



# Drug Courts: Background, Effectiveness, and Policy Issues for Congress

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## Summary

Drug courts are specialized court dockets, or portions of judges' calendars of cases, that generally target nonviolent offenders with substance-abuse problems. These programs provide offenders with intensive court supervision, mandatory drug testing, substance-abuse treatment, and other social services as an alternative to adjudication or incarceration. In this way, drug courts are designed to break the cycle of substance abuse, addiction, and crime by changing the behavior of substance-abusing offenders. Participation in these programs is voluntary. Eligible defendants must agree to the program's requirements and successfully complete the program in exchange for avoiding incarceration, having their criminal charges reduced or dismissed, or having their sentences reduced. Drug courts encourage participants' compliance and impose sanctions on those who fail to comply with the program's requirements. Drug courts are widely considered an important strategy for reducing incarceration, providing drug treatment, and reducing drug use and recidivism (reoffending) among nonviolent offenders.

Although drug courts are mostly initiated and funded at the state and local level, Congress has supported the development, implementation, and expansion of drug courts through the federal Drug Court Discretionary Grant Program, originally authorized under Title V of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). While the federal drug court grant program authorization of appropriations expired in FY2008, the program has continued to receive appropriations: \$40 million for FY2009 (P.L. 111-8) and \$45 million for FY2010 (P.L. 111-117). In the 111<sup>th</sup> Congress, H.R. 6090 would amend the program and extend the authorization of appropriations for drug court grants from FY2011 through FY2017. Congress could consider reauthorizing the program in its current form or amending the program to reflect issues of concern.

Since the first drug court was established in 1989, drug court programs have been quickly adopted by communities and states across the country. As of July 2009, there were 2,361 drug courts in operation across the country. Although there are drug courts in many jurisdictions, it is unclear how many drug-abusing offenders participate in these programs or how well they have fared after successfully completing a drug court program. Some estimates indicate that only a small number of potential participants are actually included in these drug treatment programs. Variations in how drug courts determine eligibility, provide substance-abuse treatment, supervise participants, and enforce compliance reflect the adaptability of the drug court model, but also complicate program evaluations, comparisons, and cost-benefit analyses. Nevertheless, research suggests that drug courts reduce substance abuse and recidivism among participants compared to nonparticipants, and are a viable intervention for reducing drug demand among substance-abusing offenders.

This report considers these and other issues related to state drug courts. The report includes an overview of state drug courts and the related federal grant program. The report then discusses some of the related issues that may be of interest to Congress if it considers reauthorizing the drug court grant program or other related legislation.

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## Introduction

Drug courts are specialized court dockets, or parts of judges' calendars of cases awaiting action in court, that generally focus on cases involving nonviolent offenders with substance-abuse problems.<sup>1</sup> Drug court programs generally include intensive court supervision, drug testing, and substance-abuse treatment. Under the drug court model, judges and other court personnel monitor a participant's substance-abuse treatment and program compliance, and judges can impose immediate and graduated sanctions if offenders fail to comply with the program's requirements.<sup>2</sup> Graduated sanctions can include more-frequent drug testing, in-patient detoxification and treatment, additional court appearances, and short periods of incarceration that may increase as an offender's infractions accumulate.<sup>3</sup> To encourage participants' continued compliance, drug courts also provide incentives, such as fewer drug tests, fewer court appearances, and possibly the dismissal of criminal charges or reduced or set aside sentences if the program is successfully completed.<sup>4</sup> By bringing intensively monitored long-term substance-abuse treatment into the criminal justice system and coercing abstinence from participants, drug courts seek to help substance-abusing offenders break the cycle of drug use and criminal offending.<sup>5</sup> Research indicates that drug courts can reduce drug abuse, recidivism,<sup>6</sup> and incarceration among drug-involved offenders.<sup>7</sup> Thus, drug courts arguably represent one viable approach to drug demand reduction among substance-abusing offenders.

Drug courts began at the state and local level in the 1980s as a response to the rapidly rising incarceration rates among drug offenders.<sup>8</sup> Many of these offenders had little or no history of violence or high-level drug selling activity, but instead had substance-abuse problems that fueled

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<sup>1</sup> U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), National Criminal Justice Reference Service (NCJRS), "In the Spotlight: Drug Courts," available at [http://www.ncjrs.gov/spotlight/drug\\_courts/summary.html](http://www.ncjrs.gov/spotlight/drug_courts/summary.html) (hereafter referred to as NCJRS, *In the Spotlight: Drug Courts*); James J. Hennessy, "Introduction: Drug Courts in Operation," in *Drug Courts in Operation: Current Research*, ed. James J. Hennessy, Nathaniel J. Pallone (Binghamton, NY: The Haworth Press, Inc., 2001), pp. 1-10 (hereafter referred to as *Drug Courts in Operation*).

<sup>2</sup> U.S. DOJ, BJA, OJP, "Defining Drug Courts: The Key Components," January 1997, pp. 43; Douglas B. Marlowe, "Integrating Substance Abuse Treatment and Criminal Justice Supervision," *Science and Practice Perspectives*, National Institute on Drug Abuse of the National Institutes of Health, August 2003, p. 7.

<sup>3</sup> U.S. DOJ, BJA, OJP, "BJA Drug Court Discretionary Grant Program: FY 2010 Requirements Resource Guide," p. 2.

<sup>4</sup> NCJRS, *In the Spotlight: Drug Courts*; Douglas B. Marlowe, "Integrating Substance Abuse Treatment and Criminal Justice Supervision," *Science and Practice Perspectives*, National Institute on Drug Abuse of the National Institutes of Health, August 2003, p. 7.

<sup>5</sup> C. West Huddleston, III, Judge Karen Freeman-Wilson (ret.), Douglas B. Marlowe, and Aaron Roussell, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*, U.S. DOJ, OJP, BJA, National Drug Court Institute (NDCI), May 2005, vol. 1, no. 2, p. 2 (hereafter referred to as NDCI, *Painting the Current Picture: A National Report Card on Drug Courts*).

<sup>6</sup> According to DOJ's National Institute of Justice, recidivism or criminal recidivism refers to reoffending or repeated criminal behavior and may be measured as self-reported offenses, arrests, and/or convictions.

<sup>7</sup> In the drug court literature, and the literature on substance abuse among offenders, two terms are frequently used to refer to drug-using offenders. In general, "drug offenders" refers to individuals who are suspected or convicted of having committed a drug offense and who may or may not be drug addicted or drug dependent. "Drug-using," "drug-abusing," or "drug-involved" offenders may have committed a drug offense or some other type of criminal offense but have been identified as having a substance abuse problem or being at risk of drug dependency.

<sup>8</sup> U.S. Government Accountability Office (GAO), *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, GAO-05-219, February 2005, p. 1 (hereafter referred to as U.S. GAO, *Adult Drug Courts, 2005*).

their criminal activity. A growing body of research indicated that substance-abuse treatment could effectively reduce drug use and related criminality, particularly if an offender could be compelled to enter and remain in drug treatment long enough, so that the “dose” was sufficient to end their addiction or reduce their drug use. There was also a growing recognition that drug enforcement alone could not reduce the demand for illegal drugs. However, if the coercive power of the criminal justice system could be combined with drug treatment, this combination might be an effective strategy for reducing substance abuse, drug-related crime, and incarceration rates among low-level, nonviolent repeat offenders.

Over the last 20 years, drug courts have been adopted by many states and localities across the country in an effort to more efficiently and effectively reduce drug-related crime and recidivism. Most drug court programs are focused upon low-level, nonviolent offenders. In some states and localities, however, the focus of drug court programs has been widened to include more serious offenders. Meanwhile, several studies, some of them federally sponsored, have attempted to demonstrate the effectiveness of drug courts.<sup>9</sup> Program data limitations, however, have prevented researchers from making conclusive, across-the-board findings about the effectiveness of drug courts. Nevertheless, some of these studies report that only a fraction of the low-level, nonviolent offenders are being served.<sup>10</sup> Some researchers, moreover, assert that expanding the drug court program eligibility to include more serious offenders could arguably increase the potential benefits of drug courts to society.<sup>11</sup> Notwithstanding the absence of conclusive findings, drug courts are viewed by many to be an effective strategy for addressing the underlying problems of substance-abusing offenders.

Congress demonstrated its support for developing state and local drug court programs through the Drug Court Discretionary Grant Program, authorized under Title V of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). These competitive grants, administered by the Bureau of Justice Assistance (BJA) at the Department of Justice (DOJ), assist state, local and tribal governments, and court entities with efforts to plan, implement, and expand drug courts. Since FY1995, Congress has provided more than \$530 million in federal appropriations for drug court grants. For FY2010, Congress appropriated \$45 million for drug court grants. The federal drug court grant program currently functions, in large measure, as a “start-up” or demonstration program, providing funding for a few years to help support new or expanding drug courts. The grant program also expressly prohibits awardees from including violent offenders in their programs.

Congress could consider various issues or options for supporting and shaping the future role of the federal drug court grant program. For example, Congress could consider whether to amend the existing grant program or authorize increased funding for the program. Congress could specify that a portion of the program’s funding be designated for grants furthering the standardization of program data reporting and evaluation. Congress could also consider amending

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<sup>9</sup> U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, *Quitting Hard Habits: Efforts to Expand and Improve Alternatives to Incarceration for Drug-Involved Offenders*, Statement of James Burch, Acting Director, BJA, Office of Justice Programs, DOJ, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 22, 2010, pp. 3-4.

<sup>10</sup> Avinash Singh Bhati, John K. Roman, and Aaron Chalfin, *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*, Urban Institute, Justice Policy Center, April 2008, pp. 1-2 (hereafter referred to as Bhati, Roman, and Chalfin, *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*).

<sup>11</sup> U.S. DOJ, OJP, National Institute of Justice (NIJ), *Drug Courts: The Second Decade*, June 2006, pp. 2-3.

the federal drug court grant program to permit awardees to include offenders with more serious or extensive criminal histories. These and other issues could be of concern to Congress if reauthorizing the federal drug court grant program is taken up in future deliberations.

This report includes (1) an overview of state adult drug courts and the scope of the problems that drug courts are designed to address, including drug use, recidivism, and incarceration rates among drug offenders; (2) an overview of the federal drug court grant program and its funding history; and (3) a discussion of selected issues that may be of interest to Congress related to the drug court grant program. An **Appendix** provides the number of adult drug courts by state as of July 2009. While the drug court model has been adapted to serve specific subpopulations, such as juveniles or veterans, this report focuses on adult drug courts.

## Scope of the Problem

Drug control policy in the United States has historically been dominated by law enforcement efforts to reduce the availability and use of illegal drugs.<sup>12</sup> As drug use and the demand for illegal drugs increased during the 1980s, the emphasis on drug enforcement meant that growing numbers of drug offenders entered the criminal justice system. In response to the increased use of powder and crack cocaine during the 1980s, and the violence associated with the illicit drug market,<sup>13</sup> Congress established more stringent penalties for drug offenses, including federal mandatory minimum prison sentences for specific quantities of certain drugs. States similarly increased penalties associated with drug offenses and emphasized enforcement over substance-abuse treatment or prevention efforts. Consequently, prison populations swelled as drug offenders were incarcerated in larger numbers and sentenced to longer periods of incarceration. The first drug court was established in 1989 in response to these developments.

Evidence of the rapid rise in drug-related offending during this period is apparent at both the state and federal levels. According to the Federal Bureau of Investigation (FBI), in 1980 state arrests for drug offenses numbered 580,900, accounting for 5.6% of total estimated arrests.<sup>14</sup> The number of arrests for drug offenses grew to almost 1.362 million in 1989, or 9.5% of total estimated arrests.<sup>15</sup> By 2008, the number of drug arrests had risen to more than 1.7 million, accounting for 12.2% of total arrests (14.0 million).<sup>16</sup> Of the state and local drug arrests in 2008, 82.3% were for violations categorized as drug possession, while 17.7% of these arrests were for drug sales or manufacturing violations.<sup>17</sup>

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<sup>12</sup> David Boyum, Peter Reuter, "An Analytic Assessment of U.S. Drug Control Policy," American Enterprise Institute Press, Washington, DC, 2005, pp. 2-3 (hereafter referred to as Boyum and Reuter, "An Analytic Assessment of U.S. Drug Control Policy").

<sup>13</sup> *Ibid.*, pp. 22-25.

<sup>14</sup> U.S. DOJ, FBI, Criminal Justice Information Services Division, *1980 Crime in America*, September 10, 1981, Table 24, p. 191.

<sup>15</sup> U.S. DOJ, FBI, Criminal Justice Information Services Division, *1989 Crime in the United States*, August 5, 1989, Table 24, p. 172.

<sup>16</sup> U.S. DOJ, Federal Bureau of Investigation, Criminal Justice Information Services Division, *2008 Crime in America*, Table 29, at [http://www.fbi.gov/ucr/cius2008/data/table\\_29.html](http://www.fbi.gov/ucr/cius2008/data/table_29.html) (hereafter referred to as *2008 Crime in America*).

<sup>17</sup> *Ibid.*

From 1980 to 1989, the number of drug offenders in custody of state correctional authorities increased from 19,000 to 120,100, an increase of 532%.<sup>18</sup> The most recent data available indicates that in 2006, there were 265,800 state drug offenders representing 20% of the total state prison population,<sup>19</sup> up from 19,000 in 1980, when drug offenders represented 6% of the total state prisoners.<sup>20</sup>

The total prison population also increased at both the federal and state levels during the 1980s. According to DOJ's Bureau of Justice Statistics (BJS), between 1980 and 1989, year-end state and federal prison populations grew from 329,821 to 712,364, increasing by 116%.<sup>21</sup> By 2008, the prison population had more than doubled to 1.5 million, a number that is equivalent to approximately one in every 198 persons in the U.S. resident population being incarcerated in a state or federal prison.<sup>22</sup>

Moreover, BJS estimates that more than half of the individuals entering the criminal justice system, regardless of their offense, have substance-abuse problems.<sup>23</sup> Among state prisoners, 32% reported drug use at the time of the offense, and 53% of state prisoners met the medical criteria for drug dependence or abuse.<sup>24</sup> The BJS survey found that drug dependent or drug-abusing state prisoners were more likely to have extensive criminal records, with 53% of such inmates having at least three prior sentences, compared with 32% of other state inmates.

## **The Drug Court Movement**

The number of drug courts has grown rapidly in the 20 years since the first drug court was established in 1989.<sup>25</sup> The rapid growth in the number of drug courts has led many criminal justice researchers to refer to their development as a "movement" because the basis of their adoption preceded empirical evidence of their effectiveness.<sup>26</sup> As courts, jails, and prisons became overwhelmed by the numbers of low-level, repeat drug offenders and street-level dealers, many of whom had substance-abuse problems and were involved in crimes related to drug use, there was a growing consensus that drug enforcement and corrections alone could not address the problem. Drug courts were seen as an innovative way of addressing substance-abuse and drug-related crime by targeting nonviolent offenders with substance-abuse problems. The drug court movement reflected a fundamental shift from law enforcement's emphasis on reducing drug use

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<sup>18</sup> The number of persons in custody of corrections are categorized by their most serious offense, generally the offense that carries the longest prison sentence. These offenders may or may not have been convicted of other offenses. Drug offenders are persons in custody whose most serious offense was a drug offense, which may include possession, manufacturing, trafficking, and other drug offenses.

<sup>19</sup> BJS, *Prisoners in 2008*, p. 6. A "sentenced" prisoner is one sentenced to more than one year.

<sup>20</sup> U.S. DOJ, BJS, *Correctional Populations in the United States, 1992*, January 1995.

<sup>21</sup> U.S. DOJ, BJS, *Prisoners in 1993*, June 1994, pp. 1, 8.

<sup>22</sup> U.S. DOJ, BJS, *Prisoners in 2008*, p. 6.

<sup>23</sup> U.S. DOJ, BJS, *Drug Use and Dependence, State and Federal Prisoners, 2004*, October 2006, p. 1.

<sup>24</sup> The criteria used to estimate dependence or abuse are based on those specified in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition (DSM-IV). See U.S. DOJ, BJS, "Drug Use and Dependence, State and Federal Prisoners, 2004," October 2006.

<sup>25</sup> Earlier courts were also referred to as "drug courts," although they focused only on expediting low-level, drug-related case calendars and did not provide offenders with substance-abuse treatment.

<sup>26</sup> U.S. Department of Justice (DOJ), OJP, National Institute of Justice (NIJ), *The Drug Court Movement*, July 1995; John S. Goldkamp, *Justice and Treatment Innovation: The Drug Court Movement*, DOJ, OJP, NIJ, October 1994.

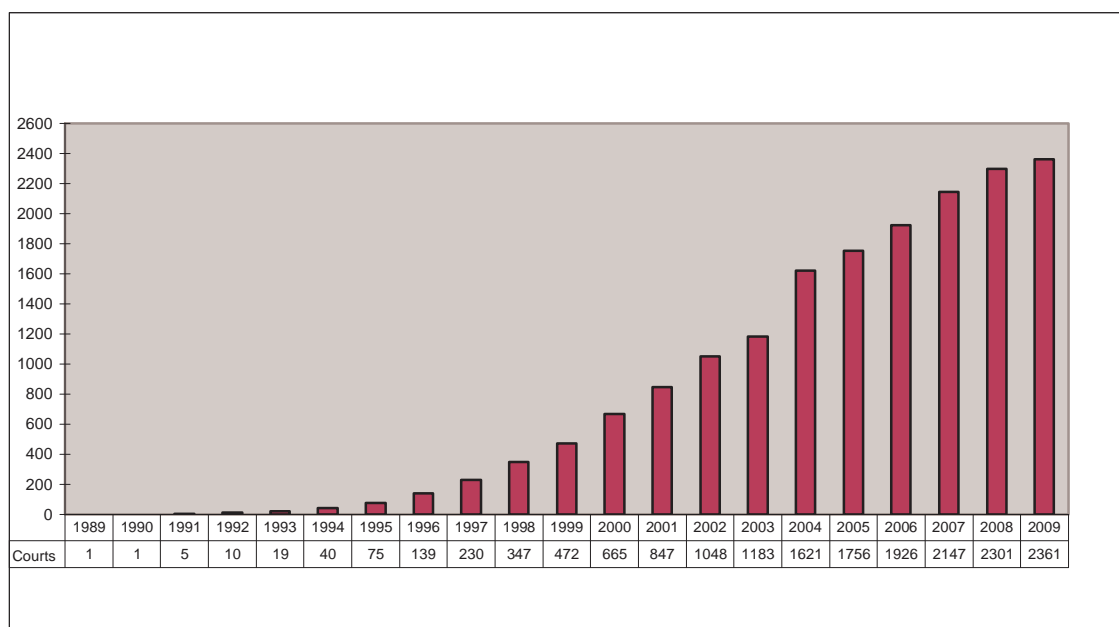


by limiting the availability of drugs, to efforts to reduce the demand for illegal drugs by treating the underlying addiction.<sup>27</sup> For eligible offenders, drug courts offered substance-abuse treatment and other services in lieu of prosecution or incarceration, with the goal of reducing substance abuse and criminal recidivism.

## The Growth of Drug Courts

Drug courts were quickly adopted by communities and states struggling with the challenges that stemmed from the growing abuse and trafficking of illegal drugs. As **Figure 1** illustrates, drug courts multiplied rapidly, increasing in the first 10 years from one such court to 472 in 1999. By the end of the second decade, the number of drug courts increased to 2,361, a 400% increase in 10 years.

**Figure 1. Number of Drug Courts, 1989-2009**



**Source:** U.S. DOJ, OJP, NIJ, at <http://www.ojp.usdoj.gov/nij/topics/courts/drug-courts/welcome.htm>.

Today, all 50 states and the District of Columbia, Northern Mariana Islands, Puerto Rico, and Guam have operational drug court programs.<sup>28</sup> The drug court model has been applied to certain subsets of drug offenders, such as juveniles and veterans. As of July 2009, there were 2,361 drug courts operating across the country, including

- 1,281 adult drug courts;<sup>29</sup>

<sup>27</sup> John S. Goldkamp, “The Drug Court Response: Issues and Implications For Justice Change,” *Albany Law Review*, Spring 2000; King, Ryan, “Drug Courts: A Review of the Evidence,” *The Sentencing Project*, April 2009, p. 1.

<sup>28</sup> U.S. DOJ, Bureau of Justice Assistance (BJA), Drug Court Clearinghouse Project, American University, Justice Programs Office, 2009.

<sup>29</sup> For a national map of adult drug courts, see **Figure 2**. A table providing the number of adult drug courts by state, as of June 2009, is provided in the **Appendix**.

- 466 juvenile drug courts: programs that focus on juvenile delinquency (e.g., criminal) matters and status offenses (e.g., truancy) that involve substance-abusing juveniles;
- 304 family dependency treatment courts: programs that deal with cases involving parental rights, in which an adult is the party litigant, which come before the court through either the criminal or civil process, and which arise out of the substance abuse of a parent. These cases can include custody and visitation disputes; abuse, neglect, and dependency matters; petitions to terminate parental rights; guardianship proceedings; and other loss, restriction, or limitation of parental rights;
- 166 DWI (driving while intoxicated) or DUI (driving under the influence) courts: programs that provide substance-abuse interventions and treatment for defendants who plead guilty to driving while intoxicated or under the influence of an illegal substance;
- 83 tribal drug courts: programs that deal with substance-abusing adult, juvenile, and family tribal offenders;
- 30 federal reentry courts: programs for federal offenders with documented substance-abuse problems who are on supervised release in the community and who volunteer to join the program;
- 21 state reentry drug courts: programs that provide reentry services aimed at reducing recidivism among low-level, drug-trafficking defendants, including close supervision, employment, education, parenting, and child support services, and that require participants to perform up to 220 hours of community service;
- six campus courts: programs targeting college students whose excessive use of substances has continued and had serious consequences for themselves or others; and
- four veterans treatment courts: hybrid programs that combine drug and mental health court models to serve veterans with addiction, serious mental illness, and/or co-occurring disorders. These programs provide a coordinated response involving drug and mental health courts, in conjunction with the U.S. Department of Veterans Affairs health care networks, the Veterans' Benefits Administration, volunteer veteran mentors and veterans and veterans' family support organizations.<sup>30</sup>

Adult drug courts make up just over half (54.3%) of the total number of different drug courts, referred to more broadly by some as “problem solving” courts, that have been implemented in communities across the country.<sup>31</sup> In addition, an estimated 397 drug courts were being planned as of July 2009, including 226 adult drug courts, 51 juvenile drug courts, 34 family dependency courts, and 35 tribal drug courts.<sup>32</sup>

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<sup>30</sup> U.S. DOJ, OJP, National Institute of Justice (NIJ), “Drug Courts,” at <http://www.ojp.usdoj.gov/nij/topics/courts/drug-courts/welcome.htm>.

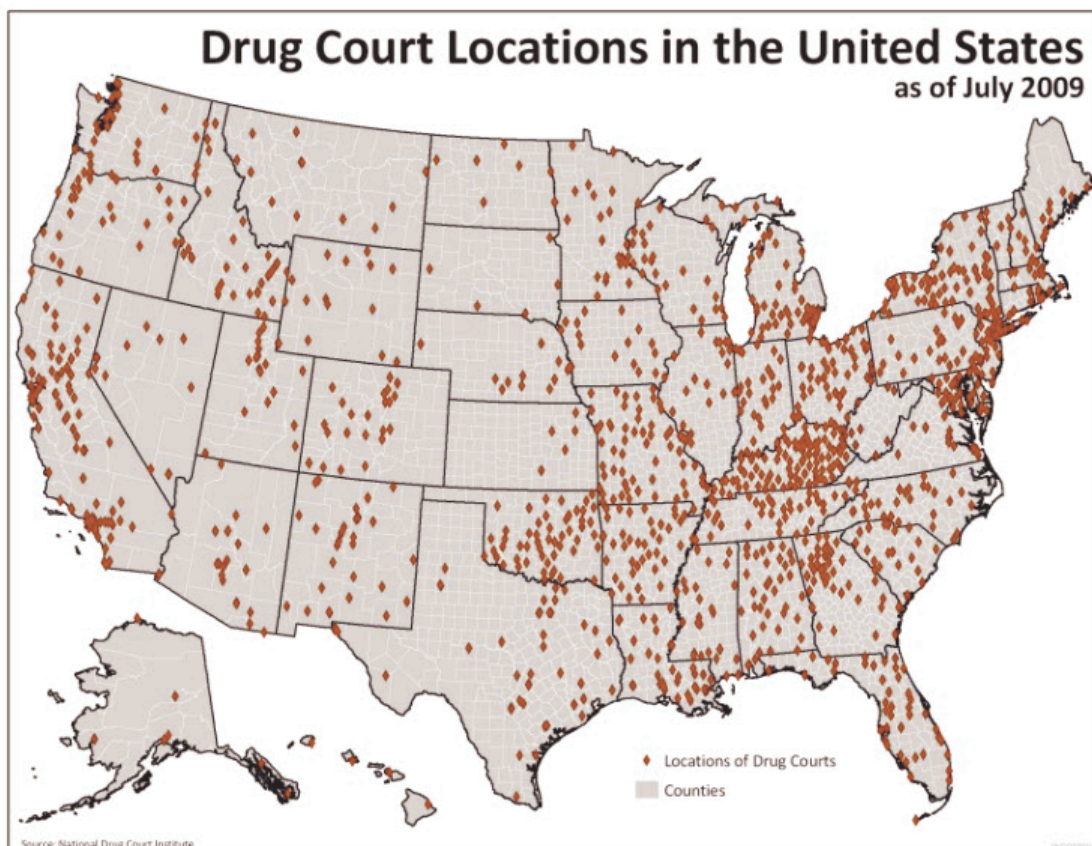
<sup>31</sup> Aubrey Fox and Greg Berman, “Going to Scale: A Conversation About the Future of Drug Courts,” *Court Review*, Fall 2002, p. 4.

<sup>32</sup> U.S. DOJ, BJA, Drug Court Clearinghouse Project, American University, Justice Programs Office, 2009.

## Geographic Distribution of Adult Drug Courts

As illustrated by **Figure 2**, drug courts have been widely adopted by communities across the country. According to the Drug Court Clearinghouse, as of July 2009, there were established drug courts in 1,416 counties across the nation, representing almost 45% of the total number of counties (3,155) in the country.<sup>33</sup>

**Figure 2. Adult Drug Court Locations**



**Source:** National Drug Court Institute, available at <http://www.ojp.usdoj.gov/nij/topics/courts/drug-courts/welcome.htm>.

## Drug Court Participation

Despite the large number of drug courts, the total number of participants treated annually is not easily quantifiable, and there are no national totals available. Using a statistical model developed by researchers at the Urban Institute, however, it is estimated that approximately 55,000 offenders are treated through drug court programs annually.<sup>34</sup> The model further estimates that current drug court participants only represent about 3.8% of the potential number of participants (1.47 million)

<sup>33</sup> Ibid.

<sup>34</sup> Bhati, Roman, and Chalfin, *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*, p. 32.

that could be treated if existing programs expanded their eligibility requirements and service capacity.<sup>35</sup> In comparison, the National Drug Court Institute estimates that in 2009 there were 1.2 million adult drug dependent offenders who were potential candidates for drug courts, and that existing programs served about 10% of that number, or approximately 120,000.<sup>36</sup>

The difference between these two estimates of drug court participants is difficult to reconcile. The number of participants in drug courts is not systematically reported. Instead, most estimates are developed from national arrest or conviction data on drug offenses. These data are not necessarily the most accurate indicators of drug court participation for a number of reasons. For example, not all persons arrested for drug violations are charged with an offense. Not all individuals who are eligible for drug courts choose to participate since participation is voluntary. Some individuals opt to be released on bail, unencumbered by the requirements of a drug court program, and, if later convicted, they could receive a sentence that is shorter than the required length of drug court programs.

In addition, not all drug dependent offenders meet the eligibility requirements of drug court programs. Potential drug court participants may be excluded because of other offenses committed at the time of their current offense, or because they have prior convictions for violent or other serious offenses that would disqualify them as candidates for drug courts. For example, drug courts routinely exclude certain types of offenders on the basis of factors that can include the type of offense, criminal history, and their substance-abuse history. Based on the 2005 survey of adult drug court administrators, researchers at the Urban Institute report that individuals facing a drug charge for selling, regardless of whether they were drug dependent, were excluded from participation by 70% of drug courts for misdemeanor sales and by 53% of courts for felony sales.<sup>37</sup> The survey also indicated that other charges were often grounds for exclusion from drug court participation. These charges included (1) property crimes, such as theft, fraud, and prostitution, which are often associated with drug use; (2) marijuana charges brought against young offenders; and (3) current domestic violence cases.<sup>38</sup> While some drug courts (16%) excluded substance-abusing offenders because their drug problems were too severe, other drug courts (48%) reported that they rejected some arrestees because their drug problems were not severe enough, and almost 69% excluded offenders with co-occurring disorders.<sup>39</sup> Notably, the survey found that 52% of the drug courts surveyed reported that they could not accept eligible clients simply because of capacity constraints. On average, drug courts treated about 93 participants a year.<sup>40</sup> In other words, according to adult drug court administrators, capacity constraints were the largest single factor limiting drug court participation.

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<sup>35</sup> *Ibid.*, p. 33.

<sup>36</sup> Dina Fine Maron, "Courting Drug-Policy Reform: A Bipartisan Drug Policy 20 Years in the Making," *Newsweek*, October 7, 2009, at <http://www.newsweek.com/id/216866/page/1>.

<sup>37</sup> Bhati, Roman, and Chalfin., *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*, pp. 7-8.

<sup>38</sup> *Ibid.*

<sup>39</sup> According to the Substance Abuse and Mental Health Services Administration (SAMHSA), the term generally refers to persons with one or more substance-related disorders and one or more mental health disorders. See U.S. Department of Health and Human Services (DHHS), SAMHSA, Center for Substance Abuse Treatment, *Definitions and Terms Related to Co-Occurring Disorders*, p. 3, 2007.

<sup>40</sup> Avinash Singh Bhati and John K. Roman, *Simulated evidence on the prospects of treating more drug-involved offenders*, p. 17.

## Overview of State Drug Courts

The first drug courts were established as a “grassroots” response to increasing numbers of drug-related cases overwhelming state and local courts. Drug courts offered an alternative strategy for addressing a drug offender’s substance-abuse problems. By integrating mandatory substance-abuse treatment and community-based rehabilitation with court supervision, and sanctions when needed, drug courts could use the “coercive power of the judiciary” to compel drug-abusing offenders to participate in and follow the requirements of a treatment plan in order to avoid incarceration.<sup>41</sup> Developed as “therapeutic,” non-adversarial programs, drug courts brought together teams that included judges, attorneys, parole officers, and substance-abuse treatment providers to provide rehabilitative strategies that could be enforced with swift and certain sanctions for participants who failed to comply. Then, as now, drug courts were seen as a way to relieve the criminal justice system of low-level, repeat drug offenders, freeing the state courts and criminal justice system to deal with more serious, violent offenders.<sup>42</sup> Some drug courts have been expanded over the years to include probationers, and still others to include drug-using offenders charged with non-drug offenses. Drug courts are widely considered a viable means of reducing the demand for drugs among criminally involved individuals.

## How Drug Courts Work

State drug courts vary from one jurisdiction to another in terms of structure, scope, and target populations, but they all have three primary goals: (1) reduce recidivism among participants, (2) reduce substance abuse among participants, and (3) rehabilitate participants to improve their chances of successful reintegration into society by providing social services such as employment, job training, education, and housing assistance.<sup>43</sup> Drug courts are designed and developed at the local level and vary depending on the needs and resources of the community where they are implemented. Drug courts are often programs designed to divert less-serious offenders charged with simple possession of drugs, or with being under the influence of drugs, from the regular criminal justice system into some form of substance-abuse treatment. Consequently, drug courts are often referred to as a programmatic application of “therapeutic jurisprudence,” in recognition that illegal drug use and abuse are criminal justice/law enforcement problems *and* public health problems with roots in the community.<sup>44</sup>

## Program Eligibility

Eligibility for a drug court program is generally determined by the type of offense a defendant is charged with and by evidence of substance abuse. Eligibility requirements differ by court, although in many courts, defendants must be charged with drug possession or a nonviolent, drug-related offense. A substance-abusing defendant is identified by post-arrest drug testing results, self-reporting, or through a review of the defendant’s criminal history. Participation in a drug

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<sup>41</sup> *Drug Courts in Operation*, p. 5.

<sup>42</sup> NDCL, *Painting the Current Picture: A National Report Card on Drug Courts*, p. 2.

<sup>43</sup> NCJRS, *In the Spotlight: Drug Courts*.

<sup>44</sup> James J. Hennessey and Nathaniel J. Pallone, eds., *Drug Courts in Operation: Current Research*, “Introduction: Drug Courts in Operation,” (Binghamton, NY: The Haworth Press, Inc., 2001) p. 5 (hereafter referred to as *Drug Courts in Operation*).

court program is voluntary. Defendants who choose to participate in the program are often required to sign an agreement or contract that states the agreed-upon terms of participation.

## **Case Processing in Drug Courts**

Drug court programs generally process cases in one of two ways: (1) deferred prosecution, or diversion, or (2) post-adjudication.<sup>45</sup> Under the diversion process, the defendant's prosecution is deferred based on the offender's agreement to participate in the drug court program.<sup>46</sup> Defendants often enter the program before pleading to a charge, and those that complete the treatment program are not prosecuted further or may have their charges dismissed. If the defendant fails to complete the program, the defendant is prosecuted for the original offense. In this way, defendants are provided the opportunity to receive treatment and, in exchange, avoid conviction and the possibility of incarceration.<sup>47</sup> Post-adjudication drug court participants are required to plead guilty to the charge or charges against them, and their sentences are suspended or deferred if they agree to participate in a drug court program. If participants successfully complete the program, their sentences are waived.

Early drug court programs were generally diversionary or pre-plea models. Today, according to a survey of drug courts, 7% of adult drug courts are diversionary programs, 59% are strictly post-conviction programs, and another 19% report serving both pre-adjudication and post-plea participants.<sup>48</sup>

## **Drug Court Components**

As previously discussed, drug court programs vary from state to state, although these programs are generally designed to address the underlying cause of an offender's behavior: substance abuse. Drug court programs generally offer community-based substance-abuse treatment and other social services in lieu of a prison or jail sentence. There is no single model; however, drug courts often share a number of common principles. These common principals can include expedited case processing, outpatient substance-abuse treatment, collaboration among justice officials and community organizations, participant accountability, and a variety of support services, such as job placement, education and training, and housing assistance. Drug courts combine any or all of these features and require mandatory drug testing and intensive court or probation supervision.

BJA, in collaboration with the National Association of Drug Court Professionals, identified the following 10 key components that define drug courts:

- incorporating drug testing into case processing;
- creating a non-adversarial relationship between the defendant and the court;

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<sup>45</sup> NDCL, *Painting the Current Picture: A National Report Card on Drug Courts*, pp. 4-5.

<sup>46</sup> U.S. GAO, *Adult Drug Courts 2005*, p. 36.

<sup>47</sup> NCJRS, *In the Spotlight: Drug Courts*.

<sup>48</sup> NDCL, *Painting the Current Picture: A National Report Card on Drug Courts*, pp. 4-5. This report did not specify how the remaining 15% of drug court cases are processed.

- identifying defendants in need of treatment and referring them to treatment as soon as possible after arrest;
- providing access to a continuum of treatment and rehabilitation services;
- monitoring abstinence through frequent, mandatory drug testing;
- establishing a coordinated strategy to govern drug court responses to participants' compliance;
- maintaining judicial interaction with each drug court participant;
- monitoring and evaluating program goals and gauging their effectiveness;
- continuing interdisciplinary education to promote effective drug court planning, implementation, and operations; and
- forging partnerships among drug courts, public agencies, and community-based organizations to generate local support and enhance drug court effectiveness.<sup>49</sup>

The key components serve as guidelines or benchmarks for developing drug court programs, although programs still have a measure of discretion in how the key components are implemented.

### **Judicial Monitoring**

One defining feature of drug courts is the heavy involvement of judges in monitoring participant progress. Drug court participants are required to appear regularly at status hearings before a judge. These judges and other court personnel assist participants with problems they may be having with drug use, employment, or family life. Drug court participants are required to enter substance-abuse treatment and submit urine tests so the court can determine that they are abstaining from drug use. Drug courts also monitor whether participants are regularly attending treatment and receive reports from treatment providers about the participants' progress. If drug court participants miss court hearings, fail to go to treatment, have an excessive number of positive urine tests, or are rearrested while participating in the program, a number of sanctions can be imposed by the judge.

### **Substance-Abuse Treatment in Drug Courts**

All drug courts have a treatment component as part of the overall program, although the type and extent of treatment offered varies widely among programs. Treatment offered in drug court programs can be of variable length, and participation requirements range between 8 to 16 months, although they generally average about one year. Substance-abuse treatment can consist of a wide range of services, including drug testing, detoxification, outpatient substance-abuse treatment, attendance of support group meetings such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), and inpatient drug treatment.

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<sup>49</sup> U.S. DOJ, OJP, BJA, *Defining Drug Courts: The Key Components*, available at <http://www.ojp.usdoj.gov/BJA>.

## Monitoring Compliance

Participants are required to meet the conditions of the drug court, which include regular drug testing, participation in drug treatment, and regular court appearances. Participants who adhere to the court's requirements will receive encouragement, while defendants who violate the requirements can be subjected to a range of graduated sanctions. For example, sanctions can include additional drug testing requirements, periods of incarceration, and additional periods of participation in the program. If a participant repeatedly violates the court's requirements, the participant may be removed from the program and sentenced for the offense in post-conviction drug court programs, or placed back on the regular criminal court docket for trial for the original offense if the drug court program is a deferred prosecution program.

## Are Drug Courts Effective?

Drug courts are considered by many to be one of the most effective strategies for reducing recidivism and criminal activity among participants in the program and for providing an alternative to incarceration. Critics, however, have long argued that drug courts may not reduce recidivism or relapse among drug-abusing offenders any more than conventional interventions, such as incarceration, parole, or probation.<sup>50</sup> Over the years, numerous program evaluations have been conducted, and the findings have been as varied as the drug courts themselves. Questions remain about the extent to which drug courts reduce substance abuse among participants and lower recidivism, criminal victimization, and costs related to criminal adjudication and incarceration. Because most drug courts do not typically monitor the abstinence of participants beyond completion of the program, it is difficult to determine the long-term impact of drug court participation on recidivism, substance abuse, criminal victimization, and other factors that underlie criminal offending.

In general, drug courts have been evaluated using three types of analyses:

- process or operations evaluations, which examine and describe the programmatic details of drug courts that have been implemented, such as the number of participants, referrals to treatment, and individuals completing the program (drug court graduates);
- cost-savings estimates, which compare the cost of drug court services with the avoided costs of adjudication, incarceration, or criminal victimization; and
- impact evaluations, which compare the effectiveness and impact of drug court programs on the lives of participants with the outcomes of similar drug offenders processed through traditional courtrooms by looking at factors such as recidivism (new arrests or new convictions), substance abuse, and employment.

Many drug court evaluations are tied to funding requirements imposed by legislatures to justify continued funding or by the federal drug court grant program (described below). Drug courts are often required to demonstrate their effectiveness and costs-to-benefits compared to traditional case processing and adjudication. Typically, programs report administrative data, such as numbers

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<sup>50</sup> Morris B. Hoffman, "The Rehabilitative Ideal and the Drug Court Reality," *Federal Sentencing Reporter*, vol. 14, no. 3-4, 2001-2002, p. 172 (hereafter referred to as Hoffman, *The Rehabilitative Ideal and the Drug Court Reality*).



of participants, participant completion (graduates) rates, and other outcome data, as a condition of receiving continued funding.<sup>51</sup>

Drug court evaluations have been widely criticized for methodological weaknesses and data inconsistencies. Some criticisms stem from the fact that the majority of drug court program evaluations (1) have either no comparison group or a biased comparison group, such as offenders who refused or failed the drug court program; (2) report outcomes only for participants who complete the program (graduates), while excluding participants who did not complete the program (dropouts); and (3) use flawed data-collection methods, such as drug court participants' self-reported surveys.<sup>52</sup>

The variations in the types of drug courts, disparities in the data collected, varied methods used to evaluate drug courts, and limited follow-up of participants are among the data limitations and knowledge gaps that complicate efforts to quantify the effectiveness of the intervention. Nonetheless, many researchers believe that drug courts represent one of the more promising strategies for intervening with drug-abusing offenders, and that these programs “outperform virtually all other strategies that have been attempted for drug offenders.”<sup>53</sup> For example, research indicates that many drug-abusing offenders do not respond to incarceration and that more than half fail to comply with drug testing and treatment conditions of probation, with most returning to drug use within the first 6 to 12 months after release from prison.<sup>54</sup> Studies suggest that drug court programs are more successful in retaining participants in drug treatment programs.<sup>55</sup>

### **Government Accountability Office 2005 Meta-analysis of Adult Drug Courts**

Because drug courts are designed and operated at the local level, it can be difficult to make comparisons between drug court outcomes. Although the number of evaluations of drug courts continues to grow, the results of these studies can be difficult to interpret and compare. Some researchers have turned to meta-analysis to better assess the findings of drug court evaluations.<sup>56</sup> In 2005, the Government Accountability Office (GAO) used meta-analytical techniques to assess whether drug courts were effective at reducing recidivism and substance-abuse relapse among drug offenders.<sup>57</sup> This frequently cited assessment is briefly summarized as an example of a meta-analysis of the effectiveness of adult drug courts.

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<sup>51</sup> Drug courts that receive DOJ grant funding are required to conduct program evaluations.

<sup>52</sup> Douglas B. Marlowe, “Drug Court Efficacy vs. Effectiveness,” a response to a commentary by Kevin Whiteacre that appeared August 18, 2004, on the Join Together website, available at <http://www.courtinfo.ca.gov/programs/collab/documents/DCEfficacyvsEffectiveness.pdf>, accessed May 16, 2010.

<sup>53</sup> Douglas B. Marlowe, David S. DeMatteo, and David S. Festinger, “A Sober Assessment of Drug Courts,” *Federal Sentencing Reporter*, vol. 16, no. 2, December 2003, p. 153.

<sup>54</sup> *Ibid.*, p. 154.

<sup>55</sup> Steven Belenko, *Research on Drug Courts: A Critical Review*, National Center on Addiction and Substance Abuse at Columbia University, New York, 2001, p. 12 (hereafter referred to as Belenko, *Research on Drug Courts: A Critical Review*, 2001).

<sup>56</sup> Meta-analyses are a type of systematic review of studies that allow researchers to draw conclusions across a wide range of studies by using statistical methods to derive quantitative results from the analysis of multiple sources of quantitative evidence.

<sup>57</sup> As a part of the reauthorization of the DOJ, P.L. 107-273, Congress tasked GAO with conducting an assessment of the effectiveness of adult drug courts.

GAO's meta-analysis assessed the findings of 27 evaluations of 39 adult drug court programs implemented between 1991 and 1999.<sup>58</sup> GAO selected these evaluations on the strength of their methodologies and compared the outcomes of drug court participants with an appropriate group of similar offenders who did not participate in such a program.<sup>59</sup> The report considered the outcomes of drug court participants and other comparable offenders on (1) recidivism, (2) substance-use relapse, (3) program completion of participants, and (4) the costs and benefits of the drug court programs that included this information.<sup>60</sup>

Overall, GAO's assessment found that drug court programs led to statistically significant *recidivism reductions* (i.e., reductions in rearrests or reconvictions)<sup>61</sup> among participants for felony offenses and drug offenses (both misdemeanor and felony). Recidivism reductions were greater and more enduring for participants than for comparison groups. Some of the evaluations also included recidivism data for participants and comparison groups for a period following the completion of a drug court program. Although the data were limited, GAO found that post-program recidivism reductions continued to be greater for drug court participants than for comparison groups and that these reductions endured even after participants had successfully completed a drug court program.<sup>62</sup> In addition, among drug court participants, program graduates had lower post-program recidivism than dropouts.

GAO found that data on the effectiveness of drug court programs in reducing relapses consisted of drug-test results and self-reported drug use, and were limited and mixed.<sup>63</sup> For drug court programs using drug-test results, four out of five programs reported that participants had lower drug relapse rates than comparison groups; however, one evaluation reported no significant difference in the percentage of positive drug tests among drug court participants and control groups.<sup>64</sup> In a previous study in 1993, GAO noted that self-reported drug use data raised concerns about underreporting and could be an unreliable measure of substance-use relapse.<sup>65</sup>

*Completion rates*, the number of participants successfully completing the program compared to those admitted, ranged from 27% to 66%. Predictably, completion of the program was related to compliance with the program's requirements, which included (1) attending treatment sessions, (2) engaging in treatment early in the program, and (3) appearing at status hearings. However, GAO's assessment found that no other program factor, including the severity of sanctions for failing to complete the program, predicted participant completion rates.

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<sup>58</sup> U.S. GAO, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, GAO-05-219, February 2005 (hereafter referred to as GAO, *Adult Drug Courts: Evidence Indicates Recidivism Reductions*).

<sup>59</sup> Of the 27 evaluations reporting recidivism reductions using comparison groups, five used experimental designs that randomly assigned participants.

<sup>60</sup> Only eight of the evaluations reported cost-benefit information, and only four of these reported sufficient data for GAO to assess the net benefits of these programs.

<sup>61</sup> Rearrests and reconvictions do not measure all reoffending because every offense or violation does not necessarily lead to an arrest, nor do all arrests lead to convictions.

<sup>62</sup> *Ibid.*, p. 52.

<sup>63</sup> Data on substance use were available from eight drug court programs included in GAO's assessment.

<sup>64</sup> *Ibid.*, p. 60.

<sup>65</sup> For more information, see GAO, *Drug Use Measurement: Strengths, Limitation, and Recommendations for Improvement*, GAO/PEMD-98-18, Washington, DC, June 25, 1993.

Only four evaluations of seven programs included sufficient information on estimated *costs and benefits* of drug courts. Of these, only one evaluation reported that drug court programs provided a negative net benefit and cost between \$800 to \$8,700 per participant.<sup>66</sup> Three of the evaluations reviewed by GAO estimated that the additional costs of operating a drug court program exceeded conventional case processing services, from about \$750 to \$8,500 per participant. However, when the benefits of drug court programs were factored into the calculation, the reduced costs of crime resulting from recidivism reductions yielded estimated net benefits ranging from \$1,000 to \$15,000 per participant, largely attributed to reduced victimization.

Overall, GAO's analysis concluded that these program evaluations might be underestimating the net benefits of drug courts because they may not have taken into account the indirect, or secondary, benefits to society stemming from reductions in drug use among drug court participants. GAO noted that additional indirect benefits might be realized from avoided costs, such as drug addicts not using medical services that they might have otherwise required or lowered unemployment among program participants. GAO also noted that other benefits, such as productivity gains, higher wages, and tax revenue, might also be realized as the result of treating and rehabilitating drug addicts.

### **National Institute of Justice's Multi-Site Adult Drug Court Evaluation**

DOJ's National Institute of Justice (NIJ) funded the Multi-Site Adult Drug Court Evaluation (MADCE), a longitudinal study designed to study the effects of drug courts on drug use and re-offending.<sup>67</sup> According to NIJ, the project includes a process, impact, and cost evaluation of almost 1,800 drug court participants and non-drug court probationers from 29 rural, suburban, and urban jurisdictions in eight states across the country to determine the following:

- What is the impact of adult drug courts on alcohol and other drug use, criminal recidivism, employment, and other functional outcomes?
- What community, program, and offender characteristics predict these long-term outcomes?
- How do changes in short-term outcomes—such as offender perceptions and attitudes—mediate the impact of programs on long-term outcomes?
- Are there cost savings attributable to drug court programs?

To answer these research questions, the evaluation collected and continues to analyze data on offender background characteristics, offender perceptions of the drug court program's requirements, participants' in-program behavior, and post-program outcomes. The data from drug court participants are then compared to a group of non-participating offenders to determine *why* drug courts may produce positive outcomes. By comparing the characteristics of individual participants with an appropriate group of non-participants, the study's aim is to test whether drug court participants have lower rates of drug use, criminal activity, and improved socioeconomic functioning (e.g., engagement in education or employment) compared with non-participants.

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<sup>66</sup> GAO, *Adult Drug Courts: Evidence Indicates Recidivism Reductions*, p. 71.

<sup>67</sup> NIJ funded the project in 2003 in collaboration with the Urban Institute Justice Policy Center, RTI (Research Triangle Institute) International, and the Center for Court Innovation. More information is available at <http://www.ojp.usdoj.gov/nij/topics/courts/drug-courts/madce.htm>.

NIJ's MADCE is designed to control for some of the limitations that have plagued much of the drug court research, such as collecting data on a consistent set of participant and drug court characteristics, using an appropriate comparison group, and accurately gauging the longer-term impacts of drug court participation on criminality and drug use through the use of post-program follow-up periods. The evaluation is based on interviews conducted at the program's beginning (baseline), six months, and 18 months; oral fluid (saliva) drug tests at 18 months; and recidivism follow-ups for up to 24 months.

Although the research is ongoing, some preliminary findings of the MADCE study were described at the 2009 conference of the American Society of Criminology.<sup>68</sup> At the beginning of the program (baseline drug use),<sup>69</sup> 84% of drug court participants and 82% of the comparison group reported any drug use in the previous six months. Six months into the study, 42% of drug court participants and 62% of the comparison group reported any drug use in the previous six months. At 18 months, 46% of drug court participants and 68% of the comparison group reported any drug use in the previous year. Preliminary results also seem to indicate that offenders whose primary drug of choice was marijuana benefitted less, offenders with co-occurring conditions at baseline (depression and narcissism) benefitted less, and offenders who were employed or in school benefitted less, although older offenders appeared to benefit more from the drug court intervention than young offenders.

Additional preliminary findings indicate that self-reported criminal activity by drug court participants averaged 40% compared to 53% among the comparison group during the year before the 18-month interview.<sup>70</sup> The criminal activity was often drug related, with 36% of drug court participants and 50% of comparison group members involved in drug-related criminal activity. Notably, 75% of both groups of offenders originally reported baseline criminal activity.

Although the preliminary results of MADCE suggest that drug courts may reduce drug use and criminal activity among participants, the research continues to explore the variables that may influence how drug courts work to change offender behavior.<sup>71</sup>

## **Federal Drug Court Discretionary Grant Program**

Since the mid-1990s, the federal government has supported the planning, implementation, and expansion of drug courts through a competitive grant program originally authorized under Title V of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). The federal Drug Court Discretionary Grant program<sup>72</sup> has been reauthorized twice, under the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act (P.L. 107-273) and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162). The federal drug court program is authorized to make grants to state, local, and tribal governments, and state and

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<sup>68</sup> Shelli B. Rossman, Mia Green, and Mike Rempel, "Substance Abuse Findings from the NIJ's Multi-Site Adult Drug Court Evaluation (MADCE)," American Society of Criminology Conference, November 5, 2009.

<sup>69</sup> For MADCE, drug use is measured for the categories of alcohol, marijuana, powder cocaine, crack cocaine, heroin, amphetamines, other drugs, and not using drugs.

<sup>70</sup> John Roman, Jennifer Yahner, Janine Zweig, and Ritadhi Chakravarti, "How Do Drug Courts Work?" presented at the American Society of Criminology Conference, November 5, 2009.

<sup>71</sup> While the final report on MADCE is expected to be published in the fall of 2010, it had not been released by the publication date of this CRS Report.

<sup>72</sup> 42 U.S.C. § 3797u et seq.

local courts to establish and enhance adult drug courts for nonviolent, substance-abusing offenders. The resources provided under the program can be used to award grants in three drug court categories:

- **Implementation Grants:** For jurisdictions that have completed much of the planning and are ready to implement an adult drug court.
- **Enhancement Grants:** For jurisdictions with an adult drug court that has been fully operational for at least one year. The grants can be used to provide additional services to participants; to evaluate a drug court; to develop or implement an automated data collection system for the court; or to meet the special needs of certain categories of drug court participants, including methamphetamine addicts, persons suffering from co-occurring mental health issues, members of cultural and language minorities, and individuals coping with severe traumatic experiences.
- **Statewide Grants:** For state agencies to improve, enhance, or expand drug court services statewide through activities including training or technical assistance for drug court teams; tracking or compiling state drug court information and resources; disseminating statewide drug court information for the purpose of strengthening and enhancing drug court programs; increasing communication, coordination, and information sharing among drug court programs; conducting statewide drug court evaluation; establishing an automated drug court evaluation; and establishing an automated drug court data collection system.

Federal drug court grants have a matching requirement. Drug court grants are not permitted to cover more than 75% of the total costs of the project being funded. Grant applicants are required to identify a nonfederal source of 25% of the program's costs with cash or in-kind services, or some combination of both.

The program can provide grants for adult drug courts, juvenile drug courts, family drug courts, and tribal drug courts that include (1) continuing judicial supervision of nonviolent offenders and other individuals with substance-abuse problems under the jurisdiction of the court, (2) coordination with the appropriate state or local prosecutor, and (3) the integrated administration of other sanctions and services, including

- mandatory periodic drug testing for the use of controlled substances or other addictive substances during any period of supervised release or probation;
- substance-abuse treatment for each participant;
- diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration if an offender does not comply with program requirements or fails to show satisfactory progress;
- offender management and aftercare services, which could include relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services;
- payment by the offender, in whole or part, of treatment costs, such as urinalysis or counseling, to the extent practicable; and

- payment by the offender of restitution, in whole or part, to the extent practicable, either to the offender's victim or to a victim support fund.

Economic sanctions imposed on an offender are limited to amounts that would not interfere with the offender's rehabilitation.

Grant amounts can be awarded only to a drug court program that includes mandatory drug testing for each participant for the controlled substance that the participant has been known to abuse, as well as for any other substance deemed appropriate. Under the program, testing is required to be accurate and practicable.

Drug court grantees must impose graduated sanctions that increase punitive measures, therapeutic measures, or both whenever a participant fails a drug test. The sanctions and measures can include one or more of the following:

- incarceration,
- detoxification treatment,
- residential treatment,
- increased time in the program,
- termination from the program,
- increased drug screening requirements,
- increased court appearances,
- increased counseling,
- increased supervision,
- electronic monitoring,
- in-home restriction,
- community service,
- family counseling, and
- anger management classes.

Drug court programs funded with these grants cannot include violent offenders.<sup>73</sup> A violent offender is defined as

- a person who has been charged with or convicted of an offense that carried a term of incarceration of more than one year,<sup>74</sup> and in the commission of which

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<sup>73</sup> As originally authorized under P.L. 103-322, the participation of violent offenders was prohibited and the law further required that grant funding be immediately suspended for any drug court that permitted violent offenders to participate in their program.

<sup>74</sup> P.L. 110-199, the Second Chance Act of 2007 (122 Stat. 668), amended the law to specify that a violent offense must have carried a term of incarceration exceeding one year in order to meet the definition of a violent offender. All drug court grantees must comply with this further specified definition by April 9, 2011, or face a reduction in the amount of their grant award.

- the person carried, possessed, or used a firearm or dangerous weapon, and
- the death or serious bodily injury of any person occurred, or
- there occurred the use of force against another person, regardless of whether any of the previous circumstances were an element of the offense or conduct for which the person is charged or convicted; or
- a person who has one or more prior convictions for a violent felony involving the use or attempted use of force against another person with the intent to cause death or seriously bodily harm.<sup>75</sup>

Grantees are required to annually submit a description and evaluation report on the effectiveness of their drug court program.<sup>76</sup>

### **Funding for the Federal Drug Court Discretionary Grant Program**

The drug court grant program was last reauthorized through FY2008 under the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162). However, Congress has continued to fund the program, most recently appropriating \$45 million for FY2010 (see **Figure 3**).<sup>77</sup> Since it began in 1995, the drug court program has received from Congress total appropriations of more than \$530 million.<sup>78</sup>

As **Figure 3** indicates, Congress funded the program at levels that were well below the authorized appropriation levels during its early years. Over the history of the program, annual appropriations have never been more than half of the amount authorized for the program's first year of operation in FY1995. After the program's authorization lapsed in FY2001, the subsequent authorization of appropriations dropped from \$200 million for FY2000 to between \$50 and \$60 million for FY2002 through FY2005. After lapsing again in FY2006, the program's authorization of appropriations was set at \$70 million for FY2007 and FY2008, but program appropriations have remained well below this amount to the present.

There is no clear explanation for the notable drop in funding for the program for FY2006 and FY2007, or increases in funding since FY2008. During this time, the President's budget requests included proposals to consolidate various Office of Justice Programs (OJP) law enforcement assistance grant programs into fewer, more-broadly based grant programs. These proposals generally proposed funding cuts for such consolidated grant programs. Congress did not enact the proposed program consolidations and instead continued to fund individual grant programs like the drug court program. The committee reports accompanying the appropriation bills for this period are silent on the matter of drug court grants and do not provide a rationale for reductions in funding. It is possible that these reductions in appropriations simply reflected shifting congressional appropriations priorities for DOJ's discretionary grant programs. However, since FY2008, funding for drug court grants has rebounded, and it surpassed the FY2005 level in FY2010.

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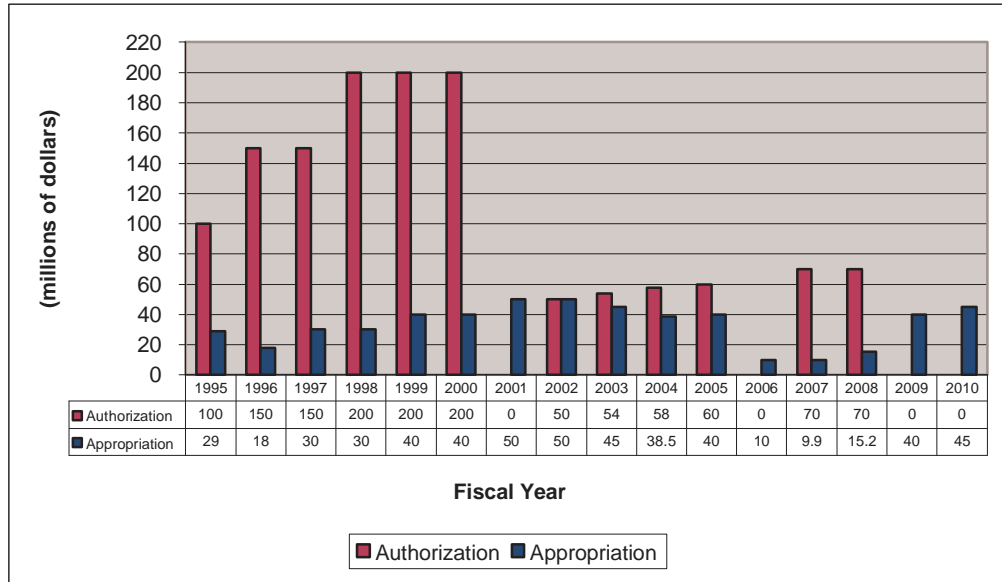
<sup>75</sup> 42 U.S.C. § 3797u-2.

<sup>76</sup> 42 U.S.C. § 3797u-7.

<sup>77</sup> The Consolidated Appropriations Act, 2010 (P.L. 111-117).

<sup>78</sup> The authorization of appropriations for drug courts is found at 42 USC § 3793(25).

**Figure 3. Federal Drug Court Grant Authorizations and Appropriations**  
FY1995-FY2010



**Source:** CRS presentation of enacted authorizations of appropriations and annual appropriations.

**Notes:** For FY2001, FY2006, FY2009, and FY2010, there were no authorizations of appropriations.

As introduced in the 111<sup>th</sup> Congress, H.R. 6090 would amend the federal Drug Court Grant program and authorize appropriations for FY2011 through FY2017. The bill would authorize appropriations of \$125 million for FY2011, \$150 million for FY2012, \$200 million for FY2013, and \$250 million for each year from FY2014 through FY2017. Congress has taken no action on H.R. 6090 to date.

### Other Potential Sources of Federal Funding for Drug Courts

In addition to the federal drug court grant program, other OJP grants can be used for funding drug court activities. For example, the Edward Byrne Memorial Justice Assistance Grants (JAG) provides funding for, among other purposes, prosecutorial initiatives and court programs, as well as drug treatment programs.<sup>79</sup> Also, Office of Juvenile Justice and Delinquency Prevention (OJJDP) program grants may be used for establishing or enhancing a juvenile drug court.<sup>80</sup> These programs, however, do not specifically report the number or total amounts of grants that are awarded specifically for projects or programs related to drug court activities.

Although beyond the scope of this report, grants for expanding or enhancing drug court substance-abuse treatment services are provided by the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA). These SAMHSA grants can be awarded for the provision of drug court services such as alcohol and drug

<sup>79</sup> For more information on JAG grants, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant Program: Legislative and Funding History*, by Nathan James.

<sup>80</sup> For more information on OJJDP program grants, see CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*, by Kristin M. Finklea.



treatment; recovery support services for such treatment, screening, assessment, and case management; and program coordination for adult defendants and offenders.

## Issues for Congress

Through the federal Drug Court Discretionary Grant Program, Congress continues to support state efforts to develop alternatives to reduce the incarceration and recidivism rates of substance-abusing offenders. The federal role in state drug courts is limited, however, because most drug courts and the services they provide are primarily funded at the state and local level. The authorization of appropriations for the federal Drug Court Discretionary Grant Program expired in FY2008. While Congress has continued to fund the grant program, the program has not been reauthorized.

During the 111<sup>th</sup> Congress, legislation to reauthorize the federal drug court grant program has been introduced. Representative Jackson Lee introduced H.R. 6090, the Drug Court Reauthorization Act, on August 10, 2010. Among other things, the bill would reauthorize the grant program from FY2011 to FY2017 (see discussion of appropriations, above). Additionally, H.R. 6090 would change the federal definition of a “violent offender,” and provide a definition of a “sex offender” for determining the types of offenders that would be permitted to participate in drug court programs receiving federal grants. To date, H.R. 6090 has not received congressional action.

In addition to the provisions of H.R. 6090, other issues have been raised regarding drug courts and the federal support provided for these programs. The following issues may be of interest to Congress if legislation related to drug courts or other similar initiatives is considered.

## Measuring Drug Court Effectiveness

Numerous studies have been conducted examining the outcomes of drug courts. Drug courts have been difficult to evaluate because, among other things, they are so varied. As previously discussed, while drug courts generally adhere to certain key program components, drug courts can differ in factors including admission criteria, type and duration of drug treatment, degree of judicial monitoring and intervention, and application of sanctions for noncompliance. As a result, it has often been difficult to compare drug courts and to determine which interventions are effective.<sup>81</sup> The data available for evaluating programs have generally been administrative or process data and have not always been uniformly collected or systematically reported. Drug court evaluations have also been hampered by methodological problems such as selection bias, due in part to nonrandomized comparison groups of participants and nonparticipants, and the often small sample size of individual programs.<sup>82</sup> In addition, the lack of post-program tracking of drug court

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<sup>81</sup> For example, see Susan Turner, Douglas Longshore, Suzanne Wenzel, Elizabeth Deschenes, Peter Greenwood, Terry Fain, Adele Harrell, Andrew Morral, Faye S. Taxman, Martin Iguchi, Judith Greene, and Duane McBride, “A Decade of Drug Treatment Court Research,” RAND Corporation, in *Drug Courts: Current Issues & Future Perspectives*, edited by Lana D. Harrison, Frank R. Scarpitti, Menachem Amir, and Stanley Einstein, 2002, p. 69.

<sup>82</sup> For example, see National Research Council, *Informing America’s Policy on Illegal Drugs: What We Don’t Know Keeps Hurting Us*, Committee on Data and Research for Policy on Illegal Drugs, National Academy, Washington, DC, 2001, pp. 261-263.

participants has been an important data limitation for evaluating the long-term effectiveness of the intervention.

In 2002, GAO reported that the data reported by drug court grant recipients were insufficient for evaluating the effectiveness of drug courts.<sup>83</sup> Since then, a number of randomized, quasi-experimental drug court studies have been designed and conducted, along with multi-site comparative evaluations and long-term studies of individual drug courts.<sup>84</sup> As previously discussed, GAO's 2005 meta-analysis of 27 drug court evaluations concluded that there continued to be sizeable knowledge gaps and data limitations in the research on drug courts. For example, even among the most rigorous evaluations very few programs track the abstinence or reoffending of drug court graduates. In addition, similar follow-up data on comparison groups would also need to be tracked in order to determine whether drug court graduates fared better than nonparticipants in comparison groups.<sup>85</sup> While post-program tracking would be difficult and costly for programs, this type of information could help to determine the long-term impact of drug court participation. Similarly, little is known about the relative effectiveness of the key drug court components, such as whether judicial intervention has an impact on successful outcomes, or whether one type of sanction has a greater effect on the likelihood of drug relapse among participants. In addition, some argue that drug court outcomes evaluations may not be useful for drawing broader conclusions about efficacy or effectiveness of programs, in part because new programs often face pressures to implement and evaluate programs quickly in order to satisfy federal and state implementation funding requirements.<sup>86</sup> As a result, it is argued, evaluation results may not reflect the impact of a more mature and established drug court program.<sup>87</sup>

The National Institute of Justice has sponsored research examining drug court processes, outcomes, and costs. Research currently underway includes the Multi-Site Adult Drug Court Evaluation (MADCE) study, described above. It is an example of a broader national research project designed to measure how drug court resources are used to produce positive program outcomes for participants. The MADCE study is noteworthy because it is unlikely that state and local authorities would undertake a comprehensive study of this scope without federal sponsorship. As a part of reauthorizing the federal Drug Court Grant Program, Congress could consider whether establishing and implementing more rigorous standards for drug court data collection and program evaluations could be linked to receipt of federal drug court grants. Congress could also consider providing additional funding for drug court research of national importance.

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<sup>83</sup> U.S. GAO, "Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed to Measure the Impact of Drug Court Program," GAO-02-434, April 2002, pp. 18-20.

<sup>84</sup> For example, see Denise C. Gottfredson, Brook W. Kearley, Stacy S. Najaka, Carlos M. Rocha, "The Baltimore City Drug Treatment Court 3-Year Self-Report Outcome Study," *Evaluation Review*, vol. 29, no. 1, February 2005, pp. 42-64; Michael W. Finigan, Shannon M. Carey, Anton Cox, "The Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs," NPC Research, April 2007, pp. 88.

<sup>85</sup> Belenko, *Research on Drug Courts: A Critical Review*, 2001, p. 52.

<sup>86</sup> Steven Belenko, Nancy Wolff, Nicole Holland, "Improving the Evidence Base: Formative Evaluations of Problem-Solving Courts," Policy Brief, Center for Behavioral Health Services and Criminal Justice Research, Rutgers University, May 2009, p. 2.

<sup>87</sup> *Ibid.*

## Could Accreditation Be a Means of Improving Drug Court Effectiveness?

The problematic state of research on drug court effectiveness, as discussed above, has been a long-standing concern. Many drug court evaluations lack methodological rigor, making it difficult to draw meaningful conclusions that could help inform the development of evidence-based best practices for drug courts. Given the limited efficacy of many drug court evaluations thus far, some researchers have argued that an alternative approach might be beneficial. Rather than continuing to conduct program-specific process or outcomes evaluations, some using imperfect methodologies, research could be more-broadly focused on developing systematic standards for improving drug court effectiveness and instituting evidence-based practices through accreditation.<sup>88</sup> Based on these standards, Congress could then consider establishing and supporting a system of accreditation for drug courts.

Accreditation can take many forms and is often used to ensure the quality of services provided by a wide range of institutions, such as hospitals, universities, and child welfare agencies. Generally, the accreditation process ensures that an entity's or program's practices, selection procedures, treatment content, and services meet established standards generally accepted among practitioners in the field. Accreditation, moreover, can be used to encourage programs to improve the quality of services provided, to ensure the accountability of programs and institutions, and to provide public confidence that the services provided meet an acceptable level.

Under the current federal drug court program, every drug court receiving a federal grant is required to conduct an outcome evaluation to determine whether the program is having a positive effect on its participants. States and localities also often require drug courts to conduct evaluations for the purpose of justifying continued funding. Some argue that a better way to standardize and improve drug courts would be to establish a national accrediting body that could use the most rigorous existing program research to establish performance benchmarks and national standards.<sup>89</sup> An accrediting body could determine whether a program demonstrated and maintained its compliance with established national standards, thus reducing the need for annual individual program evaluations of varying quality and rigor. Accreditation could also provide a more efficient and reliable way for drug courts to demonstrate their competence and effectiveness to legislators, policymakers, and constituents.<sup>90</sup> Among accredited drug courts, the resources once spent for annual evaluations could be freed up for more productive purposes. In addition, more standardized outcome data from accredited programs could fuel new methodologically sound research designed to advance the efficacy of drug courts.

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<sup>88</sup> John Roman, *Accreditation Key to Creating the Next Generation of Drug Courts*, Urban Institute, September 9, 2004, available at <http://www.urban.org/publications/900735.html>.

<sup>89</sup> Shannon M. Carey, Michael W. Finigan, and Kimberly Pukstas, "Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs," NPC Research, March 2008, p. 1.

<sup>90</sup> *Ibid.*, p. 274; Douglas B. Marlowe, "Drug Court Efficacy vs. Effectiveness," September 29, 2004, Commentary on the Join Together website, at <http://www.jointogether.org/news/yourturn/commentary/2004/drug-court-efficacy-vs.html>.

## Could State Drug Courts Be “Taken to Scale”?

Taking drug courts “to scale” refers to the idea of increasing the capacity of drug court programs to provide services to as many eligible substance-abusing defendants as possible. Although the number of drug courts has increased rapidly over the past 20 years, some argue that the number of participants has not increased at a similar pace. Two overarching considerations confront states that might consider whether to expand drug courts to include more offenders: (1) which offenders should participate, and (2) what will the budgetary impact be of expanding the programs? As previously mentioned, although there are no annual national totals for how many offenders participate in drug courts, policymakers continue to be interested in whether expanding participation in drug courts would be beneficial.

In an effort to analyze the available data to inform this question, researchers at the Urban Institute developed a model and a synthetic database of 40,320 client profiles that is designed to estimate the potential benefits and costs of expanding offender eligibility to participate in substance-abuse treatment through drug courts.<sup>91</sup> The model estimated that approximately 55,000 adult offenders are treated annually in drug courts at a cost of approximately \$515 million.<sup>92</sup> According to this analysis of the current adult drug court treatment regime, drug court treatment resulted in approximately \$2.21 in benefits for each \$1 in costs, providing an estimated annual average net benefit to society of \$624 million.<sup>93</sup>

Using their simulation model, the Urban Institute also estimated the costs and benefits that could accrue to society if drug court treatment slots were expanded to treat all potentially eligible offenders using current program criteria (109,922).<sup>94</sup> The resulting cost of expanding drug court treatment to all potentially eligible offenders was estimated to increase the total cost of drug court treatment to just over \$1.023 billion.<sup>95</sup> Such an expansion of drug court eligibility, they estimated, would almost double current estimated expenditures (\$515 million). Under this scenario, the model also predicted that expanding drug treatment to more substance-abusing offenders would yield benefits to society that would outweigh the additional costs associated with expanding drug

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<sup>91</sup> Bhati, Roman, and Chalfin, *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*, p. 2. The Urban Institute’s model is based on a synthetic dataset constructed from national drug-use survey responses taken from the National Survey of Drug Use and Health (NSDUH) and the Arrestee Drug Abuse Monitoring (ADAM) program. In addition, data from the Drug Abuse Treatment Outcome Study (DATOS) were used to estimate the crime reduction benefits of treating clients with a wider range of criminal profiles than are generally eligible to participate in most drug court programs (drug-involved offenders). See pp. 11-18. The dataset further incorporated the survey responses of 600 drug court administrators which were part of the Urban Institute’s Multi-Site Adult Drug Court Evaluation (MADCE), described above in the section of this report entitled “National Institute of Justice’s Multi-Site Adult Drug Court Evaluation.” These data were used to estimate current drug court program eligibility on the basis of 70 different characteristics of drug court operation, eligibility, and exclusion criteria. For a detailed description of the methodology used for developing the dataset, see Appendix A, “Mathematical Appendix,” pp. 81-90.

<sup>92</sup> *Ibid.*, p. 54. The cost estimate is based on the assumption that the most common drug treatment modality is outpatient care.

<sup>93</sup> *Ibid.*, pp. 55-56. The benefits and cost savings from treating substance-abusing offenders could include lowered drug-related crime (e.g., fewer aggravated assaults, other assaults, robbery, burglary, larceny/theft, stolen property offenses, fraud, and drug offenses), lower criminal justice costs as the result of averting crimes (e.g., fewer arrests, investigations, and prosecutions), lower criminal victimizations, and lower rates of incarceration.

<sup>94</sup> *Ibid.*, pp. 56-58.

<sup>95</sup> *Ibid.*, p. 57.

court eligibility. The model estimated approximately \$2.14 in benefits for each \$1 in costs, potentially yielding an estimated average net benefit to society of \$1.171 billion.<sup>96</sup>

Moreover, when the Urban Institute's model was used to estimate the effects of expanding drug court eligibility to all arrestees at risk of drug dependence or at risk of drug abuse (approximately 1.47 million), the cost of treatment exceeded \$13.7 billion. The model also predicted that treatment for the entire group of arrestees could result in an estimated average net benefit of more than \$46.065 billion, or a benefit to cost ratio of 3.36:1.<sup>97</sup> Thus, the simulation in which all existing drug court eligibility restrictions were eliminated yielded the largest cost-benefits.

Citing the findings and benefit-to-cost estimates of the Urban Institute's study, the Senate Appropriations Committee expressed its support for expanding drug courts to scale in the FY2010 report.<sup>98</sup> The Committee report, however, did not indicate what level of federal funding might support or sustain drug court expansions of the size considered in the study.

The National Association of Drug Court Professionals (NADCP) estimates that expanding drug courts would require federal drug court grant funding of \$250 million for each of the next six years.<sup>99</sup> To support their assertion, the NADCP notes that the federal law that established the federal drug court grant program authorized appropriations of \$200 million for each of FY1998-FY2000. NADCP argues that the authorized appropriation level indicates the congressional "intent" of the authorizing committee and that congressional appropriators should be guided by the program's original statutory authority.<sup>100</sup> Notably, in subsequent reauthorizations of the federal drug court grant program, Congress provided lower authorization of appropriation levels.<sup>101</sup> Moreover, Congress has provided the program with actual appropriations equal to authorized levels in only one year, when appropriations of \$50 million were provided for FY2002. As previously noted, Congress most recently provided appropriations for the federal grant program of \$45 million for FY2010, less than one-fifth (18%) of the level called for by the NADCP.

Although federal grants support the planning, implementation, and expansion of drug courts, as previously noted, state and local governments are responsible for sustaining drug court activities beyond the grant period.<sup>102</sup> The NADCP asserts that state and local governments would respond to annual federal funding of \$250 million by providing, by their estimate, \$1.25 billion in state funding each year.<sup>103</sup> In the face of difficult economic challenges and competing law enforcement priorities, it is doubtful that Congress would increase funding for federal drug court grants to the levels sufficient to take state drug courts "to scale." In light of budgetary constraints and the cost

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<sup>96</sup> *Ibid.*, p. 57.

<sup>97</sup> *Ibid.*, pp. 66-67.

<sup>98</sup> U.S. Senate Committee on Appropriations, S.Rept. 111-34, Departments of Commerce, Justice, Science and Related Agencies Appropriations Bill, 2010, p. 88.

<sup>99</sup> National Association of Drug Court Professionals (NADCP), "A Drug Court Within Reach of Every American in Need," p. 2, available at <http://aja.ncsc.dni.us/htdocs/2009Annual/SpeakerMaterials/DrugCourtBrief.pdf>.

<sup>100</sup> *Ibid.*, p. 3.

<sup>101</sup> As previously discussed, the most recent authorization of appropriations for the federal grant program authorized funding of \$70 million for FY2008.

<sup>102</sup> U.S. DOJ, National Criminal Justice Reference Service (NCJRS), Institutionalizing Drug Courts: A Focus Group Meeting Report, March 2002, at <http://www.ncjrs.gov/html/bja/idc/chp2.html>, accessed on May 16, 2010.

<sup>103</sup> *Ibid.* This estimate is based on the assumption that states would provide funding at a ratio of 5:1 for each dollar of federal funding. In past years, according to NADCP estimates, states leveraged federal dollars at about a 9:1 ratio.

and availability of substance-abuse treatment, it is similarly unlikely that most state drug court programs could expand program participation without some additional level of federal assistance.

## **Expanding Federal Drug Court Grants to Include Certain Violent Offenders**

As a condition of receiving a federal grant award under the drug court program, grantees must exclude violent offenders from participation, as previously described.<sup>104</sup> According to DOJ's Bureau of Justice Assistance (BJA), the statute specifies the types of current or prior offenses categorized as felony crimes of violence.<sup>105</sup> The federal exclusion stems from concerns that violent offenders participating in community-based drug court programs could pose public safety concerns.

Early drug courts generally targeted nonviolent, low-level or first-time offenders, although there are indications that some programs have expanded their admissions to include more serious offenders.<sup>106</sup> As programs exhaust their federal grant funding, some have opted to incorporate offenders with more extensive criminal histories, including some with past convictions for violent offenses.<sup>107</sup> Despite some research suggesting that drug courts can have a positive impact on drug-involved offenders with violent criminal histories,<sup>108</sup> a 2005 survey of drug court administrators found that most drug courts (88%) excluded offenders with a violent history.<sup>109</sup>

Questions have been raised about whether the exclusion of violent offenders from substance-abuse treatment through drug court programs continues to serve the public safety interests of communities.<sup>110</sup> For some communities and policymakers, public safety concerns might limit support for the participation of violent offenders in drug courts. Proponents of eliminating the federal grant's violent offender exclusion argue that drug courts should be given the discretion to determine whether to expand their eligibility even if they are recipients of federal grant funds. Added flexibility, it is argued, would give new drug courts the option of treating a broader range of offenders that could reflect the criminal justice needs of states and localities, while balancing local public safety concerns.

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<sup>104</sup> For a definition of a "violent offender," see the "Federal Drug Court Discretionary Grant Program" section.

<sup>105</sup> U.S. DOJ, BJA, "FY2010 Adult Drug Court Program, Frequently Asked Questions (FAQs)," available at <http://www.ojp.usdoj.gov/BJA/grant/10DrugCourtFAQ.pdf>.

<sup>106</sup> NIJ, *Drug Courts: The Second Decade*, 2006, p. 6.

<sup>107</sup> Christine A. Saum and Matthew L. Hiller, "Should Violent Offenders Be Excluded From Drug Court Participation?: An Examination of Recidivism of Violent and Nonviolent Drug Court Participants," *Criminal Justice Review*, vol. 33 no. 3, September 2008, pp. 292, 302-305 (hereafter referred to as Saum and Hiller, *Should Violent Offenders Be Excluded From Drug Court Participation?*).

<sup>108</sup> Bhati, Roman, and Chalfin, *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*, p. 60; Saum and Hiller, *Should Violent Offenders Be Excluded From Drug Court Participation?*, pp. 302-305.

<sup>109</sup> Bhati, Roman, and Chalfin, *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders*, p. 29; U.S. DHHS, National Institutes of Health, National Institute on Drug Abuse (NIDA), *Principles of Drug Abuse Treatment for Criminal Justice Populations*, September 2007, p. 1.

<sup>110</sup> Saum and Hiller, *Should Violent Offenders Be Excluded From Drug Court Participation?*, p. 292.

Research suggests that expanding drug court eligibility to include offenders with more serious criminal histories could result in greater reduction in drug-related crime and incarceration.<sup>111</sup> As states look for ways to reduce offender drug use and recidivism, some see the federal grant exclusion of “violent offender” as a factor that is limiting the potential pool of participants for drug courts. Thus, the issue for Congress is whether the federal drug court grant’s exclusion of violent offenders is a policy that continues to be the most effective way to reduce crime and substance abuse among offenders.

## Conclusion

Record levels of incarceration and involvement in the correctional system in the United States are a longstanding concern for policymakers. While incarceration protects communities from the most violent and dangerous criminals, questions have been raised about whether such broad use of incarceration as a sanction, particularly for nonviolent, substance-abusing offenders, is an effective crime deterrent. Some suggest that continued reliance on incarceration and drug enforcement alone may have reached the point where its impact on crime rates and public safety may be yielding diminishing returns.<sup>112</sup>

Substance-abusing offenders represent a recurring problem for the criminal justice system. As the costs associated with incarceration continue to rise, there is growing concern about whether incarceration is the most effective and efficient manner to reduce crime, particularly drug-related crime among substance-abusing offenders. Substance use and abuse have long been considered one of the root causes of criminality.<sup>113</sup> Drug treatment is arguably a key element of efforts to reduce recidivism and substance abuse among offenders. Drug courts offer substance-abuse treatment as an alternative to incarceration for certain drug-using offenders. Research on this criminal justice intervention indicates that drug courts can often successfully reduce the demand for drugs among participants, reduce recidivism, and promote positive outcomes for participants.

Between 1995 and 2010, Congress has provided appropriations of \$530 million to support drug courts through federal grants to expand and enhance these activities at the state and local levels. If Congress decides to reauthorize the drug court grant program, it could consider amending the program to strengthen the evaluations of these programs and broaden the application of best practices among new and existing drug courts. Congress could also consider providing additional support for increasing the capacity of existing drug courts to provide services for larger numbers of drug-involved offenders. These and other policy decisions are likely to be shaped by budgetary considerations and evidence, or the lack thereof, of the effectiveness of drug courts.

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<sup>111</sup> *Ibid.*, pp. 302-305.

<sup>112</sup> Pew Center on the States, *One in 31: The Long Reach of American Corrections*, March 2009, p. 18.

<sup>113</sup> For example, see Douglass B. Marlow, “Integrating Substance Abuse Treatment and Criminal Justice Supervision,” *Science and Practice Perspectives*, August 2003, p. 4; Steven Belenko, Jordan Pugh, Joseph A. Califano, Margaret Usdansky, and Susan E. Foster, “Behind Bars: Substance Abuse and America’s Prison Population,” *Corrections Today*, October 1998.

## Appendix. Adult Drug Courts, by State

**Table A-1. Number of Adult Drug Courts, by State**  
(as of July 2009)

State	Adult Drug Courts	State	Adult Drug Courts
Alabama	47	Montana	7
Alaska	2	Nebraska	11
Arizona	10	Nevada	20
Arkansas	41	New Hampshire	2
California	105	New Jersey	21
Colorado	20	New Mexico	16
Connecticut	3	New York	98
Delaware	9	North Carolina	24
District of Columbia	1	North Dakota	5
Florida	52	Ohio	30
Georgia	30	Oklahoma	50
Guam	1	Oregon	27
Hawaii	4	Pennsylvania	22
Idaho	28	Puerto Rico	9
Illinois	24	Rhode Island	4
Indiana	26	South Carolina	15
Iowa	15	South Dakota	1
Kansas	6	Tennessee	38
Kentucky	87	Texas	50
Louisiana	29	Utah	18
Maine	6	Vermont	3
Maryland	20	Virginia	14
Massachusetts	17	Virgin Islands	0
Michigan	32	Washington	18
Minnesota	16	West Virginia	14
Mississippi	28	Wisconsin	22
Missouri	70	Wyoming	13

**Source:** National Drug Court Institute, available at <http://www.ojp.usdoj.gov/nij/topics/courts/drug-courts/welcome.htm>.



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