

DRUG WAR FACTS

Drug Courts and Treatment as an Alternative to Incarceration

Drug Courts and Treatment Alternatives to Incarceration programs are popular, widely praised and rapidly expanding alternative approaches of dealing with drug offenders and people charged with nonviolent crimes who are drug users. Drug Courts substitute mandatory treatment for incarceration. Because they are relatively new, much of the research on their effectiveness is recent, incomplete and inconclusive. Drug Courts have been much applauded, however 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. And it is true that the number of drug arrests has grown dramatically since the early 1990s. 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 typically rely on abstinence-based treatment. For example, methadone is sometimes not available to heroin addicts. In addition, Drug Courts rely heavily on urine testing rather than focusing on whether the person is succeeding in employment, education or family relationships, and in avoiding re-arrest.**
- **Drug Courts also sometimes 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. "Of the 1,700 drug court programs operating or planned as of September 2004, about 1,040—nearly 770 operating and about 270 being planned— were adult drug court programs, according to data collected by the Office of Justice Programs' Drug Court Clearinghouse and Technical Assistance Project.⁵ The primary purpose of these programs is to use a court's authority to reduce crime by changing defendants' substance abuse behavior. In exchange for the possibility of dismissed charges or reduced sentences, eligible defendants who agree to participate are diverted to drug court programs in various ways and at various stages in the judicial process. These programs are typically offered to defendants as an alternative to probation or short-term incarceration."

Source: "Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes," Government Accountability Office, GAO-05-219, Feb. 2005, p. 3.

2. According to the US General Accounting Office in 2002, "Based on information available as of December 31, 2001, drug court programs were operating in 48 states, the District of Columbia, and Puerto Rico. New Hampshire and Vermont were the only states without an operating drug court program but both have programs being planned. Guam also has programs being planned. California, Florida, Louisiana, Missouri, New York, and Ohio account for 344, or almost 44 percent, of the 791 operating drug courts."

Source: US General Accounting Office, "Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed To Measure Impact of Drug Court Programs," (GAO-02-434: Government Printing Office, April 2002), p. 27.

3. The Drug Court Clearinghouse & Technical Assistance Project at the American University in Washington, DC, released the results of a survey of drug courts in 2001. Based on information reported by 372 of the 420 adult family drug court programs which were in operation as of January 1, 2001, DCC/TAP estimated:

Total number of individuals who have enrolled in adult drug court programs:	226,000
Number of participants as of 6/1/01:	77,000
Number of graduates as of 6/1/01:	74,000
Participant retention rates (overall):	67%+
Jail/prison days saved, average reported:	9,980 days
Jail/prison days saved, median reported:	4,015 days
Costs saved, average reported:	\$697,652
Costs saved, median reported:	\$330,000

Source: "Summary Information on All Drug Court Programs and Detailed Information on Adult Drug Courts," Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project (Washington, DC: American University, June 25, 2001), pp. 2, 6.

4. "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.

5. 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.

6. "Drug courts do not always target users of 'hard' drugs. In several adult drug courts a substantial proportion of clients reported that marijuana was the primary drug used: Chester County (PA) (47%), Lackawanna County (NY) (22%) and Syracuse (NY) (25%). A majority of participants in the Cumberland County (ME) drug court reported alcohol as their primary drug (58%)."

Source: Belenko, Steven, PhD, "Research on Drug Courts: A Critical Review 2001 Update" (New York, NY: National Center on Addiction and Substance Abuse (CASA) at Columbia University, June 2001), p. 20.

7. 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.

8. "In most of the evaluations we reviewed, adult drug court programs led to recidivism reductions during periods of time that generally corresponded to the length of the drug court program — that is, within-program. Our analysis of evaluations reporting recidivism data for 23 programs showed that lower percentages of drug court program participants than comparison group

members were rearrested or reconvicted. Program participants also had fewer incidents of rearrests or reconvictions and a longer time until rearrest or reconviction than comparison group members. These recidivism reductions were observed for any felony offense and for drug offenses, whether they were felonies or misdemeanors. However, we were unable to find conclusive evidence that specific drug court program components, such as the behavior of the judge, the amount of treatment received, the level of supervision provided, and the sanctions for not complying with program requirements, affect participants' within-program recidivism. Post-program recidivism reductions were measured for up to 1 year after participants completed the drug court program in several evaluations, and in these the evidence suggests that the recidivism differences observed during the program endured."

Source: "Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes," Government Accountability Office, GAO-05-219, Feb. 2005, pp. 5-6.

9. "Completion rates, which refer to the number of individuals who successfully completed a drug court program as a percentage of the total number admitted, in the programs we reviewed that assessed completion ranged from 27 to 66 percent. As might be expected, program completion was associated with participants' compliance with program requirements. Specifically, evaluations of 16 adult drug court programs that assessed completion found that participants' compliance with procedures was consistently associated with completion. These program procedures include attending treatment sessions, engaging in treatment early in the program, and appearing at status hearings. No other program factor, such as the severity of the sanction that would be invoked if participants failed to complete the program and the manner in which judges conducted status hearings, predicted participants' program completion. Several characteristics of the drug court program participants themselves were also associated with an increased likelihood of program completion. These characteristics include lower levels of prior involvement in the criminal justice system and age, as older participants were more likely to complete drug court programs than younger ones."

Source: "Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes," Government Accountability

Office, GAO-05-219, Feb. 2005, p. 6.

10. "A limited number of evaluations in our review discussed the costs and benefits of adult drug court programs. Four evaluations of seven drug court programs provided sufficient cost and benefit data to estimate their net benefits (that is, the benefits minus costs). The cost per drug court program participant was greater than the cost per comparison group member in six of these drug court programs. However, all seven programs yielded positive net benefits, primarily from reductions in recidivism affecting both judicial system costs and avoided costs to potential victims. Net benefits ranged from about \$1,000 per participant to about \$15,000 in the seven programs. These benefits may underestimate drug court programs' true benefits because the evaluations did not include indirect benefits (such as reduced medical costs of treated participants). Financial cost savings for the criminal justice system (taking into account recidivism reductions) were found in two of the seven programs."

Source: "Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes," Government Accountability Office, GAO-05-219, Feb. 2005, pp. 6-7.

11. "Carey and Finigan (2004) estimated the benefits and costs of the Multnomah County Drug Court in Portland, Oregon. They evaluated a sample of 1,173 individuals to determine the cost and criminal justice outcome differences between the drug court and the business-as-usual process over a 30-month period following the initial court appearance. Based on their cost and benefit estimates, the benefit-cost ratio associated with Multnomah County Drug Court was 2.5. "In an unpublished report, Harrell, Cavanaugh, & Roman (1999) estimated benefit-cost ratio of about 2 for the sanctions docket program that was part of the D.C. Superior Court Drug Intervention Program. Similarly, in an evaluation the Multnomah County, Oregon, S.T.O.P. (Sanction Treatment Opportunity Progress) Drug Court Diversion Program, Finigan (1998) estimated a benefitcost ratio of 2.5 from the taxpayer perspective. In these studies, benefits were calculated as the dollar value of averted crime costs (Harrell et al.) or averted CJS [criminal justice system] costs (Finigan) due to decreased criminal activity."

Source: Zarkin, Gary A., Laura J. Dunlap, Steven Belenko & Paul A.

Dynia, "A Benefit-Cost Analysis of the Kings County District Attorney's Office Drug Treatment Alternative to Prison (DTAP) Program," Justice Research and Policy, Vol. 7, No. 1 (Washington, DC: Justice Research and Statistics Association, 2005), p. 3.

12. "Importantly, Belenko et al. (2005) have shown just the opposite result for DTAP [Drug Treatment Alternative to Prison]: 57% of DTAP participants were rearrested for any offense at least once in the follow-up period compared with 75% of the comparison group. Similarly, only 42% of DTAP participants were reconvicted of any offense compared with 65% of the prison comparison group. Finally, only 30% of the DTAP participants had a new jail sentence (compared with 51% of prison comparisons) and only 7% had a new prison sentence (compared with 18% of prison comparisons).

"When these outcomes are monetized, our study shows that the DTAP program is cost beneficial from the CJS perspective; it is less costly to divert drugabusing offenders to treatment instead of prison. In addition, the findings suggest that a long-term perspective is important in evaluating treatment diversion or other criminal justice-based treatment programs. We find that benefits increase in each subsequent year of analysis. Findings from this analysis provide an economic justification for the DTAP program. In addition, our unit cost estimates for the CJS and diversion expenses for New York City may be used by policymakers and researchers to evaluate other diversion programs."

Source: Zarkin, Gary A., Laura J. Dunlap, Steven Belenko & Paul A. Dynia, "A Benefit-Cost Analysis of the Kings County District Attorney's Office Drug Treatment Alternative to Prison (DTAP) Program," Justice Research and Policy, Vol. 7, No. 1 (Washington, DC: Justice Research and Statistics Association, 2005), p. 20.

13. According to the US General Accounting Office in 2002, "Although DOJ points out in its comments that a number of individual program evaluation studies have been completed, no national impact evaluation of these programs has been done to date. We continue to believe that until post-program follow-up data on program participants are collected across a broad range of programs and also included within the scope of future program and impact evaluations (including nonprogram participant data), it will not be possible to reach firm

conclusions about whether drug court programs are an effective use of federal funds or whether different types of drug court program structures funded by DCPO work better than others. Also, unless these results are compared with those on the impact of other criminal justice programs, it will not be clear whether drug court programs are more or less effective than other criminal justice programs. As such, these limitations have prevented firm conclusions from being drawn on the overall impact of federally funded drug court programs."

Source: US General Accounting Office, "Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed To Measure Impact of Drug Court Programs," (GAO-02-434: Government Printing Office, April 2002), pp. 20-21.

14. In a 2003 report, New York's Center for Court Innovation compared recidivism rates between drug court graduates and attendees from six different drug courts, and control groups of similar defendants not entering drug court. They found that "All six drug courts (Bronx, Brooklyn, Queens, Suffolk, Syracuse, and Rochester) produced recidivism reductions compared with conventional case processing. The six courts represent a mix of geographic areas and policies (e.g., regarding eligibility criteria, screening and assessment protocols, graduation requirements, approach to sanctions, and supplemental services). Since the measurement periods tracked defendants at least three years after the initial arrest and at least one year after program completion, the results indicate that positive drug court impacts are durable over time. "The six drug courts generated an average 29% recidivism reduction over the three-year postarrest period and an average 32% reduction over the one-year post-program period."

Source: Rempel, Michael, Dana Fox-Kralstein, Amanda Cissner, Robyn Cohen, Melissa Labriola, Donald Farole, Ann Bader and Michael Magnani, "The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts" (New York, NY: Center for Court Innovation, Oct. 2003), p. x.

15. In a 2003 report, New York's Center for Court Innovation compared recidivism rates between drug court graduates and attendees from six different

drug courts, and control groups of similar defendants not entering drug court. They found that "When in-program participation time was included in the calculation, processing time for participants was far longer than for comparison defendants (due to the length of the drug court program). Hence to achieve positive impacts such as lower recidivism, drug courts require a significant up-front investment of court resources."

Source: Rempel, Michael, Dana Fox-Kralstein, Amanda Cissner, Robyn Cohen, Melissa Labriola, Donald Farole, Ann Bader and Michael Magnani, "The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts" (New York, NY: Center for Court Innovation, Oct. 2003), p. xi.

16. In a 2003 report, New York's Center for Court Innovation compared recidivism rates between drug court graduates and attendees from six different drug courts, and control groups of similar defendants not entering drug court. They found that "Graduation is itself a powerful predictor of avoiding postprogram recidivism; those who failed drug court were far more likely to recidivate in the post-program period. Further, contrary to previous research with non-drug court populations, no benefit was found to spending more total time in treatment only to fail in the end. Among those who failed, more time in the drug court program (measured in four courts) or more days specifically attending treatment (measured in one court) had no impact on post-program recidivism. These results strongly point to drug court graduation as the pivotal indicator of long-term outcomes."

Source: Rempel, Michael, Dana Fox-Kralstein, Amanda Cissner, Robyn Cohen, Melissa Labriola, Donald Farole, Ann Bader and Michael Magnani, "The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts" (New York, NY: Center for Court Innovation, Oct. 2003), p. xiii.

17. 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.

18.

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

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. 1496, citing 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).

19. "Despite their ongoing popularity and rapid spread, historically there has been a relative paucity of empirically sound and comprehensive research on drug court operations and impacts. Most evaluations have been relatively small-

scale local process evaluations mandated for DCPO grantees, which include program and client descriptions, with some retention and outcome data."

Source: Belenko, Steven, PhD, "Research on Drug Courts: A Critical Review 2001 Update" (New York, NY: National Center on Addiction and Substance Abuse (CASA) at Columbia University, June 2001), p. 6.

20. In an updated review of the available research on drug courts, CASA reported that "More generally, few evaluations presented data on recidivism during program participation (in several cases, anecdotal data were presented or the number of drug cases was too small to draw any conclusions)."

Source: Belenko, Steven, PhD, "Research on Drug Courts: A Critical Review 2001 Update" (New York, NY: National Center on Addiction and Substance Abuse (CASA) at Columbia University, June 2001), p. 6.

21. According to the US General Accounting Office in 2002, the data on drug courts collected by the Justice Department is inadequate for evaluating drug court effectiveness. "In 1998, DCPO required its implementation and enhancement grantees to collect and provide performance and outcome data on program participants, including data on participants' criminal recidivism and substance abuse relapse after they have left the program. However, in 2000, DCPO revised its survey and eliminated the questions that were intended to collect post-program outcome data. The DCPO Director said that DCPO's decision was based on, among other things, drug court program grantees indicating that they were not able to provide post-program outcome data and that they lacked sufficient resources to collect such data. DCPO, however, was unable to produce specific evidence from grantees (i.e., written correspondence) that cited difficulties with providing post-program outcome data. The Director said that difficulties have generally been conveyed by grantees, in person, through telephone conversations, or are evidenced by the lack of responses to the post-program questions on the survey. Contrary to DCPO's position, evidence exists that supports the feasibility of collecting post-program performance and outcome data. During our 1997 survey of the drug court programs, 53 percent of the respondents said that they maintained follow-up data on participants' rearrest or conviction for a nondrug crime. Thirty-three percent said that they maintained follow-up data on participants'

substance abuse relapse."

Source: US General Accounting Office, "Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed To Measure Impact of Drug Court Programs," (GAO-02-434: Government Printing Office, April 2002), pp. 12-13.

22. According to the US General Accounting Office in 2002, the Department of Justice fails to collect adequate data on drug courts. "One of the Drug Court Clearinghouse's functions has been to identify DCPO-funded drug court programs. However, the Drug Court Clearinghouse has only been tasked since 1998 with following up with a segment of DCPO grantees to determine their implementation date. Thus, the information provided to DCPO on the universe of DCPO-funded drug court programs is at best an estimate and not a precise count of DCPO drug court program grantees. Noting that its current grant information system was not intended to readily identify and track the number of DCPO-funded drug court programs, DCPO officials said that they plan to develop a new management information system that will enable DOJ to do so. Without an accurate universe of DCPO-funded drug court programs, DCPO is unable to readily determine the actual number of programs or participants it has funded or, as discussed below, the drug court programs that should have responded to its semiannual data collection survey."

Source: US General Accounting Office, "Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed To Measure Impact of Drug Court Programs," (GAO-02-434: Government Printing Office, April 2002), p. 9.

23. In a 2003 report, New York's Center for Court Innovation examined eleven different adult drug courts in New York state. They found that "Relapse and noncompliance are common, even among those who ultimately succeed. In seven of eight courts examined, at least half of all graduates had at least one positive drug test, and many had several positives - usually in the earlier stages of participation. This highlights the value of drug courts according multiple chances to participants experiencing early problems."

Source: Rempel, Michael, Dana Fox-Kralstein, Amanda Cissner, Robyn

Cohen, Melissa Labriola, Donald Farole, Ann Bader and Michael Magnani, "The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts" (New York, NY: Center for Court Innovation, Oct. 2003), p. xiv.

24. "Drug courts are experiencing a variety of difficulties engaging and retaining clients in treatment and clients who are deemed 'unmotivated.' Fifty-nine percent of drug courts indicate that 'lack of motivation for treatment' is used as a criterion to exclude people from drug court admission. Fifty-six percent of drug courts report that participants are discharged early from treatment because they have a poor attitude or lack motivation. Other reasons for early discharge from treatment include failure to appear in court (59 percent), failure to engage in treatment (70 percent), and missing too many treatment appointments (64 percent)."

Source: Peyton, Elizabeth A., and Robert Gossweiler, PhD, "Treatment Services in Adult Drug Courts: Report on the 1999 National Drug Court Treatment Survey, Executive Summary," Drug Courts Program Office, Office of Justice Programs, US Dept. of Justice, and the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, US Dept. of Health and Human Services (Washington, DC: US Dept. of Justice and US Dept. of Health and Human Services, May 2001), p. 10.

25. 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.

26. 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.

27. 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.

28. "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.

29. "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.

30. Judge Morris Hoffman of the Second Judicial District (Denver), State of Colorado, wrote in a recent North Carolina Law Review article: "As with drugs themselves, however, the promises of drug courts to not measure up to their harsh reality. They are compromising deep-seated legal values, including the doctrine of separation of powers, the idea that truth is best discovered in the fires of advocacy, and the traditional role of judges as quiet, rational arbiters of the truth-finding process."

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.

31. 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.

32. "The greatest frustrations described by drug courts include limited access to residential treatment, treatment for mental health disorders, and specialized services for women, racial and ethnic minorities, and the mentally ill. Problems with client engagement and retention in treatment are also identified. Followup interviews with a sample of respondents suggest that, while services may be available, they may be limited in quantity or otherwise very difficult to access."

Source: Peyton, Elizabeth A., and Robert Gossweiler, PhD, "Treatment Services in Adult Drug Courts: Report on the 1999 National Drug Court Treatment Survey, Executive Summary," Drug Courts Program Office, Office of Justice Programs, US Dept. of Justice, and the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, US Dept. of Health and Human Services (Washington, DC: US Dept. of Justice and US Dept. of Health and Human Services, May 2001), p. 9.

33. "Drug courts report that screening, assessing, and determining drug court eligibility occur quickly, and most participants are able to enter treatment less than 2 weeks after drug court admission. However, not all drug courts use screening or assessment instruments that have proved reliable and valid, and some do not appear to use appropriate clinically trained staff to conduct assessments."

Source: Peyton, Elizabeth A., and Robert Gossweiler, PhD, "Treatment Services in Adult Drug Courts: Report on the 1999 National Drug Court Treatment Survey, Executive Summary," Drug Courts Program Office, Office of Justice Programs, US Dept. of Justice, and the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, US Dept. of Health and Human Services (Washington, DC: US Dept. of Justice and US Dept. of Health and Human Services, May 2001), p. 9.

34. The US Dept. of Justice and US Dept. of Health and Human Services reported on treatment services available to drug courts around the US. The government found the following types of dedicated and external treatment programs available to drug courts:

Type of Treatment	Percent making specific treatment available
Residential Treatment	92%
Intensive Outpatient	93%

Outpatient	85%
Detoxification	82%
Alcohol and Other Drug Education	82%
Methadone Maintenance	39%
Other Pharmacological Interventions	25%
Prison- or Jail-Based Therapeutic Community	39%
Community-Based Therapeutic Community	51%
Acupuncture	32%
Self-Help	93%
Relapse Prevention	85%
Other	17%

Source: Peyton, Elizabeth A., and Robert Gossweiler, PhD, "Treatment Services in Adult Drug Courts: Report on the 1999 National Drug Court Treatment Survey, Executive Summary," Drug Courts Program Office, Office of Justice Programs, US Dept. of Justice, and the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, US Dept. of Health and Human Services (Washington, DC: US Dept. of Justice and US Dept. of Health and Human Services, May 2001), p. 7, Figure A.

35. The US Dept. of Justice and US Dept. of Health and Human Services reported on treatment services available to drug courts around the US. The government found the following types of support services available to program participants:

Type of Service	Percent making specific service available
Mental Health Treatment	91%

Mental Health Referral	96%
Vocational Training	86%
Job Placement	77%
Housing Assistance	59%
Housing Referral	72%
Parenting Education	84%
Educational Remediation/GED	92%
Domestic Violence Intervention Services	73%
Transportation Assistance	59%
Anger Management	87%
Life Skills Management	79%
Stress Management	72%
Relapse Prevention	93%
Childcare	32%

Source: Peyton, Elizabeth A., and Robert Gossweiler, PhD, "Treatment Services in Adult Drug Courts: Report on the 1999 National Drug Court Treatment Survey, Executive Summary," Drug Courts Program Office, Office of Justice Programs, US Dept. of Justice, and the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, US Dept. of Health and Human Services (Washington, DC: US Dept. of Justice and US Dept. of Health and Human Services, May 2001), p. 8, Figure B.

36. 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.

37. "It is unlikely that the level and intensity of services required for drug court participants will be supported by managed care. Pressures to reduce treatment expenditures and manage costs associated with Medicaid are driving States to shorten length of stay in treatment and increasing the thresholds for admission to intensive treatment."

Source: Peyton, Elizabeth A., and Robert Gossweiler, PhD, "Treatment Services in Adult Drug Courts: Report on the 1999 National Drug Court Treatment Survey, Executive Summary," Drug Courts Program Office, Office of Justice Programs, US Dept. of Justice, and the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, US Dept. of Health and Human Services (Washington, DC: US Dept. of Justice and US Dept. of Health and Human Services, May 2001), p. 13.

38. "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.

39. In a 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.

40. "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.

41. 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.

42. 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.

43. "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.

44. "According to the most recent American University survey of 237 responding adult drug courts (out of 438 operational adult drug courts; American University, 2001), an estimated 72% of drug court clients are male; 38% are African American, 42% white non- Hispanic, and 17% Hispanic; 49% are unemployed; 76% had prior substance abuse treatment; 74% had at least one prior felony conviction; and 56% had been previously incarcerated."

Source: Belenko, Steven, PhD, "Research on Drug Courts: A Critical Review 2001 Update" (New York, NY: National Center on Addiction and Substance Abuse (CASA) at Columbia University, June 2001), p. 19.

45. 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>.

46. 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.

47. "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.

48. "Drug court judges and coordinators ranked improving staff skills to engage and retain drug court participants in treatment as the most needed improvement in the court's treatment component."

Source: Peyton, Elizabeth A., and Robert Gossweiler, PhD, "Treatment

Services in Adult Drug Courts: Report on the 1999 National Drug Court Treatment Survey, Executive Summary," Drug Courts Program Office, Office of Justice Programs, US Dept. of Justice, and the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, US Dept. of Health and Human Services (Washington, DC: US Dept. of Justice and US Dept. of Health and Human Services, May 2001), p. 14.

49. In a 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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