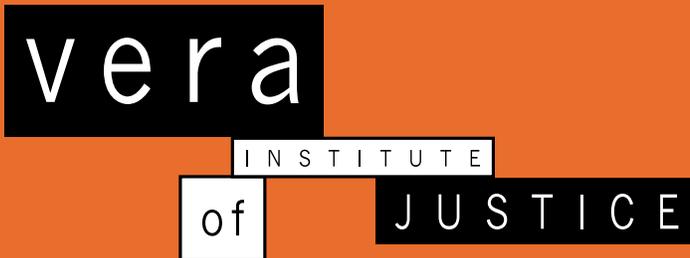


Do drug courts save jail and prison beds?

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STATE SENTENCING AND CORRECTIONS PROGRAM

The first drug court in America opened in Dade County, Florida, in 1989. Within five years, 46 more were launched.¹ By January 2000, the total number nationally reached 449.² Developed to cope with the wave of drug offenders that began flooding the system twenty years ago—a swell that had doubled in size by 1989—drug courts have proliferated because many people are convinced that uniting treatment and judicial supervision is a more effective way to limit future drug use and crime than either strategy employed in isolation.³

Yet from the beginning, drug courts held appeal for another reason: their potential to relieve overburdened justice systems and correctional facilities. This year as the number of people held in jails and prisons nationally surpasses two million, state and local officials—most of whom face crowded facilities and large corrections budgets—are more interested than ever before in the impact drug courts have on jail and prison space. Building on two widely known reviews of the drug court literature, this paper examines the relationship between these courts and custodial resources. Reflecting knowledge to date on this issue—as well as gaps in what is known—this briefing paper aims to help policy makers and drug court administrators become more attuned to the dynamics that influence bed savings in the short term and over time so they can strive for maximum returns.⁴

Do drug courts conserve custodial resources? Many criminal justice practitioners involved with them think so. In a recent national survey of 97 drug courts, for example, Caroline Cooper found that nearly half the court administrators and corrections officials who responded say that the drug court in their jurisdiction frees up jail beds, largely because it reduces pretrial detention stays.⁵ Those who were able to quantify the benefit reported sums of up to \$397,114 per year, and most of the corrections officials said that the court reduces the number of inmates they have to release early to make room for new arrivals—a common response to managing overcrowded jails. Researchers who evaluate drug courts tend to agree with practitioners. In 1997 the General Accounting Office (GAO) published a review of twenty such evaluations.⁶ Eight addressed

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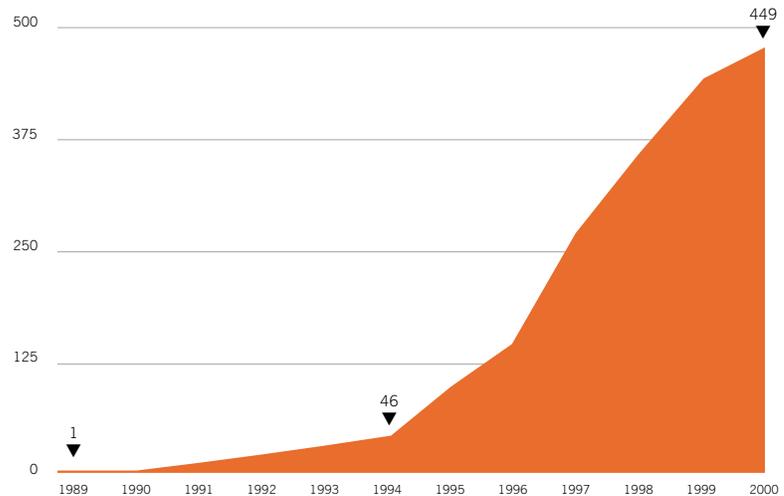
the court's effect on custodial resources, and all eight reported savings. More recent evaluations offer similar conclusions. Among ten reviewed for this paper, four address the impact on bed space, each reporting savings to jails.⁷

While encouraging, the information on bed savings is far from conclusive—largely because it is incomplete. Existing studies examine resource savings by measuring changes in pretrial detention and recidivism rates. But other factors also mediate bed savings. It is important to examine whether drug courts are enrolling offenders otherwise bound for jail or prison, yet this question has been overlooked by nearly every study to date. Researchers have also failed to factor in practices that erode savings: using detention to facilitate detoxification and punish noncompliant participants, and sentencing people who fail in drug courts more severely than similar offenders who never entered the program. These are as much a part of the bed-savings equation as reducing pretrial detention and recidivism, and thus merit further inquiry.

Opportunities for Conserving Bed Space

Speeding case processing to reduce pretrial detention Ten years after the first drug court opened, speedier case processing is considered to be one of the signal benefits. According to Cooper, more than half the drug courts that operate under a model of deferred prosecution receive offenders less than a week after their arrest.⁸ Obtaining convictions delays referral, but some post-prosecution programs are also expediting the process. In Cooper's survey, 25 percent of these courts receive of-

Growth of Drug Courts, 1989 – January 10, 2000



Source: Drug Court Clearinghouse and Technical Assistance Project

fenders within 10 days of their arrest. Independent evaluations typically show that drug courts move cases more quickly than traditional criminal courts. For example, researchers evaluating the drug court in Denver, Colorado, found that participants would have spent 7 to 15 more days in jail had they not enrolled in the drug court.⁹ In his review of more than 20 evaluations, Steven Belenko reaches the same conclusion: these courts conserve jail beds because they reduce pretrial detention.¹⁰

Speeding up case processing has additional benefits. According to the National Association of Drug Court Professionals Standards Committee, arrest sparks a brief crisis during which an offender is interested in addressing his or her problems and is more receptive to solutions such as treatment.¹¹ By shrinking the time between arrest and decisive judicial action, drug courts are likely to introduce the value of treatment before the offender's heightened awareness fades.

Decreasing recidivism among drug court graduates Preventing subsequent criminal behavior has the greatest impact on correctional resources over time, so it makes sense that researchers have concentrated on measuring recidivism. Nearly every published evaluation to date concludes that drug court graduates are less likely to be arrested for new crimes than similar offenders. Of the twenty studies reviewed by the General Accounting Office in 1997, all but two report lower recidivism rates for graduates compared with offenders who either dropped out or never entered the program.¹² Despite these positive reports, the GAO review discourages readers from drawing conclusions about the overall impact of drug courts or even their influence on recidivism. According to GAO, the courts themselves and the study designs are too varied to be considered as a group. More important, the follow-up periods in most of the evaluations are too short and differences between the

participant and comparison groups raise questions about the accuracy of the findings.

In his literature review published the following year, Steven Belenko also acknowledges the need for longer follow-up and better use of comparison groups, yet he finds enough evidence to conclude that drug courts reduce recidivism, especially among graduates.¹³ His opinion is based partly on updates of recidivism studies GAO had reviewed that subsequently reported favorable differences between participant and comparison groups. Belenko also reviewed studies published after the GAO report, several of which, according to him, employ more rigorous methodologies, thus improving the strength of their findings.

More recent evaluations, which are not included in either review of the literature, provide further support for reduced recidivism among drug court graduates. For example, evaluators of the King County Drug Court in Washington State found that graduates were nearly three times less likely to be charged with a new crime one year after completing drug court compared with people who dropped out or never enrolled, groups which each had a 25 percent arrest rate.¹⁴ Evaluators of the Okaloosa and Escambia Drug Courts in Florida tracked participants and matched groups of probationers for 30 months, which included a year of treatment. In Okaloosa, approximately one out of every four graduates (26 percent) was arrested while more

than half those who did not graduate (63 percent) and just over half the probationers (55 percent) were arrested. In Escambia, where arrest rates were high across groups, almost half the graduates were arrested, but the arrest rates among those who did not complete the program (86 percent) and probationers (63 percent) were even higher.¹⁵ It seems important to note that the methodological weaknesses GAO highlighted and Belenko affirmed—differences between participant and comparison groups and insufficiently long follow-up—are evident even in these recent studies.

These two studies are not the only ones in which outcomes—vis-à-vis recidivism at least—are better for graduates than for other drug court

As we enter a new century, government leaders around the country are again poised to reform sentencing and corrections policies in their states. A result of years of rising prison populations and corrections budgets, sentencing reform has become a regular item on legislative agendas. Citizens continue to demand safety, integrity, and accountability from the criminal justice system, as well as fiscal restraint. Yet state officials who try to improve upon existing laws and practices are quickly overwhelmed by the breadth of options and the lack of reliable information and advice. Under these conditions, shaping thoughtful policies and reaching consensus across branches of government and political divides is tough if not impossible.

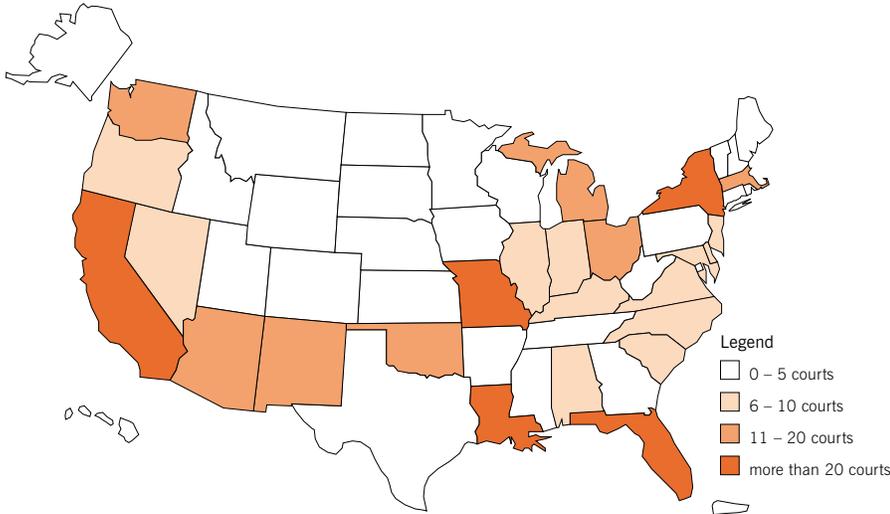
The State Sentencing and Corrections Program at the Vera Institute of Justice helps legislators, governors, corrections commissioners, judges, district attorneys, and other government officials develop balanced, fair, and affordable criminal justice policies. We do this by providing peer-to-peer assistance. Since launching the program last June, we have assembled a diverse group of seasoned practitioners and elected officials from around the country to provide on-site guidance to state officials who request our help. These individuals, who have long been active in their own jurisdictions, bring well-informed yet objective perspectives to issues ranging from sentencing guidelines to juvenile waivers to drug courts—the focus of this publication. They help state officials assess situations, build collaboration, set goals, and advance agendas. A list of our current associates appears on page five.

Do drug courts save jail and prison beds? Enthusiasm for these courts has built steadily since the first one opened in Miami, Florida, in 1989. Many people are convinced that drug courts help rehabilitate individual offenders while conserving criminal justice resources. Because of the optimism, I believe it is important to look closely at the impact of drug courts on bed savings. Vera researcher Reginald Fluellen has prepared the most up-to-date review of the literature on this issue to help policy makers understand the value of these courts and make the most of them.

This is the first in a series of briefing papers that will explore the latest trends and innovations and shed new light on established practices and programs such as drug courts. I hope you find it useful, and I welcome your comments and suggestions for future papers.

Nicholas R. Turner Director, State Sentencing and Corrections Program

Distribution of Drug Courts as of January 10, 2000



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Source: Drug Court Clearinghouse and Technical Assistance Project

participants. In each of the ten recent studies reviewed for this paper, the effect of the court on people who enroll and later fail is much less promising. Previous studies produced similar results. Belenko reviewed nine evaluations that compare drug court participants—those who graduated and those who failed—with similar offenders who never entered the program.¹⁶ While participants have lower recidivism rates in eight of these studies, differences between the two groups are statistically significant in only two of them. That participants have higher recidivism rates than graduates is important because about half the people who enroll in drug courts never graduate.¹⁷

The obvious lesson for administrators and policy makers is the need to boost retention rates. Motivating people to remain in treatment is the classic challenge of every program for substance abusers. Most drug courts help

participants secure stable housing and address medical, psychological, and other personal problems that threaten their progress in treatment. A thorough needs-assessment immediately following placement, however, would likely reveal problems before those most at risk fail. Experienced judges in these courts try to balance discipline with support and empathy. With some experimentation and closer tracking of the results of their actions, they could probably become more adept at encouraging retention. Finding ways to share this knowledge with less experienced judges is also important.

Diverting jail- and prison-bound offenders Reducing pretrial detention and recidivism are important to saving bed space, yet an equally fundamental question has received far less attention: Are drug courts truly diversion programs? In other words, do they target

and enroll offenders who would otherwise receive a jail or prison sentence? Despite its importance, this question has been overlooked by nearly every drug court evaluation to date. Most studies merely identify the court's eligibility criteria and then determine whether it succeeds or fails in reaching its target population. Researchers evaluating the Hawaii Drug Court went one step further. After determining that the court enrolled the repeat offenders it targeted, the researchers concluded—based solely on participants' criminal histories—that these offenders were likely bound for jail when the drug court intervened.¹⁸

A better test of diversion would compare drug court participants with a closely matched sample of defendants whose cases are processed in the traditional criminal courts. Incarceration rates among the comparison group would indicate how many drug court participants would have been confined had they not enrolled in the program. Not every drug court has the resources to fund research on diversion. Officials in states with automated criminal justice information systems could improve upon Hawaii's approach by examining past sentencing trends.

It is also useful for policy makers and practitioners to think about diversion within the context of loosening eligibility requirements. Originally, drug courts targeted first-time offenders, typically people arrested for possessing a small amount of drugs or selling an equal amount to support their habit. Some courts also admitted offenders who committed minor property crimes to finance their drug use. Hoping to duplicate success with first-time and low-level criminals, drug courts have begun admitting more serious offenders.¹⁹ In Cooper's national survey, 40 percent of respondents said they had changed their eligibility criteria since

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launching the program.²⁰ Most had expanded the range of eligible charges and loosened restrictions based on prior offenses. Three out of every four courts, according to the General Accounting Office, admit repeat offenders; 16 percent admit people with a history of violent crime.²¹ If the trend toward admitting serious offenders expands, drug courts will have more potential to conserve correctional resources, particularly prison beds.

Of course enrolling more serious offenders and especially those with histories of violent crime increases the public safety risks associated with drug courts. Federal funds administered under the Violent Crime Control and Law Enforcement Act of 1994 cannot be used to support drug court programs that admit violent offenders. Moving on this issue requires consensus across branches of government and political divides, and may also entail altering drug courts to boost the level of supervision—perhaps by merging them with intensive probation services or other alternative-to-incarceration programs.

Practices That Erode Bed Savings

Using jails to punish or treat participants reduces bed savings Most drug court programs last at least one year.²² Participants must attend treatment programs that aim to reduce physical and psychological dependence on drugs and to encourage greater involvement in work and community life while remaining drug free. At the same time, judges work closely with treatment providers and service coordinators—as well as prosecutors, defense attorneys, and law enforcement agencies—to monitor the progress of participants and to im-

pose appropriate incentives and sanctions. When judges use detention to punish people who relapse, break other rules, or miss scheduled court hearings, bed savings overall are reduced.

As judges have become more accepting of relapse as an initial part of recovery, their use of sanctions has become more nuanced. Following a first failed drug test, a verbal reprimand is now common, as is scheduling more frequent court appearances, treatment sessions, and drug tests. In response to continued drug use or other infractions, judges often require the person to repeat an earlier stage of the treatment program or to enroll in a residential program—and many also resort to detention. These jail stays typically range from a few days to a couple of weeks, increasing with the severity of the violation.²³

An evaluation of the drug court in Dade County, Florida, for example, shows that judges routinely order “motivational” jail stays of up to two weeks for noncompliant participants.²⁴ In Cooper’s national survey, over half the respondents indicate that judges punish relapse and other violations by ordering time in jail.²⁵ The drug court in Oakland, California, incarcerates participants who fail to show up for scheduled status hearings for at least a week before reinstating them in a treatment program.²⁶ These brief stays aid the withdrawal process and provide a clear message that continued drug use and noncompliance will not be tolerated.

According to the Department of Justice and the National Association of Drug Court Professionals, drug courts also use jails as detoxification sites,

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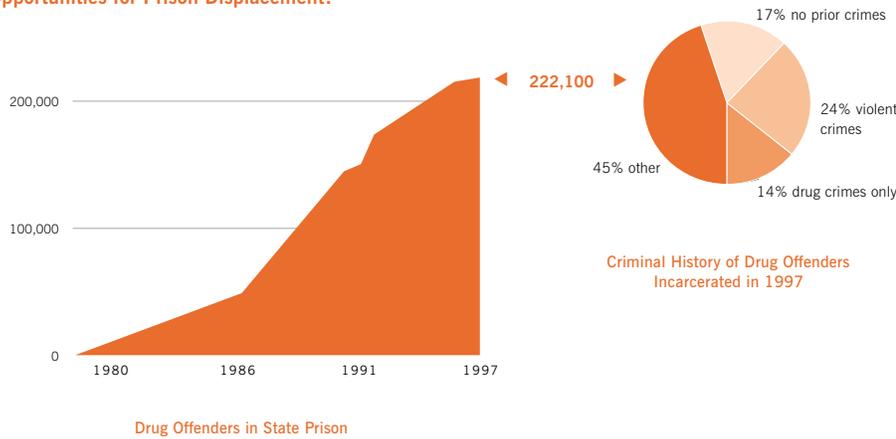
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Opportunities for Prison Displacement?



Over the last two decades, the number of drug offenders in state prisons has climbed dramatically. Would drug court have been an appropriate response to some of these offenders? Every five years, the Bureau of Justice Statistics gathers detailed information on drug offenders in prison. The most recent data describes the 1997 inmate population. A look at their past offenses—particularly the small proportion of inmates, 24 percent, reporting a history of violent crime—offers insight about whether drug courts could be used to conserve prison beds.

Source: Bureau of Justice Statistics

either during the initial phase of treatment or following relapse.²⁷

When interim jail stays are counted, drug court participants could spend more time in jail than if they had never enrolled in the program. Researchers who evaluated the Baltimore Drug Court make this point explicitly in the conclusion to their report: “...increased supervision of the clients’ behavior will result in a greater number of official sanctions than would otherwise have occurred.”²⁸ They point out that clients’ time behind bars is not the consequence of new crimes but of “relatively non-serious” technical violations. Unfortunately, no evaluation to date has carefully documented the use of interim jail stays and measured its impact on bed savings.

Encouraging retention and conserving custodial resources can be viewed as conflicting goals. Using detention to coerce people to finish the program certainly expends jail resources in the short run. Establishing a range of sanctions, along with a variety of positive reinforcements, and encourag-

ing judges to use the full range in every case is probably the best way to work toward both goals: retention and bed savings.

Penalizing failure reduces bed savings

Some drug courts defer prosecuting defendants while others convict them before initiating treatment. In either case, the judge withholds passing a sentence until the person either completes the program or fails. Graduates return to their homes and communities without further supervision. For those who fail, the judge considers any progress toward rehabilitation (or lack of progress) when determining their sentence.

There is some evidence that judges sentence people who fail in drug court more harshly than they would if the person had never entered the program. Researchers evaluating the drug court in Baltimore found that participants who committed new crimes spent significantly more days in jail than a matched group of recidivists.²⁹

Researchers at the Vera Institute studying drug courts in the Bronx, Manhattan, and Queens agree that judges tend to be harder on offenders who fail than on people who never attempt the program.³⁰ Penalizing failure with more time in jail or prison than the person would otherwise have received has a clearly negative impact on bed savings, especially since failure rates average nearly fifty percent. If conserving correctional resources is a primary goal, officials running or planning drug courts must find ways to discourage judges from overpenalizing failure.

Conclusion

The case for savings is compelling. Research combined with widespread anecdotal evidence provides a convincing picture of reductions in pretrial detention as a result of speeding up case processing. Even more encouraging, the body of literature on recidivism is now strong enough, despite lingering methodological weaknesses, to conclude that completing a drug court program reduces the likelihood of future arrest—at least within the first two years.

For officials to draw conclusions about bed savings based only on this information, however, would be imprudent. Reductions in pretrial detention and recidivism are only part of the equation. Bed savings are affected by other dynamics as well: targeting and enrolling offenders actually bound for jail or prison, using detention during the program to punish violations and augment treatment, and sentencing people who fail in drug courts more harshly than they would have been if they had never entered the program. We simply do not know enough about the interaction of these elements to accurately predict overall bed savings. Evaluations that attend to all of these dynamics would be enormously helpful to policy makers and practitioners.

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In the meantime, what can drug court planners and operators do to promote bed savings? There are a number of potentially helpful strategies:

- ▶ **Focus on improving retention.**
- ▶ **Diversify sanctions.** Judges need to respond effectively to relapsing or otherwise noncompliant participants without necessarily resorting to detention.
- ▶ **Avoid overpunishing people who fail in drug court.** Work with judges to break this apparent trend.
- ▶ **Investigate whether the drug court in your jurisdiction is actually diverting offenders who would otherwise be incarcerated.** Formal research is the best approach, but states with useful data collection systems can at least examine past sentencing practices.
- ▶ **Consider expanding eligibility to include offenders with more serious criminal records—individuals who are certainly bound for jail and some for prison.** It is controversial and politically difficult but possible in some places and under certain conditions. For example, you might increase the level of supervision to address the public safety risks associated with releasing serious offenders.
- ▶ **Expand and improve interagency collaboration.** A hallmark of drug courts, these relationships are necessary to achieve immediate and long-term bed savings—to ensure that conservation efforts neither overwhelm nor are they overwhelmed by equally important goals.

Where you can find information and help

Drug Court Clearinghouse and Technical Assistance Project

Operated by the American University for the U.S. Office of Justice Programs, the project maintains information on drug courts throughout the United States and publishes quarterly assessments of activities in the field. A source for the latest statistics, evaluations, and insight into issues and practices shaping this work.
(202) 885-2875
<http://www.american.edu/academic.depts/spa/justice/dcclear.htm>

Drug Strategies

This research institute publishes *Keeping Score*, an annual review of federal drug control spending that identifies promising prevention, treatment, and law enforcement programs. It has also produced in-depth profiles of drug abuse in several cities and states and is preparing a guide to help citizens profile their own state or locality.
(202) 289-9070
<http://www.drugstrategies.org>

National Association of Drug Court Professionals

The association seeks to expand the use of drug courts as a way to reduce substance abuse and crime. It advocates for increased funding for drug courts; collects and disseminates information; and provides intensive, on-site technical assistance through its Mentor Court Network.
(703) 706-0576
<http://www.nadcp.org>

The National Drug Court Institute

The institute seeks to advance and ensure the survival of drug courts. It provides training for practitioners, supports and disseminates research on drug courts through its Evaluation Resource Center, and publishes the semi-annual *National Drug Court Institute Review*.
(703) 706-0576
<http://www.drugcourt.org/ndci.htm>

State Justice Institute

This nonprofit organization awards grants and provides educational materials and technical assistance to improve the quality of justice in state courts; coordinate state and federal courts; and foster innovative, efficient solutions to problems all courts face. Addressing the needs of substance abusers in court is a current area of interest.
(703) 684-6100
<http://www.statejustice.org>

U.S. Department of Justice Drug Courts Program Office

The office administers grants to jurisdictions to develop or enhance drug courts and supports these efforts through training and technical assistance. In partnership with the National Institute of Justice, the office is currently comparing several drug court programs to identify the most effective elements and designs.
(202) 616-5001
<http://www.ojp.usdoj.gov/dcpo>

Footnotes

- ¹ Drug Court Clearinghouse and Technical Assistance Project.
- ² Ibid.
- ³ Between 1980 and 1989, the number of drug arrests doubled. Sources: U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics 1981*, U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics, 1990*. Source of information about the effectiveness of treatment and supervision: Drug Court Clearinghouse and Technical Assistance Project, *Looking at a Decade of Drug Courts*, Washington, D.C., 1998, p. 3.
- ⁴ This paper reflects the research available as of September 1999. Any studies completed or published subsequent to this date were not considered.
- ⁵ Caroline Cooper, *1997 Drug Court Survey Report: Executive Summary*, (Washington, D.C.: Drug Court Clearinghouse and Technical Assistance Project, 1997), pp. 26 and 40.
- ⁶ U.S. General Accounting Office, *Drug Courts: Overview of Growth, Characteristics, and Results*, 1997.
- ⁷ Studies of drug courts in Santa Clara and Monterey County, California; Madison County, Illinois; and King County, Washington, attribute savings to jails. The study of the drug court in King County also attributes some savings to prisons. Sources: Santa Clara County Drug Treatment Court, *Santa Clara County Courts: Drug Treatment Court*, 1998; Jan Roehl, *Monterey County Drug Court: Evaluation #1*, 1998; Mark D. Godley, Michael Dennis, Rod Funk, Malissa Siekmann, and Ralph Weisheit, *Madison County Assessment and Treatment Alternative Court: Final Report*, 1998; M. M. Bell, *King County Drug Court Evaluation: Final Report*, 1998.
- ⁸ *1997 Drug Court Survey Report: Executive Summary*, pp. 19-20.
- ⁹ Robert Granfield, Cynthia Eby, and Thomas Brewster, "An Examination of the Denver Drug Court: The Impact of a Treatment-Oriented Drug Offender System," *Law & Policy* 20, no. 2 (1998), p. 192.
- ¹⁰ Steven Belenko, *Research on Drug Courts: A Critical Review* (New York: The National Center on Addiction and Substance Abuse at Columbia University, 1998), pp. 25 and 35.
- ¹¹ National Association of Drug Court Professionals Standards Committee, *Defining Drug Courts: The Key Components*, Alexandria, Virginia, 1997, Key Component 3.
- ¹² *Drug Courts: Overview of Growth, Characteristics, and Results*.
- ¹³ *Research on Drug Courts: A Critical Review*, p. 35.
- ¹⁴ *King County Drug Court Evaluation: Final Report*, p. 67.
- ¹⁵ Roger H. Peters and Mary R. Murrin, *Evaluation of Treatment-Based Drug Courts in Florida's First Judicial Circuit* (Tampa: Department of Mental Health, Law, and Policy, University of South Florida, 1998), pp. 34-35.
- ¹⁶ *Research on Drug Courts: A Critical Review*, p. 29.
- ¹⁷ Graduation rates average 48 percent. Source: *Drug Courts: Overview of Growth, Characteristics, and Results*, p. 56.
- ¹⁸ Okamoto Consulting Group, *Evaluation of Hawaii Drug Court*, 1998, p. 20.
- ¹⁹ *Looking at a Decade of Drug Courts*, p. 3.
- ²⁰ *1997 Drug Court Survey Report: Executive Summary*, p. 19.
- ²¹ *Drug Courts: Overview of Growth, Characteristics, and Results*. p. 53.
- ²² *1997 Drug Court Survey Report: Executive Summary*, p. 17.
- ²³ *Drug Courts: Overview of Growth, Characteristics, and Results*, p. 26.
- ²⁴ John S. Goldkamp and Doris Weiland, *Assessing the Impact of Dade County's Felony Drug Court: Final Report*, 1993.
- ²⁵ Cooper's survey divided days in detention into four possible ranges. Respondents could select any of the ranges that accurately describe practices in their jurisdiction. The results: 60 percent of respondents selected "up to 3 days"; 48 percent selected "4 to 7 days"; 27 percent selected "8 to 15 days"; and 20 percent selected "over 15 days." *1997 Drug Court Survey Report: Executive Summary*, p. 26.
- ²⁶ Jeffrey S. Tauber, *An Evaluation of the Oakland Drug Court After Three Years*, 1995, p. 5.
- ²⁷ *Drug Courts: Overview of Growth, Characteristics, and Results*, p. 26.
- ²⁸ Denise C. Gottfredson, Kris Coblentz, and Michele A. Harmon, *Baltimore City Drug Treatment Court Evaluation*, 1996, p. 9.
- ²⁹ Ibid, p.12.
- ³⁰ Conversation with Douglas Young, Senior Researcher, Vera Institute of Justice, on January 6, 2000.

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