

Time for an Intervention: Rethinking Drug Treatment Courts

“**THEY WORK**” is the catchy mantra of those driving the drug treatment court movement in this country—a movement that is part of a widespread effort to use criminal courts to solve difficult societal problems. Proponents claim drug courts are an effective alternative to incarceration and work to curb recidivism, reduce costs, and even save lives. However, it is not at all clear whether any of these things are true. And in their zeal to solve problems plaguing our communities, today’s court reformers often overlook important concerns of individual defendants—including their rights to due process of law and zealous representation.



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When the Miami Drug Treatment Court opened its doors in 1989, it garnered tremendous attention because of its innovative approach to drug crime. Using a carrot-and-stick approach to encourage treatment compliance, the judge abandoned his traditional role of removed arbiter to become an active participant in defendant rehabilitation. Prosecutors and defense attorneys changed their roles, too, shedding their adversarial posture to become part of the defendant’s treatment “team.” Given its promise, supporters quickly lined up behind this exciting new court model.

In fact, over the last two decades, the federal government has provided hundreds of millions of dollars in support to local drug courts. Drug court judges and others have also helped spur their expansion, sharing success stories and convincingly claiming that these venues not only address addiction, but save money by diverting defendants from prison. As a result of these advocacy efforts, there are more than 2,300 drug treatment courts in the United States today, with more on their way.

Despite widespread praise, the returns still are not all in on drug courts. While the Department of Justice (DOJ) was busily funding them, the General Accounting Office (GAO) was issuing reports questioning their efficacy. Of the 117 drug court evaluations that had been completed by 2005, in part with federal dollars, the GAO found that only 27 were methodologically sound. And even within this sampling, “[e]vidence about the effectiveness of drug court programs in reducing participants’ substance abuse” was “limited and mixed.”

More recently, in April 2009, the Sentencing Project, an independent nonprofit organization interested in criminal justice initiatives, issued a similarly critical report. It, too, questioned the ambitious accounts of court reformers, noting that “[s]ome studies show little or no impact from drug court participation” on rearrest

rates. It also could not discern what components of drug courts, if any, actually contributed to the arguably positive results that were seen.

Recent estimates also suggest that between one-third and one-half of all defendants actually “fail out” of drug court. For these defendants, their efforts at treatment are ultimately rewarded with lengthy prison terms—often longer periods of time than they would have served if they had opted out of drug court in the first place. Indeed, in a drug court in which I practiced, defendants who failed out usually received an indeterminate

prison sentence that was twice as long—two to six years versus one to three years—as similarly situated nondrug court defendants. Thus, not only is it misleading to suggest that such courts serve as an alternative to incarceration, but also that they save money using fewer prison beds.

What is more, much of what happens in drug courts—in the name of teamwork and therapeutic outcomes—takes place without meaningful notice to defendants, an opportunity to be heard, or representation. “Staffings,” where defendants’ progress in treatment and possible jail sanctions are discussed by court staff, are often held behind closed doors. And subsequent review hearings, where jail or other sanctions might be visited upon defendants who are allegedly faltering in treatment, frequently occur without defense counsel presence or advocacy.

Yet, the Obama administration has promised to continue to support these experiments in justice. At a recent meeting of the National Association of Drug Court Professionals, our new drug czar, R. Gil Kerlikowske, delivered a letter from President Obama thanking the group for its “life-saving” work and announced a goal of \$117.9 million in federal aid to drug courts in 2010 alone.

Even if it is impossible to stop the momentum of the powerful drug court movement, perhaps we can at least begin to hold reformers accountable for their claims. The Obama administration should engage in greater oversight of federally funded drug courts to make sure these ongoing experiments actually do what they say they do. Such oversight should not be limited to therapeutic and economic considerations. Rather, in determining whether drug courts really “work” in this country, time should be spent evaluating whether their teamwork approaches comply with the rule of law and respect the constitutional and other rights of those who pass through their doors. ||||

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