

Moving Away from Drug Courts: Toward a Health-Centered Approach to Drug Use



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Drug courts have spread across the country, yet available research does *not* support their continued expansion. Most drug courts do not reduce imprisonment, do not save money or improve public safety, and fail to help those struggling with drug problems. The drug court model must be corrected to play a more effective role in improving the wellbeing of people involved in the criminal justice system who suffer substance misuse problems – while preserving scarce public safety resources.

Background

Drug courts arose in the 1980s as a laudable attempt to ameliorate the devastating effects of the nation's misguided drug laws. Today there are more than 2,800 drug courts operating in the 50 states and U.S. Territories, up from 1 in 1989 and 665 in 2000.¹ Half of all U.S. counties have at least one operating drug court. In 2014, the Obama administration budgeted \$85 million for drug courts, with states and localities spending considerably more to fund them.²

Available evidence shows, however, that most drug courts are costly;³ are no more effective than voluntary treatment;⁴ do not demonstrate cost savings, reduced criminal justice involvement, or improved public safety;⁵ leave many participants worse off for trying;⁶ and often deny proven treatment modalities, such as methadone and buprenorphine.⁷

Drug courts programs should not receive public funding unless they meet basic minimum standards to live up to their promise of providing effective treatment to criminally-involved people who need it. Such programs should never be used for people who merely use or possess small amounts of drugs.

Drug Courts Do Not Reduce Imprisonment or Criminal Justice Involvement

In spite of their proliferation, drug courts have not reduced incarceration rates in the U.S. because most drug courts admit only low-level offenders to their programs – people who would not have received lengthy prison or jail sentences in the first place.⁸

In fact, recent studies have found that because of their heavy focus on low-level drug possession offenses, their strict eligibility requirements, and underlying sentencing laws (like mandatory minimums) that render many individuals ineligible for any type of diversion, drug courts have not contributed to a reduction in the number of people incarcerated in the U.S.⁹

Many, if not most, of the people forced into drug courts did nothing wrong but possess small amounts of drugs.¹⁰

For participants who are drug dependent, drug courts routinely respond to their predictable drug relapse by kicking them out of treatment and tossing them in jail.¹¹ Yet incarcerating people for relapse flies in the face of medical and public health principles and reveals a blatant disregard for the myriad dangers to health and safety that jails pose for people who use drugs.¹² Because drug courts are “addicted” to jail sanctions for drug relapse, drug court participants often end up serving *more* time behind bars than those whose cases are handled by conventional courts.¹³

The U.S. Government Accountability Office found that almost half of drug courts studied did not reduce re-arrest rates of their participants.¹⁴ Furthermore, while data are limited, available evidence indicates that

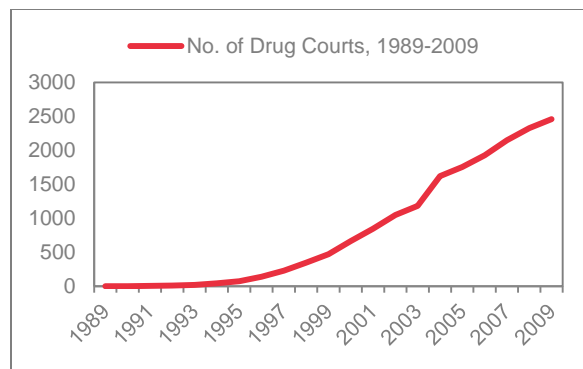
people of color are less likely to be admitted to drug court, less likely to successfully graduate from drug court, and more likely to receive a punitive sanction for failing drug court. Therefore, drug courts appear not to reduce, and in fact may *increase* the extreme racial disparities in drug law enforcement and sentencing.¹⁵

Most drug courts require participants to plead guilty as a condition of program eligibility, with the chance of having that conviction later expunged upon successful completion.¹⁶ The majority of drug court participants never get their convictions expunged, and are left saddled with criminal records that often act as lifetime barriers to many aspects of social, economic and political life in the U.S.¹⁷ The consequences of a conviction can include denial of child custody, voting rights, employment, business loans, licensing, student aid, public housing and other public assistance. A guilty plea in a drug court can also result in deportation for noncitizens, even if they are legal permanent residents.¹⁸

“Coerced treatment is ethically unjustifiable, especially when voluntary treatment can yield equal or more positive outcomes.”¹⁹

-American Public Health Association, 2013

The Growth of Drug Courts in the U.S.



Source: National Drug Court Institute

Drug Courts Do Not Reduce Cost or Improve Public Safety

Because they require prosecutors, judges, and other court staff, and the use of a public courtroom, drug courts are costly – far more costly than treatment delivered through the health system.²⁰ Such programs, moreover, have absorbed scarce resources that could have been better spent on proven, health-centered approaches like community-based treatment.²¹ They have also not improved public safety.²²

Recent studies, including the Department of Justice - funded Multi-Site Adult Drug Court Evaluation (MADCE), found limited net benefits from drug courts.²³ The savings in future criminal justice costs measured against the costs of operation are greatest when compared to conventional incarceration.²⁴ That is, drug courts are cheaper only when compared to the bloated cost of solely locking people up.

For these reasons, drug courts should be reserved only for people charged with more serious (non-drug) offenses but whose behavior was motivated by an underlying drug problem.²⁵ Drug courts should be forbidden from focusing, as they do now, on people found using or possessing small amounts of drugs – who can be better served outside of the criminal justice system.²⁶

“In the face of no alternative except incarceration, of course ‘drug courts work.’”²⁷

- Jennifer Murphy, Deviant Behavior, 2013

Drug Courts Fail to Help People Struggling with Drug Problems

Ultimately, drug courts serve very few people; and they are generally available to those who least need help.²⁸ The majority of people who use illicit substances do so absent problems,²⁹ and studies show that more than half of people involved in drug courts do not meet the diagnostic criteria for substance dependence.³⁰

As currently constituted, most drug courts fall woefully short in providing appropriate, quality treatment services to the people most in need in a manner that effectively promotes public safety and health.

For example, opioid substitution treatments such as methadone and buprenorphine have been long recognized by leading U.S. and international health experts – including the National Institutes on Drug Abuse, National Institutes of Health, and Centers for Disease Control and Prevention – to be the most effective medical intervention for reducing opioid drug use, the spread of HIV/AIDS, and overdose mortality.³¹

Today's drug courts are *not* a public health approach: they are costly, do not reduce incarceration, and withhold the most effective forms of treatments.

Yet the vast majority of drug courts prevent opioid-dependent people from receiving opioid substitution treatment – often the *only* effective treatment for their condition.³² A recent survey of drug courts found that, while nearly every drug court in the country serves participants who are opioid-dependent, fewer than half offer medication-assisted treatments like methadone.³³

By denying access to methadone and similar medications, drug court judges reject science, usurp the authority of medical professionals and place opioid-dependent people at significantly elevated risk for overdose.³⁴ They also likely violate the Americans with Disabilities Act.³⁵ And by not providing overdose prevention education and training – including access to and instruction on using naloxone (an antidote for opioid overdose) – drug courts miss a critical opportunity for preventing overdose fatalities.³⁶

Furthermore, drug courts monopolize treatment slots that are better used outside the criminal justice system for the same population.³⁷ The largest study to date

found that drug courts are no more effective than voluntary treatment.³⁸ Drug courts do a particularly poor job of meeting the treatment needs of women.³⁹

Recommendations: Drug Courts Must Change

The Drug Policy Alliance supports eliminating criminal penalties for personal drug possession and use.

There may be a role for drug courts as well, but only if they undergo a change of course. Specifically, drug courts should *not* receive public funding unless they:

1. Target people arrested for more serious offenses who would otherwise face lengthy incarceration terms;
2. Eliminate jail sanctions for simple drug relapse;
3. Allow the use of opioid substitution treatments, such as methadone and buprenorphine, to treat opioid-using participants;
4. Provide opioid-using participants with overdose prevention education, training and naloxone; and
5. Adopt pre-plea rather than post-plea or post-conviction procedures for participant eligibility.

¹ U.S. Department of Justice, "Drug Courts," (May 2014).

² Executive Office of the President of the United States: National Drug Control Budget FY 2014 Highlights April 2013.

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⁴ Shelli B Rossman et al., "The Multi-Site Adult Drug Court Evaluation: Study Overview and Design," (Washington D.C.: Urban Institute, 2011), 24.

⁵ Harold Pollack, E Sevigny, and Peter Reuter, "If Drug Treatment Works So Well, Why Are So Many Drug Users Incarcerated?," (Controlling Crime: Strategies and Trade-Offs, Chicago: NBER, University of Chicago Press, 2011); American Public Health Association, "APHA Policy Statement 201312: Defining and Implementing a Public Health Response to Drug Use and Misuse," (Washington, DC: American Public Health Association, 2013).

⁶ Eric L. Sevigny, Brian K. Fuleihan, and Frank V. Ferdik, "Do drug courts reduce the use of incarceration?: A meta-analysis," *Journal of Criminal Justice* 41, no. 6 (2013).

⁷ H. Matusow et al., "Medication assisted treatment in US drug courts: Results from a nationwide survey of availability, barriers and attitudes," *J Subst Abuse Treat* 10.1016/j.jsat.2012.10.004(2012); Peter D. Friedmann et al., "Medication-Assisted Treatment in Criminal Justice Agencies Affiliated with the Criminal Justice-Drug Abuse Treatment Studies (CJ-DATS): Availability, Barriers, and Intentions," *Substance Abuse* 33, no. 1 (2011).

⁸ Eric L. Sevigny, Harold A. Pollack, and Peter Reuter, "Can Drug Courts Help to Reduce Prison and Jail Populations?: Harold Pollack, E Sevigny, and Peter Reuter, "If Drug Treatment Works So Well, Why Are So Many Drug Users Incarcerated?."

⁹ Eric L. Sevigny, Harold A. Pollack, and Peter Reuter, "Can Drug Courts Help to Reduce Prison and Jail Populations?"; Eric L. Sevigny, Brian K. Fuleihan, and Frank V. Ferdik, "Do drug courts reduce the use of incarceration?: A meta-analysis."

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¹² American Public Health Association, "APHA Policy Statement 201312: Defining and Implementing a Public Health Response to Drug Use and Misuse."

¹³ Eric L. Sevigny, Harold A. Pollack, and Peter Reuter, "Can Drug Courts Help to Reduce Prison and Jail Populations?"; Eric L. Sevigny, Brian K. Fuleihan, and Frank V. Ferdik, "Do drug courts reduce the use of incarceration?: A meta-analysis; Michael Rempel, Mia Green, and Dana Kralstein, "The impact of adult drug courts on crime and incarceration: findings from a multi-site quasi-experimental design," *Journal of Experimental Criminology* 8, no. 2 (2012); Rebecca Tiger, *Judging Addicts: Drug Courts and Coercion in the Justice System* (NYU Press, 2012).

¹⁴ US Government Accountability Office, "Adult Drug Courts: Studies Show Courts Reduce Recidivism, But DOJ Could Enhance Future Performance Measure Revision Efforts," (2011).

¹⁵ See e.g., Daniel Howard, "Race, Neighborhood, and Drug Court Graduation," *Justice Quarterly*, no. ahead-of-print (2014); John MacDonald et al., "Decomposing Racial Disparities in Prison and Drug Treatment Commitments for Criminal Offenders in California," *The Journal of Legal Studies* 43, no. 1 (2014); Ben Gilbertson, "Finding Its Place: The Effect of Race on Drug Court Outcomes," (2013); Traci Schlesinger, "Racial Disparities in Pretrial Diversion: An Analysis of Outcomes Among Men Charged With Felonies and Processed in State Courts," *Race and Justice* 3, no. 3 (2013); K. E. DeVall and C. L. Lanier, "Successful completion: an examination of factors influencing drug court completion for white and non-white male participants," *Subst Use Misuse* 47, no. 10 (2012); Joel Gross, "Effects of Net-Widening on Minority and Indigent Drug Offenders: A Critique of Drug Courts, The," *U. Md. LJ Race, Religion, Gender & Class* 10(2010); Douglas B Marlowe, "Achieving Racial and Ethnic Fairness in Drug Courts," *Court Review* 49, no. 1 (2013); National Association of Drug Court Professionals, "Board Resolution on The Equivalent Treatment of Racial and Ethnic Minority Participants in Drug Courts," (2010); Michael W Finigan, "Understanding racial disparities in drug courts," *Drug Court Review* 6(2009); Michael O'Hear, "Rethinking drug courts: Restorative justice as a response to racial injustice," *Stanford Law & Policy Review* 20(2009); R. Brown and M. Gassman, "Assistant District Attorney decision making when referring to drug treatment court; Rebecca Tiger, *Judging Addicts: Drug Courts and Coercion in the Justice System*.

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²⁰ Nastassia Walsh, "Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities," (Washington, D.C.: Justice Policy Institute, 2011).

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²⁴ Shelli B Rossman et al., "The Multi-Site Adult Drug Court Evaluation: Study Overview and Design."

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