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JUDGING DRUG COURTS: BALANCING THE EVIDENCE

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The 14 years since the first drug court began operation in Miami have seen the number of drug courts grow exponentially, fueled by ardent practitioners and federal dollars. By the end of 2001, nearly 800 drug courts were in operation and over 450 were in the planning stages (GAO, 2002). Drug courts are designed to get offenders whose addiction has contributed to their criminal behavior to stop using drugs. Drug court procedures include drug treatment, legal pressure, drug testing, regular judicial review, and systematic use of sanctions and rewards.

The advent of drug courts signaled a sea-change in American courts—a paradigm shift from court practices designed for speed and efficiency in dispensing penalties to court practices designed to prevent future crime by addressing problems that increase the risk of criminal activity. This shift to problem-solving courts is based on the premise that courts should try to advance public safety by preventing future crime among offenders at high risk of recidivism.

The court shift is also defended by theories of therapeutic jurisprudence. This theoretical perspective argues that courts should, while fulfilling their primary mandate to adjudicate and penalize infractions of the law appropriately, adopt practices that promote the well-being of stakeholders and rely on science to guide the selection of practices (see Winnick, 1997). Unfortunately for the courts, the theory of therapeutic jurisprudence defines the goal and rationale for legal reform, but it tells us little about how to accomplish this goal. Despite the popularity of drug courts, the scientific basis for assessing their impact on public safety, efficient use of criminal justice resources, and therapeutic outcomes for participants has been weak.

Gottfredson and her colleagues have made a significant contribution toward science-based answers to questions about drug courts. The results provide convincing evidence on the core issue—do drug courts reduce crime and protect the public and, if so, by how much? But their analysis goes further and provides evidence to address the concerns of drug court opponents about the efficiency and fairness of the drug court's use of incarceration and the risks and benefits of the program to participants. It also begins a much needed process of deconstructing drug court practices

to examine how components, in this case, drug treatment, are related to outcomes.

Policy makers should now be convinced that drug courts can reduce the likelihood of arrest among participants. In Baltimore, offenders assigned to drug court were significantly less likely to be rearrested, had fewer arrests, and had fewer new charges than offenders not assigned to the drug court. Although based on a single court, the group equivalence produced by random assignment and conservative assumptions about group assignment adds weight to the generally positive evaluation findings found in qualitative and quantitative reviews (Belenko, 2001; Wilson et al., 2002). A close look at the meta-analysis results of Wilson et al. indicates that 34 of 40 evaluations that included comparison groups reported lower rates of crime among the drug court participants. The pooled results also showed significantly lower likelihood of criminal offending, including drug crimes, among participants.

The results should also remind policy makers that drug courts, although effective for some offenders, are not a magic bullet. Many drug court clients fail. In Baltimore, approximately a third of the eligible offenders in both the drug court and control group were rearrested within four months of selection into the study, and within two years, only 19% had graduated. Although lower than graduation rates reported by many courts, the Baltimore rates are undoubtedly influenced by the severity of the drug problems of the sample, more than half of which used heroin, cocaine, or crack on a daily basis. Moreover, even among graduates, relapse is possible. Within two years of sample entry, two-thirds of the Baltimore drug court participants had been rearrested. Although significantly lower than the 81% rearrest rate of the control group rearrested, this is a high rate. A recent study of over 2,000 drug court graduates from a national sample of drug courts found that 16% had been rearrested within a year and 27% within two years (Roman et al., 2002). The message is that we need to be realistic in our expectations about drug court impact.

Do reductions in rearrest rates of this magnitude justify the shift to drug courts? Is the cup half full or half empty? One way of answering the questions is to examine the ratio of benefits to the costs of running a drug court. A recent review of cost-benefit studies reports that the savings resulting from reduced crime average \$2.83 for every dollar invested in drug courts (Aos et al., 2001). Although the Baltimore drug court did not reduce jail costs for the offense that led to court, savings can be expected in the future due to the averted costs of subsequent offenses. An equally important way to answer the question may be to look at the effects of this model on procedural and distributive justice. Do offenders receive appropriate punishments and is the process fair to participants? The Baltimore study offers some answers to this question.

Opponents of drug courts fall generally into two opposite camps—those who believe drug courts are “soft on crime” and offer offenders a way to avoid punishment for their offenses. The other camp opposes the coercion of offenders into treatment and fears that setting up intensive program requirements increases the risk of incarceration for participants, a group in which minorities are overrepresented.

This study’s careful analysis of the time in jail following assignment to the treatment and control groups discounts the concerns of both groups. There is no evidence that this drug court let offenders off the hook. Offenders assigned to drug court were slightly, but not significantly, more likely to be incarcerated as a result of the initial arrest and spent almost as many days in jail as did the control group. Indeed, the burden on them was significant and included drug treatment and testing requirements and court review hearings. Thus, they did not avoid penalties for their offense. Opponents who fear that drug court policies such as jail sanctions and program termination consequences increase risk of incarceration of participants should be reassured by the fact that the overall time in jail did not increase. Indeed, because the subsequent rearrest rate was lower, the risk of subsequent incarceration was actually decreased.

From a policy perspective, the results suggest that the days in jail served, similar in the treatment and control groups, were more appropriately directed by the drug court at those who continued their drug use and thus posed the greatest risk of recidivism. Compared to the control group, drug court participants spent fewer days in jail prior to case disposition and as a direct result of the assigned sentence, but more days in jail due to infractions of rules (failing drug tests or nonattendance). Thus, outcomes in terms of penalties seem fairly distributed.

The study does not address specifically the fidelity of implementation of sanctions for violations or rewards for compliance, although the program description implies set procedures that define expectations, requirements, and penalties for failure. Properly implemented, the use of consistent rules to guide the application of penalties increases the transparency of court decisions and a closer fit between behavior and penalty. The fact that much of the incarceration time served by drug court participants was in response to noncompliance (mainly continued drug use detected on tests or failure to attend treatment) suggests that participants had a chance to control the penalties received and that the process increases their perception of control. Participants in focus groups attended by participants in the DC Superior Court’s Drug Intervention Program emphasized that the importance of knowing the rules and seeing them applied consistently and fairly was critical in their compliance with drug testing requirements (Harrell and Smith, 1996).

However, as the authors note, some argue the rules are inherently

unfair because addicts cannot control their drug use and require treatment (some studies suggest at least 90 days of treatment) to achieve sustained abstinence. From their vantage point, participants are set up for failure by impossible rules. However, one of the most consistent findings from a host of evaluations is that drug courts increase the likelihood of treatment entry and retention (Belenko, 2001; GAO, 2002). At the heart of this debate is whether participants fairly enter into the agreement to drug court rules and consequences for failure.

Drug court entry is voluntary in Baltimore and in most other drug courts. Decisions to accept the conditions are made in the face of considerable legal pressure, pressure denounced by some as coercion. In Baltimore, the sentences assigned in drug court were considerably more severe than those assigned to the control group, but much more likely to be suspended. This created additional pressure to succeed in the program. However, I would argue that the formal legal pressure exerted by drug courts is not unlike informal, but strong, social pressure exerted by family and friends of addicts during structured interventions designed to force treatment. In both settings, the decision to enter and stay in treatment is voluntary, but arrived at under pressure. Offenders can, and some do, choose to serve their time. Some do this to avoid the hassle of treatment, tests, and court reviews; others do this because they believe they will fail and face penalties after all the extra requirements. The primary difference may be that in drug courts, the pressure, rules, and sanctions are state-imposed.

Thus, the criteria to use may be whether the use of legal pressure is justified in terms of its therapeutic effects. Do the benefits realized by the participants give the courts reason to adopt these practices as a way of discharging their responsibility to penalize drug crimes? In the absence of a reduction in jail time, did participants benefit from the treatment, drug tests, and court appearances? And, specifically, which court practices have therapeutic effects?

This study touches on the question of which drug court practices contribute to reductions in recidivism and, thus, future well-being of participants. Offenders randomly assigned to drug court who did not participate in a minimal amount of treatment were no less likely to be rearrested than the control group. The benefits to drug court were observed only among those who attended treatment for at least 10 consecutive days. The treatment received consisted primarily of certified outpatient and intensive outpatient treatment and jail-based acupuncture. The quality of treatment provided and the clear evidence that the treatment services received by the drug court participants exceeded services to the control group distinguishes this study from two prior experiments that found no positive effects of drug court treatment, but

suffered from excess services to the control group or poor treatment delivery (Deschenes et al., 1995; Harrell et al., 1999). Although selection bias and the high rate of rearrest in the first four months may have inflated the correlation between treatment and rearrest rates, the finding is consistent with others. Defendants in Washington, D.C. placed in a sanctions program who voluntarily participated in AA/NA groups had significantly lower rearrest rates in the year after sentencing than the control group (Harrell et al., 1999).

This brings us to the challenge facing the next generation of drug courts. There is tremendous variation in drug court operations across the country. Differences exist in who is eligible, how they are selected, what treatments are available, and, very importantly, how court practices affect the outcome. A striking reminder of the need to study and monitor court practices is provided by longitudinal studies of two drug courts. Outcomes were different for the two courts and varied over time with changes in court policies and practices (Goldkamp et al., 2001).

Hypotheses on the “active ingredients” of drug courts abound. High on the list are the legal pressure implied by the consequence for failure, the drug treatment provided (quality, appropriateness, duration), the motivating effects of the personal interest of the judge, the consistency and perceived fairness of sanctions for noncompliance, to name a few. Research on how these policies, alone and in combination, affect offender compliance with drug court requirements, graduation rates, and subsequent recidivism is needed to guide drug court operations. So although this article is a welcome start, future research needs to concentrate on comparisons of drug court practices designed to focus on court practices.

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