Drug courts: Conceptual foundation, empirical findings, and policy implications

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Abstract

While drug courts have emerged on the criminal justice policy-making agenda with considerable fanfare in recent years, they have now reached the point in their operational advancement and political advocacy where continued growth and development are becoming more dependent on the strength of empirical evidence. Along with insights obtained from descriptions related to the history and function of drug courts, their divergence from traditional judicial practices, and their role in the new paradigm of therapeutic jurisprudence, this article analyzes the results of systematic reviews and meta-analyses of the drug court evaluation literature. From a public policy perspective, these empirical assessments are considered in conjunction with the conceptual foundations and implementation strategies associated with contemporary drug courts, in an effort to address their future potential to maintain a prominent position on the public policy agenda. As with similar public initiatives, it is argued that the long-term survival of drug courts can be strengthened to the extent that they are based on theory that is solidly anchored to policy, policy to practice, and, ultimately, practice to evidence-based outcomes.

Introduction

In America’s elusive search for more productive responses to the drug abuse epidemic that has been clogging court calendars and crowding correctional facilities since the late 1970s, drug courts emerged on the public policy-making agenda with considerable fanfare, prompting renewed hope for breaking the cycle of drug-related crime. Less than two decades ago, the concept of a ‘drug court’ was simply nonexistent. It took the zero-tolerance crackdown of the war on drugs initiated in the early 1970s to so overburden the capacity of the criminal
Justice system that the necessity to explore creative alternatives became the driving force behind implementation of the first drug court in Miami, Florida, in 1989. From this grassroots beginning, the concept spread across the USA with the judicial equivalent of wildfire, in what has since been described as a driving 'spirit of fanaticism' (Dodge, 2001, quoting Mark Kleiman). By December, 2007, some 2147 fully-operating drug courts were operating throughout all fifty states, with 284 more in the planning phases (Office of Drug Control Policy, 2008; see Figure 1). In fact, when federal and state expenditures are combined, it has been estimated that American drug courts represent an economic investment of more than one billion dollars (Roman, Butts, & Rebeck, 2004). While similar figures are not available worldwide, the International Association of Drug Treatment Courts has observed that in the past decade since Canada opened the first drug court outside of the USA, additional courts have been established in over a dozen countries, ranging from Australia to Macedonia (see http://www.iadtc.law.ecu.edu.au/about/index.html).

Despite their phenomenal growth and the investment of substantial fiscal resources, however, it has been noted as recently as 2003 that evaluation research investigating the impact of drug courts has 'lagged considerably behind' their exponential expansion (Goldkamp, 2003; see also US Government Accountability Office, 2002). Moreover, even among those studies that have been conducted, many have been criticized for lack of methodological rigor, and/or a somewhat premature focus on the criminal behavior of participants during their participation in the program, rather than upon its completion (Jensen & Mosher, 2006). Additionally, such studies generally focus on a single site, or, at most, embrace a small handful of programs for comparative purposes.

For these and many other reasons, the drug court evaluation literature thus far has not established the firm foundation of confidence that can serve as a definitive empirical springboard from which incremental knowledge building can emerge.

Yet outcome evaluations of policy initiatives can be a powerful tool, particularly in terms of their potential to cast doubt upon presumed assumptions and ‘reframe’ issues that were once thought to have been resolved by policy-makers (Gersten, 1997, p. 120). As a result, it is worthwhile to analyze the results of drug court research somewhat more closely, particularly in the context of the drug-court movement’s historical development, conceptual foundation, theoretical underpinnings, and related public policy implications [1].

Defying tradition: The drug court model

Unlike their counterparts in the juvenile justice system, criminal courts in the United States have traditionally operated on the basis of an adversarial model of jurisprudence, with the prosecutor and defense serving incompatible interests, and the judge officiating to rule on legal issues, assure due process, and maintain courtroom decorum. Ultimately, the goal of this traditional model of jurisprudence is to determine a defendant’s guilt or innocence within the framework of constitutional protections, and, in the case of a conviction, to impose a suitable penalty. From the role of the judge to the nature of the interactions, goals of the proceedings, and outcome of the process, this model bears little resemblance to that of a drug court—where ‘formal adversarial rules generally do not apply’ (Goldkamp, 2000, p. 952).

Most fundamentally, many drug courts are not technically an adjudicatory process in the typical sense. Although some models require eligible clients to plead guilty and receive a suspended sentence before enrolling in drug court (with the conviction expunged upon successful completion) [2], many others operate on a diversionary (pre-plea) basis (Peters & Murrin, 2000, p. 73; Wilson, Mitchell, & MacKenzie, 2006). In diversionary drug courts, a defendant who is drug- or alcohol-dependent has the option to avoid prosecution (and eventually have charges dropped; see Drug Strategies, 1997) in exchange for participation in a rigorous treatment regimen. In such cases, the defendant is essentially on ‘judicial probation’ until successfully completing the drug court program (usually, within two years), withdrawing, or being expelled (Fischer, 2003, p. 240).

Either way, the defendant is provided with a powerful, judicially-enforced incentive to complete the program. By the same token, however, the stipulations that drug courts require of participating clients in terms of everything from attending counseling sessions to remaining substance free, submitting to periodic urine analysis, becoming gainfully employed, reporting progress periodically to the court, and so on, can be viewed by some as so excessively demanding that the personal investment is not worth the dispositional trade-off, especially for a defendant facing a relatively short sentence, with credit for time served in pretrial status [3]. In that regard, it has been noted that the ‘traditional tools of punishment’ have not been eliminated from the repertoire of drug courts, but rather, punishment has been recast into constructive terminologies such as ‘motivational sanctions’ or ‘incentives for ensuring compliance’ (Chiodo, 2002, p. 86).
Moreover, penalties for non-compliance can produce more time behind bars than would have been assigned if the case had been traditionally adjudicated (Goldkamp, 2000, p. 953).

An additional characteristic that delineates drug courts from more traditional judicial proceedings is their non-adversarial approach that focuses on helping the client in a coordinated manner, emphasizing teamwork among the judge, prosecution, defense counsel, case managers, and treatment providers. In this atmosphere, the defense counsel becomes an integrated component of the treatment team (Boldt, 1998, p. 1245) rather than an independent legal advocate. In contrast to traditional responses to criminal offenses, the drug court model provides access to a continuum of treatment and rehabilitation services, with abstinence monitored by frequent testing (Drug Court Programs Office, 1997). In fact, it is this intensive monitoring function, coupled with the threat of graduated sanctions for non-compliance, that perhaps most clearly distinguishes both the interactive judicial role and the personal accountability of the defendant from that of traditional courtroom proceedings—where the judge maintains a neutrally-detached distance from the defendant, who, in turn, passively submits to punishment without any personal investment in either assuming responsibility for past failures or making behavioral changes in the future. In a traditional courtroom, judges have been anecdotally noted for 'playing God,' holding the offender's future destiny in their enlightened hands in a manner that is perhaps respected, but often not fully comprehended, by those who are subjected to such far-reaching judicial authority. In contrast, the judge's role in drug court is more analogous to the hands-on interactions of a 'guardian angel,' who is continually keeping watch over transgressors to assure that they are maintaining agreed-upon commitments to redirect their lives, and poised to dispense either praise for compliance or sanctions for violations—both delivered in an atmosphere of compassionate concern.

The result has been nothing less than a major paradigm shift—from 'court practices designed for speed and efficiency in dispensing penalties' to problem-solving courts designed to 'prevent future crime by addressing problems that increase the risk of criminal activity' (Harrell, 2003, p. 207). As such, drug courts have been described as 'the most significant criminal justice initiative in the last century' (Huddleston, Freeman-Wilson, & Boone, 2004, p. 1). As Goldkamp (2003, p. 197) has noted, however, not everyone has embraced this widespread departure from tradition, with some viewing it as conflicting with the judicial mission to serve as 'neutral arbiter,' and undermining the 'professional detachment' needed to dispense justice in an equitable manner.

Given the fact that many drug-related offenders have past histories of frequently recycling into and out of treatment programs (Huddleston et al., 2004), they are not well noted for their steadfast ability to fulfill commitments or their staunch tenacity in pursuing rehabilitative goals. As a result, drug courts often enter into a shaky therapeutic relationship with somewhat reluctant clients, many of whom have experienced the discouragement of previous failures. In this setting, the unique power and authority of a judge represents an essential
ingredient to compel compliance with treatment (Wilson et al., 2006, pp. 460-461). Moreover, because of their treatment focus, an integral feature of drug courts is their ability to mobilize community support and resources through a team-oriented approach to building partnerships with key stakeholders (Drug Court Programs Office, 1997).

Nurturing a new paradigm in unfertile ground

In retrospect, it is easy to dismiss what a ‘dramatic a departure from prevailing judicial philosophy’ the first drug court in Miami actually represented (Goldkamp, 2003, p. 197). Since tradition has a tenacious way of becoming entrenched in the criminal justice system, the question is how such a distinctly non-traditional approach as drug courts not only emerged, but actually flourished, in a relatively inhospitable public-policy environment.

In that regard, it is notable that more than thirty years have passed since the paradigms guiding American jurisprudence shifted from the rehabilitative focus of the medical model to a renewed emphasis on the retributive and deterrent emphasis of the more punitive practices associated with the contemporary justice model (Stinchcomb, 2005a, pp. 17-19). While current social policy tends to reaffirm a traditionally adversarial approach to the pursuit of justice, drug courts appear to be an outlying anomaly that clearly contradicts modern trends. Just how did such a needs-based initiative, rooted in the theoretical basis of the medical model that had been politically and conceptually cast aside years ago, become a prevalent practice in the contemporary era of free-choice-based rationality characteristic of the justice model? The answer largely points toward the failure of prevailing efforts, combined with ‘improved knowledge about the nature of addiction and its treatment’ (Listwan, Sundt, Holsinger, & Latessa, 2003, p. 392) and the unanticipated burdensome fiscal consequences of pursuing an increasingly punitive public-policy agenda.

The shifting sands of drug-related public policy

Americans are notable for their public-policy ambivalence, particularly in terms of criminal justice, where policy paradigms have swung dramatically in widely differing directions over recent decades: Community-based alternatives go out—intermediate sanctions come in. Rehabilitation goes out—accountability comes in. Soft-on-crime goes out—zero tolerance comes in (Stinchcomb, 2000, p. vi). But perhaps nowhere has US policy-making ambivalence found greater expression than in America’s divergent responses over the years to drug-related crime and substance abuse.

In fact, today it is difficult to imagine that in the early twentieth century, cocaine was legal but alcohol was not. More recently, US drug policy, along with the legislative enactments and fiscal investments associated with it, has shifted dramatically, from zero-tolerance enforcement—and even the threat of capital
punishment at one point—to faith-based initiatives and the provision of voluntary treatment programs. In 1956, for example, the federal Narcotic Control Act was passed in the midst of what was then thought to be 'the height of the drug scare' (Stinchcomb, 2005a, p. 41). Although this legislation established the death penalty for a second conviction of selling drugs to a minor, its implementation revealed our discomfort with the disproportionately punitive nature of such drug-related policies, since not a single person was ever sentenced to death under this law (Carney, 1980, p. 7).

In subsequent years, America’s ongoing struggle to develop a coherent public policy in response to the escalating threat of illicit drugs has witnessed wide-ranging shifts, from zero-tolerance enforcement to therapeutic interventions. By the early 1990s, studies were emerging that began to identify drug addiction as a ‘chronic, relapsing condition that is not effectively addressed by sanctions, enhanced monitoring, or longer prison sentences’ (Andrews & Bonta, 1998; Fagan, 1994; Listwan et al., 2003, p. 391, citing Belenko, Mara-Drita, & McElroy, 1992). Particularly in light of research demonstrating that drug abuse may have genetic origins that can mitigate the impact of free choice (Maes et al., 1999; Saah, 2005; Tsuang et al., 1998), the logic of empirical evidence coincided with an inherent distaste for excessively harsh sanctions in response to addiction-related behavior, producing contemporary social policies that have promoted preventive approaches and treatment-oriented initiatives. Enter, the therapeutic jurisprudence of drug courts.

The etiology of drug-addiction research notwithstanding, it is somewhat ironic that such a non-traditional, utilitarian strategy as the drug court concept can trace its genesis to the unrelenting arrests and immitigable sentencing provisions of the war on drugs that characterized public policy during the 1980s (see Figure 2). Certainly, it was not merely the result of a ‘nostalgic swing of the pendulum back to the philosophy of the 1960s,’ or a ‘simple reincarnation of rehabilitation’ (Goldkamp, 2003, p. 198). As the crack-cocaine epidemic spread throughout a

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country firmly committed to conservative political agendas, 'just say no' became the rallying cry and zero-tolerance the enforcement weapon in this metaphoric war. At the same time, the shift toward legislatively structured guidelines based on the determinate sentencing mandates of the justice model significantly reduced judicial discretion (Stinchcomb & Hippensteel, 2001; Wallace, 1993), resulting in the confinement of escalating numbers of drug-addicted offenders in correctional facilities (Anonymous, 1992; Mauer, 2006).

As this double-barreled punch of increasingly intensive enforcement and progressively punitive sanctions ultimately produced crowded court dockets and sky-rocketing correctional populations (with much of the increase attributed to drug offenders) [4], public policies in support of the war-on-drugs crackdown came face to face with conservative political commitments to avoid the imposition of new taxes. Since there are no punishment options more costly than secure confinement in correctional facilities, it was apparent that something had to give.

The new paradigm: Merging alternatives with accountability

Thus, it was a desperate search for feasible solutions to the enormous caseloads, unyielding court backlogs, and unrelenting jail crowding, which were paralyzing the justice system, that promoted development of the first drug court in Miami in 1989 (Goldkamp, 2003). By the mid-1980s, officials at the Miami-Dade Department of Corrections and Rehabilitation were facing fiscal demands from a persistently-escalating jail population, along with orders from a federal court to reduce the daily population to acceptable limits, while having virtually exhausted their options in terms of such pretrial release alternatives as standard bonds, release on recognizance, and electronic monitoring [5]. At the same time, local judges were expressing extreme frustration with sentencing more and more offenders to probation, only to later revoke their community supervision and incarcerate them in a seemingly endlessly repetitive cycle (Drug Strategies, 1997). The observation that 'necessity is the mother of invention' clearly applied here. As a result, the first drug court came into existence—designed as a judicially sanctioned alternative process incorporating a treatment-oriented approach, which redefined relevant defendants from offenders destined for incarceration to addicts targeted for treatment [6]. Ultimately, as the movement spread across the country, drug courts came to be defined by the following parameters:

A specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among non-violent substance-abusing offenders and to increase the offender's likelihood of successful habilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, community supervision and use of appropriate sanctions and other habilitation services (Bureau of Justice Assistance, 2003).

Grounded in an ideology with broad-based political appeal, it is not surprising that drug courts have become so widely popular, inasmuch as they are attractive
Drug courts

Regardless of their underlying political ideology or pragmatic idiosyncrasy, drug courts reflect the theoretical foundations of a burgeoning initiative known as therapeutic jurisprudence. Originally defined by Wexler and Winick (1991), therapeutic jurisprudence focuses on the 'socio-psychological ways in which laws and legal processes affect individuals involved in the legal system' (Hora, Schma, & Rosenthal, 1999, p. 441), particularly in terms of whether they produce therapeutic or anti-therapeutic results for those involved. In fact, it is this emphasis on outcomes that clearly distinguishes therapeutic from traditional jurisprudence:

The latter largely concerns itself with whether the correct law or legal interpretation has been applied in a particular case, but not with the consequences of the decision. Therapeutic jurisprudence brings the effect of the legal system's actions on the welfare of the defendant ... squarely into the jurisprudential equation. (Reed, 2001, p. 1).

Above and beyond traditional adjudicatory and sentencing responsibilities, courts operating according to this perspective use their power to enforce legal rules and procedures to promote the psychological and physical wellbeing of
stakeholders (Harrell, 2003; Senjo & Leip, 2001; Wexler & Winick, 1991), with
the court playing a key role as ‘an active therapeutic agent in the recovery process’
(Lerner-Wren, 2000, p. 6). Since courtrooms are obviously not drug-treatment
centers, this requires multidisciplinary input into the application of legal
processes in a manner that can most effectively produce therapeutic outcomes.
Instead of relying exclusively on the statutory substance of the law in decision
making, therapeutic jurisprudence therefore incorporates knowledge from other
relevant disciplines (such as psychology and the social sciences), ‘to inform what
legal practices may best lead to healing results’ (Reed, 2001, p. 2). Essentially, the
fundamental intent is to pursue ‘treatment, justice, and public safety,’ in a
manner that reflects ‘a synthesis of therapeutic treatment and the judicial process’
(Hora et al., 1999, pp. 449 & 453).

Problem-solving courts based on the concept of therapeutic jurisprudence have
been adapted to address any number of social and interpersonal issues, from
mental health to domestic violence, drunk driving, and even homelessness. In that
regard, drug courts in particular have been praised for adding a ‘rich and humane
dimension to traditional jurisprudence,’ and for recognizing drug-related crimes
as ‘public health as well as criminal justice problems’ (Reed, 2001, pp. 1-2).
But questions have also been raised in terms of whether the ends justify the
means—i.e. whether their use of legal pressure is justified in the interest of
therapeutic effects (Harrell, 2003, p. 210). For example, it has been noted that
the very presence of drug courts is generating more arrests and prosecutorial
filings in the kinds of low-level drug cases ‘that the system simply would not have
bothered with before,’ and that drug courts are actually ‘sending substantially
more drug defendants to prison’ (Hoffman, 2001-2002, p. 174). Such net-
widening consequences have caused at least one judge to question whether
‘frustration over the war on drugs’ combined with ‘powerful hopes for
workable rehabilitation’ may have ‘clouded our judgment’ (Hoffman, 2001-
2002, pp. 173-174). Likewise, others have observed that the highly stigmatizing
nature of drug courts might, in accordance with labeling theory, potentially be
doing more harm than good (Miethe, Lu, & Reese, 2000). In that regard, it has
been noted that the fundamental question that should be asked is:

Why drug offenders are in the criminal justice system rather than in treatment
in the first place? The answer to this question appears to lie in the socio-racially
and enforcement driven genesis and evolution of drug control laws ...Drug
courts obscure the fact that punishment is the persistent and predominant mode
of addiction control. (Fischer, 2003, p. 244)

Along the same lines, doubts have been raised about the compatibility of the
principles of criminal justice and those of rehabilitative treatment. Particularly
under the justice model of public policy making—with its emphatic emphasis on
free will, individual choice, and personal accountability—the contemporary
criminal justice paradigm appears to be in direct contradiction to the
deterministic, pathological, and even biological basis from which drug addiction
treatment flows. In fact, it has been noted that these contrasting perspectives are
'not only fundamentally different, but contradictory and exclusionary' (Fischer, 2003, p. 235).

**Systematic reviews and meta-analyses of drug court evaluation literature**

Nevertheless, the community-based, problem-solving nature of therapeutic jurisprudence has invoked significant symbolic appeal as well as widespread sentimental support and political popularity throughout the United States (Fischer, 2003, p. 242). Yet the critical substantive question is whether drug courts are achieving an impact on reducing criminal behavior, inasmuch as ‘neither prevalence nor popularity’ should substitute for solid empirical evidence (Goldkamp, 2003, p. 202). In response to that question, interpretations of empirical evidence have fluctuated widely, ranging from assertions that drug court success has been definitively established (e.g. Marlowe, 2004; Meyer & Ritter, 2001-2002), to concerns that they are essentially ‘a sham perpetuated by irrational believers’ (Marlowe, 2004, referring to Anderson, 2001, and Hoffman, 2001-2002). On the one hand, there is a ‘strong sense of enthusiasm and conviction’ about the ability of drug courts to ‘deliver on their ambitious promises,’ but on the other hand, there is ‘very limited evidence’ documenting their superior effectiveness, especially when taking into account the substantial methodological problems that are often characteristic of their assessments (Fischer, 2003, p. 231).

In an effort to more precisely assess the drug court evaluation literature, four systematic reviews have been reported in the current literature on this topic (Belenko, 2001; Jensen & Mosher, 2006; US Government Accountability Office, 2005; Wilson et al., 2006), with the latter also incorporating meta-analytical techniques. In addition, two meta-analytic reviews were conducted in recent years, one published (Lowenkamp, Holsinger, & Latessa, 2005), and one as-yet unpublished (Shaffer, 2006). Although overall findings of these studies lean toward endorsing the beneficial effects of drug courts, they are neither universally nor unconditionally positive, as outlined in the following summarized descriptions.

Belenko’s (2001) review of 37 published and unpublished evaluations of drug courts produced between 1999 and April, 2001, reports that they have ‘achieved considerable local support and have provided intensive, long-term treatment services to offenders with long histories of drug use and criminal justice contacts, previous treatment failures, and high rates of health and social problems.’ His findings indicate that drug use and criminal activity are ‘relatively reduced’ during program participation, but with an average of 47% graduating, ‘the long-term, post-program impacts’ are ‘less clear’ (Belenko, 2001, p. 1). In four of the six studies that examined one-year post-program recidivism, a reduction was found, but the size of the reduction varied [8]. Among the three studies that used random assignment, all reported a reduction in recidivism, but none distinguished between in-program and post-program rearrests.
As a result, Belenko (2001, p. 2) concludes that his review ‘suggests a continuing need for better precision in describing data sources,’ particularly in terms of clearly identifying whether the population is being studied during or after drug court participation. Additionally, he points out that ‘findings from several evaluations suggest that drug court impacts may fluctuate over time,’ thus requiring multi-year replication studies to accurately determine long-term outcomes (Belenko, 2001, p. 2). Goldkamp (2003, p. 199) further affirms this observation, noting that his research likewise revealed ‘some pretty strong years, some not-so-strong years, and some years in which significant differences in outcomes between participants and comparisons could not be found.’

In an effort to update Belenko’s review, Jensen and Mosher (2006) searched criminology and criminal justice research sources for adult criminal drug court outcome evaluations published in refereed journals from 2001 through June 2005. They uncovered only eleven studies that met their requirements for scientific rigor that had not been reviewed previously by Belenko. In response to the methodological concerns expressed by Belenko, their findings are separated into two distinct categories: (1) those studies that mix in-program and post-program follow-up periods; and (2) those that measure post-program outcomes only.

Among the first (mixed) group, three studies found that drug courts reduced recidivism, one found a small reduction in reconvictions (but it was not statistically significant), and in one results were mixed. Among the second group (post-program outcomes only), three studies found that drug courts resulted in lower recidivism rates. Given these differences in follow-up designs, they conclude that ten of the eleven evaluations reviewed were found to reduce criminal recidivism, although the reduction in one was small, and another reported mixed results (Jensen & Mosher, 2006, p. 464). Like Belenko, these researchers also denounced the lack of methodological consistency, particularly in terms of ‘how recidivism is measured, the length and scope of the study, and the use of non-equivalent comparison groups’ (Jensen & Mosher, 2006, p. 464). Additionally, they pointed out that peer-reviewed journals are considerably more likely to publish studies that find positive results, thus concluding that ‘a selection bias may exist’ that would modify their findings (Jensen & Mosher, 2006, p. 464).

The research conducted by the US Government Accountability Office (GAO) began by noting that determining whether drug courts reduce recidivism and substance use has been challenging because so much of the empirical evidence is weak (US Government Accountability Office, 2005). Nevertheless, GAO was mandated by the Department of Justice Appropriations Authorization Act to assess drug court program effectiveness. To meet this mandate, a systematic review of drug court research was conducted, which identified 117 evaluations that reported outcome data and were published between May 1997 and January 2004. However, when additional criteria for methodological soundness were applied, only 27 evaluations were ultimately selected (just five of which employed random assignment).
GAO’s analysis of ‘within-program’ recidivism data (i.e. recidivism during program participation) showed that participants had fewer incidents of rearrests or reconvictions and a longer time until rearrest or reconviction than comparison group members (these reductions were observed for any felony offense and for drug offenses). Moreover, GAO’s evidence suggests that recidivism reductions observed during the program endured when post-program recidivism was measured for up to one year after completion (US Government Accountability Office, 2005) [9].

With regard to substance use, results were somewhat less consistent. While drug test results generally showed significant reductions in use during program participation, self-reported results did not. From a fiscal perspective, however, among the seven evaluations that provided sufficient cost and benefit data, all yielded positive net benefits (US Government Accountability Office, 2005). Since completion rates ranged from 27% to 66%, and inasmuch as program completion was associated with compliance with requirements, GAO concluded that ‘practices that encourage program completion may enhance the success of drug court programs in relation to recidivism’ (US Government Accountability Office, 2005, p. 7). As another researcher observed in this regard, ‘we know that drug courts reduce recidivism and drug use among participants when they are in drug court, though we don’t know how long the effect lasts’ (Fox, 2004, p. 6, quoting John Roman).

The systematic literature review conducted by Wilson et al. (2006) differed from those previously cited on at least two significant dimensions—i.e. it included both published and unpublished reports, as well as a statistical meta-analysis, thereby enabling them to estimate overall effect across studies. Their search strategy was designed to locate all eligible drug court evaluations—whether published or not—that used a comparison group and experimental or quasi-experimental design. Sixty-eight documents representing 50 studies met the eligibility criteria, the majority of which (62%) were actually unpublished, thereby addressing the potential selection bias issue raised by Jensen and Mosher (2006).

Findings reported by Wilson et al. (2006, p. 479) ‘tentatively suggest that drug offenders participating in a drug court are less likely to reoffend than similar offenders sentenced to traditional correctional options.’ More specifically, they found the reduction in overall offending was approximately 26% across all studies (14% for two high-quality randomized studies). Nevertheless, they qualify their results as ‘tentative,’ explaining the equivocation in their conclusions as resulting from the ‘generally weak nature of the research designs’ employed by the studies they reviewed (Wilson et al., 2006, p. 479). Although they maintain that ‘evidence is supportive of the hypothesis that drug courts are effective at reducing future drug use and other criminal behavior,’ it is ‘not convincing from a social scientific standpoint’ (Wilson et al., 2006, p. 479).

The research conducted by Lowenkamp et al. (2005) likewise included both published and unpublished evaluations, along with meta-analytic techniques. They identified 22 outcome evaluations that met their criteria for inclusion of a comparison group and utilization of some measure of criminal behavior as an
outcome measure. Looking at long-term results, they determined that studies using a follow-up period of more than two years actually demonstrated the greatest reductions in recidivism (with each twelve-month increase in follow-up time increasing the average recidivism reduction). This prompted the authors to conclude that their findings 'may indicate that long-term behavioral changes are an outcome of the drug court programs and that these changes do not begin to dissipate within three years' (Lowenkamp et al., 2005, p. 10). One of the most unique features of this meta-analysis, however, was its focus on offender risk level, which was found to be a significant predictor associated with a doubling of the effect size—i.e. 'studies where less than 50% of the participants had a prior record produced an average reduction in recidivism of 5%,' compared 'to an average 10% reduction associated with studies where half or more of the participants had a prior record,' thus apparently validating the notion that treatment programs should be reserved for higher-risk cases (Lowenkamp et al., 2005, pp. 10 & 28).

Finally, in her meta-analysis, Shaffer (2006) collected data from 60 outcome evaluations, representing 76 distinct drug courts and six multi-site evaluations [10]. Overall, her findings indicate that drug courts in general reduce recidivism by approximately 9%, although this average masks considerable differences between adult drug courts (10%) and juvenile drug courts (5%). Differences in effect size were also noted on the basis of methodological quality and program length (Shaffer, 2006), with those lasting between eight and sixteen months significantly more effective than those lasting less than eight months or longer than sixteen months.

It is also noteworthy that, while empirically qualifying as neither a systematic review nor a meta-analysis, Fischer’s (2003, p. 232) analysis of the literature identified the following key issues as illustrating ‘the state of limited effectiveness or research quality’ in drug court evaluations (Fischer, 2003, p. 232):

1. **Limited program retention**—i.e. several dozen evaluation reviews suggest that drug courts retain (for at least one year) about 40–60% of eligible offenders. Particularly in light of the correlation between participation and positive outcomes, this is interpreted as ‘a key indicator’ of limitations in terms of establishing the effectiveness of drug courts.

2. **Skimming practices**—i.e. many drug courts carefully select the ‘most treatable’ or ‘lowest risk’ offenders, making them vulnerable to ‘self-selection bias.’ Since most of their evaluations are based on control groups (rather than random assignment), comparing the experimental group to either dropouts who are expelled for rule violations or high-risk offenders who are ineligible to participant results in comparing ‘not so bad apples’ with ‘very bad apples,’ thus skewing results in favor of the intervention.

3. **No long-term, post-intervention follow-up**—i.e. focusing the evaluation on those remaining in the program (and therefore under the supervision of the criminal justice system), who are, by default, in compliance with the very program rules and regulations that serve as effectiveness indicators, thereby creating a tautological effect.
Conclusions from empirical findings

As is illustrated by this review of the literature, researchers have come to rather divergent opinions about evidence reflecting on the impact of drug courts. In that regard, Marlowe (2004) rhetorically questions why this field has continued to languish in 'serious dispute about whether drug courts work,' in light of extensive empirical results. His assessment of the answer relates to the likelihood that, as the literature is expanded, it is inevitably going to contain more conflicting findings, inadequate methodologies, and differential standards of proof, but that these issues should not detract from the scientific integrity of well-designed studies that 'prove the efficacy of drug courts' beyond the standard of evidence needed to establish the efficacy of a new medication in clinical trials (Marlowe, 2004, p. 3). In fact, Janet Reno herself has remarked that she did not expect to see 'fairy tale' results showing dramatic reductions in recidivism, but rather, appeared to be more impressed with the finding that, when drug court participants did recidivate, they took two to three times longer to be rearrested than their counterparts (Goldkamp, White, & Robinson, 2001, p. 32).

At the opposite extreme, another researcher describes drug courts as 'unproven mandatory treatment programs ... that rely on legal coercion' (Anderson, 2001, p. 469), and at least one judge clearly denounces their efficacy (i.e. 'drug courts don’t work, and never have'), criticizing them for massive net-widening, as well as creating 'a dangerous psycho-judicial branch [of government] populated by judges who think they are doctors, who think drug addiction is a treatable disease, and who send their patients to prison when they fail to respond to treatment' (Hoffman, 2001-2002, p. 172). Still others take a more neutral position, concluding that drug courts are 'promising but understudied,' (Marlowe, DeMatteo, & Festinger, 2003), and expressing concern that 'what we know about drug courts] is very small ... what we think we know is much bigger' (Fox, 2004, p. 3, quoting John Roman).

Policy-related conclusions and implications

Reviewing the findings reported herein helps to illustrate why evaluation research often does not contribute significantly to public policy development. Not only do empirical studies tend to produce ambivalent results (Petersilia, 1996) that can lead to the widely-differing conclusions expressed above, but even when definitive findings are forthcoming, they often do little to identify why change did or did not occur in the anticipated direction (Stinchcomb, 2005b). The resulting lack of specificity is among the reasons that at least one public policy analyst has observed that he has been unable to identify a single governmental program that has been 'terminated solely as a consequence of an unfavorable systematic evaluation' (Anderson, 1994, p. 250). The dynamic environment of ongoing debate over the efficacy of drug courts therefore continues to raise questions concerning the strength of their conceptual foundation, the execution of their...
implementation strategies, and, ultimately, the future potential of their ability to maintain a prominent position on the public-policy agenda.

With regard to their conceptual basis, the therapeutic jurisprudence foundation of drug courts perhaps most closely resembles the non-traditional judicial approaches that have characterized the contemporary restorative justice movement (see Bazemore & Griffiths, 1997; Perry, 2002; Zehr, 1991). Founded in the midst of disenchantment with the capability of punishment alone to reduce drug-related crimes (Stinchcomb, 2000), drug courts to a considerable extent share a common theoretical basis with restorative justice initiatives, which emerged in the United States at approximately the same time, as a result of similar frustrations with existing practices. In that respect, both approaches attempt to hold offenders accountable for their actions, while at the same time incorporating into the judicial decision-making equation a tough-love-oriented concern for addressing whatever underlying condition prompted their law-violating behavior. Likewise, both rely on a multidisciplinary team-focused intervention that, in contrast to traditional judicial practices, represents a relatively unstructured and unstandardized initiative that is based on the unique circumstances of each case (Stinchcomb, 2005a, p. 37).

While a certain degree of 'shaming' is inherent in both, restorative justice emphasizes reintegrative rather than stigmatic shaming (Braithwaite, 1989), whereas drug courts have been criticized for actually being more stigmatizing than conventional courts (emphasis added) and 'not reintegrative enough' in their orientation toward punishment (Miethe et al., 2000, p. 522). This may be a reflection of the fact that restorative justice practices appear to be grounded on somewhat more solid theoretical underpinnings (see, for example, Bazemore & Stinchcomb, 2004) than drug courts, which seem to have emerged more atheoretically as an opportunistic reaction to fiscal and political realities. As Scheirer (1981) has observed in that regard, opportunistic public policies are substantially less likely to succeed in fulfilling their mission than those based more on analytical problem solving. Without theory-driven parameters to serve as directional guideposts, public policy has a tendency to drift through the shifting sands of popular opinion and political ideology, which does not provide 'fertile soil in which to plant productive policy paradigms' (Stinchcomb, 2000, p. viii).

Whether theoretically grounded or politically driven, however, policy ultimately must be translated into practice. In that process, some degree of reshaping and redefinition is always necessary in order to enable the broad-based nature of policy to be specifically applied in response to local needs (Levine, Musheno, & Palumbo, 1980, p. 118). Nevertheless, it is well known that even the best policy intentions are not always converted effectively into operational practices. Consider, for instance, the so-called 'medical model' that ostensibly dominated correctional policy (and by inference, practice) from the 1930s to the mid-1970s (Archambeault & Archambeault, 1982, p. 165). While widespread rehabilitative rhetoric surrounded this policy, the reality of its implementation reflected little of its theoretical assumptions.
One might assume that treatment services were widely available in prisons under the medical model. That, however, was not the case. Even at the height of the medical model, in-depth psychological counseling, social casework, and psychiatric therapy were never prominent features of correctional institutions... In the mid-1950s, for example, there were only twenty-three full-time psychiatrists in US correctional institutions... The psychological staff numbered sixty-seven. The 257 caseworkers [in prisons throughout the country] averaged less than sixteen minutes per inmate each month. (Stinchcomb, 2005a, pp. 276-77, citing data from Schnur, 1958).

Moreover, drug-court evaluations that focus exclusively on outcome measures such as recidivism often fail to explore implementation procedures representing the 'black box' that intervenes between policy intentions and operational outcomes. Such evaluations are insensitive to political and organizational contexts within which the drug court emerged and neglect such issues as the relationship between planned and delivered treatment, official and operative goals, intended and unintended effects, etc. (Chen, 1990; Stinchcomb, 2001). Although most drug-court evaluations reflect outcome-focused summative assessments, some have opened the black box, discovering, for example, a 'wide disparity' between the court's 'organizational rhetoric and actual practices' (Miethe et al., 2000, p. 536). Until more empirical assessments explore this level of analysis through a combination of formative and summative assessments, the reasons underlying either positive or negative results will remain obscured.

In the final analysis, the challenge for drug courts in terms of their potential to maintain a prominent position on the public policy agenda is intimately related to each of the issues discussed above—i.e. the strength of their conceptual foundation and the execution of their implementation strategies, both of which are encompassed within a politically charged policy development environment. As Lindblom (1980, p. 12) has noted in that regard:

On the one hand, people want policy to be informed and well-analyzed. On the other hand, they want policy-making to be democratic, hence necessarily political. In slightly different words, on the one hand, they want policy-making to be more scientific; on the other, they want it to remain in the world of politics. Whether emerging from theoretical, political, or simply pragmatic considerations, drug courts ultimately must be able to demonstrate their operational utility, empirical benefits, and comparative superiority to traditional practices. That is more likely to be achieved for public policies that are based on solid theoretical grounding than those that are floundering in conceptual uncertainty. For although people may want public policy to encompass the diametrically opposed attributes of scientific inquiry and political reality, the question for both policy makers and practitioners is what happens when political support diminishes or ideological paradigms shift, leaving public policy that was dependent on these frail foundations floating in a sea of ambiguity: It is only when theory is solidly anchored to policy—and subsequently, policy to practice, and ultimately, practice to methodologically rigorous evidence-based outcomes—that a protective causal chain can be convincingly mounted to guard against
the destructive repercussions of unanticipated idiosyncrasies ranging from political reactions to public indifference.

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Notes

[1] Although the research in this article is based on the widespread empirical results that have been generated in conjunction with the US drug court experience over the past two decades, findings are in most cases likewise relevant to similar initiatives in other countries without benefit of an extensive empirical foundation on which to rely in shaping their developmental drug court initiatives.

[2] In such post-adjudication drug courts, the defendant pleads guilty, and the sentence is suspended in lieu of successfully completing drug court programming, at which point the sentence is waived, and often the conviction is expunged as well (or if the client is unsuccessful, the suspension is lifted and the sentence imposed).

[3] Between 40% and 80% of drug abusers drop out of treatment prior to the ninety-day threshold of effective treatment length, ... and 80 to 90% drop out in fewer than twelve months (Huddleston et al., 2004, p. 4).

[4] For example, between 1985 and 1995, the population of drug offenders in state prisons increased by 478%, more than double the increase for any other offense category (Mauer, 1999, p. 35). Moreover, in terms of the fiscal impact, a comparative study of two groups of low-level drug traffickers sentenced before and after the adoption of mandatory minimums and sentencing guidelines concluded that the additional time spent in prison for the second group would cost taxpayers approximately $515 million (Harer, 1994).

[5] These insights reflect the fact that during this period of time, the author was on the management staff of the Miami-Dade Department of Corrections and Rehabilitation.

[6] In an ironic twist of fate, as of mid-April, 2007, Miami-Dade’s drug court had placed a moratorium on accepting new defendants in order to reduce the load of 2000 cases, which had become unmanageable for its solitary judge (Arthur, 2007).

[7] In fact, the same perspectives are held among drug court opponents—some of whom believe that they are ‘soft on crime’ by offering offenders a means of avoiding punishment, while others view them as too coercive, thereby increasing the risk of incarceration for participants, among which minorities are overrepresented (Harrell, 2003, p. 209).

[8] Another study independent of Belenko’s research found that, based on a sample of 2020 drug-court graduates (designed to represent approximately 17,000 graduates), 16.4% had been arrested and charged with a serious offense within one year of graduation. Within two years, the figure rises to 27.5% (Roman, Townsend, & Bhati, 2003).

[9] These findings are in contrast to an earlier GAO analysis of the literature, which, on the basis of evidence available at that time, concluded that ‘some studies showed positive effects of the drug court programs during the period offenders participated in them, while others showed no effects, or effects that were mixed and difficult to interpret. Similarly, some studies showed positive effects for offenders after completing the programs, while others showed no effects, or small and insignificant effects’ (US Government Accounting Office, 1997, p. 85).

[10] Additionally, she surveyed and conducted telephone interviews with the targeted courts.
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