, prisons, and more traditional community supervision.

Typically, alternatives to incarceration programs require that drug-involved offenders remain in the community where they receive drug treatment under the supervision of a judge

or probation officer. As a result, the American criminal justice system stands at the nexus of drug use, drug treatment, and drug-related harm. The most visible point in that nexus is the drug court. In drug courts, drug-involved offenders repeatedly stand before the same judge to discuss their progress in drug treatment and to jointly plot a course that leads to their sober departure from criminal justice system supervision.

After two decades of operations, from 1989 to 2010, the drug court will see its one-millionth drug-involved offender this year. That achievement is cause for both applause and concern. Since drug courts average about a 10 to 20 percent reduction in recidivism among their clients, the cumulative effect of one million clients treated is surely associated with millions of prevented crimes, and tens of thousands of improved lives. The concern grows from the slow rate of adoption of this highly visible and efficacious program. While treatment alternatives to incarceration— and drug courts in particular— are becoming fixtures in criminal case processing, the rate at which offenders enroll in these programs is growing very slowly. Each year, less than 5 percent of drug-involved offenders in need of treatment actually enter a drug court. Some of the slowness in the expansion of drug courts results from severe restrictions on eligibility for participation, which prevents many arrestees who would do well in drug court from participating.¹ Those restrictions on eligibility result from both a lack of funds to serve everyone who could benefit from drug court and concerns that arrestees treated in the community rather than held in prison may commit new crimes while in drug court that prison would have prevented.

¹ Avinash Bhati and John Roman, "Treating Drug-Involved Offenders: Simulated Evidence on the Prospects of Going to Scale," *Journal of Experimental Criminology* 6, no. 1 (2010): 1–33.

At the same time, new diversion models, such as Hawaii's Opportunity Probation with Enforcement (HOPE),² have recently emerged. Early evidence suggests that diversion can reduce criminal recidivism at a much lower cost than drug court. The programs must be successfully replicated in various settings, and more research is required to understand the effects of these diversion programs on multiple participant outcomes. Still, there is enough encouraging data to begin to consider how these programs could be integrated into front-end court processing. In particular, would these programs crowd out current alternatives to incarceration, such as drug courts, or could they be integrated into an intervention continuum, with low-cost diversion at the front-end and higher-cost, intensive, treatment drug courts at the other end.

I discuss three issues in this testimony. First, I take up the issue of whether there is now sufficient evidence to conclude that drug courts are effective at reducing drug use and crime in light of soon-to-be released results from the National Institute of Justice-funded study, the Multi-Site Adult Drug Court Evaluation (MADCE). Second, I discuss why, in light of the improvement in drug court participant outcomes, drug courts are not used more often to divert drug-involved offenders from jail and prison. Finally, I discuss whether drug courts and other alternatives to incarceration programs are complements or substitutes, and consider what a continuum of diversion programming might look like and how it could substantially broaden the number of arrestees diverted rather than incarcerated.

Drug Courts, Drug Use, and Crime

² Mark Kleiman, *Making Community Supervision Work: Hope for Reducing Drug Abuse, Crime, and Incarceration* (Washington, DC: Washington Office on Latin America, 2010); Angela Hawken and Mark Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE* (Washington, DC: The National Institute of Justice, 2009).

Drug use affects crime in various ways. Extensive research links drug use to criminality.³ Chronic drug users commit crimes to pay for their habit, individuals under the influence of drugs commit crimes because their inhibitions are lowered and their self-control is reduced,⁴ and illegal drug markets create conflict and violence.⁵ In addition, drug users are more likely to be the victims of violence than non-drug users, and criminal behavior increases as the frequency and intensity of use increase.⁶

However, crime decreases as drug use declines, particularly income-generating crimes. Research suggests that drug treatment can be effective in reducing demand for drugs among users, and consequently can reduce criminal offending related to drug use. Economic studies have found that drug treatment is more cost-effective than incarceration,⁷ that intensive long-term treatment is most effective,⁸ that direct interaction with a judge is more effective for serious drug users,⁹ and that violent offenses cause the greatest economic damage to communities.¹⁰ The Drug Abuse Treatment Outcomes Study (DATOS) found that after one year of treatment, drug use, illegal activities, and psychological distress were each reduced by about 50 percent. Arrest rates declined from 34 percent in the year before intake to 22

³ R. J. MacCoun, B. Kilmer, and P. Reuter, "Research on Drug-Crime Linkages: The Next Generation," in *Toward a Drugs and Crime Research Agenda for the 21st Century* (National Institute of Justice Special Report, 2003); R. J. MacCoun, and P. Reuter, *Drug War Heresies: Learning from Other Vices, Times, and Places* (New York: Cambridge University Press, 2001).

⁴ P. Goldstein, "The Drug/Violence Nexus: A Tripartite Conceptual Framework," *Journal of Drug Issues* 14 (1985): 493-506.

⁵ D. A. Boyum and M. A. Kleiman, "Substance-Abuse Policy from a Crime-Control Perspective," in *Crime: Public Policies for Crime Control*, edited by J. Q. Wilson and J. Petersilia (Oakland, CA: Institute for Contemporary Studies, 2002), 331-82.

⁶ M. D. Anglin, D. Longshore, and S. Turner. "Treatment Alternatives to Street Crime: An Evaluation of Five Programs," *Criminal Justice & Behavior* 26, no. 2 (1999): 168-95.

⁷ J. P. Caulkins, C. P. Rydell, W. L. Schwabe, and J. Chiesa, *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?* (Santa Monica, CA: Rand Corporation, 1997).

⁸ D. D. Simpson, G. W. Joe, B. W. Fletcher, R. L. Hubbard, and M. D. Anglin, "A National Evaluation of Treatment Outcomes for Cocaine Dependence," *Archives of General Psychiatry* 56 (1999): 507-14.

⁹ D. B. Marlowe, D. S. Festinger, and P. A. Lee, "The Judge Is a Key Component of Drug Court," *National Drug Court Institute Review* 4, no. 2 (2004): 1-34.

¹⁰ Bhati and Roman, "Treating Drug-Involved Offenders," 2009.

percent one year after enrolling in treatment, and the average economic benefit from long-term residential treatment was \$10,344.¹¹

The criminal justice system stands at the intersection of drug, crime, and treatment. Drug users face a significant and ongoing risk of arrest and incarceration. For example, a part-time drug seller in Washington, D.C., has a 22 percent risk of imprisonment in any single year, and will spend about a third of a criminal career incarcerated.¹² Clearly, it is in the interest of the criminal justice system to distinguish between those who possess drugs for personal use or who commit crimes to support drug habits from those who commit drug-related crimes for profit and power. On one hand, treatment targeted at chronic drug users is effective. On the other hand, young drug users and sellers are most likely to be violent and thus most deserving of scarce prison beds.

However, it is difficult for the criminal justice system to distinguish drug users in need of treatment from criminal drug offenders, since drug sellers are often drug users.¹³ The scale of the problem contributes to the difficulty as 1 in 100 Americans is in prison on any given day and 1 in 31 Americans is under criminal justice supervision (often for drug-related crimes).¹⁴ The Bureau of Justice Statistics estimates that about half of both federal prisoners and jail inmates abuse or are dependent on drugs.¹⁵ Few inmates ever receive treatment at any stage within the criminal justice system. This is because the criminal justice system has

¹¹ P. M. Flynn, P. L. Kristiansen, J. V. Porto, and R. L. Hubbard, "Costs and Benefits of Treatment for Cocaine Addiction in DATOS," *Drug and Alcohol Dependence* 57 (1999): 167-74.

¹² P. Reuter, R. MacCoun, and P. Murphy, *Money from Crime* (Santa Monica, CA: RAND Corporation, 1990).

¹³ Reuter, MacCoun, and Murphy, *Money from Crime*, 1990.

¹⁴ Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: The Pew Charitable Trusts, 2009); Pew Center on the States, *One in 100: Behind Bars in America in 2008* (Washington, DC: The Pew Charitable Trusts, 2008).

¹⁵ C. Mumola and J. Karberg, "Drug Use and Dependence, State and Federal Prisoners, 2004" (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006).

trouble distinguishing users from offenders and because treatment slots are limited.¹⁶

Among incarcerated populations, only about 15 percent received drug treatment.¹⁷

Drug-related crime is hard to combat, but for the past two decades, judges in the United States have used an approach radically different from the traditional adversarial process. Drug-involved offenders are screened at arrest, and those found to be eligible are assigned to special court dockets or caseloads where these arrestees receive community-based drug treatment under close judicial supervision. Those who fail drug court are usually incarcerated, while those who succeed return to their community with a new chance to be productive citizens.

Drug court processing begins soon after arrest. Drug court clients who meet clinical and legal eligibility requirements are offered the opportunity to enroll in drug court. Clinical eligibility criteria vary widely, but drug courts usually focus on a particular population. In some drug courts, that means that only those with long histories of substance abuse are eligible, while others may not focus on clients with demonstrated dependency, choosing instead to focus on a less serious population. Legal eligibility criteria are generally established at the beginning of court operations and many drug courts follow federal guidelines that exclude offenders with violent histories. Beyond violence, legal eligibility also varies widely along the continuum of criminal severity, with some courts focusing on first-time misdemeanants, others on clients with long histories of felony convictions, and most falling somewhere in between. Some of the decision about whom to target is a function of the availability of treatment resources and some is a function of the risk aversion of drug court stakeholders. While the drug court literature tends to show that the biggest benefits come

¹⁶ A. Harrell and J. Roman, "Reducing Drug Use and Crime among Offenders: The Impact of Graduated Sanctions," *Journal of Drug Issues* 31, no. 1 (2001): 207–32.

¹⁷ J. Karberg, and J. James, *Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2005).

from serving the most serious offenders, the decision to treat serious offenders in the community rather than incarcerating them is politically risky. If the most serious offenders reduce their offending, and in doing so save victims and taxpayers money, they still are likely to commit more— and more serious— crime than would a less risky population.

Drug courts employ several techniques to ensure offenders complete their treatment as directed. Each drug court client is assigned a case manager to coordinate service delivery, including, but not limited to, drug treatment. Drug court clients are routinely drug-tested and regular court hearings review client behavior. If clients have committed infractions, graduated sanctions (sanctions that become incrementally more severe), including brief periods of confinement in jail, are used to encourage better future behavior. Persistent noncompliance can result in dismissal from the drug court, and dismissal often results in a prison sentence. In addition to sanctions, the level of treatment is reviewed on a regular basis, and positive behaviors are rewarded. The entire drug court process generally lasts 12 to 18 months, and a substantial period of drug-free and infraction-free behavior is required before a client “graduates” from drug court. Once a client graduates, his or her record is either cleared of the original charge or the sentence is substantially reduced.

How Effective Are Drug Courts?

Drug courts are among the most studied criminal justice interventions, with more than 100 studies having been completed to date. However, these studies have been widely criticized.¹⁸ The central criticism is that they employ convenience samples or compare drug court clients with drug court failures, in effect stacking the deck to ensure that the study finds a positive effect of drug court. The consensus of prior research is that drug courts have a statistically

¹⁸ See K. W. Whiteacre, “The Jury’s Still Out on Drug Courts. Join Together Online” ([Q: publisher?]], 2004). But also see, J. Roman, “Accreditation Key to Creating the Next Generation of Drug Courts” (Join Together Online, 2004).

significant, but relatively modest effect on client outcomes. Reviews of large numbers of drug court studies by the U.S. Government Accountability Office (2005), and meta-analyses by the Washington State Institute of Public Policy; Wilson, MacKenzie, and Mitchell¹⁹; and Shaffer²⁰ generally conclude that drug courts reduce the chance of rearrest by 10 to 20 percent in the year after enrollment. The research also suggests that drug court clients use fewer days of prison and tend to have longer crime-free periods before a new arrest. These meta-analytic studies collect data on all prior studies of drug courts that meet a minimum threshold of rigor and synthesize the findings into a single estimate of drug court effect. In the three meta-analytic studies, adjustments were made for the substantial variation in the quality of the studies included in the meta-analysis. While these adjustments do not rule out the possibility that poor study designs have contributed to the finding of drug court effectiveness, the consistency of these findings, and their similarity to results from the most rigorous randomized experimental studies, provide support for their conclusions.

Note that these findings do not apply to juveniles. Although there are now several hundred juvenile drug courts in the United States, much less is known about their effect.²¹ In fact, there is ample reason to believe that drug courts will be substantially less effective for juveniles. First, the teen years are typically the peak of an individual's crime and drug-using career, and many—if not most—juvenile offenders will stop committing crimes and using drugs with no official intervention. Second, few juveniles meet clinical standards of addiction and thus the adult drug court model, which is centered on treating addiction, may be ineffective. Third, juveniles may experience worse long-term outcomes due to long-term

¹⁹ D. B. Wilson, O. Mitchell, and D. L. MacKenzie, "A Systematic Review of Drug Court Effects on Recidivism," *Journal of Experimental Criminology* 2, no. 4 (2006): 459–87.

²⁰ Deborah K. Shaffer, "Reconsidering Drug Court Effectiveness: A Meta-analytic Review" (Dissertation, University of Cincinnati, 2006).

²¹ Butts, Jeffrey A. and John K. Roman, editors. 2004. *Juvenile Drug Courts and Teen Substance Abuse*. Washington, D.C.: The Urban Institute Press.

exposure to the juvenile justice system and anti-social peers. And finally, juveniles with long-term juvenile justice system contact are likely to fare worse than similar peers who don't receive such intervention, as the labeling effect will be to brand them as addicts.

The Multi-Site Adult Drug Court Evaluation

Despite the breadth of research on drug courts and the general consensus of moderately positive effects, the poor quality of studies has led many to conclude that there is insufficient evidence to definitively state whether or not drug courts reduce crime and drug use. To address this concern, in 2004, the Urban Institute (UI), RTI International (RTI), and the Center for Court Innovation (CCI) received funding from the National Institute of Justice (NIJ) in the U.S. Department of Justice to conduct a rigorous, five-year, multi-site evaluation of adult drug courts. The objectives of the Multi-Site Adult Drug Court Evaluation (MADCE) are to

- Test whether drug court participants achieve better outcomes related to continued substance use and recidivism than similar offenders not exposed to drug courts;
- Isolate key individual and program factors that influence participant outcomes;
- Test effects of variations in drug court practices on participant outcomes;

To answer these and other questions, we conducted three waves of offender interviews, at baseline (entry into drug court for the treatment group or regular court for the comparison), 6 months, and 18 months, coupled with the collection of official rearrest data. The selected drug courts are located in seven geographic regions and represent a mix of urban, suburban, and rural locations. The comparison sites were drawn from the same clusters. Some comparison sites do not require any court-directed treatment; some mandate treatment but without the added supervision components found in drug courts; and some even monitor the offenders through drug testing or case management. We believe that our design creates a better study than comparing drug court participants strictly to a “no-

treatment” comparison group since offenders often receive treatment, whether through probation, diversion programs, or other mechanisms. Therefore, the question is whether the drug court model adds value through its structured combination of treatment with case management, drug testing, judicial status hearings, sanctions, incentives, threat of incarceration for failing, and other components.

MADCE Results

We found that drug court participants self-report significantly less criminal behavior than the comparison group. Over the full 18-month tracking period, the sampled drug courts reduced the probability of any reoffending by 23 percent relative to the comparison group (from 64 to 49 percent); and reduced the total number of criminal acts by 52 percent (from 110 to 52). These reductions in offending persist throughout the 18 months of observation, even after most in the treatment group have left drug court. The largest impacts were on drug-related crime, including both drug possession and sales offenses. Drug courts also significantly reduced DWI and property-related crime. Significant effects were not apparent, however, on violent, weapons-related, or public order offenses, all of which were rare in both samples. We also found that drug court participation led to an apparent reduction in rearrests, although these results were not statistically significant. The 24-month rearrest rate dropped from 62 to 52 percent, and the total number of rearrests over that same period dropped from an average 1.66 to 1.25.

We find that reductions in drug use are the best predictor of reductions in crime. At six months, significantly fewer drug court participants (40 percent) self-reported drug use than in the comparison group (55 percent). Drug court participants averaged significantly fewer days of drug use per month, fewer days of serious drug use per month, and were significantly less likely to report marijuana or alcohol use. All of these improved outcomes for drug court

participants remained at 18 months, although the rate of drug use increased for both groups— for instance, 56 percent of drug court participants self-report drug use at 18 months, compared with 76 percent in the comparison group.

Overall, we found some evidence that adult drug courts improved socioeconomic and family conflict-related outcomes. Across 28 socioeconomic measures, including employment status, school status, and annual income, 23 measures showed better results for drug court participants. However, the effect sizes were modest, and only three total differences were statistically significant. We also found that drug court participation led to less family conflict and greater emotional support from family members, but these effects also were modest. Finally, there was little evidence that adult drug courts led to improved mental or physical health or to a lesser risk of homelessness, particularly at the final 18-month mark.

Finally, drug courts appear to be cost-effective. The average net benefit to society is about \$4,000 per drug court participant, regardless of how well that participant did, although the difference is not statistically significant. Consistent with prior studies, the biggest benefits come from reductions in crime, where crime victims experience fewer costs from crime committed by drug court participants than crimes committed by the comparison group. Among public agencies, drug court participants used significantly less prison and police resources. Drug court participants did use more of some public resources, including significantly more court and drug court resources, more community supervision, halfway houses, homeless shelters, public housing, and government support.

Why Don't More People Go through Drug Court?

Beginning with a few experimental programs developed as a grassroots initiative in the late 1980s, the drug court concept quickly grew into a full-scale movement in the United States. Fueled in part by the injection of federal funding, but also by anecdotal evidence of

success, drug courts rapidly expanded. A survey by the Urban Institute in 2005 found more than 700 adult drug courts in active operation. The typical adult drug court is small, with an average of 40 to 80 clients. While most medium to large American counties had a drug court by the early part of this decade, the recent growth in drug courts has mainly been from the implementation of drug courts in small rural or tribal communities, rather than from expansion of existing courts. Thus, while the number of drug courts is increasing, the number of clients served by drug courts is increasing at a much slower rate.

Despite the growing consensus that drug treatment for drug-involved offenders is effective in reducing offending, strict drug court eligibility rules have limited the impact of drug courts on public safety. Only a small fraction, 5 percent or less, of drug-involved arrestees enter a drug court each year. Thus, positive drug court experiences can achieve only small reductions in crime. If, in the best-case scenario, drug courts average a 20 percent reduction in reoffending and, again in the best case, 5 percent of drug-involved offenders enter a drug court, the result is a 1 percent reduction in the crime rate for drug-involved offenders. Even though the cumulative effect of drug courts over time may be greater, due to the substantial constraints on eligibility, the overall impact can only be small.

The limited access to treatment for criminal offenders appears to be based on subjective judgments of the risks of treating offenders in the community and the benefits of treatment. The strict eligibility rules suggest that risks are assumed to be high for most offenders, and the benefits of treatment are assumed to be low. As a result, almost all drug-involved arrestees are determined to be ineligible for participation in community-based treatment programs. An important question for the nation's drug policymakers is whether a substantial expansion of substance abuse treatment would yield benefits from reduced crime and improved public safety. A related question is whether evidence-based strategies can be

developed to prioritize participation, given limited resources, perhaps through a continuum of diversion programs, beginning with the least costly and least intensive interventions, before moving to a drug court.

A 2008 study by the Urban Institute was aimed at providing policymakers some guidance on whether expanding this model to more drug-involved offenders is cost-beneficial. The study linked data from the National Survey on Drug Use and Health (NSDUH) and the Arrestee Drug Abuse Monitoring (ADAM) to develop estimates of the prevalence of various profiles that reflected categories of attributes that led arrestees to be eligible or ineligible for drug court participation. Data from the Drug Abuse Treatment Outcome Study (DATOS) were used to compute expected crime-reduction benefits of treating clients with particular profiles. The resulting dataset— including more than 40,000 distinct profiles— permitted the benefit-cost analysis of a limited number of simulated policy options.

Data on adult drug court eligibility rules were gathered from a survey of 600 drug courts in 2005 administered as part of MADCE. Across all adult drug courts, dozens of different eligibility restrictions can be found. Some of those eligibility rules are subjective,²² and others are not routinely recorded in administrative data. Thus, not all exclusion rules could be modeled in our data. However, we were able to identify six attributes (number of prior arrests, past violence, past treatment, age, gender, and alcohol abuse) that are used most often to determine eligibility. Those with a current violent charge were excluded in 88 percent of drug courts, and those with past violence were excluded in 63 percent of drug courts. Those with another active case were excluded in 50 percent of drug courts. Those with prior

²² One common place where individuals are excluded from drug court is after an interview with the intake official (who may be drug court staff, a probation officer, or someone from the prosecutor's office). Intake officials may exclude people whom they feel are too high-risk to be in the community based on a sense from the interview that the person would not succeed in drug court.

treatment failures were excluded by 49 percent of drug courts. Those who had an alcohol problem along with a drug problem were excluded by 34 percent of drug courts. Since individuals are excluded on the basis of any single rule violation, it is easy to see how so many individuals are excluded from drug court.

We found that there are annually about 1.5 million drug-involved arrestees who are probably guilty (which is the population generally targeted by drug courts). Under current rules that limit access to treatment for most of this population, there are about 55,000 individuals treated annually— about 32,000 are drug dependent and 23,500 at risk of drug abuse. This group that received treatment represents less than 4 percent of all drug-involved arrestees and less than 1 percent of all arrestees.

In total, a little more than \$500 million is spent annually to treat those drug court clients. Assuming only average reductions in offending from drug treatment (following the results of the DATOS study) and no additional benefit from drug courts, this investment yields more than \$1 billion in annual savings. The primary beneficiary of these savings is the public, which benefits from having fewer citizens victimized in their communities. Overall, the current adult drug court treatment regime produces about \$2.21 in benefits for every \$1 in costs, for a net benefit to society of more than \$600 million. Note that if only the benefits to the government (from reductions in law enforcement, court, and corrections expenses) are considered, then the benefits may not exceed the costs. If, however, the purpose of law enforcement is to protect and serve, then benefits to private citizens must be considered.

Next, we tested whether loosening drug court eligibility rules and allowing larger numbers of drug-involved offenders to enter drug court would be cost-beneficial. In the first step, we tested whether expanding drug court to everyone currently eligible would be cost-effective. We estimate that there are about twice as many arrestees currently eligible for drug

court (109,000) than there are available drug court treatment slots (55,365). If all 109,000 were treated, the costs of treating these additional clients would total about \$1 billion. The additional 54,000 people treated would have slightly worse outcomes than the current drug court population. The net result is a modest decrease in the benefit-cost ratio to 2.14 from 2.21. But the benefits were still positive and this expansion of treatment yields a benefit to society of more than \$1.17 billion.

We then tested several other expansions of drug courts by eliminating current eligibility rules. Every policy change, save one,²³ simulated in this study yielded a cost-effective expansion of drug treatment. That is, removing current program eligibility restrictions would continue to produce public safety benefits that exceed associated costs. Many drug courts exclude individuals with a pending case in another court. We estimate that expanding treatment access to those with a pending case is cost beneficial, with about \$1.65 billion in total benefits. We find that allowing those with past violence into court-supervised treatment is as cost-beneficial as current practice, with a benefit-to-cost ratio of 2.15. Expanding drug courts to include individuals with a history of failed treatment is also cost-beneficial.

Most strikingly, removing all eligibility restrictions and allowing access to treatment for all 1.47 million at-risk arrestees would be most cost-effective. Treating all at-risk arrestees would cost more than \$13.7 billion and return benefits of about \$46 billion, a benefit of \$3.36 for every dollar spent. At the same time the drug court debate is occurring, a new model is emerging that offers a very different approach to helping offenders stay off drugs?.

Creating a Continuum of Interventions

²³ Many drug courts exclude individuals that have both an alcohol and a drug problem. Those with less serious drug problems return a slightly positive return on society's investment in treatment. Treating those with alcohol problems and more serious drug problems is not cost-effective (0.70:1).

Hawaii's Opportunity Probation with Enforcement (HOPE) focuses on the certainty in detecting and punishing drug use in a probation population. The strategy is to focus the resources of probation on catching every violation of probation (specifically continued drug use) and to punish every infraction. An evaluation shows that "80 percent of the criminal justice population can and will desist without a treatment mandate," and that HOPE leads to substantial reductions in drug use and new offending.²⁴ Thus, HOPE is a "mandated desistance" program that is quite distinct from the "treatment-mandate" model of drug court. The focus is on desistance, not treatment.

The results from HOPE are impressive enough that many policymakers and other stakeholders are interested in applying the model. Given the substantial past investment in drug courts and the dramatic results from the HOPE demonstration, it is fair to ask how and if drug courts and HOPE can coexist. In describing the HOPE model, Kleiman notes that a "mandated-desistance program could also serve as the 'front end' of a treatment-mandate program."²⁵ That is, HOPE could serve as a front-end gatekeeper into the criminal justice system, with drug courts serving as final step before prison. If large numbers of drug-involved offenders can refrain from offending due to the threat of sanctions, those who remain could enter drug court for more intensive—and expensive—treatment. Such a system would hardly shutter drug courts. In fact, a five-fold increase in the number of adult drug courts would likely be required to serve everyone who fails HOPE.

This idea is logical and follows a path being explored to reform the juvenile justice system. The reform model "Reclaiming Futures" was developed by the Robert Wood Johnson Foundation and is being tested by the Office of Juvenile Justice and Delinquency in the U.S. Department of Justice. The Reclaiming Futures idea is to triage boys and girls

²⁴ Hawken and Kleiman, *Managing Drug Involved Probationers*, 2009.

²⁵ Kleiman, *Making Community Supervision Work*, 2010, 4.

entering the juvenile justice system to identify those with substance disorders. Youth are screened, and those with symptoms of more serious problems are sent for a full diagnostic evaluation. If the diagnosis is that the youth is at risk of substance dependence, the youth is then sent for progressively more intensive treatment, with juvenile drug courts eventually occupying the deepest end of the continuum. A similar model could be developed in the adult criminal justice system, with a HOPE-like program being employed early in case processing and drug court occurring later for those with more serious problems or problems more resistant to intervention.

It is too early in the development of the HOPE model to comment extensively about how drug courts and HOPE can be linked together. The HOPE project was evaluated under close-to-ideal conditions and has not yet been replicated in large numbers of other places and times. Until effectiveness studies are performed in other real-world situations, the strengths and weaknesses of HOPE are difficult to evaluate, and, thus, proposals for a continuum linking drug court and HOPE are probably premature.

However, it is possible to consider the strengths and limitations of the drug court model and to consider how those strengths and weaknesses relate to HOPE. If HOPE and drug courts are complementary, the two models will not require different resources and will either solve different problems for the same drug-involved offenders or focus on different client bases. That is, if the two models are to coexist, HOPE must fill in the holes in the drug court model, and vice versa, without requiring the same people, places, and funds that drug courts require to be successful. Too much overlap and the models become substitutes. Drug courts are a substantial advance over traditional strategies for dealing with drug-involved offenders and reverse a long-term trend toward the commoditization of offenders. In 1974, a literature review of all existing research on the effectiveness of drug treatment famously

concluded that “nothing works in drug treatment.” This finding from “The Martinson Report” led to two decades during which the criminal justice system was resistant to the use of drug treatment to reduce criminal offending. During that period, crime rates increased, and mass incarceration of drug-involved offenders led to overcrowded prisons that were ineffective in rehabilitating drug offenders. The creation of drug courts not only defied that trend, but inspired court systems to reconsider the idea that assembly-line processing of cases was an efficient means of improving public safety. Non-adversarial case processing has shown potential to improve life-course outcomes not only of drug-involved offenders but other individuals with antisocial behaviors. The reforms brought to the court system by drug courts can be adapted to reform other criminal justice operations, most notably probation and parole.

Thus, the development of HOPE represents a natural extension of the problem-solving court evolution that has been occurring since drug courts were introduced. HOPE continues the use of the courts’ coercive power to help individuals help themselves desist from crime and drugs. For many individuals, HOPE will represent a better social investment. That is, if individuals can desist without the public paying for the costs of treatment, then substantial benefits to the public should result.

There are two important concerns about integrating HOPE and drug courts into a single model, as points along a continuum of interventions. First, such a model does not address any of the criticisms that have been leveled against drug courts. The drug court judge will still be engaging in social work-like activities for which the judge may not have sufficient training.²⁶ The drug court defendant will still have to forgo some procedural rights.²⁷ And,

²⁶ M. B. Hoffman, “The Rehabilitative Ideal and the Drug Court Reality,” *Federal Sentencing Reporter* 14 (2002): 172–78.

the criticism will remain that each drug court is unique enough that policymakers have difficulty determining whether any particular drug court is effective.

Second, integration of the two approaches in a single model similarly does not address the three major concerns about the HOPE model. One concern about HOPE is that drug-involved offenders desist during their period of supervision but do not attain the skills they would gain in drug treatment that allow them to continue to desist. A credible case can be made that those who return to drug use after their supervision ends would have been better served by participating in drug court. A second concern is that those who ultimately fail in HOPE will have substantially delayed their entry into treatment, which will likely reduce the likelihood of positive outcomes. Further research should explore whether strategies can be developed to address these issues.

A more important concern is that in theory HOPE reverses the trend away from criminalizing drug dependence, which should be addressed as a public health issue rather than a criminal issue. The advent of drug courts and other problem-solving courts was seen by many as a movement by the courts toward a more rehabilitative model. Certainly one central tenet of the drug court model is that relapse is part of recovery and that the traditional criminal justice response of incapacitation is only warranted some of the time. Another central tenet is that whenever possible, treatment is preferred to incapacitation. The HOPE model moves back toward traditional practice, albeit within a more progressive contingency management framework.

Overall, though, there is little reason to believe that a HOPE-like model and drug courts cannot coexist. And, there is a substantial advantage to incorporating them into a single intervention continuum. That is, real barriers remain to broader expansion of drug courts.

²⁷ National Association of Criminal Defense Lawyers, “America’s Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform” (Washington, DC: NACDL, 2009).

While risk tolerance ultimately determines who gets into a drug court, funding determines how many people get into drug courts. At the moment, there is little reason to believe that substantial increases in drug court funding are imminent.

At the federal level, Congress has committed to funding some expansion of drug courts to new populations or new communities but has strongly resisted funding the expansion of drug courts in underserved jurisdictions. Thus, growth will be modest. For example, the FY 2010 House budget contains funding for 100 new drug courts (adding 5,200 new clients) and funding to serve 870 children of methamphetamine addicts. While this represents a substantial increase in drug court coverage, it nevertheless is dwarfed by the more than 1.4 million drug-involved arrestees at risk of drug abuse and dependence who enter the American criminal justice system each year but are not served by a drug court.

Conclusion

The challenge for communities that seek to embrace the drug court model is to identify sustainable funding while operating in a system that does not reward those who care more about long-term outcomes than short-term costs. Most drug court funding comes from the court system and treatment providers, but these agencies do not reap the benefits of drug court. Corrections and community supervision agencies reap some reward from drug courts by not having to supervise successful participants, but they do not shoulder any of the drug court costs. The main beneficiaries of drug courts are private citizens who would have been victims but for the drug-involved offenders' desistance from crime. However, since the identities of victims who were not victimized cannot be determined, these benefits are invisible to individuals and society. Thus, a substantial challenge to the growth of drug courts and the adaptation of drug court principles is that the costs are large and visible while the benefits are diffuse.

Given this disconnect between who pays for drug courts and who benefits, it is relatively easy to forecast the future for drug courts. Looking ahead a decade, it seems reasonable to predict that drug courts will have a similar reach as they do today. And, it seems reasonable to believe that drug court practice will not have advanced a great deal either, as drug court operations have not changed much in the past decade. That does not mean that drug courts will not continue to make positive contributions in terms of enhanced public safety and improved lives for clients, their families, and their communities. Rather, it means that the full potential of this approach to reform the American criminal justice system will remain untapped.

If HOPE is successfully replicated, adding a HOPE-like front-end diversion program would dramatically increase the ability of the criminal justice system to effectively manage drug-involved offenders in the community. Managing this population in the community is far less expensive than incarceration. More effective management means less new criminal victimization. Despite the success of drug courts, without some dramatic expansion of effective supervision strategies, there is little reason to believe that the amount of crime committed by drug-involved offenders can be reduced.