

DRUG COURTS IN THE AMERICAS

A report by the Drugs, Security and Democracy Program

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EXECUTIVE SUMMARY

Drug courts in the United States are presented as an alternative to incarceration for people arrested for minor drug offenses where drug use is considered an underlying cause of the crime, thus theoretically serving as a tool for reducing prison and jail populations. The United States has nearly thirty years of experience with these courts, which have spread to all fifty states as well as US territories.

Many countries around the world have looked to the United States' experience with drug courts as a model to be adopted, and the US government has also promoted them abroad as an alternative to incarceration. Perhaps the most organized efforts to expand this policy are those currently underway in Latin America and the Caribbean. The considerable influence of the United States on the region's drug control policies has certainly encouraged many of its countries to view drug courts as such an alternative, and the growing number of countries implementing them signals that these efforts are moving ahead with full force there. The Canadian government has also worked to support the expansion of drug courts, particularly in the Caribbean, but this report does not focus on the Canadian model.

Proponents of drug courts assert that they are cost-effective; they reduce recidivism as well as time spent in detention (prison or jail); and they offer drug treatment as an alternative to incarceration to people whose drug use fuels their criminal activity. To evaluate these assertions, this report reviews key findings from the United States' experience which, despite major institutional, legal, and cultural differences, may usefully inform debates about drug courts, along with other alternatives to incarceration for low-level drug crimes, in other countries—in particular, in countries in Latin America and the Caribbean that have either established, or are looking to establish, drug courts. This report also presents a brief overview of where and how drug courts have been implemented in Latin America and the Caribbean to identify, to the extent possible, the different

experiences and challenges faced by those countries. One main difficulty in this exercise is the limited availability of data that would allow strong parallels to be drawn. As is the case with the United States, with rare exceptions, drug courts in Latin America and Caribbean are not independently monitored and evaluated, and most were established relatively recently. Nevertheless, we have found the information available points to fundamental problems with the implementation of drug courts; the findings from the United States experience could, at the very least, offer insight into whether and under what circumstances they provide a more desirable option than incarceration.

The US section is based on review of the existing research on drug courts and treatment for substance use disorders and evaluations of drug court efficacy conducted and published by the US government, major research institutions, advocacy organizations, and leading scholars whose work focuses on drug courts specifically or on criminal justice, substance use disorders, drug treatment, and drug policy more broadly. The Latin America and Caribbean sections are based on a review of their available information on drug courts (which is significantly more limited than the vast literature available in the United States), as well as on research on criminal justice, incarceration, drug treatment, and drug policy, responses to requests for information, and interviews. Also reviewed for each country are laws, official documents (including memoranda of understanding, government documents and web pages, judiciary reports, PowerPoint presentations made by authorities, and international organization documents, among others), studies and evaluations (when available), and, in a few cases, news reports.

The substantial diversity among drug court models complicates efforts to evaluate their impact on the problems they aim to address, but our review of the existing evidence shows the claim that drug courts provide an alternative to incarceration is debatable. We found that drug courts, as implemented in the United States, are a costly, cumbersome intervention that has limited, if any, impact on reducing incarceration. Indeed,

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for many participants, they may have the opposite effect by increasing criminal justice supervision and subjecting those who fail to graduate to harsher penalties than they might otherwise have received, thus becoming an *adjunct* rather than an *alternative* to incarceration. Moreover, evidence about their effectiveness in reducing cost, recidivism, and time spent in prison is mixed. The financial and human costs to drug court participants are also steep and disproportionately burdensome to the poor and racial minorities.

The evidence also does not support drug courts as an appropriate public health intervention. Drug court judges are empowered to make treatment decisions that should be the domain of health care professionals, choosing from limited or counterproductive options that may threaten the health and lives of participants as well as expose confidential information about their health and drug use.

One of the main stated objectives of drug courts is to ensure access to comprehensive substance abuse treatment for those who need it. Our review of the available evidence shows, however, that, in practice, many drug court participants do not need treatment; at the same time, treatment may be unavailable to or inappropriate for those who do. Evidence we have found indicates the resort to drug courts may be an appropriate measure for certain offenders—that is, people charged with serious crimes linked to their drug dependence who would otherwise serve prison terms. What is often not considered is that most drug courts do not meet this definition.

More important, we must remember that drug dependence treatment is a type of medical care. People who are dependent on drugs have a right, under international human rights law, to relevant health care services that are available, physically and economically accessible without discrimination, gender appropriate, culturally and ethically acceptable, designed to

respect confidentiality, scientifically and medically appropriate, and of good quality.¹ By mediating treatment through the criminal justice system, drug courts aggressively insert the penal system into people's private and family lives and into their decisions about their health and medical care, reproducing and perpetuating the criminalization of people who use drugs and those involved in low-level drug-related crimes. As an overall framework through which to think about drug courts, we should not lose sight of the fact that no individuals, regardless of their criminal records, should be punished for their medical conditions, nor should they have to allow courts to make their medical decisions for them or rely on the criminal justice system for access to treatment that could perhaps have prevented their incarceration in the first place.

The primary lessons learned from US drug courts that should be considered by other countries in the Americas as they look at this model are the following:

Drug courts are not an alternative to incarceration:

- Defendants remain in criminal proceedings at every step in the drug court program, risk incarceration, both as a sanction while in the program and for failure to complete it, and, in some cases, spend more time behind bars than they would have had they chosen to pursue criminal justice proceedings instead of drug court.

Drug courts may increase the number of people under supervision of the criminal justice system in the following ways:

- By requiring them to plead guilty as a condition of getting access to drug court.
- By processing discretionary crimes that police might have not enforced had drug court not been an option.
- By mediating treatment through the criminal justice system.

¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, adopted August 11, 2000, para. 12.

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Drug courts are not a rights-based health intervention:

- Drug court judges maintain control over treatment decisions for drug court participants, in some cases ordering treatment that is at odds with accepted medical practice.
- Participants who fail drug court risk incarceration and face abrupt interruption of treatment and other health risks attendant to incarceration.
- Access to treatment comes at the cost of forfeiting fundamental legal and human rights.

Drug courts may perpetuate racial bias in the criminal justice system:

- Drug courts point to drug dependence as the factor that puts people at risk of criminal justice involvement, ignoring the racial bias in drug policing and prosecution in the United States that leads African Americans and Latinos into long-term criminal justice supervision at much higher rates than their white counterparts.

Further complicating this scenario is the concerted effort to export drug courts as a model that should be adopted by other countries. Despite the evidence from the United States experience cited above, countries in Latin America and the Caribbean have embraced drug courts as a promising solution to the over-incarceration problem that plagues the region. This development is problematic not only because governments in the region apparently are not conducting proper investigations before adopting drug courts as a public policy model, but also because the very specific social, economic, and political context of Latin American and Caribbean countries immediately complicates the adoption of public policies designed by other, more developed countries with different legal systems. The lack, for example, of scientifically and medically appropriate treatment options and the reliance on private providers is a

serious issue in the Latin America and Caribbean region, where numerous cases of abuse and human rights violations by treatment providers have been documented.² Furthermore, health systems do not have enough capacity to provide health and social services to all the people who need them; in these cases, private and religious institutions with scarce knowledge about drug dependence, treatment, and medical standards are used. A reliance on abstinence-based treatment programs and drug testing is also of concern.

On the criminal justice side of the issue, many drug courts in the region still focus on simple drug possession as a crime, contributing to the criminalization and stigmatization of people who use drugs. Research about drug courts in Latin America and the Caribbean also underscores the need for a more rigorous data management system that can provide sufficient information for a comprehensive assessment of their effectiveness in the region. Currently, research is too dependent on anecdotal evidence and not focused on evidence-based analysis.

This report's main findings about drug treatment courts in Latin America are as follows:

- Generally speaking, detailed and current data are lacking in almost all the Latin American countries studied, and independent evaluations are scarce.
- The model is more advanced in three countries (Chile, Mexico, and Costa Rica) and in a pilot phase in four others (Argentina, Panama, Dominican Republic, and Colombia). Ecuador and Peru are also considering whether to establish drug courts.
- Most programs in the region were established in 2012 or later, except for the Chilean model, which was implemented in 2004.
- Drug courts in Latin America function as specific

² See, for example, Débora Upegui-Hernández and Rafael A. Torruella, Humiliation and Abuses in Drug "Treatment" Centers in Puerto Rico (Puerto Rico: Intercambios Puerto Rico, 2015), <http://intercambiospr.org/wp-content/uploads/2015/11/Humiliation-Abuse-in-Drug-Treatment-in-Puerto-Rico-Intercambios-PR-2015.pdf>; Roxane Saucier, "No Health No Help: Abuse as Drug Rehabilitation in Latin America & The Caribbean," (New York: Open Society Foundations, 2016), <https://www.opensocietyfoundations.org/sites/default/files/no-health-no-help-en-21060403.pdf>.

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programs within the legal jurisdictions where they have been established rather than as special courts. They function under the conditional suspension of criminal proceedings mechanism and adopt a pre-plea approach that diverts participants before conviction.

- Candidates must meet two basic requirements to enter the programs: they must be prosecuted for an eligible offense, and they must receive a diagnosis of problematic drug use related to the commission of the crime.
- Only people charged with what the local jurisdictions consider to be minor and/or nonviolent crimes (charges carrying sentences of no more than three to five years in prison) are accepted in the programs.
- Many programs carry harsh penalties as sanctions during the course of treatment.
- In most programs, participants must be first-time offenders.
- In contrast to the US experience, Latin American drug treatment courts graduate few participants.
- The drug courts in the region most commonly address crimes against property, domestic violence, and drug possession. Based on available information, simple possession is one of the most frequent crimes in drug court programs that include drug offenses (those in Chile, Dominican Republic, Mexico, and Panama).
- Most participants in drug court programs are male.
- Juvenile courts have been established in Chile, Colombia, Costa Rica, and Mexico, and other countries plan to create such programs.
- Much as in the United States, participation in Latin American drug courts typically requires that participants remain drug free and sometimes

sanction them for positive drug tests.

- Most countries clearly lack the capacity to provide appropriate treatment to all program participants.

This report's main findings about drug treatment courts in the English-speaking Caribbean are as follows:

- Much as in Latin America, detailed and current data are lacking in almost all the Caribbean countries studied, and no independent evaluations of drug courts have been done. The information available is mostly from government sources.
- The earliest drug court programs in the Caribbean were established in 2001 in Bermuda and Jamaica (making these the oldest programs in the Latin America and Caribbean region), with other countries (the Cayman Islands, Trinidad and Tobago, Barbados, and Belize) establishing drug courts in 2012 or later.
- The drug court model is more advanced in three countries (Bermuda, Jamaica, and the Cayman Islands) and in an initial phase in three others (Trinidad and Tobago, Barbados, and Belize). The Bahamas seems to be interested in establishing drug courts.
- Drug courts in the Caribbean are not specialized courts as in the United States but, rather, operate as specific programs under local lower (parish/magistrate's) courts, as in Latin America. The drug treatment courts in Caribbean countries operate under different legal structures. Bermuda, the Cayman Islands, and Jamaica have enacted specific legislation, while Barbados, Belize, and Trinidad and Tobago have signed memoranda of understanding with the Organization of American States' Inter-American Drug Abuse Control Commission (CICAD). The Canadian government has directly supported the implementation of drug courts in a few Caribbean countries.
- The basic requirements for admission to drug court are to be charged with an eligible offense and

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receive a diagnosis of problematic drug use related to the commission of the crime.

- Only people charged with what the local jurisdictions consider to be minor and/or nonviolent crimes are accepted in the programs, with the exception of Jamaica, where people charged with certain more serious crimes may be eligible. Participants must be first-time offenders.
- Jamaica is the only country in the English-speaking Caribbean where a guilty plea is not a requirement for admission.
- The information available suggests that few participants graduate from Caribbean drug courts.
- The drug courts in the region most commonly address crimes against property and drug possession. Based on available information, simple possession is one of the most frequent crimes in drug court programs that include drug offenses.
- Most participants in drug court programs are male.
- Juvenile courts have been established in Jamaica, and reports indicate the Cayman Islands and Trinidad and Tobago are exploring the possibility of establishing such programs.
- Many programs carry harsh penalties as sanctions during the course of treatment.
- Participation in Caribbean drug courts typically requires that participants remain drug free, and they rely on drug testing to assess compliance, with sanctions imposed for positive drug tests.
- Information about treatment standards and options available is scarce, but our research suggests most countries in the region lack the capacity to provide appropriate treatment to all program participants.

Undoubtedly, the creation of alternatives to the criminal justice system for drug-related offenses is urgently needed, and countries should focus on moving away from an excessive reliance on incarceration as a panacea. Nonetheless, a close examination of the United States as a case study does not support the drug court model as the most appropriate solution for governments genuinely focused on addressing this issue, since in some respects it continues to criminalize drug consumption and prioritize a criminal approach to drug dependence over a health approach.

Hence, this report presents a series of recommendations that should be seriously considered by countries concerned with mass incarceration and intent on moving away from overreliance on criminal justice responses to drug use. We developed the recommendations with two groups in mind: countries that have not established drug courts or in which they are in early stages, and countries in which drug courts are more established and their continuation is overwhelmingly supported, thus making it difficult (but not impossible) to address the issues raised here.

RECOMMENDATIONS

Any serious attempt to provide an effective alternative to incarceration should start with the decriminalization of drug use and possession for personal use. This will facilitate access to voluntary treatment by removing the fear of arrest. In the interim, governments should take measures to ensure drug dependence is treated as a public health rather than a criminal issue and to minimize the impact of criminal justice involvement and discrimination faced by people with drug arrests or convictions.

Implementing the following recommendations may help move countries toward these goals.

Health-Oriented Approaches to Drug Use and Dependence

- Governments should take legislative and other measures to ensure treatment is available,

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physically and economically accessible, gender appropriate, culturally and ethically acceptable, designed to respect confidentiality, scientifically and medically appropriate, and of good quality to people dependent on drugs. To this end, governments should do the following:

- Provide financial and technical resources to expand and improve comprehensive harm-reduction services in communities, including evidence-based drug treatment programs that are not linked to the criminal justice system.
- Provide greater oversight to private sector treatment and rehabilitation services to ensure they are of adequate quality; that evidence-based practices are used; and that serious abuses, such as solitary confinement, torture, sexual abuse, and forced or unpaid labor, do not take place.
- Distinguish between drug use and drug dependence and recognize that not all drug use is problematic or requires treatment to address it.

Alternative Approaches to Criminal Justice Involvement

- Governments should take necessary legislative and other measures to ensure people who commit minor or nonviolent drug offenses and are in need of treatment are directed, prior to arrest or the opening of a criminal proceeding, to community-based services tailored to their specific needs. Law enforcement–assisted diversion programs in the United States, which have been shown to reduce recidivism, time spent in prison or jail, and related costs significantly, can be useful models for such initiatives.
- Law enforcement and judicial personnel should be provided with information and training about drug use and dependence, harm-reduction

measures, and available health and social services so they can direct people with drug dependence to appropriate services outside of and unlinked to the criminal justice system.

- Governments should ensure women and men have equal access to diversion programs, regardless of race or ethnic backgrounds.
- Drug use and minor drug crimes among juveniles should be treated outside of the criminal justice system. Treatment interventions and any sanctions must take into account the best interests of the child and ensure information about treatment and prevention is provided, and that criminal justice interventions are a last resort.

While the main conclusion of this report is that drug courts are not an appropriate solution for the issues they were ostensibly designed to address, measures could be put in place to minimize the negative impacts of their implementation. Such measures include prioritizing the eligibility of those charged with serious criminal offenses who would benefit from drug treatment, ensuring access to evidence-based drug treatment, and taking advantage of other forms of alternatives to incarceration, such as community service or job training, among others.

In countries in which drug courts are already in place and embedded in the legal system, the following recommendations should be taken into account to mitigate unintended negative consequences of their operation.

Legal Framework

- Drug courts should target people who have been charged with serious offenses, including violent crimes, that otherwise would result in incarceration, and who would benefit from drug dependence treatment.
- The existence of a criminal record and the nature of the offense should not render a potential participant ineligible, as is often the case.

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- A person should not have to plead guilty to a criminal offense as a condition for entering a drug court program.
- A person who does not have a drug dependence problem should not be channeled into drug court and should, instead, benefit from other alternatives to incarceration for drug-related offenses.
- No individual should be diverted to a drug court for drug use or possession for personal use. In countries where drug use or possession remains illegal, alternatives to the criminal justice system, such as education, fines, or community service, should replace other forms of punishment or incarceration.

Treatment Provision

- Evidence-based and good-quality treatment programs must be available and easily accessible to all. Treatment should follow internationally accepted norms and standards, including the recognition that drug dependence is a chronic and recurring disease.
- Returning to drug use is a normal part of the recovery process and should not be the basis for dismissal from a program or the imposition of sanctions, such as detention or more frequent court appearances or drug testing.
- An individual should only be accepted into a drug court if rights- and evidence-based treatment is immediately available. People should not be diverted to drug courts if they will be placed on waiting lists for treatment.
- Drug courts should take into account the specific needs of women and tailor treatment programs to their needs. For pregnant women or mothers, treatment facilities should provide child care, transportation, prenatal care, and other

special programs, as needed.

- Drug testing can discourage participation in treatment programs, and its use should be discouraged. If it is used, no punitive actions should be taken for failing a drug test.
- Opioid-dependent drug court participants should have access to medication-assisted treatment with methadone or buprenorphine. Methadone or buprenorphine patients should not be forced to stop treatment as a condition for entering a drug court program.
- To ensure better long-term results, drug court programs should be coordinated with programs that provide support services, such as skills training, education, and assistance in obtaining housing and employment.

Mitigation of Potential Harms

- Participation in drug court should not be dependent on paying fines, fees, or any other costs, nor should failure to do so be criminally sanctioned. The length of the program and treatment schedule should accommodate participants' needs and should not unnecessarily interfere with employment.
- If home visits are mandated by the drug court, they should be carried out by social workers (not law enforcement personnel) and be conducted discreetly, so as to protect the privacy of participants and their families and not expose them to social stigma and discrimination.
- The shaming of drug court participants during public hearings is demeaning and further stigmatizes those who use drugs. It should be avoided at all costs.
- Measures must be taken to ensure drug courts do not lead to expanding the number of people being detained and prosecuted for low-level drug

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offenses, as has been documented in some US jurisdictions.

- Measures must be taken to ensure a person who “fails” or chooses to leave drug court does not end up with a harsher punishment than would have been received had the person not opted to participate in the first place.

Guarantee of Fundamental Rights

- Potential participants in drug court programs should be provided with complete and accurate information on possible sanctions for the crime allegedly committed, the duration and requirements of the programs, and sufficient time to make an informed decision about whether to participate.
- The requirement to plead guilty as a condition for participation should be eliminated.
- All defendants should be guaranteed the opportunity to have adequate and effective defense, including access to legal aid. As many defendants do not have the financial resources to pay their defense costs, governments should ensure public defenders are adequately funded, at a rate at least comparable to prosecutors, and have the skills, resources, and time necessary to defend their clients properly.
- Participants in drug court programs should not be required to waive doctor–patient confidentiality or attorney–client privilege as a condition of their participation.

Monitoring and Evaluation

- Sound monitoring and evaluation mechanisms should be incorporated into existing drug court programs.
- Mechanisms should be established to ensure accurate recordkeeping and the consistent

collection of comparable data over time. Such records should include the types of or reasons for sanctions imposed, net reductions (or increases) in time spent in custody, completion rates, recidivism rates, and the quality of the treatment services provided.

- Recorded data should be publicly available and used to analyze the reasons candidates are accepted or rejected for participation in drug courts, dropout rates, low levels of participation, and potential race- or gender-based biases.
- All such studies should be conducted through an intersectional lens, taking into consideration the gender, age, race, and other characteristics of the participants in their analyses.
- In addition to the conduct by governments of rigorous official evaluations, independent experts with no vested interests in the programs should also be tasked with evaluating and assessing the impact of drug courts.

INTRODUCTION

Among the many (presumably) unintended consequences of the “war on drugs” has been a well-documented—and significant— increase in the prison population in many countries for drug-related offenses. Prisons are bursting at the seams across the Americas, and a driving force behind this crisis are harsh drug laws. Research shows many of those arrested or incarcerated for drug offenses committed minor, nonviolent crimes or were simply charged with possession.³

This issue has been at the center of the regional drug policy debate and has led to a renewed interest in new public policy approaches, in particular those offering alternatives to incarceration. One policy that ostensibly addresses the issue in the United States has been the establishment of drug courts.

The stated goal of drug courts is, indeed, to offer court-supervised treatment for offenders with problematic drug use⁴ as an alternative to incarceration for drug-related offenses. Drug courts in the United States have been the

subject of countless studies that offer interesting insights into the positive and negative aspects of this policy model. Many countries in Latin America and the Caribbean have started drug court programs or are considering their implementation as well, making this is a timely opportunity to consider the full implications of drug courts in the region.

ORIGINS OF DRUG COURTS IN THE UNITED STATES

Drug courts emerged in the United States in response to concerns about the rising arrests, growing court dockets, and jail and prison overcrowding produced by a massive increase in enforcement of low-level drug laws in the 1980s and 1990s and enhanced criminal penalties for the possession and sale of small amounts of controlled or illicit drugs.⁵ Proponents of drug courts argued that the traditional adversarial system⁶ was not working, and a new approach was needed. Drug courts would “provide a safety valve for the cycle of incarceration-release-recidivism that filled prisons with low-level drug users,” while permitting the criminal justice system to focus on more serious offenses.⁷

³ Almost everyone convicted of a drug offense under federal law has been convicted of drug trafficking (see, for example, <https://www.bjs.gov/content/pub/pdf/dofp12.pdf>), but this is not particularly meaningful, as trafficking can include a single marijuana plant (https://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=30). The vast majority of “drug abuse” violations (defined as arrests for possession, sale or manufacturing) nationwide— 84 percent of the 1,488,707 arrests in 2015—are for possession. See Department of Justice, FBI, “Estimated Number of Arrests, 2015,” <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-29>; DoJ, FBI, “Arrests for Drug Abuse Violations, 2015,” https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/arrest_table_arrests_for_drug_abuse_violations_percent_distribution_by_regions_2015.xls. As of December 31, 2015, 15.2 percent of state prisoners (197,200 prisoners, 3.4 percent of them for possession and 11.7 percent for “other offenses”) and as of September 30, 2016, 47.5 percent of sentenced federal prisoners (81,900), were incarcerated for drug offenses. US Department of Justice, Bureau of Justice Statistics, “Prisoners in 2016,” <https://www.bjs.gov/content/pub/pdf/p16.pdf>. For information about incarceration in Latin America, see Sergio Chaparro, Catalina Pérez Correa, and Coletta Youngers, *Castigos irracionales: Leyes de drogas y encarcelamiento en América Latina* (Ciudad de México: Colectivo de Estudios Drogas y Derecho, 2017).

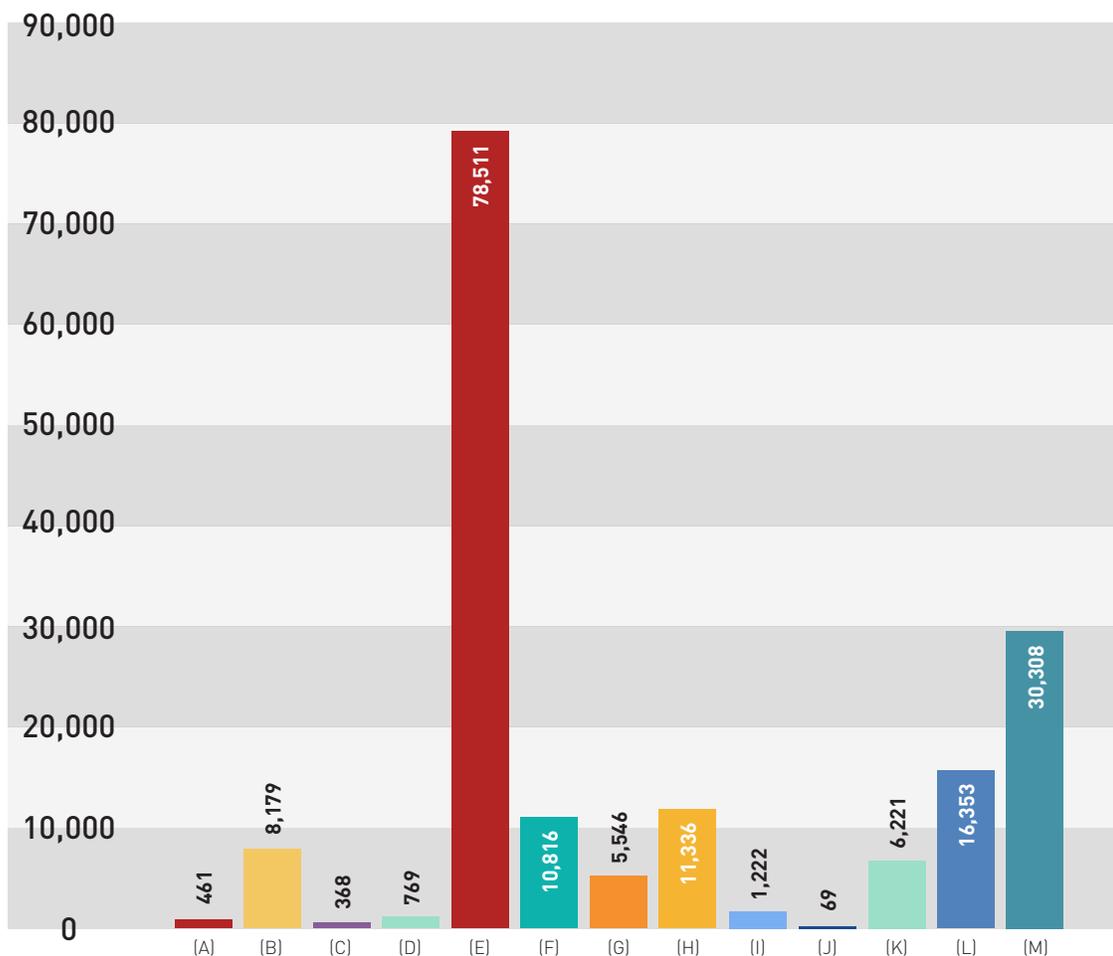
⁴ There is no standard definition of “problem or problematic drug use.” It may include people diagnosed with “disorders due to substance use” based on clinical criteria in the International Classification of Diseases (ICD 11), WHO; the DSM – Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association); or people who inject drugs, or other criteria. The European Monitoring Centre for Drugs and Drug Addiction defines high-risk drug use as “recurrent drug use that is causing actual harms (negative consequences) to the person (including dependence, but also other health, psychological or social problems), or is placing the person at a high probability/risk of suffering such harms.” European Monitoring Centre for Drugs and Drug Addiction, *High-risk drug use key epidemiological indicator*, <http://www.emcdda.europa.eu/activities/hrdu> (accessed February 11, 2018). See also Global Commission on Drug Policy, “The World Drug Perception Problem: Countering Prejudices about People Who Use Drugs,” 14, http://www.globalcommissionondrugs.org/wp-content/uploads/2018/01/GCDP-Report-2017_Perceptions-ENGLISH.pdf.

⁵ Eric J. Miller, “Drugs, Courts, and the New Penology,” *Stanford Law & Policy Review* 20, no. 2 (2009): 417–461. A 2016 overview of US drug possession laws noted that all US states and the federal government criminalize possession of illicit drugs for personal use, and that, in “42 states, possession of small amounts of most illicit drugs other than marijuana is either always or sometimes a felony offense.” American Civil Liberties Union and Human Rights Watch, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States* (New York: ACLU and Human Rights Watch, 2016), 4, 34.

⁶ Under the US adversarial system of justice, inherited from the English common law, a trial is a contest between two opponents, presided over by an impartial fact finder (judge or jury) who determines the truth based on evidence and arguments developed and presented by lawyers. In inquisitorial systems, the model common to civil law jurisdictions, judges are actively involved at all levels of the dispute resolution process, gathering evidence and investigating and prosecuting cases, including determining which evidence should be presented at trial, how, and to what end. In recent years, several countries in Latin America have adopted or incorporated many aspects of the adversarial system to replace their inquisitorial systems in whole or in part. Janet Ainsworth, “Legal Discourse and Legal Narratives: Adversarial versus Inquisitorial Models,” *Language and Law / Linguagem E Direito* 2, no. 1–11 (2015).

⁷ Miller, “Drugs, Courts, and the New Penology,” 101.

TABLE 1: NUMBER OF US FEDERAL PRISONERS INCARCERATED, BY OFFENSE



- (A) Banking & Insurance, Counterfeit, Embezzlement
- (B) Burglary, Larceny, Property Offenses
- (C) Continuing Criminal Enterprise
- (D) Courts or Corrections
- (E) Drug Offenses
- (F) Extortion, Fraud, Bribery
- (G) Homicide, Aggravated Assault, and Kidnapping Offenses
- (H) Immigration
- (I) Miscellaneous
- (J) National Security
- (K) Robbery
- (L) Sex Offenses
- (M) Weapons, Explosives, Arson

Source: Adapted from the US Federal Bureau of Prisons. Statistics based on prior month's data, last updated on August 25, 2018. Available at https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (accessed October 1, 2018).

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The first drug court was established in Miami, Florida, in 1989. Although reports conflict on the exact number of drug courts currently operating in the United States and territories, most sources cite more than three thousand.⁸ More than half of these target adult offenders,⁹ while an estimated 12 or 13 percent are designated exclusively for juveniles.¹⁰ They are part of a larger set of “problem-solving courts” that focus attention and resources on specific crimes and behaviors and their root causes.¹¹ The US federal government budgeted \$92 million for drug courts for 2017,¹² and states and local governments also fund these interventions.¹³

Although the term “drug courts” seems to refer to a homogenous entity, in reality it encompasses a variety of specialized courts that divert people charged with certain drug offenses and offenses presumably associated with drug use from incarceration or other standard criminal sanctions to court-supervised drug treatment. In general, drug courts limit eligibility to those charged with drug possession or nonviolent drug-related offenses where there is evidence of substance

use, although some drug courts do admit people charged with or convicted of violent offenses.

People with current or prior violent offenses are excluded from drug courts that receive certain federal funds or, in some cases, by specific provisions of state law, regardless of the funding available.¹⁴ Overriding sentencing laws (such as mandatory minimums, sentence enhancements, and habitual offender laws) may also effectively bar access to drug court.¹⁵ These conditions exclude many people who might benefit from diversion to treatment—that is, people charged with serious crimes linked to their drug dependence who would otherwise serve prison terms. The National Drug Court Institute (NDCI) has conducted a national survey of rural, urban, and suburban drug courts in all fifty US states, the District of Columbia, and the US territories of Puerto Rico, Guam, and the Virgin Islands that reports the primary, secondary, and tertiary “substances of abuse” by people who come before the courts. Although the data are not very specific and do not link specific substances to participants’ crimes, they do indicate that, for adults, a

⁸ The US Department of Justice’s Office of Justice Programs states there were over 3,100 drug courts as of May 2018 (information available at <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>, accessed July 23, 2018); the National Institute of Justice indicates there were 3,142 drug courts as of June 2015 (information available at <https://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx>, accessed July 23, 2018). The National Drug Court Resource Center has counted 3,454 drug courts, including adult, juvenile, family treatment, “tribal healing to wellness,” designated driving while intoxicated (DWI), campus, reentry, federal, veteran, and co-occurring disorder courts. The last source, however, does not indicate when the data were collected. “Drug Treatment Courts by State”, National Drug Court Resource Center, available at <https://ndcrc.org/database/> (accessed July 23, 2018).

⁹ See, e.g., US Department of Justice’s Office of Justice Programs (information available at <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>, accessed January 18, 2018), the National Institute of Justice (information available at <https://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx>, accessed January 18, 2018), and the National Drug Court Resource Center (information available at <https://ndcrc.org/drug-treatment-courts-by-type/>, accessed January 18, 2018).

¹⁰ See, e.g., the National Institute of Justice (information available at <https://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx>, accessed January 18, 2018), and the National Drug Court Resource Center (information available at <https://ndcrc.org/drug-treatment-courts-by-type/>, accessed January 18, 2018).

¹¹ “Problem-solving” courts are specialized criminal courts that focus on issues considered to be the root causes of criminal behavior. Most share the goal of reducing reliance on incarceration and conventional probation in favor of less punitive alternatives. Since the creation of the Miami drug court in 1989, an array of other problem-solving courts, including domestic violence courts, mental health courts, re-entry courts, and community courts, has been developed, following the “broken windows” theory of policing that targets “quality of life offenses” like prostitution, low-level drug possession, disorderly conduct, and petty theft. Allegra M. McLeod, “Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law,” *Georgetown Law Journal* 100 (2012): 1587–1674.

¹² White House Office of National Drug Control Policy, “National Drug Control Budget: FY 2017 Funding Highlights,” February 2016, <https://www.whitehouse.gov/sites/default/files/ondcp/press-releases/fy2017budgethighlights.pdf>

¹³ Douglas B. Marlowe, Carolyn D. Hardin, and Carson L. Fox, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Courts in the United States* (Alexandria, VA: National Drug Court Institute, 2016).

¹⁴ Drug courts receiving funding through the Bureau of Justice Assistance Adult Drug Court Discretionary Grant Program may not use this or nonfederal matching funding to serve past or current violent offenders or repeat felony offenders, with the exception of Veterans’ Drug Courts serving violent offenders. See, e.g., Office of Justice Programs, US Department of Justice, “Adult Drug Court Discretionary Grant Program FY 2017 Competitive Grant Announcement,” 2017, <https://www.bja.gov/funding/DrugCourts17.pdf>. At the state level, Florida law, for example, excludes people charged with offenses considered violent and repeat felony offenders. See, e.g., Drug Court Offender Probation, Fla. Stat. Sec. 948.20(1); Pretrial Intervention Program, Fla. Stat. Sec. 948.08(2, 6(a)); Misdemeanor Pretrial Substance Abuse Education and Treatment Intervention Program; Misdemeanor Pretrial Veterans’ Treatment Intervention Program; Misdemeanor Pretrial Mental Health Court Program, Fla. Stat. Sec. 948.16(1)(a); “When Court May Place Defendant on Probation or into Community Control,” Fla. Stat. Sec. 948.01(7(a), 8(a)).

¹⁵ Eric L. Sevigny, Harold A. Pollack, and Peter H. Reuter, “Can Drug Courts Help to Reduce Prison and Jail Populations?” *Annals of the American Academy of Political and Social Science* 647, no 1 (2013): 190–212, doi:10.1177/0002716213476258 (finding that strict sentencing laws excluded more than 30 percent of at-risk offenders from drug courts, regardless of their eligibility).

Introduction

significant number of violations are related to alcohol, followed by marijuana and heroin or pharmaceutical opioids. For juveniles, most violations are reported as related to marijuana, followed by alcohol.¹⁶

Drug court models vary substantially across a number of areas—including legal and clinical eligibility criteria, target population, substance abuse treatment options, specific incentives and sanctions, and termination and successful discharge criteria—but they also share a number of characteristics. In general, judges preside over drug court proceedings, monitor offenders' progress with mandatory drug testing (scheduled and random) and with frequent status hearings in court, and prescribe punitive sanctions (such as writing assignments, community service, or short periods of jail detention) and incentives (such as verbal praise, reduced supervision requirements, or token gifts) for performance. Judges typically receive input from multidisciplinary teams that include prosecutors, defense attorneys, case managers and/or treatment providers, law enforcement personnel, and probation and parole¹⁷ or community supervision officers.¹⁸

The substantial diversity among drug court models complicates efforts to evaluate their impact on the problems they aim to address, even assuming they can be appropriately evaluated—like traditional medical treatment—according to health and human rights standards. Law professor Allegra McLeod has

developed a typology to describe institutional models at work in problem-solving courts (including drug courts) that is useful to understanding key distinctions among them and the different potential consequences associated with these different approaches. These models are as follows:

- **Therapeutic jurisprudence**, where the judge, who may have no formal therapeutic training, personally attempts to facilitate in court a therapeutic process aimed at changing a defendant's drug-using behavior through routine court proceedings, sanctions and rewards, and, in some cases, incarceration¹⁹
- **Intensive judicial monitoring**, where the judge assumes a role usually played by a probation or parole officer, monitoring defendants or participants by requiring they submit to frequent, often random, urine tests and attend court appointments as often as several times a week
- **Order maintenance**, which focuses on lower-level offenses that would otherwise receive little attention in criminal court, based on the theory that minor social disorders (like marijuana use), if not addressed, contribute to more serious crime (the "broken windows" theory of policing)²⁰

¹⁶ Marlowe, Hardin, and Fox, *Painting the Current Picture*. This report is based on a survey distributed to the designated primary point of contact for problem-solving courts in all 50 US states, Washington, D.C., Guam, Puerto Rico, and the Virgin Islands. 53 of 54 (98 percent) of jurisdictions completed all or part of the survey, which covers information as of December 31, 2014. The survey collected information about drug courts in each state or territory, including the number of drug courts and participants; dispositional models; offense levels in adult drug courts; graduation rates; substances of abuse; and state and federal funding sources. *Ibid.*, 32-34.

¹⁷ Probation is a criminal sentence that permits an offender to remain in the community under supervision in lieu of incarceration. Parole is early, supervised release from prison.

¹⁸ US Government Accountability Office (US GAO), *Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts* (Washington, DC: US GAO, 2011); Marlowe, Hardin, and Fox, *Painting the Current Picture*.

¹⁹ Therapeutic jurisprudence applies insights from behavioral sciences and psychology to the judicial and legal process. The aim is to address, through the legal process, the root causes of some types of offending behaviors, rather than apply a retributive approach that does not consider the psychosocial issues underlying the behavior.

²⁰ The "broken windows" theory holds that minor manifestations of physical and social disorder—for example, broken windows, begging, public drinking, or drug use—give rise to fear and withdrawal, signaling to more serious criminals that no one cares about a particular neighborhood and in turn increasing the likelihood of serious crime. Police are, thus, encouraged to focus on prosecuting petty public-order offenses to combat fear of crime, as well as the serious crime attracted by the disorder. James Q. Wilson and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *Atlantic Monthly*, March 1982. The "broken windows" model of policing has been criticized by scholars, judges, prosecutors, public defenders, and human rights advocates for having the opposite effect: making public spaces more dangerous for poor people of color, who comprise the majority of public-order arrests, by facilitating aggressive and often brutal policing of their communities; exacerbating racial and economic inequality; and potentially aggravating crime. See, e.g., K. Babe Howell, "The Costs of 'Broken Windows' Policing: Twenty Years and Counting," *Cardozo Law Review* 37 (2016): 1059-1073; Dina R. Rose and Todd R. Clear, "Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory," *Criminology* 36, no. 3 (1998): 441-480, doi:10.1111/j.1745-9125.1998.tb01255.x.

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- **Decarceration**, which refers defendants who otherwise would likely be incarcerated to mental health and drug treatment, job and housing placement, and other services instead. Drug courts operating under this model would sentence people to relevant services and nonrevocable or revocation-limited probation, with incarceration a punishment of last resort, imposed only where there is substantial reason to believe it is necessary to protect public safety or otherwise serve the interests of justice.²¹

The model formalized by the National Association of Drug Court Professionals (NADCP) and the US Department of Justice combines the first two approaches and can also support the third.²² In practice, various combinations of the first three models exist in drug courts in the United States, although one or another may predominate.

Drug courts vary in terms of the length of treatment required. According to the NDCI, most drug court programs range from twelve to twenty-four months, though “some participants may require substantially more time to satisfy criteria for successful discharge from the program.”²³ In some cases, successfully completing a program can take five years or more.²⁴ Discharge (“graduation”) requirements generally entail an extended period of abstinence²⁵ from illicit drugs and alcohol; compliance

with supervision conditions, which may include curfew; and payment of program fees, fines, and restitution.²⁶

In the United States, most drug courts require defendants to plead guilty as a condition for entering treatment and having their pleas withdrawn, charges dismissed, probation reduced, or sentences waived or set aside and, sometimes, to be eligible for expungement of their records on successful completion of the court-mandated treatment program. Often, people are sentenced to drug court or required to participate as a condition of probation or a community-based sentence. In those cases, participation is not voluntary, and participants cannot withdraw consent to participate.²⁷ Some courts offer deferred prosecution or diversion, in which defendants enter a treatment program before pleading to a charge, and their charges are not prosecuted further or are dismissed on successful completion of the program.

A participant who fails to complete court-supervised treatment (for example, by failing to remain abstinent from drugs or alcohol, comply with supervision conditions, or pay program fees, fines, and restitution) is returned to criminal court for sentencing (if the person has pleaded guilty pre-adjudication), is placed under state supervision (probation or custody, if the person has pleaded guilty post-adjudication), or has court proceedings reopened (in pre-plea cases).²⁸ In 2014, 6 percent of courts used pre-plea diversion or deferred prosecution, and

²¹ McLeod, “Decarceration Courts.”

²² National Association of Drug Court Professionals, *Adult Drug Court Best Practices Standards: Volume 1* (Alexandria, VA: NADCP, 2013), <http://www.nadcp.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf>; National Association of Drug Court Professionals, “Defining Drug Courts: The Key Components” (Washington, DC: US Department of Justice, 1997), <http://www.ndci.org/sites/default/files/nadcp/KeyComponents.pdf>.

²³ Marlowe, Hardin, and Fox, *Painting the Current Picture*.

²⁴ Problem-Solving Courts Task Force, National Association of Criminal Defense Lawyers, *America’s Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform* (Washington, DC: NACDL, 2009). See also Ira Glass, “Very Tough Love,” March 25, 2011, in *This American Life*, <http://www.thisamericanlife.org/radio-archives/episode/430/transcript> (ten and a half years supervision, including five and a half with the drug court, for forging check for less than \$100).

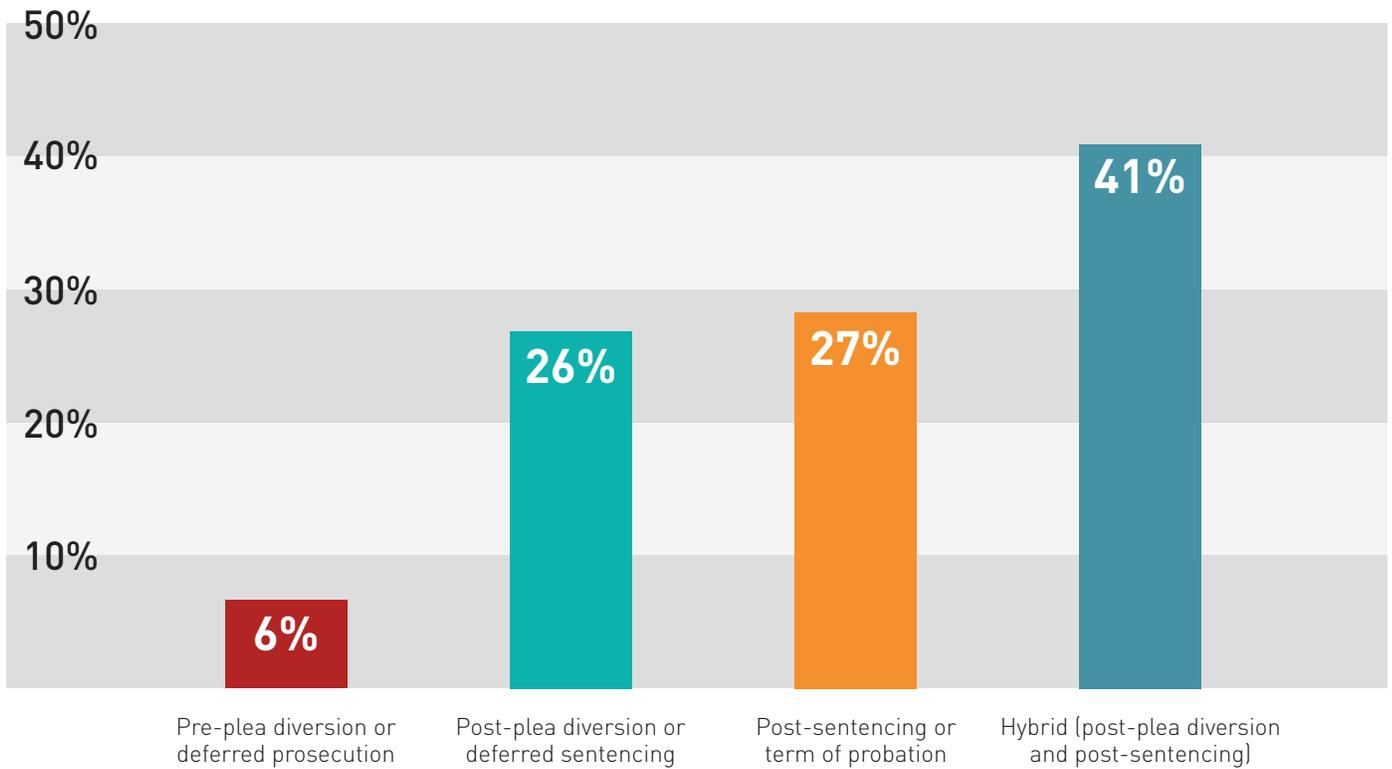
²⁵ Frequent court-ordered alcohol and drug testing, which should be random and directly observed, is considered an essential component of drug courts to monitor progress toward the ultimate goals of treatment—abstinence and public safety. National Association of Drug Court Professionals, *Adult Drug Court Best Practices Standards*; National Association of Drug Court Professionals, *Defining Drug Courts*, US Guideline 5.

²⁶ Marlowe, Hardin, and Fox, *Painting the Current Picture*.

²⁷ Ibid.

²⁸ Ibid.; Celinda Franco, “Drug Courts: Background, Effectiveness and Policy Issues for Congress,” *Journal of Current Issues in Crime, Law & Law Enforcement* 4, no. 1/2 (2011): 19–50, <http://search.ebscohost.com/login.aspx?direct=true&db=i3h&AN=67159691&site=ehost-live>.

TABLE 2: DISPOSITIONAL MODELS IN ADULT DRUG COURTS



Source: Douglas B. Marlow, Carolyn D. Hardin, and Carson L. Fox, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Courts in the United States* (Alexandria, VA: National Drug Court Institute, 2016), 40.

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the remainder were post-conviction programs, including post-plea/pre-adjudication (26 percent), post-sentencing or term of probation (27 percent), and hybrid post-plea/post-sentencing (41 percent).²⁹

Drug courts in the United States typically require people to remain drug free and sanction them for positive drug tests or other program violations. Sanctions may include imposing more frequent drug testing and court appearances (including random drug testing during the business hours of the court, which may affect the defendant's employment stability or violate his or her confidentiality at home or in the workplace), escalating periods of jail time, or dismissal from the program and return to criminal proceedings.³⁰ This approach is not in line with national and international standards for treating drug dependence, which recognize it as a chronic disease in which relapse should be viewed as a normal part of efforts to cease drug use and not a basis for dismissal from a program.³¹ As noted below, this approach also punishes people with drug dependence for their medical conditions and may put them at risk of fatal overdose.

Many drug court policies and practices empower judges to make medical decisions about drug treatment, usurping the role of physicians and other health-care professionals in determining the proper course of treatment for those who need it. In the United States, for example, where opioid dependence is a major public health crisis, some drug courts ban, or arbitrarily limit, methadone maintenance treatment, considered the “gold

standard” treatment for opioid dependence, sometimes in contradiction of physicians' orders or advice. These decisions are also contrary to international and national standards and threaten the health—and sometimes the lives—of people who use drugs.³²

Critics of drug courts further caution that they threaten to aggravate existing problems in the US criminal justice system by expanding the scope of criminal supervision, limiting procedural protections, and, potentially, increasing incarceration.³³ They also argue that the focus on drug courts has diverted attention from reforms needed with regard to the serious, systemic issues that drive the scale and cost of incarceration for drug law violations, in particular aggressive law enforcement strategies, increased prosecutorial power, and harsh sentencing laws.³⁴

DRUG COURTS AS AN EXPORT POLICY MODEL

The United States drug court model has been adopted by other countries throughout the world, but perhaps the most organized efforts to export this policy are those currently underway in Latin America and the Caribbean. The considerable influence of the United States in the region's drug control policies has certainly encouraged many Latin American and Caribbean countries to view drug courts as an alternative to incarceration, and the growing number of countries implementing them signals that these efforts are moving ahead with full force.

²⁹ Hybrid courts include populations that enter at different points in the criminal justice process, typically combining post-plea diversion and post-sentencing cases. Marlowe, Hardin, and Fox, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Courts in the United States*; see also US Department of Justice, Bureau of Justice Statistics, “Census of Problem-Solving Courts, 2012,” September 2016, <http://www.bjs.gov/content/pub/pdf/cpsc12.pdf>.

³⁰ See, e.g., National Association of Drug Court Professionals, *Defining Drug Courts*, 13 (listing sanctions).

³¹ US Department of Health and Human Services, “Principles of Drug Addiction Treatment: A Research-Based Guide” (Third Edition) (2012); United Nations Office on Drugs and Crime and World Health Organization, “Principles of Drug Dependence Treatment (Discussion Paper),” 2008, <https://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf>.

³² Harlan Matusow, Samuel Dickman, Josiah D. Rich, et al., “Medication Assisted Treatment in US Drug Courts: Results from a Nationwide Survey of Availability, Barriers and Attitudes,” *Journal of Substance Abuse Treatment* 44, no. 5 (2013): 473–480, doi:10.1016/j.jsat.2012.10.004; Joanne Csete and Holly Catania, “Methadone Treatment Providers' Views of Drug Court Policy and Practice: A Case Study of New York State,” *Harm Reduction Journal* 10, no. 1 (2013): 1–9.

³³ McLeod, “Decarceration Courts”; Karen McElrath, Angela Taylor, and Kimberly K. Tran, “Black-White Disparities in Criminal Justice Referrals to Drug Treatment: Addressing Treatment Need or Expanding the Diagnostic Net?” *Behavioral Sciences* 6 (2016): 21–36.

³⁴ Drug Policy Alliance, *Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use* (New York: Drug Policy Alliance, 2011), 25, www.drugpolicy.org/drugcourts; see also Jessica M. Eaglin, “The Drug Court Paradigm,” *American Criminal Law Review* 53 (2016): 595–640.

Introduction

The Canadian government has also worked to support the expansion of drug courts, particularly in the Caribbean, but this report has not focused on reviewing their drug court model.

While public policy solutions to the significant incarceration problem in the region are essential, it is also important to understand how legal, institutional, cultural, and socioeconomic differences might affect the adoption of external policy models by different countries. The seeming enthusiasm demonstrated by these countries for drug courts, or drug treatment courts (DTCs), as they are commonly referred to in the region, should be substantiated by a thorough understanding of the possibilities and limitations of the model.

To this end, this report looks at evidence provided by the available literature on US drug courts, which offers valuable “lessons learned” for countries now looking into adopting the model, followed by a review of how drug courts have been implemented so far in the region to identify whether and in what circumstances they might offer an acceptable alternative to incarceration. By exploring drug court models in Latin America and the Caribbean as a regional trend and providing a breakdown of regional similarities and differences among countries, we hope to discuss present practices and provide recommendations based on the well-documented US experience.

This study comprises four sections. The first, “Drug Courts in the United States: Lessons Learned from the US Experience,” offers a literature review of the research on drug courts to explore how this policy model has functioned in practice. The second and third sections, “Drug Courts in Latin America: An Adequate Response?” and “Drug Courts in the Caribbean: A Brief Overview,” provide short summaries of how drug courts are functioning in the Latin America and Caribbean region, according to the limited information currently available. The paper closes with some conclusions, followed by recommendations as to whether and under what conditions the use of drug courts might be appropriate.

METHODOLOGY

The US section is based on review of the existing research on drug courts and treatment for substance use disorders and evaluations of drug court efficacy published in peer-reviewed journals and law reviews and by advocacy organizations, government agencies, and research centers whose work focuses on drug courts specifically or on criminal justice, treatment for substance use disorders, or drug policy more broadly.

The literature on drug courts is vast, and a great many evaluations have been published. The literature reviewed here is focused on research conducted and published by the US government, major research institutions, and leading scholars on criminal justice, substance use disorders, drug treatment, and drug policy.

The two main drug court advocacy organizations, the NADCP and its offshoot, the NDCI, which provides technical assistance and training to drug court professionals throughout the United States, were a key source of the literature reviewed. In 1997, with the support of the US Department of Justice, NADCP published “Defining Drug Courts: The Key Components,” a set of guiding principles that have informed the operation of drug courts throughout the country. Both the NADCP and the NDCI have been endorsed and funded by a number of federal agencies, including the US Department of Justice, the White House Office of National Drug Control Policy, and the Substance Abuse and Mental Health Services Administration, and their publications have been cited as authoritative by national and state-level government organizations concerned with criminal justice issues, drug courts, and drug dependence treatment.

The Latin America section is based on a literature review and on responses to requests for information. Also reviewed for each country were laws, official documents (including MOUs, government documents and web pages, judiciary reports, PowerPoint presentations made by authorities, and international organization documents, among others), studies

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and evaluations (if available), and, in a few cases, news reports. Although the author requested information from authorities in all countries in which drug treatment courts are already installed, responses were not always received. The author retains all responses to the requests.

The English-speaking Caribbean section is primarily based on a literature review, with additional interviews conducted in Jamaica. Also reviewed for each country were laws, official documents (including government documents and web pages, judiciary reports, PowerPoint presentations made by authorities, and international organization documents, among others), studies, and, in a few cases, news reports.

DRUG COURTS IN THE UNITED STATES: LESSONS LEARNED FROM THE US EXPERIENCE

BY REBECCA SCHLEIFER

According to their proponents, drug courts offer lifesaving drug treatment and other services to people whose drug use is seen as the underlying cause of, or linked to, their criminal behavior. Drug courts are also said to be cost effective and to reduce criminal activity, as well as time spent behind bars, hence offering an alternative to incarceration for this population.

Based on around three decades of experience in implementing and expanding drug courts, the United States has promoted them as a policy model for other countries looking for alternatives to incarceration for (mostly minor) drug-related offenses. As these countries seek to adopt drug courts, many times under different legal, institutional, and cultural conditions, it is important to examine the main arguments for or against them in terms of cost effectiveness, impact on recidivism, reduction in incarceration time, and treatment.

This section will explore the evidence from the available literature showing how drug courts in the United States relate to these four aspects in practice.

COST IMPLICATIONS OF DRUG COURTS

An argument often made for seeking alternatives to

incarceration is fiscal. According to the Vera Institute of Justice, the average cost of incarcerating one person in state prison in the United States was \$33,274 in 2015;³⁵ for federal inmates in the 2015 fiscal year, the US Department of Justice's Bureau of Prisons estimated this cost at \$31,977.65 per person.³⁶ In both cases, the amount indicated covered only direct costs and did not take into account collateral costs arising from incarceration.

Studies of the cost effectiveness of drug courts have yielded mixed results. The courts themselves can be costly: they require the participation of prosecutors, defense attorneys, judges, court staff, case managers, treatment providers, and probation or other community supervisors; residential and outpatient drug treatment; regular drug testing; and jail or prison time, either as a sanction for noncompliance or as a result of program failure. The determination of cost effectiveness depends, importantly, on the comparison group—that is, are drug courts cost effective, compared to what? In addition, as we will discuss further below, the direct and indirect costs of incarceration borne by the participants themselves, which are not commonly reflected in these studies, should be considered.

A 2011 review of cost-effectiveness studies by the US Government Accountability Office (US GAO) produced a wide range of estimates, from a net benefit of \$47,000 per participant in one study to a net cost (or negative benefit) of \$7,108 in another. The study reporting the largest net benefit compared the cost of drug courts to the cost of incarceration, while in other studies the members of the comparison group served a less costly probation.³⁷

The Multi-Site Adult Drug Court Evaluation (MADCE), the largest national evaluation of US drug courts, covered twenty-three adult drug courts at six sites. It found that, on average,

³⁵ Chris Mai and Ram Subramanian, "The Price of Prisons: Examining State Spending Trends, 2010–2015" (New York: Vera Institute of Justice, 2015), 7.

³⁶ Bureau of Prisons, "Annual Determination of Average Cost of Incarceration," Federal Register, Vol. 81, No. 138, July 19, 2016.

³⁷ In the study conducted by the US Government Accountability Office, the net benefit was calculated as the monetary benefit of reduced recidivism accrued to society from the drug court program through reduced future victimization and justice system expenditures, less the net costs of the drug court program—that is, the cost of the program less the cost of processing a case in criminal court. US Government Accountability Office (US GAO), *Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts*.

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drug courts returned net benefits to local communities of approximately two dollars for every dollar invested, but that this amount was not statistically significant.³⁸ The authors noted that many of the drug courts in the study reduced the incidence of low-level criminal offenses, which are not typically associated with high incarceration or victimization costs. Rather, these findings were driven by a reduction in the most serious offending by relatively few individuals. In other words, drug courts were found to be most cost effective when measured against the high costs of conventional incarceration. Drug courts targeting serious offenders who would otherwise face lengthy incarceration would be especially likely to save money.³⁹

But comparing the cost of drug courts to the cost of incarceration is inapt if one considers assisting defendants with medical intervention for drug dependence as the courts' first objective and reducing crime and the costs of incarceration secondarily. If the primary intended outcome of drug courts is to treat drug dependence—and not to reduce recidivism or costs—a more appropriate comparison would be to weigh the cost of the courts against that of traditional treatment. Meta-analyses conducted by the Washington State Institute for Public Policy of policy options to reduce crime and substance abuse have

found out-patient or non-intensive drug treatment delivered in the community⁴⁰ and case management for substance-abusing offenders⁴¹ more cost effective than adult drug courts.⁴²

Furthermore, the promotion of drug courts as a cost-saving solution to crime, particularly when driving down costs is an important objective, raises questions about the current and future quality of treatment received by the defendants who go before them.

Drug treatment itself has consistently been associated with net financial benefits and savings,⁴³ as well as significant reductions in drug use, drug sales, and criminal activity linked to drug procurement.⁴⁴ It is worth comparing the benefits of investing in drug treatment outside and unlinked to the criminal justice system to those of drug courts, as well as to other measures that would keep people out of the criminal justice in the first place. These could include decriminalization of drug use and possession and other minor drug offenses; law enforcement diversion of criminal conduct prior to opening a criminal proceeding; or directing people who need treatment to community-based services to address their specific needs and circumstances instead of to prosecution or incarceration.⁴⁵

³⁸ A finding is "statistically significant" when the probability that a relationship between two (or more) variables is the result of a cause (or causes) other than random chance.

³⁹ Shelli B. Rossman, Michael Rempel, John K. Roman, et al., "The Multi-Site Adult Drug Court Evaluation: Study Overview and Design. Final Report: Volume 4" (Washington, DC: The Urban Institute, 2011), <http://www.urban.org/uploadedpdf/412354-MADCE-Study-Overview-and-Design.pdf>.

⁴⁰ This is outpatient or residential treatment delivered to offenders in the community (as opposed to during incarceration).

⁴¹ Case management for substance abuse problems is a strategy to facilitate coordination and continuity of services to help clients access resources they need. Case management services include assessing clients' needs; treatment planning; and coordinating, monitoring and advocating for access to services to meet clients' needs (such as housing, job search, etc.). Substance Abuse and Mental Health Administration (SAMHSA), "Comprehensive Case Management for Substance Abuse Treatment. Treatment Improvement Protocol (TIP) Series, No. 27" (Rockville, MD: SAMHSA, 2000).

⁴² Stephanie Lee, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, and Laurie Anderson, *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes* (Olympia, WA: Washington State Institute for Public Policy, 2012); Washington State Institute for Public Policy, "Benefit-Cost Results", 2017, <http://www.wsipp.wa.gov/BenefitCost?topicId=2>.

⁴³ See, for example, Kathryn E. McCollister and Michael T. French, "The Relative Contribution of Outcome Domains in the Total Economic Benefit of Addiction Interventions: A Review of First Findings," *Addiction* 98, no. 12 (2003): 1647–1659, doi:10.1111/j.1360-0443.2003.00541.x; Susan L. Ettner et al., "Benefit-Cost in the California Treatment Outcome Project: Does Substance Abuse Treatment 'Pay for Itself?'" *Health Services Research* 41, no. 1 (2006): 192–213, doi:10.1111/j.1475-6773.2005.00466.x.

⁴⁴ McCollister and French, "The Relative Contribution of Outcome Domains"; Ettner et al., "Benefit-Cost in the California Treatment Outcome Project"; L. Marsch, "The Efficacy of Methadone Maintenance Interventions in Reducing Illicit Opiate Use, HIV Risk Behavior and Criminality: A Meta-Analysis," *Addiction* 93, no. 4 January 1997 (1998): 515–532, doi:0965-2140/98/0400515-18.

⁴⁵ Technical Secretariat Working Group on Alternatives to Incarceration, *Technical Report on Alternatives to Incarceration for Drug-Related Offenses* (Washington, DC: OAS, 2015).

TABLE 3: CONCLUSIONS OF ELEVEN DRUG COURT PROGRAM EVALUATIONS IN US GAO COST-BENEFIT REVIEW

DRUG COURT PROGRAM (STATE)	PROGRAMS SHOWN TO BE COST BENEFICIAL?	NET BENEFITS
Kings County District Attorney's Office Drug Treatment Alternative to Prison Program (New York) ^a	YES	\$47,836
Multiple Drug Courts (Maine)	YES	\$42,177
Douglas County Drug Court (Nebraska)	YES	\$11,336
Multnomah County Drug Court (Oregon)	YES	\$10,826
MADCE (Multiple States)	YES ^b	\$6,208
Multiple Drug Courts (Kentucky)	YES	\$5,446
St. Joseph County Drug Court (Indiana)	YES	\$3,148
St. Louis City Adult Felony Drug Court (Missouri)	YES	\$2,615
Vanderburgh County Day Reporting Drug Court (Indiana)	NO	(\$1,640)
Barry County Adult Drug Court (Michigan)	NO	(\$3,552)
Monroe County Drug Treatment Court (Indiana)	NO	(\$7,108)

^a Comparison was to prison population

^b Because of the variability in the estimate, the MADCE study could not determine that the net benefits were statistically significant. Most other studies did not report on whether differences in cost were statistically significant.

Source: US Government Accountability Office (US GAO), "Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts" (Washington, DC: US GAO, 2011).

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A comprehensive cost-benefit analysis must consider other factors, as well; for example, individuals who participate in drug court programs incur significant financial costs that are not taken into account in drug court evaluations. The NADCP encourages the payment of fees, fines, and restitution as part of treatment⁴⁶ and as a condition of successful discharge from a drug court program,⁴⁷ and many courts impose these requirements. The MADCE found, for instance, that 62 percent of courts surveyed required payment of court costs as a condition of graduation; 57 percent required payment of restitution; and 40 percent required payment of drug testing fees.⁴⁸ These fees can be steep—a 2012 cost-benefit analysis found the *average* total cost to participants in Virginia's drug treatment court to be more than \$750, for instance⁴⁹—and are commonly excluded from private and some public health insurance plans.⁵⁰

Some relief from these costs was provided by the Patient Protection and Affordable Care Act (ACA) (2010), which required the inclusion of substance abuse treatment as an

essential benefit in insurance plans and expanded eligibility for insurance for millions of previously uninsured people.⁵¹ Significantly, the ACA gave states the option of expanding access to Medicaid (government-financed health insurance for certain categories of low-income individuals, which then included children and adolescents, parents and caretaker relatives, pregnant women, the elderly, and people with disabilities) to a previously uncovered population—adults without dependent children.⁵² Medicaid can defray coverage for some drug court-related costs (those related to treatment) for previously ineligible adults. But it does not do so in the seventeen states that opted out of the Medicaid expansion⁵³ nor for those drug court participants who are ineligible for Medicaid or other ACA subsidies,⁵⁴ and not for many costs, such as drug court staffing, court sessions and supervision, or fines or restitution.⁵⁵ Moreover, for people with private insurance, copayments for covered services and limits on the length and type of recommended treatment may be significant.⁵⁶

Coupled with these various costs, drug court participation

46 National Association of Drug Court Professionals, *Defining Drug Courts*.

47 Marlowe, Hardin, and Fox, *Painting the Current Picture*.

48 Janine M Zweig et al., "The Multi-Site Adult Drug Court Evaluation: What's Happening with Drug Courts? A Portrait of Adult Drug Courts in 2004, Volume 2" (Washington, DC: The Urban Institute, 2011) <http://search.proquest.com/docview/921711169?accountid=13042>.

49 Tara L. Kunkel et al., "Virginia Adult Drug Treatment Cost Benefit Analysis" (Williamsburg, VA: National Center for State Courts, 2012). These fees covered drug court assessment, staffing, court sessions and supervision, drug treatment, and drug testing. See also Shannon M. Carey and Michael W. Finigan, *Indiana Drug Courts: Monroe County Drug Treatment Court - Process, Outcome and Cost Evaluation* (Portland, OR: NPC Research, 2007). Fees include a \$500 program fee; a \$150 public defender fee; a \$100 evaluation fee; and a \$1,000 outpatient treatment fee; Rebekah Diller, *The Hidden Costs of Florida's Criminal Justice Fees* (New York: Brennan Center for Justice, 2010).

50 Marsha Regenstien, *Implications of the Affordable Care Act's Medicaid Expansion on Low-Income Individuals on Probation* (Washington, DC: George Washington University School of Public Health, 2014).

51 Patient Protection and Affordable Care Act, Pub. L. 111-148, Section 1302(b)(1)(E) (substance use disorder treatment included as an essential benefit).

52 The Henry Kaiser Family Foundation, "Medicaid Primer," <http://www.kff.org/medicaid/fact-sheet/medicaid-pocket-primer/>.

53 As of June 1, 2018, thirty-four states and Washington, DC, had opted to expand Medicaid, and seventeen had not done so. National Council of State Legislatures, "Affordable Care Act Medicaid Expansion," updated July 1, 2018, <http://www.ncsl.org/research/health/affordable-care-act-expansion.aspx>.

54 These include people living in poverty who have incomes above Medicaid eligibility limits but below the lower limit for ACA-related tax credits; lawfully present immigrants who have been in the country less than five years; and undocumented immigrants. Rachel Garfield and Anthony Damico, *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid - An Update* (Washington, DC: Kaiser Family Foundation, 2016), <http://kff.org/health-reform/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-an-update/>; see also Kaiser Family Foundation, "Fact Sheet: Key Facts about the Uninsured Population" (Washington, DC: Kaiser Family Foundation, 2017), <http://files.kff.org/attachment/Fact-Sheet-Key-Facts-about-the-Uninsured-Population>.

55 It is worth noting that while a plurality (44 percent) of the uninsured are non-Hispanic whites, people of color are at a higher risk of being uninsured than non-Hispanic whites, and, in fact, Hispanics and blacks have significantly higher uninsured rates (16.9 percent and 11.7 percent, respectively) than whites (7.6 percent). *Ibid.*

56 Physicians for Human Rights, *Neither Justice nor Treatment: Drug Courts in the United States* (New York: PHR, 2017).

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can cause serious economic hardship and, in some cases, deprivation of liberty by imposing onerous requirements that interfere with obtaining or maintaining employment. In many jurisdictions, those who fail to meet legal financial obligations (fines, fees, or other costs) in a timely manner may be dropped from treatment programs, sent to jail or prison, stripped of their voting rights,⁵⁷ or face civil punishment (such as suspension of a driver's license).⁵⁸

In addition to direct financial costs, it is important to understand what other costs may be associated with drug court participation. Most drug courts, for example, require defendants to plead guilty as a condition of treatment, with people also being sentenced to or required to participate in drug courts as a condition of probation or a community sentence. A drug possession conviction can have additional serious economic, social, and political consequences: it can bar people from welfare benefits, subsidized housing, and education loans, and, in many states, it can strip them of their right to vote or serve on a jury.⁵⁹ A 2010 study found that

... serving time reduced hourly wages for men by 11 percent and annual earnings by up to 40 percent, totaling \$179,000 in lost earnings for a typical formerly-incarcerated person by the age of forty-eight.⁶⁰

Those who successfully complete drug court may be saddled with evidence of their criminal record, even where the charges are deferred pending successful program completion, which may threaten their prospects for employment. Government agencies may be notified when employees are arrested, resulting in their losing their jobs and putting their professional licenses at risk.⁶¹ Information about open cases, including arrest charges, disposition, and all court appearances made in the case, may also be available to the general public over the Internet.⁶²

Yet another cost is incurred by defendants who wish to expunge their criminal records after they successfully complete their drug treatment programs. Most states and the federal government have laws providing for the expungement,

⁵⁷ All but two states impose restrictions on voting rights for convicted or imprisoned felons, in some cases for life. See Brennan Center, "Criminal Disenfranchisement Laws Across the United States," updated October 6, 2016, <https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>. At least eight states also restrict voting rights of people convicted of misdemeanors. Allyson Fredericksen and Linnea Lassiter, *Disenfranchised by Debt: Millions Impoverished by Prison, Blocked from Voting* (Seattle, WA: Alliance for a Just Society, 2016). While most of these states restore voting rights at the end of prison, probation, or parole, thirty require formerly-incarcerated individuals to pay outstanding legal financial obligations before they can regain their voting rights. In nine states, voter eligibility statutes explicitly require payment of fines, fees, court debt, or other legal financial obligations to regain the right to vote. In twenty-one others, people on probation and/or parole cannot vote and probation can be extended or revoked because of nonpayment of legal financial obligations. Marc Meredith and Michael Morse, "Discretionary Disenfranchisement: The Case of Legal Financial Obligations," *Journal of Legal Studies*, June 25, 2017; Fredericksen and Lassiter, *Disenfranchised by Debt* (reviewing restrictions by state and type).

⁵⁸ See Diller, *The Hidden Costs of Florida's Criminal Justice Fees*; American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors' Prisons* (New York: ACLU, 2010); M. Scott Carter and Clifton Adcock, "Prisoners of Debt: Justice System Imposes Steep Fines, Fees," *Oklahoma Watch*, January 31, 2015, <http://oklahomawatch.org/2015/01/31/justice-system-steeps-many-offenders-in-debt/>. Conditioning the exercise of fundamental rights to liberty and voting on the payment of legal financial obligations may be unconstitutional if exceptions are not made for indigence, see *Bearden v. Georgia*, 461 US 660 (1983); US Constitution, Art. I, Section 14; and because the discriminatory impact on racial minorities (in particular, African Americans) and on the poor amounts to an unconstitutional poll tax, see Jill Simmons, "Beggars Can't Be Voters: Why Washington's Felon Re-enfranchisement Law Violates the Equal Protection Clause," *Washington Law Review* 78 (2003): 297-333; cf. *Harvey v. Brewer*, 605 F.3d 1067 (9th Cir. 2010); Fredericksen and Lassiter, *Disenfranchised by Debt*.

⁵⁹ US federal law imposes a lifetime ban on anyone with a federal or state drug conviction from receiving welfare benefits. 21 US Code § 862a - Denial of assistance and benefits for certain drug-related convictions. States can opt out, though most retain either a full or partial ban. *Ibid.*; see also Eli Hager, "Six States Where Felons Can't Get Food Stamps," *The Marshall Project*, February 4, 2016, <https://www.themarshallproject.org/2016/02/04/six-states-where-felons-can-t-get-food-stamps#.6zkA1f4qq>. US law imposes a time-bound ban on federal student aid for those convicted of drug-related offenses and a lifetime ban for those with three such convictions. See US Department of Education, "Students with Criminal Convictions," <https://studentaid.ed.gov/sa/eligibility/criminal-convictions>; Brennan Center, "Criminal Disenfranchisement Laws Across the United States"; and US Department of Housing and Urban Development, "General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" (Washington, DC: HUD, 2016), https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf. See also Human Rights Watch and the American Civil Liberties Union, *Every 25 Seconds* (Reviewing harsh consequences of misdemeanor and felony drug convictions).

⁶⁰ The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Washington, DC: The Pew Charitable Trusts, 2010), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1.pdf.

⁶¹ Jim Dwyer, "Side Effects of Arrests for Marijuana," *New York Times*, June 16, 2011.

⁶² Issa Kohler-Hausmann, "Managerial Justice and Mass Misdemeanors," *Stanford Law Review* 66 (2014): 611-683.

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erasure, destruction, or sealing of arrest or conviction records. The details vary, but in most states, once an arrest or conviction has been expunged, it need not be disclosed (including to most potential employers or landlords). Expungement may be onerous and expensive for defendants, requiring time off from work to file paperwork with the court clerk and even to appear before a judge to seek an expungement order. Moreover, the criminal record may live on in the form of a record of the expungement. This information may be publicly available, including to employers and for use in civil and criminal court.⁶³

IMPACT ON RECIDIVISM

The effect of participation in a drug court program on the tendency to reoffend, also known as recidivism, is commonly presented as a main argument in favor of this policy model.

Nonetheless, the evidence for this effect is mixed. A number of studies have reported that drug court graduates experience fewer rearrests and reconvictions or longer periods between arrests than comparison groups.⁶⁴ Other studies, however, show little or no impact of drug court participation on recidivism.⁶⁵ In addition, it can be difficult to discern which

program components contributed to the cases where a reduction was observed. For example, many evaluations do not take into account the gender, age, race, class background, or criminal and substance use history of participants, all of which have been shown to affect treatment outcomes.⁶⁶

A meta-analysis of evaluations of the effectiveness of adult drug courts, DWI (driving while intoxicated) courts,⁶⁷ and juvenile drug courts in reducing recidivism found drug court participants less likely to reoffend than nonparticipants,⁶⁸ but the effect varied by the type of drug court. Based on the aggregated evidence reviewed, the study concluded the adult drug courts were effective in reducing recidivism past graduation. DWI courts showed similar effects, but the evidence was less robust. Juvenile courts, on the other hand, had relatively little effect on recidivism. Finally, programs serving less severe clients (i.e., whose participants were exclusively nonviolent offenders and clients with minor criminal histories) were more effective than drug courts that accept such clients in reducing recidivism.⁶⁹

Similarly, a 2011 US Government Accountability Office review of drug court evaluations found program participation generally associated with lower recidivism.⁷⁰ A 2013 study of eighty-six New York drug courts, however,⁷¹ found recidivism rates

⁶³ Brian M. Murray, "A New Era for Expungement Law Reform? Recent Developments at the State and Federal Levels," *Harvard Law & Policy Review*, vol. 10 (2016), 362–383; Michael Pinar, "Criminal Records, Race and Redemption," *N.Y.U. Journal of Legislation and Public Policy*, vol. 16 (2013), 963–997.

⁶⁴ See, e.g., Ojmarrh Mitchell et al., "Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts," *Journal of Criminal Justice* 40, no. 1 (2012): 60–71, doi:10.1016/j.jcrimjus.2011.11.009; Eric L. Sevigny, Brian K. Fuleihan, and Frank V. Ferdik, "Do Drug Courts Reduce the Use of Incarceration?: A Meta-Analysis," *Journal of Criminal Justice* 41, no. 6 (2013): 416–425, doi:10.1016/j.jcrimjus.2013.06.005: (citing studies).

⁶⁵ Ryan S. King and Jill Pasquarella, *Drug Courts: A Review of the Evidence* (New York: The Sentencing Project, 2009); Amanda B. Cissner et al., *A Statewide Evaluation of New York's Adult Drug Courts* (New York: Center for Court Innovation, 2013).

⁶⁶ King and Pasquarella, *Drug Courts: A Review of the Evidence*; see also Alberto R. Gonzales, Regina B. Schofiel, and Glenn R. Schmitt, *Drug Courts: The Second Decade* (Washington, DC: National Criminal Justice Reference Service, 2006).

⁶⁷ DWI courts serve adults charged with driving under the influence of drugs or alcohol.

⁶⁸ "Nonparticipants" are those who did not participate in the drug court program. They might have declined participation, been rejected, or been eligible but not referred. The question of whether participants and nonparticipants constitute comparable groups is an important one, as noted below.

⁶⁹ Mitchell et al., "Assessing the Effectiveness of Drug Courts on Recidivism." Compare Shelli B. Rossman, Michael Rempel, John K. Roman et al. "The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts, Volume 4" (Washington, DC: The Urban Institute, 2011), doi:10.16373/j.cnki.ahr.150049; Christine A. Saum, Frank R. Scarpitti, and Cynthia A. Robins, "Violent Offenders in Drug Court," *Journal of Drug Issues* 31, no. 1 (2001): 107–128 (comparison of individual drug court participants finding that violent offenders perform as well as nonviolent offenders in drug courts).

⁷⁰ US Government Accountability Office (US GAO), *Adult Drug Courts*.

⁷¹ This is a retrospective look at drug court participants and a comparison group of otherwise similar defendants who were eligible but not screened for drug court and were processed in a conventional way, ending with convictions, during the same period of time. People who participated in drug courts were divided into two categories: those who tried and graduated and those who tried and failed. In the latter case, they typically received sentences to jail or prison upon failing.

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worse for those who tried and failed drug court than for those who did not participate. Of those who failed the program, 64 percent were rearrested within three years, compared to 36 percent of graduates and 44 percent of nonparticipants.⁷²

In 2006, the Washington State Institute for Public Policy published meta-analyses of policy options to reduce crime and substance abuse. They found that, on average, drug court reduced recidivism rates of participants by 8 percent.⁷³ The reduction for adult offenders receiving drug treatment in the community, by comparison, was 9.3 percent.⁷⁴

Researchers have raised questions about the studies evaluating the effectiveness of drug courts in reducing recidivism because they regard many as methodologically weak and not based on “sound social science principles.”⁷⁵ Main concerns include a lack of appropriate control groups and small sample sizes. In addition, the time periods over which recidivism is measured are too short, with “follow-up” periods overlapping in part or altogether with treatment periods.⁷⁶ Commenting on sample selection, one scholar noted,

A common factor negatively affecting the methodological rigor of drug court evaluations was the comparability of the comparison group to the group receiving drug court treatment. The majority (56 percent) of adult drug court evaluations utilized a comparison group constructed from historical controls, clients who declined to participate in the drug court or clients who were rejected by drug court administrators. These comparison groups allow for historical factors and selection bias to threaten the

internal validity of the evaluations’ results.⁷⁷

Ideally, comparisons could be made by randomly assigning people who are eligible for drug court either to participate in the program or to remain under regular criminal justice proceedings toward criminal sentences. Relatively few such studies have been done, however.⁷⁸

Besides questions of methodology, a point to consider regarding recidivism analysis is the impact on some of unnecessary treatment mandated by drug courts and the possibility of their reoffending after drug court participation. Evidence suggests a significant number of participants do not have diagnosable substance use disorders and do not need treatment. To some degree, recidivism rates might reflect the extent to which drug court participants needed treatment in the first place. This issue will be further explored below.

REDUCTION IN INCARCERATION TIME

Evidence is mixed on whether drug court participants spend less time incarcerated than they otherwise would had they gone through criminal proceedings. Thus, whether drug courts provide an effective alternative to incarceration relative to other community-based interventions is unclear.⁷⁹ Overall, the evidence suggests adult drug courts may not reduce net incarceration rates for participants; rather, they act as an adjunct—not an alternative—to incarceration.

A 2013 meta-analysis of the impact of drug courts on

⁷² Cissner et al., *A Statewide Evaluation*.

⁷³ This is a meta-analysis based on drug court outcomes in a number of states and it does not indicate whether this figure includes all participants or only graduates.

⁷⁴ Steve Aos, Marna Miller, and Elizabeth Drake, “Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates” (Olympia, WA: Washington State Institute for Public Policy, 2006).

⁷⁵ US Government Accountability Office (US GAO), *Adult Drug Courts*.

⁷⁶ *Ibid.*; Mitchell et al., “Assessing the Effectiveness of Drug Courts on Recidivism.”

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Sevigny, Fuleihan, and Ferdik, “Do Drug Courts Reduce the Use of Incarceration? A Meta-Analysis” (citing studies).

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incarceration outcomes, based on data from nineteen studies, found mixed results on the question of whether drug courts reduce incarceration relative to conventional criminal justice supervision. The study reviewed empirical evidence of the effects of drug courts on the use of criminal justice sanctions, evaluating both the incidence of incarceration and overall time spent in jail and prison. The study found that drug courts significantly reduced the incidence of incarceration. For jail, it estimated, drug courts reduced the incidence of incarceration from a base rate of 50 percent (the estimated incidence for those under conventional criminal justice supervision) to about 42 percent (the estimated incidence for those admitted to drug court), amounting to approximately 78 jail incarcerations avoided per 1,000 admissions to drug court. For prison, it reduced the incidence to 38 percent (approximately 119 prison incarcerations avoided per 1,000 admissions to drug court). For overall incarceration, the reduced incidence was 32 percent (approximately 184 jail and prison incarcerations avoided per 1,000 admissions to drug court).

The analysis found no evidence, however, that drug court participants as a group spent less time behind bars, whether incarcerated before trial or after enrollment in the program.⁸⁰

While drug courts resulted in fewer people being incarcerated for drug-related offenses, they did not appear to reduce incarceration time overall because of lengthy custodial sentences imposed for noncompliance and treatment program “failure” that equaled or, oftentimes, exceeded those of conventionally supervised offenders.⁸¹ As Joanne Csete and Denise Tomasini-Joshi have noted, this finding is not surprising; treatment “failure” may be frequent, as relapse is a normal part of efforts to cease drug use.⁸²

Results from a five-year evaluation of twenty-three drug courts in six states also suggest drug courts do not reduce net incarceration for program participants. While they may nearly eliminate custodial time for those who graduate, these benefits are offset by high sentences imposed on those who fail the program.⁸³ Studies of New York City drug courts have reached similar results, finding that, in several courts, sentences for “failing” drug court were two to five times longer than for conventionally adjudicated defendants.⁸⁴ In other words, those who failed treatment programs could end up spending more time incarcerated than if they had just served time for the offenses committed. A significant percentage of people do not complete drug court programs, which means the number who

⁸⁰ The drug courts included in the analysis varied in several ways, including by type of treatment provided. The study also looked at which features of drug courts might predict successful diversion. It found, in particular, that drug courts reduced the use of incarceration if they provided more intensive programming, refrained from using onerous in-program sanctions, minimized failure rates, and enrolled low-risk offenders. With respect to the last point, they cautioned against a simplistic interpretation that increasing drug court stringency would improve their diversionary performance, noting that “drug courts can only be more helpful in reducing incarceration if they become more ambitious and less risk-averse by taking in higher-risk populations likely to serve real time.” *Ibid.*

⁸¹ Sevigny, Fuleihan, and Ferdik, “Do Drug Courts Reduce the Use of Incarceration?: A Meta-Analysis”; see also M. M. O’Hear, “Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice,” *Stanford Law & Policy Review* 20, no. 2 (2009): 463–499, <http://library.gcu.edu:2048/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=44304486&site=eds-live&scope=site> (those who do not complete court-supervised treatment program may face sentences two to five times longer than had they been sentenced initially); Denise C. Gottfredson et al., “Long-Term Effects of Participation in the Baltimore City Drug Treatment Court: Results from an Experimental Study,” *Journal of Experimental Criminology* 2, no. 1 (2006): 67–98.

⁸² Joanne Csete and Denise Tomasini-Joshi, *Drug Courts: Equivocal Evidence on a Popular Intervention* (New York: Open Society Foundations, 2016).

⁸³ Shelli B. Rossman, Michael Rempel, John K. Roman, et al., “The Multi-Site Adult Drug Court Evaluation: Study Overview and Design. Final Report: Volume 4” (Washington, DC: The Urban Institute 2011), <http://www.urban.org/uploadedpdf/412354-MADCE-Study-Overview-and-Design.pdf>.

⁸⁴ Michael Rempel et al. “The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts” (New York: Center for Court Innovation, 2003), https://www.courtinnovation.org/sites/default/files/drug_court_eval.pdf; Kelly O’Keefe and Michael Rempel, “The Staten Island Treatment Court Evaluation: Planning, Implementation, and Impacts” (New York: Center for Court Innovation, 2006), https://courtinnovation.org/sites/default/files/Staten_Island_Treatment_Court_Evaluation.pdf; see also William Rhodes, Ryan Kling and Michael Shively, “Suffolk County Drug Court Evaluation” (Cambridge, MA: Abt Associates, 2006) (23 percent of drug court participants spent more time in custody and 44 percent spent the same amount of time in custody as matched probationers); Denise Gottfredson, Stacey Najaka, Brook Kearly, “Effectiveness of drug treatment courts: Evidence from a randomized trial,” *Criminology and Public Policy*, 2, (2003): 171–196 (most drug court participants were incarcerated for shorter periods, but those sentenced for noncompliance spent more than twice as long in custody—fifty-five versus twenty-six days, on average—as matched counterparts).

⁸⁵ US Government Accountability Office (US GAO), *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes* (Washington, DC: Government Accountability Office, 2005) (review of twenty-seven evaluations of thirty-nine drug courts found completion rates between 27 and 66 percent); Steven Belenko, *Research on Drug Courts: A Critical Review 2001 Update* (New York: National Center on Addiction and Substance Abuse at Columbia University, June 2001) (review of thirty-seven published and unpublished evaluations of drug courts found an average of 47 percent of participants graduated, ranging from 37 to 60 percent). In his review, Belenko stated the reported program completion rates were consistent with findings in other studies.

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leave drug court programs and face longer jail or prison terms is substantial.⁸⁵

Evidence also suggests drug courts have led law enforcement to intensify its focus on people who use drugs but have either no or minor substance use disorders, which in turn has increased arrest and punishment for systematic drug use. A 2016 study of more than eight thousand cities and counties nationwide found evidence that local police increased attention to minor drug offenses in jurisdictions where drug courts were implemented.⁸⁶

Accordingly, research indicates many drug court participants do not have diagnosable or clinically significant substance use disorders and therefore are not in need of treatment.⁸⁷ This makes it hard to tell whether some drug court graduates are responding to the intervention or simply had less serious drug problems upon entering drug court, thus bolstering the graduation rate.⁸⁸ A 2015 study examining the relationship between substance use severity and graduation rates supported the latter conclusion, finding that participants with less severe substance use problems were more likely to

graduate than their counterparts with mild-to-moderate or severe problems.⁸⁹

In any event, many drug courts do not have formal guidelines or systems for administering jail-time sanctions or sentencing upon failing the program, nor do they maintain records of the reasons for jail time or other sanctions imposed, making it impossible to calculate net reductions in time spent in custody.⁹⁰

THE TREATMENT COMPONENT

International human rights law provides that all people, including those dependent on drugs, have a right to health care services that are available, physically and economically accessible without discrimination, gender appropriate, culturally and ethically acceptable, designed to respect confidentiality, scientifically and medically appropriate, and of good quality.⁹¹ Treatment provided through drug courts frequently falls short of these international standards, however, and, in some cases, it may be so deficient that it violates protections against torture or ill-treatment.⁹²

⁸⁶ See also Karen McElrath, Angela Taylor, and Kimberly K. Tran, "Black-White Disparities," 21–36.

⁸⁷ David DeMatteo et al., "Outcome Trajectories in Drug Court: Do All Participants Have Serious Drug Problems?" *Criminal Justice and Behavior* 36, no. 4 (2009): 354–368, doi:10.1177/0093854809331547 (finding that approximately one-third of participants might not have had significant drug problems on entry); Janine M. Zweig et al., "The Multi-Site Adult Drug Court Evaluation: What's Happening with Drug Courts? A Portrait of Adult Drug Courts in 2004, Volume 2" (Washington, DC: The Urban Institute, 2011), <http://search.proquest.com/docview/921711169?accountid=13042> (more than one-third of courts surveyed served only those diagnosed as addicted or dependent on drugs, one-third served regular users of drugs or alcohol, and just under one-third served anyone who used. Many courts admitted people who abused alcohol or marijuana but may not have been clinically dependent or users of more serious drugs; two-thirds permitted admission for alcohol abuse only; and 88 percent permitted admission for marijuana use only); see Sheryl Pimlott Kubiak, Cynthia L. Arfken, James A. Swartz, and Alison L. Koch, "Treatment at the Front End of the Criminal Justice Continuum: The Association between Arrest and Admission into Specialty Substance Abuse Treatment," *Subst. Abuse Treat. Prev. Policy* 2006, 1, 20 (finding that many people engaged in drug treatment despite not meeting criteria for substance abuse or dependence, including 74 percent of those on probation or parole during the previous twelve months).

⁸⁸ David DeMatteo et al., "Outcome Trajectories in Drug Court."

⁸⁹ Sanjay Shah, David DeMatteo, Michael Keesler, Jennie Davis, Kirk Heilbrun, and David S. Festinger, "Addiction Severity Index Scores and Urine Drug Screens at Baseline as Predictors of Graduation from Drug Court," *Crime & Delinquency*, 61, no. 99 (2015): 1257–1277.

⁹⁰ Gonzales, Schofiel, and Schmitt, *Drug Courts: The Second Decade*.

⁹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, adopted August 11, 2000, para. 12. This right is protected by various regional and international treaties as well as explicitly recognized in the constitutions of many countries throughout the world. See, e.g., the CESCR, G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966), entered into force on January 3, 1976, art. 12; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), adopted Nov. 17, 1988, O.A.S.T.S. No. 69 (entered into force Nov. 16, 1999), art. 10. In Latin America, the constitutions of Brazil, Colombia, Cuba, and Ecuador (among others) protect the right to health. Although the United States does not recognize a constitutional right to health, it has signed—but not ratified—the CESCR. As a signatory, the United States must refrain from taking steps that undermine the object and purpose of the treaty, as per the Vienna Convention on the Law of Treaties, art. 18.

⁹² See *Report of the Special Rapporteur on Torture*, Juan Méndez, UN Human Rights Council, 22nd session, UN doc. A/HRC/22/53, 1 February 2013, para. 73 (denial of opiate substitution therapy may violate the right to freedom from torture and ill-treatment in some circumstances).

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Availability

According to US government figures, in 2016, an estimated 7.4 million people ages twelve or older were dependent on illicit drugs, 28 percent of whom (2.2 million people) received treatment.⁹³ A number of factors have contributed to this treatment gap: scarcity of good quality drug treatment options and long waiting lists for treatment; lack of certified treatment providers (for example, to provide methadone or buprenorphine, heavily regulated medications urgently needed to address the opioid crisis) fueled, in part, by onerous licensing requirements and stigma of treating people with substance use disorders;⁹⁴ lack of or inadequate health insurance; and insufficient funding, either from government sources or insurance reimbursement.⁹⁵

These factors work to create a perverse result. In some jurisdictions, for many people seeking treatment voluntarily without a court mandate, the most viable way to access treatment is through drug courts.⁹⁶

The Human Rights Costs of Access to Treatment

Access to treatment comes at the cost of waiving or compromising fundamental legal and human rights.

International human rights law guarantees the right to a fair trial and the presumption of innocence.⁹⁷ This right is regularly flouted by most drug courts, which require people to plead guilty as a condition of participation, often providing the accused with insufficient time to make informed decisions about whether to enroll or to challenge the basis for their arrests, while "hastily extracting waivers of fundamental rights."⁹⁸ In some cases, these waivers are express, that is, part of signed contracts entered into as a condition of participating in drug court.⁹⁹

In another violation of due process, some jurisdictions do not provide discovery to defendants who enter into drug court, and/or they preclude defense counsel from litigating motions.¹⁰⁰ Discovery—the process of obtaining information from prosecutors about defendants' cases (for example, arrest reports or statements by prosecution witnesses)—is essential for defense attorneys to evaluate the strength of cases and advise their clients about the options available to them. Without discovery, it is difficult for defense counsel to provide meaningful advice to their clients before they enter pleas. Yet the client of a defense attorney who wants to know the facts about an arrest and to litigate its basis and begins to do so is automatically excluded from drug court. This process also

⁹³ Rebecca Ahrensbrak, Jonaki Bose, Sarra L. Hedden, Rachel N. Lipari, and Eunice Park-Lee, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health* (Rockville, MD: SAMHSA, 2017); Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, "Results from the 2016 National Survey on Drug Use and Health: Detailed Tables," Table 5.10A, <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2016/NSDUH-DetTabs-2016.pdf>.

⁹⁴ Physicians for Human Rights, "Neither Justice nor Treatment: Drug Courts in the United States" (New York: PHR, 2017). In 2016, in an effort to address the treatment gap for people with opioid use disorder, the Department of Health and Human Services increased the number of patients whom qualified practitioners could treat with buprenorphine from 100 to 275, "Medication Assisted Treatment for Opioid Use Disorders, 81 FR 44711-44739," July 8, 2016, <https://www.federalregister.gov/documents/2016/07/08/2016-16120/medication-assisted-treatment-for-opioid-use-disorders>.

⁹⁵ Physicians for Human Rights, *Neither Justice nor Treatment*; Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, "Results from the 2016 National Survey on Drug Use and Health: Detailed Tables," Table 5.53A, <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2016/NSDUH-DetTabs-2016.pdf>.

⁹⁶ Physicians for Human Rights, *Neither Justice nor Treatment*.

⁹⁷ International Covenant on Civil and Political Rights (ICCPR), Art. 14(1).

⁹⁸ Cynthia Orr et al. "America's Problem Solving Courts: The Criminal Costs of Treatment and the Case for Reform" (Washington, DC: National Association of Criminal Defense Lawyers, 2009); see also National Association of Drug Court Professionals, "Defining Drug Courts: The Key Components," Key Component 2.

⁹⁹ See, for example, Douglas Marlowe and William G. Meyer (editors), *The Drug Court Judicial Benchbook* (Alexandria, VA: National Drug Court Institute, 2011), chapters 8.3, 8.4; New Hampshire Superior Court, "Adult Drug Treatment Court: Acknowledgement and Waiver of Rights," <https://www.courts.state.nh.us/drugcourts/docs/Drug-Court-Ackn-and-Waiver.pdf> (accessed February 10, 2018); Criminal Court of the City of New York, Misdemeanor Brooklyn Treatment Court, "Policy and Procedures Manual," https://www.nycourts.gov/courts/nyc/drug_treatment/publications_pdf/MBTC-%20Policy%20and%20Procedure%20Manual.pdf, 28-43 (accessed February 10, 2018).

¹⁰⁰ Cynthia Orr et al., "America's Problem Solving Courts."

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raises ethical concerns for defense counsel about providing a vigorous defense.¹⁰¹

Also contributing to these violations of due process is the NADCP's "Key Components," which calls for a defendant's initial appearance before the drug court judge to take place "immediately after arrest or apprehension" and for participants to enroll in treatment "immediately."

Once enrolled in the program, defendants who fail to meet the strict conditions of drug court may be incarcerated on the original charge without trial, possibly with longer sentencing terms than a plea deal or trial at the original arraignment would have afforded them. This is especially troubling when many first-time and minor offenses might not have led to incarceration in the first place. Additionally, drug court participants agree to strict conditions during the duration of their treatment programs to which they would not be subjected if on probation or parole, often for years as they move through the programs. These long-term conditions can include surrendering the right to contest a search and seizure by law enforcement, the right to counsel, the right to due process, and the right to judicial review.¹⁰²

Confidentiality

One aspect of the right to health that may be infringed on by the drug courts is the confidentiality of personal health data.¹⁰³

This right is also protected by Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR). Delivering drug treatment through the court compromises these basic rights, as the discussion of participants' drug use and treatment plans in open court is considered part of the treatment.¹⁰⁴

NADCP guidance emphasizes the importance of the judge's active role in the treatment process, which includes holding regular status hearings with other drug court participants and encouraging defendants to provide truthful information about drug use in open court.¹⁰⁵ Some drug courts require participants to waive doctor-patient confidentiality or attorney-client privilege as a condition of participation.¹⁰⁶ As information about a person's drug use may be highly intimate as well as extremely sensitive, any state measures compelling communication or disclosure of such information are highly problematic.

Informed Consent to Treatment

Yet another rights question posed by the provision of treatment through drug courts is that of consent. Drug court

¹⁰¹ Ibid.

¹⁰² See, for example, Douglas Marlowe and William G. Meyer (editors), *The Drug Court Judicial Benchbook* (Alexandria, VA: National Drug Court Institute, 2011), chapter 8; New Hampshire Superior Court, "Adult Drug Treatment Court: Acknowledgement and Waiver of Rights," <https://www.courts.state.nh.us/drugcourts/docs/Drug-Court-Ackn-and-Waiver.pdf> (accessed February 10, 2018); Superior Court of Benton and Franklin Counties, "Drug Court Participation Agreement," <http://www.benton-franklinsuperiorcourt.com/information-and-forms-by-case-type/adult-criminal-case-information-and-forms/adult-drug-court/> (accessed February 10, 2018); 19th Judicial District Court, Parish of Baton Rouge, Louisiana, "Drug Court Plea Agreement and Placement Hearing," http://www.19thjdc.org/DTC-Plea-and-Placement-Hearing_2015-1.pdf (accessed February 11, 2018).

¹⁰³ Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the Right to Health, paras. 12(b). In citing to the right to privacy in the ICCPR, the Committee on Economic, Social and Cultural Rights stated that it gave "particular emphasis to access to information because of the special importance of this issue in relation to health." Ibid., para. 12(b), n.8. According to Manfred Nowak, the right to privacy includes a right of intimacy—that is, "to secrecy from the public of private characteristics, actions or data." This intimacy is ensured by institutional protections but also includes generally recognized obligations of confidentiality, such as those of physicians or priests. Moreover, "protection of intimacy goes beyond publication. Every invasion or even mere exploration of the intimacy sphere against the will of the person concerned may constitute unjustified interference." Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein: N.P. Engel Publishers, 1993), 296.

¹⁰⁴ See, e.g., Physicians for Human Rights, *Neither Justice nor Treatment*, 16.

¹⁰⁵ National Association of Drug Court Professionals, "Defining Drug Courts: The Key Components" (Washington, DC: US Department of Justice, 1997), <http://www.ndci.org/sites/default/files/nadcp/KeyComponents.pdf>, Key components 2, 7.

¹⁰⁶ Physicians for Human Rights, *Neither Justice nor Treatment*.

proponents claim the treatment provided is voluntary, because defendants have a choice: to be prosecuted through the regular criminal justice system or to participate in drug court. But the fact that people enter treatment under the threat of incarceration raises questions about how voluntary the choice actually is.¹⁰⁷ Compelling treatment under such a threat may obviate informed consent, which must be voluntary (without duress or undue influence),¹⁰⁸ and violate fundamental rights that include the right to bodily integrity, and with it the right to refuse medical treatment and be free from nonconsensual treatment, which are in turn protected by the human rights to health,¹⁰⁹ security of the person,¹¹⁰ and freedom from torture and other cruel, inhuman, and degrading treatment or punishment.¹¹¹ Informed consent is also a fundamental aspect of medical ethics that is enshrined in United States medical standards.¹¹² Some who feel constrained to choose drug treatment to avoid incarceration may not even have substance abuse disorders, and providing them with treatment that is not medically indicated raises legal as well as ethical questions.

Scientific and Medical Appropriateness and Quality

Drug courts operate on the premise that participants have serious drug problems that fuel or exacerbate their criminal activity, and they mandate a treatment program to address these problems. Nonetheless, research indicates that as many as two-thirds of drug court participants neither have problems with drug use nor drug dependence.¹¹³

This phenomenon occurs for a number of reasons. In some jurisdictions, drug courts may be the only available alternative sanction for minor drug offenses and thus are seen as the most humane option for defendants to avoid incarceration and criminal records for these minor violations.¹¹⁴ Furthermore, prosecutors and judges may be constrained from enrolling people with real drug dependence problems by limited drug court capacity, restrictive eligibility criteria, and overriding sentencing laws (such as mandatory minimums or habitual offender laws).¹¹⁵ They may also “cherry pick”—that is, target people deemed more likely to complete treatment—so they can

¹⁰⁷ The UN Working Group on Arbitrary Detention has raised concerns about use of the coercive powers of the criminal process to induce persons to undergo health treatment. UN Working Group on Arbitrary Detention, “Report of the Working Group on Arbitrary Detention. Addendum - Visit to Canada,” E/CN.4/2006/7/Add.2, 05 December 2005, para 57.

¹⁰⁸ United Nations, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, August 10, 2009, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/450/87/PDF/N0945087.pdf?OpenElement>.

¹⁰⁹ ICESCR, article 12 (the right to the highest attainable standard of health). Committee on Economic Social and Cultural Rights, “General Comment 14, The right to the highest attainable standard of health,” U.N. Doc E/C.12/2000/4 (2000), para. 8 (right to be free from nonconsensual medical treatment).

¹⁴¹ ICCPR, Article 9(1) (right to liberty and security of person).

¹⁴² ICCPR, Article 7 (right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, including, in particular, the right not to be subjected without free consent to medical or scientific experimentation).

¹¹⁰ ICCPR, Article 9(1) (the right to liberty and security of person).

¹¹¹ ICCPR, Article 7.

¹¹² World Medical Association, Declaration of Lisbon on the Rights of the Patient, as revised in 2005 and reaffirmed in 2015, para. 3; United Nations, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, August 10, 2009, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/450/87/PDF/N0945087.pdf?OpenElement>; American Medical Association, *Code of Medical Ethics, Chapter 2: Opinions on Consent, Communication and Decision Making*, <https://www.ama-assn.org/delivering-care/ama-code-medical-ethics#Chapter%202:%20Opinions%20on%20Consent,%20Communication%20&%20Decision%20Making>.

¹¹³ Douglas B. Marlowe, “Targeting the Right Participants for Adult Drug Courts, Part One,” *Drug Court Practitioner Fact Sheet*, vol. VII, no. 1, (Alexandria, VA: National Drug Court Institute, 2012); David DeMatteo, “A Proposed Prevention Intervention for Non-drug-Dependent Drug Court Clients,” *Journal of Cognitive Psychotherapy* 24, no. 2 (2010): 104–115, doi:10.1891/0889-8391.24.2.104; David DeMatteo et al., “Outcome Trajectories in Drug Court.”

¹¹⁴ Marlowe, “Drug Court Practitioner Fact Sheet: Targeting the Right Participants for Adult Drug Courts, Part One”; Drug Policy Alliance, “Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use.” <https://www.drugpolicy.org/docUploads/DrugCourtsAreNottheAnswerFinal2.pdf>.

¹¹⁵ Eric L. Sevigny, Harold A. Pollack, and Peter H. Reuter, “Can Drug Courts Help to Reduce Prison and Jail Populations?” *Annals of the American Academy of Political and Social Science* 647, no. 1 (2013): 190–212, doi:10.1177/0002716213476258.

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report high rates of success (although, according to Physicians for Human Rights, drug courts may not in fact cherry pick “so much as have their restrictions picked for them through . . . funding restrictions, which skew participants toward lower need and lower risk”).¹¹⁶ Some treatment centers also exclude from eligibility people charged with crimes considered violent.¹¹⁷ In short, the political importance of achieving high success rates, coupled with the need to do so to gain access to funding and a reluctance to criminalize minor offenders and to treat violent ones, creates incentives to choose participants who do not need treatment.¹¹⁸

The NADCP, in its Adult Drug Court Best Practice Standards, has also noted that targeting high-risk, high-need offenders may not always be feasible because prosecutors and other stakeholders may have questions about drug courts’ safety and effectiveness.¹¹⁹ Some prosecutors may also be inclined to impose punitive sentences, irrespective of treatment need.¹²⁰ The NADCP thus recommends that, to gain the cooperation of prosecutors and other stakeholders, some drug courts might need to begin by treating less serious offenders.¹²¹

Providing intensive court-supervised treatment to people who do not need it interferes unnecessarily with these individuals’ lives, however, with regard to employment, school, family, and

social activities, deprives people of treatment who do need it, and wastes scarce resources. The NADCP itself has observed that needlessly treating non-problematic drug users could lead to higher rates of reoffending and substance abuse or even a greater likelihood of their ending up dependent: “In particular, mixing participants with different risk or need levels together in treatment groups or residential facilities can make outcomes worse for the low-risk or low-need participants by exposing them to antisocial peers or interfering with their engagement in productive activities, such as work or school.”¹²²

Beyond the problematic selection of participants to receive it, the treatment offered by drug courts is of questionable quality. Ideally, treatment plans should be made by health care professionals in collaboration with patients,¹²³ grounded in medical evidence, respectful of medical ethics, and tailored to individuals’ specific needs.¹²⁴ Drug treatment courts, by contrast, put prosecutors and judges in charge of making decisions about the type of treatment to be provided. They choose from limited, often poor or counterproductive treatment options and impose requirements that are not based on recommended standards of care and heedless of the realities of dependence.¹²⁵ The NADCP and the National Institute for Drug Abuse (NIDA), consistent with international standards, recognize drug dependence as a chronic, relapsing disease

¹¹⁶ Physicians for Human Rights, *Neither Justice nor Treatment*, 15; see also references about funding above.

¹¹⁷ Sevigny, Pollack, and Reuter, “Can Drug Courts Help to Reduce Prison and Jail Populations?”

¹¹⁸ *Ibid.*; Josh Bowers, “Contraindicated Drug Courts,” *UCLA Law Review* 55 (2008): 783–835.

¹¹⁹ National Association of Drug Court Professionals, *Adult Drug Court Best Practices Standards: Volume 1* (Alexandria, VA: NADCP, 2013), <http://www.nadcp.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf>. In many drug courts, eligibility is based on the charge alone and not on clinical assessment.

¹²⁰ See also Physicians for Human Rights, *Neither Justice nor Treatment*, 14.

¹²¹ National Association of Drug Court Professionals, *Adult Drug Court Best Practices Standards: Volume 1* (Alexandria, VA: NADCP, 2013), <http://www.nadcp.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf>.

¹²² *Ibid.*, 7 (citing studies).

¹²³ Patient involvement is not only a human right; research also indicates that the “therapeutic” or “working alliance” between patient and health care professional, requiring agreement on goals and therapeutic tasks, mutual trust, acceptance, confidence, and a rapport, is a crucial factor in successful treatment outcomes. Richard Elovich, “Drug Demand Reduction Program’s Treatment and Rehabilitation Improvement Protocol, DDRP” (Washington, DC: USAID, 2006), <http://www.richardelovich.com/pdfdocs/DDRPtreatmentRehabManualENG.pdf>.

¹²⁴ United Nations Office on Drugs and Crime and World Health Organization, “Principles of Drug Dependence Treatment (Discussion Paper),” 2008, <https://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf>.

¹²⁵ Csete and Catania, “Methadone Treatment Providers’ Views”; Joanne Csete and Daniel Wolfe, “Seeing through the Public Health Smoke-Screen in Drug Policy,” *International Journal of Drug Policy* 43 (2017): 91–95.

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for which people may need prolonged or multiple courses of treatment.¹²⁶ NADCP best practice standards recommend that a person who relapses or uses drugs during the early phases of treatment ordinarily should not be punished but should instead receive a therapeutic adjustment.¹²⁷ Yet drug court practice is often contrary to these standards.

Another complication to the treatment question that has arisen in the past decade, as opioid dependence has become a major public health crisis in the United States, has been the increasing number of people in drug courts with opioid problems.¹²⁸ Decades of research have established that medication-assisted therapy (MAT) is the most effective approach to reducing morbidity, mortality, criminal involvement, and other harms associated with opioid dependence. The US Federal Drug Administration (FDA) has licensed three medications—methadone, buprenorphine, and naltrexone (oral and injectable)—to be used in combination with psychosocial treatment for the treatment of opioid use disorders.¹²⁹ Methadone and buprenorphine are recognized by major US health institutions as well as the World Health Organization as the most effective treatments for opioid dependence and,

because of their established efficacy, are included on WHO's List of Essential Medicines;¹³⁰ naltrexone is not on the list. The NDCI recommends that MAT be included as part of opioid dependence treatment in drug courts.¹³¹

Despite this, people often are barred from enrolling in drug court or completing the program if they are taking medications for substance use.¹³² Many drug courts in New York, for example, permit methadone only as a “bridge to abstinence,” requiring existing patients to withdraw from methadone treatment, followed by a period of “drug-free time,” as a condition of graduation.¹³³ Many drug courts also punish positive drug screens with jail time.¹³⁴

Furthermore, opioid-dependent drug court participants face serious barriers in obtaining MAT with methadone or buprenorphine through court-supervised programs. A 2013 survey of US drug courts found that MAT was not available to half of drug court participants under any circumstances and denied to most pregnant drug court participants who needed it, although 98 percent of sites reported patients with opioid dependence.¹³⁵ Reasons for limited or no availability of MAT

¹²⁶ National Association of Drug Court Professionals, “Defining Drug Courts: The Key Components”; National Institute on Drug Abuse, US Department of Health and Human Services, “Principles of Drug Addiction Treatment: A Research-Based Guide (Third Edition),” last updated January 2018, <https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/acknowledgments>. See also United Nations Office on Drugs and Crime and World Health Association, “Principles of Drug Dependence Treatment (Discussion Paper),” 2008, <https://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf>.

¹²⁷ National Association of Drug Court Professionals, *Adult Drug Court Best Practices Standards: Volume 1* (Alexandria, VA: NADCP, 2013), <http://www.nadcp.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf>.

¹²⁸ Matusow, Dickman, and Rich, “Medication Assisted Treatment in US Drug Courts”; Csete and Catania, “Methadone Treatment Providers’ Views.”

¹²⁹ Substance Abuse and Mental Health Services Administration, “Treatments for Substance Use Disorder,” <https://www.samhsa.gov/treatment/substance-use-disorders>.

¹³⁰ National Academies of Sciences, Engineering, and Medicine, Health and Medicine Division (formerly the Institute of Medicine), “Improving the Quality of Health Care for Mental and Substance-Use Conditions: Quality Chasm Series.” (Washington, DC: Institute of Medicine, 2005); and the Joint United Nations Programme on HIV/AIDS World Health Organization, United Nations Office on Drugs and Crime, “Position Paper: Substitution Maintenance Therapy in the Management of Opioid Dependence and HIV/AIDS Prevention” (Geneva, 2004); “WHO: Model List of Essential Medicines, 20th List” (Geneva: World Health Organization, 2017).

¹³¹ Benjamin R. Nordstrom and Douglas B. Marlowe, “Medication-Assisted Treatment for Opioid Use Disorders in Drug Courts,” *Drug Court Practitioner Fact Sheet*, vol. XI, no. 2 (Alexandria, VA: National Drug Court Institute, August 2016), https://www.ndci.org/wp-content/uploads/2009/04/mat_fact_sheet.pdf.

¹³² Matusow, Dickman, and Rich, “Medication Assisted Treatment in US Drug Courts”; Csete and Catania, “Methadone Treatment Providers’ Views of Drug Court Policy and Practice: A Case Study of New York State.”

¹³³ Csete and Catania, “Methadone Treatment Providers’ Views.”

¹³⁴ Physicians for Human Rights, *Neither Justice nor Treatment* (finding that courts in some Florida counties impose jail sentences of up to a month for positive or missed screenings and that a court in New Hampshire automatically imposes a seven-day sentence in county jail for the first positive drug screen, and a minimum of forty-eight hours in jail for subsequent screens).

¹³⁵ Matusow, Dickman, and Rich, “Medication Assisted Treatment in US Drug Courts.”

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included lack of local providers and its use not being permitted by the court.¹³⁶ Many courts, like those in New York mentioned above, only allowed MAT for a court-defined period of time as a bridge to abstinence or denied it altogether, against accepted medical standards and doctors' advice.¹³⁷ Denying an effective treatment for opioid dependence sets up opioid-dependent drug court participants to fail treatment and may cause harm, as MAT patients forced to stop treatment may turn to heroin or other opiates to address withdrawal, in some cases with fatal consequences.¹³⁸

As Joanne Csete and Daniel Wolfe have observed, drug court prejudice against methadone and buprenorphine once again highlights a key weakness of drug courts as a "health" intervention: judges and drug court staff, "most of whom are not trained health professionals, are making clinical decisions better made by medically trained people or vetoing the advice of health professionals."¹³⁹ The US government has taken steps to address this situation, encouraging grantees to use up to 20 percent of their grants to pay for MAT, and barring drug court grantees from requiring participants to end MAT as a condition of entering the program.¹⁴⁰

Some drug courts have been reported as recommending the exclusive use of a long-acting form of injectable naltrexone to comply with this requirement,¹⁴¹ and many drug courts and other criminal justice programs are said to prefer it to methadone or buprenorphine.¹⁴² A majority responding to

a recent survey of criminal justice actors (including those working in drug courts) said this preference was based on the published research, although trials comparing naltrexone to buprenorphine and methadone and studies comparing oral naltrexone to these medications have proved naltrexone to be inferior.¹⁴³ This is also despite the fact that methadone and buprenorphine are recognized by the WHO as essential medicines, while naltrexone is not.¹⁴⁴

OUTCOMES FOR YOUTH, WOMEN, AND MINORITIES

This section provides a brief overview of drug court outcomes for young people, women and racial and ethnic minorities and points to structural factors that may affect access to and experiences in drug courts.

Juvenile Drug Courts

Juvenile drug courts serve teens charged with nonviolent delinquency offenses presumably caused or influenced by their substance abuse or a co-occurring mental health disorder. They are modeled after adult drug courts, combining treatment with intensive supervision by the court and the juvenile justice system (probation department). As in adult court, juvenile drug court participants are required to appear regularly before a judge for status reviews, undergo frequent drug and alcohol testing, and receive incentives and sanctions according to their performance.¹⁴⁵ Most juvenile drug courts

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Csete and Catania, "Methadone Treatment Providers' Views."

¹³⁹ Csete and Wolfe, "Seeing through the Public Health Smoke-Screen in Drug Policy," 91-95.

¹⁴⁰ US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, "SAMHSA Treatment Drug Courts – Request for Application no. TI-15-002," 2015, <https://www.samhsa.gov/sites/default/files/grants/pdf/ti-15-002-modified-due.pdf> (accessed February 10, 2018).

¹⁴¹ Csete and Wolfe, "Seeing through the Public Health Smoke-Screen in Drug Policy," 91-95.

¹⁴² Physicians for Human Rights, *Neither Justice nor Treatment*.

¹⁴³ David S. Festinger, Karen L. Dugosh, David R. Gastfriend, and Chloe Sierka, "Attitudes and practices on the use of extended-release naltrexone in criminal justice settings," *Drug & Alcohol Dependence* 171 (2017), e62 - e63, [https://www.drugandalcoholdependence.com/article/S0376-8716\(16\)30422-7/abstract](https://www.drugandalcoholdependence.com/article/S0376-8716(16)30422-7/abstract).

¹⁴⁴ "WHO: Model List of Essential Medicines, 20th List" (Geneva: World Health Organization, 2017).

¹⁴⁵ Marlowe, Hardin, and Fox, *Painting the Current Picture*.

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accept cases after sentencing or release; graduates may have their sentences suspended or records expunged.¹⁴⁶

A 2016 literature review by the NDCI described evidence of the effectiveness of juvenile drug courts as “disappointing” and “lackluster.”¹⁴⁷ Meta-analyses and other reviews have found their impact on recidivism to range from statistically insignificant to minimally beneficial.¹⁴⁸ Evidence suggests some juvenile drug courts may be serving the wrong population of teens—those who have had no prior involvement with the juvenile justice system, have no substance use disorder, and use drugs or alcohol less than once a week.¹⁴⁹ Providing unnecessary services to low-risk or low-need teens and mixing them in treatment groups with high-risk peers may be doing more harm than good, as doing so has been associated with increased recidivism and substance misuse¹⁵⁰—results that may be attributable to the influence of peers who engage in violent or otherwise delinquent behavior and use more drugs than they do.¹⁵¹

Women

Women who use drugs often have limited access to effective treatment services that take into account their specific

needs and circumstances, which may include pregnancy, child care responsibilities, distinct patterns of substance use, and exposure to trauma and domestic violence. Barriers to treatment and care include lack of gender-specific services, stigma, and discrimination by family, service providers, and law enforcement.¹⁵² Pregnant women who use drugs are especially stigmatized and subject to state intervention. In many US jurisdictions, they face civil or criminal detention for extended periods of time—in some cases for the length of the pregnancy.¹⁵³

Figures from the NDCI indicate women receive access to drug courts in numbers proportionate to their population in the criminal justice system, but they graduate at rates substantially below those of male drug court participants.¹⁵⁴

Women also face specific challenges when dealing with opioid dependence within the criminal justice system. Failure to provide methadone maintenance treatment and the requirement that people on methadone “taper off” to abstinence, for instance, are of particular concern for pregnant women and contrary to accepted US and international standards of medical care.¹⁵⁵ Withdrawal from methadone during pregnancy can be harmful

¹⁴⁶ Suzanne M. Strong, Ramona R. Rantala, Tracey Kyselhahn, “Census of Problem-Solving Courts” (Washington, DC: US Department of Justice, Bureau of Justice Statistics, 2016).

¹⁴⁷ Marlowe, Hardin, and Fox, *Painting the Current Picture*.

¹⁴⁸ Mitchell et al., “Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts”; Marlowe, Hardin, and Fox, *Painting the Current Picture*; D. M. Stein, K. J. Homan, and S. DeBerard, “The Effectiveness of Juvenile Treatment Drug Courts: A Meta-Analytic Review of Literature,” *Journal of Child & Adolescent Substance Abuse* 24, no. 2 (2015): 80–93, doi:10.1080/1067828x.2013.764371.

¹⁴⁹ See Marlowe, Hardin, and Fox, *Painting the Current Picture*; John Roman and Jeffrey A. Butts (eds.), *Juvenile Drug Courts and Teen Substance Abuse* (Washington, DC: Urban Institute Press, 2004) (only 10–20 percent of juveniles enrolled in the six drug courts under review had tried anything other than alcohol or marijuana).

¹⁵⁰ See Marlowe, Hardin, and Fox, *Painting the Current Picture*; David S. DeMatteo, Douglas B. Marlowe, David S. Festinger, “Secondary Prevention Services for Clients Who Are Low Risk in Drug Court: A Conceptual Model,” *Crime & Delinquency* 52, no. 1 (2006): 114–134.

¹⁵¹ Ibid.

¹⁵² Tasnim Azim, Irene Bontell, and Steffanie A. Strathdee, “Women, Drugs and HIV,” *International Journal on Drug Policy* 26, Suppl 1 (2015): S16–21, doi:10.1016/j.drugpo.2014.09.003.

¹⁵³ Lynn M. Paltrow and Jeanne Flavin, “Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women’s Legal Status and Public Health,” *Journal of Health Politics, Policy and Law* 38, no. 2 (2013): 299–343, doi:0.1215/03616878-1966324.

¹⁵⁴ Marlowe, Hardin, and Fox, *Painting the Current Picture*.

¹⁵⁵ World Health Organization, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence* (Geneva: World Health Organization, 2009); Center for Substance Abuse Treatment, “Medication-Assisted treatment for opioid addiction during pregnancy,” in *Medication-assisted treatment for opioid addiction in opioid treatment programs*. Treatment Improvement Protocol (TIP) Series 43. DHHS Publication No. (SMA) 05-4048, (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2005), <http://www.ncbi.nlm.nih.gov/books/NBK64148> (accessed May 15, 2018).

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to a pregnant woman and her fetus.¹⁵⁶ It can put the woman at high risk of relapse to opioid use and overdose after release from custody, which continued treatment with methadone might have prevented for some years.¹⁵⁷ Withdrawal may induce spontaneous abortion or lead to preterm labor and fetal distress.¹⁵⁸

The World Health Organization and the United States Center for Substance Abuse Treatment both recommend methadone as the preferred treatment for pregnant women dependent on opioids, taking into consideration its benefits for the woman and the fetus and impacts on antenatal care and parenting of young children.¹⁵⁹ According to WHO,

Opioid-dependent women not in treatment should be encouraged to start opioid agonist maintenance treatment with methadone or buprenorphine. Pregnant women who are taking opioid agonist maintenance treatment should be encouraged not to cease it while they are pregnant. Although many women want to cease using opioids when they find out they are pregnant, opioid withdrawal is a high-risk option because a relapse to heroin

use will affect the capacity to care for the child. In addition, severe opioid withdrawal symptoms may induce a spontaneous abortion in the first trimester of pregnancy, or premature labour in the third trimester. Relapse to heroin use during pregnancy can also result in poorer obstetric outcomes. Opioid agonist maintenance is thought to have minimal long-term developmental impacts on children when compared to the risk of maternal heroin use and resulting harms.¹⁶⁰

Some evidence suggests drug treatment facilities that provide child care, prenatal care, transportation, and special programs for pregnant women have higher treatment retention and completion rates. Such women-centered programs, however, are less common in rehabilitation/inpatient and detoxification settings.¹⁶¹ A number of studies have likewise found outcomes for women improve when drug courts include treatment oriented toward their needs.¹⁶²

Racial Discrimination and Disparity

The NDCI reported in 2016 that black and Hispanic

¹⁵⁶ See, e.g., Bernadette Winklbaur et al., "Treating pregnant women dependent on opioids is not the same as treating pregnancy and opioid dependence: a knowledge synthesis for better treatment for women and neonates," *Addiction* 103, no. 9 (2008): 1429-1440; Hendree Jones et al., "Methadone maintenance vs. methadone taper during pregnancy: maternal and neonatal outcomes," *American Journal of Addiction*, 2008, 17, 372-386; Karol Kaltenbach et al., "Opioid dependence during pregnancy: effects and management," *Obstetric and Gynecology Clinics of North America*, 1998, 25, 139-151; see also Hendree Jones et al., "Neonatal abstinence syndrome after Methadone or Buprenorphine exposure," *New England Journal of Medicine*, 2010, 363, 2320-2331.

¹⁵⁷ World Health Organization/Europe, "Prevention of acute drug-related mortality in prison populations during the immediate post-release period," WHO 2010, 7-13; Center for Substance Abuse Treatment, "Medication-assisted treatment for opioid addiction during pregnancy," in *Medication-assisted treatment for opioid addiction in opioid treatment programs*. Treatment Improvement Protocol (TIP) Series 43. DHHS Publication No. (SMA) 05-4048, (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2005), <http://www.ncbi.nlm.nih.gov/books/NBK64148> (accessed May 15, 2018).

¹⁵⁸ World Health Organization, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence*, (Geneva: World Health Organization, 2009), 51.

¹⁵⁹ World Health Organization, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence* (Geneva: World Health Organization, 2009); Center for Substance Abuse Treatment, "Medication-Assisted treatment for opioid addiction during pregnancy," in *Medication-assisted treatment for opioid addiction in opioid treatment programs*. Treatment Improvement Protocol (TIP) Series 43. DHHS Publication No. (SMA) 05-4048 (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2005), <http://www.ncbi.nlm.nih.gov/books/NBK64148> (accessed May 15, 2018).

¹⁶⁰ World Health Organization, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence* (Geneva: World Health Organization, 2009), 51.

¹⁶¹ Nyaradzo Longinaker and Mishka Terplan, "Effect of Criminal Justice Mandate on Drug Treatment Completion in Women," *American Journal of Drug and Alcohol Abuse* 40, no. 3 (2014): 192-199, doi:10.3109/00952990.2013.865033. (citing studies).

¹⁶² Nena Messina, Stacy Calhoun, and Umme Warda, "Gender-Responsive Drug Court Treatment: A Randomized Controlled Trial," *Criminal Justice and Behavior* 39, no. 12 (2012): 1539-1558, doi:10.1177/0093854812453913; D. Morse, C. Cerulli, P. Bedell, J. Wilson, K. Thomas, M. Mittal, J. Lamberti, G. Williams, J. Silverstein, A. Mukherjee, D. Walck and N. Chin, "Meeting Health and Psychological Needs of Women in Drug Treatment Court," *Journal of Substance Abuse Treatment* 46, no. 2 (2014): 150-57; Susan H. Brown, Sara G. Gilman, Ellen G. Goodman, Robbie Adler-Tapia, and Steven Freng, "Integrated Trauma Treatment in Drug Court: Combining EMDR Therapy and Seeking Safety," *Journal of EMDR Practice and Research* 9, no. 3 (2015): 123-136.

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representation in drug courts was lower than for the arrestee, probation, and incarcerated populations, and that both groups graduated from drug courts at rates substantially below those of other drug court participants.¹⁶³ The percentage of non-Hispanic Caucasians in drug courts, by contrast, was roughly equivalent to that of the general and arrestee population, but considerably higher than the probation, parole, and incarcerated populations.¹⁶⁴ Other studies have reported similar findings.¹⁶⁵

Racial disparities in drug law enforcement have been well documented, with laws that criminalize the possession, sale, and use of drugs more aggressively enforced in low-income

neighborhoods and communities of color.¹⁶⁶ Although blacks and whites use and sell drugs at comparable rates, blacks are arrested and incarcerated on drug charges at rates that greatly exceed their proportions among the general population and other drug offenders.¹⁶⁷

A 2014 report by Human Rights Watch found that black adults were three times as likely as white adults to be arrested for drug offenses, including drug possession, and more than four times as likely to be arrested for marijuana possession, even though they used marijuana at similar rates. Blacks were only 13 percent of the population but represented 31.7 percent of drug arrests and more than 40 percent of prisoners

TABLE 4: US DRUG COURT POPULATION BY RACE/ETHNICITY

POPULATION	CAUCASIAN / NON-HISPANIC	BLACK / NON-HISPANIC	HISPANIC
Drug court	62%	17%	10%
General population	62%	13%	17%
Arrestees			
Any offense	69%	28%	17%
Drug offense	68%	30%	19%
Probationers	54%	30%	13%
Parolees	43%	39%	16%
Jail inmates	47%	35%	15%
Prisoners	32%	37%	22%

Source: Douglas B. Marlowe, Carolyn D. Hardin, and Carson L. Fox, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Courts in the United States* (Alexandria, VA: National Drug Court Institute, 2016).

¹⁶³ Marlowe, Hardin, and Fox, *Painting the Current Picture*; see also NADCP, *Adult Drug Court Best Practices Standards: Volume 1* (citing evidence that suggests African-American and Hispanic or Latino citizens may be underrepresented by approximately 3 to 7 percent in drug courts).

¹⁶⁴ Marlowe, Hardin, and Fox, *Painting the Current Picture*.

¹⁶⁵ Jerome McKean and Kiesha Warren-Gordon, "Racial Differences in Graduation Rates from Adult Drug Treatment Courts," *Journal of Ethnicity in Criminal Justice*, 9:41–55 (2011); Anne Dannerbeck, Gardenia Harris, Paul Sundet, and Kathy Lloyd, "Understanding and Responding to Racial Differences in Drug Court Outcomes," *Journal of Ethnicity in Substance Abuse* 5, no. 2 (2006): 1–23.

¹⁶⁶ Jamie Fellner, "Race, Drugs, and Law Enforcement in the United States," *Stanford Law & Policy Review* 20, no. 2 (2009): 257–292, doi:10.1146/annurev.polisci.6.121901.085546; Human Rights Watch, *Nation Behind Bars: A Human Rights Solution* (New York: Human Rights Watch, 2014); Human Rights Watch and the American Civil Liberties Union, *Every 25 Seconds*; see also Michael M. O'Hear, "Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice."

¹⁶⁷ *Ibid.*; see also K. Babe Howell, "Prosecutorial Discretion and the Duty to Seek Justice in an Overburdened Criminal Justice System," *Georgetown Journal of Legal Ethics* 27 (2015): 285–334.

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incarcerated for state or federal drug offenses.¹⁶⁸ A 2016 report by Human Rights Watch and the American Civil Liberties Union found that blacks were ten times as likely as white people to be imprisoned and six times as likely to be imprisoned for drug possession.¹⁶⁹ Evidence indicates prosecutors charge defendants with more serious crimes or seek sentence enhancements more often when the defendants are black¹⁷⁰ and, conversely, use their discretion to reduce or dismiss charges against white defendants at greater rates than black defendants.¹⁷¹

These practices may effectively deny many black people access to drug courts, as narrow eligibility criteria screen out people with more serious criminal histories. Evidence indicates that racial disparities in diversion to treatment are not explained by differences in criminal history alone but rather by differences in how blacks and whites with similar backgrounds are adjudicated by courts.¹⁷²

Drug courts are also not likely to address structural and systemic problems of racial disparities in drug law enforcement or reduce incarceration among blacks, as they have no direct influence on policing practices that result in high incarceration rates. Drug court failure itself may exacerbate racial disparities in incarceration, as it may result in more incarceration time for participants than for those who did not participate in the program.

At least two studies have found social and economic factors such as employment, education, and family support to be more significant predictors of drug court outcomes than race, suggesting socioeconomic conditions associated with race, and not race alone, might account for racial differences in drug court outcomes.¹⁷³

GENERAL COMMENTS

A central premise of drug courts is that people with drug use disorders are sick and should be treated as patients, not criminals. But most people who use drugs do not have “drug use disorders,” and that is also true of the participants in most drug courts. In any event, people who get treatment through the criminal justice system are still treated as criminals; they remain under supervision of the criminal justice system, and those who have disorders are punished for the symptoms of their illness (such as relapsing), with the punishment being considered part of the treatment itself. There is no acknowledgment that the main problem for many people who use drugs is the criminal justice system, not drugs, nor is the impact of sustained criminal justice supervision on their health and human rights recognized.

As Rebecca Tiger has pointed out, the focus on drug dependence as a driver of mass incarceration obscures the racial bias in policing, arresting, charging, convicting, and sentencing that leads some people who use drugs—in particular, African

¹⁶⁸ Human Rights Watch, *Nation Behind Bars: A Human Rights Solution*.

¹⁶⁹ Human Rights Watch and the American Civil Liberties Union, *Every 25 Seconds*.

¹⁷⁰ Ibid.; Cyndy Caravelis, Ted Chiricos, and William Bales, “Race, Ethnicity, Threat, and the Designation of Career Offenders,” *Justice Quarterly* 30, no. 5 (October 1, 2013): 869–894, doi:10.1080/07418825.2011.635597; Richard S. Frase, “What Explains Persistent Racial Disproportionality in Minnesota’s Prison and Jail Populations?,” *Crime and Justice* 38, no. 1 (2009): 201–280, doi:10.1086/599199.

¹⁷¹ Human Rights Watch and the American Civil Liberties Union, *Every 25 Seconds*.

¹⁷² John MacDonald, Jeremy Arkes, Nancy Nicosia, and Rosalie L. Pacula, “Decomposing Racial Disparities in Prison and Drug Treatment Commitments for Criminal Offenders in California,” *Journal of Legal Studies* 43 (2014): 155–187; Nancy Nicosia, John MacDonald, and Jeremy Arkes, “Disparities in Criminal Court Referrals to Drug Treatment and Prison for Minority Men,” *Am. J. Public Health* 103 (2013): e77–e84.

¹⁷³ Dannerbeck, Harris, Sundet, and Lloyd, “Understanding and Responding to Racial Differences in Drug Court Outcomes”; Daniel Howard, “Race, Neighborhood and Drug Court Graduation,” *Justice Quarterly* 33, no. 1 (2016).

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Americans and Latinos—directly into long-term criminal justice supervision at much higher rates than their white drug-using counterparts (while ironically, as discussed above, disproportionately disqualifying African Americans and Latinos from drug court programs).¹⁷⁴ Real efforts to address mass incarceration must begin by interrogating the discriminatory impact of drug control efforts on poor, African American, and Latino communities in the United States and consider reforms

that would keep people whose crime is drug use or personal possession out of the criminal justice system in the first place.

LESSONS LEARNED FROM US DRUG COURTS

The primary lessons learned from US drug courts that should be considered by other countries in the Americas as they look at this model are the following:

Drug courts are not an alternative to incarceration:

- Defendants remain in criminal proceedings at every step in the drug court program, risk incarceration, both as a sanction while in the program and for failure to complete it, and, in some cases, spend more time behind bars than they would have had they chosen to pursue criminal justice proceedings instead of drug court.

Drug courts may increase the number of people under supervision of the criminal justice system in the following ways:

- By requiring them to plead guilty as a condition of getting access to drug court.
- By processing discretionary crimes that police might have not enforced had drug court not been an option.
- By mediating treatment through the criminal justice system.

Drug courts are not a rights-based health intervention:

- Drug court judges maintain control over treatment decisions for drug court participants, in some cases ordering treatment that is at odds with accepted medical practice.
- Participants who fail drug court risk incarceration and face abrupt interruption of treatment and other health risks attendant to incarceration.
- Access to treatment comes at the cost of forfeiting fundamental legal and human rights.

Drug courts may perpetuate racial bias in the criminal justice system:

- Drug courts point to drug dependence as the factor that puts people at risk of criminal justice involvement, ignoring the racial bias in drug policing and prosecution in the United States that leads African Americans and Latinos into long-term criminal justice supervision at much higher rates than their white counterparts.

¹⁷⁴ Rebecca Tiger, *Judging Addicts: Drug Courts and Coercion in the Justice System* (New York: New York University Press, 2012).

DRUG COURTS IN LATIN AMERICA: AN ADEQUATE RESPONSE?

BY TANIA RAMÍREZ

The United States is not unique in its problems with mass incarceration; Latin American prisons are overflowing with people charged with drug-related offenses, with a substantial proportion in pretrial detention.¹⁷⁵ Arrests and incarceration for drug possession and other minor drug crimes are excessive, and sentences are harsh.¹⁷⁶ According to the Colectivo de Estudios Drogas y Derecho (CEDD), approximately 20 percent of the prison population in Latin America is charged with drug-related crimes.¹⁷⁷ In March 2017, the CEDD reported that, in the previous fifteen years, the population in prison for drug-related crimes had risen between eight and thirty-three times faster than the general prison population in nine Latin American countries,¹⁷⁸ depending on the country.¹⁷⁹

While alternatives including depenalization, decriminalization, and diversion measures have been recommended to address this problem,¹⁸⁰ drug courts (also known in the region as drug treatment courts, or DTCs) remain preferred in several Latin

American countries. The Organization of American States' Inter-American Drug Abuse Control Commission (CICAD), a key supporter of DTCs in the Americas, has spearheaded their expansion in the region through its Drug Treatment Courts in the Americas Program by training judges and prosecutors and advising countries on how to establish such courts, among other measures. US organizations such as the NDCI and the NADCP also provide technical and financial support for expanding drug courts in Latin America and the Caribbean. A review of drug courts in the region suggests the creation of alliances by CICAD with local, rather than national, governments has been the most common approach for initiating pilot programs, which may later be adopted at the national level.¹⁸¹

This section offers an overview of drug court implementation in several Latin American countries. The information available is limited, as many countries have only recently adopted drug courts, and most—even those that have had them longer—have not established consistent monitoring and evaluation mechanisms. Despite these limitations, important insights are provided here into patterns and variations in program design and implementation.

Drug courts share many characteristics, but they vary in how they are regulated and how they operate in practice,

¹⁷⁵ Ernest Drucker, "Mass Incarceration as a Global Policy Dilemma: Limiting Disaster and Evaluating Alternatives," in *Ending the Drug Wars: Report of the London School of Economics Expert Group on Drug Policy* (London, UK: LSE, 2014); Ernest Drucker, "Drug Law, Mass Incarceration, and Public Health," *Oregon Law Review* 91, no. 4 (2013): 1097–1128.

¹⁷⁶ Catalina Pérez Correa (coord. and author), Alejandro Corda, Rose Marie de Achá, João Pedro Padua, Luciana Boiteux, Diana Esther Guzmán, Jorge Alberto Parra, Rodrigo Uprimny, Jorge Vicente Paladines, Jérôme Manginckx, *Justicia desmedida: Proporcionalidad y delitos de drogas en América Latina* (México, DF: Editorial Fontamara, 2012). This is also true worldwide. United Nations Human Rights Council, *Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights*, report of the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, UN Doc No A/HRC/30/65, 2015, para. 5.

¹⁷⁷ Colectivo de Estudios Drogas y Derecho (CEDD), "Personas privadas de la libertad por delitos de drogas," infographic, http://www.drogasyderecho.org/index.php?option=com_content&view=article&id=158&catid=8&Itemid=141 (accessed January 31, 2018).

¹⁷⁸ Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Mexico, Peru, and Uruguay.

¹⁷⁹ Colectivo de Estudios Drogas y Derecho (CEDD), "Nuevo estudio muestra crecimiento en el número de encarcelados en América Latina por delitos de drogas de bajo nivel," Press release, March 9, 2017, http://www.drogasyderecho.org/files/CEDD_Comunicado_de_Prensa_Final.pdf (accessed January 31, 2018).

¹⁸⁰ See United Nations Office on Drugs and Crime (UNODC), *Alternatives to Incarceration. Custodial and Non-Custodial Measures* (New York: UN, 2006); Technical Secretariat Working Group on Alternatives to Incarceration, *Technical Report on Alternatives to Incarceration for Drug-Related Offenses* (Washington, DC: OAS, 2015), http://icad.oas.org/fortalecimiento_institucional/dtca/publications/ReportOnAlternativesToIncarceration_ENG.pdf (recommending decriminalization, depenalization, and diversion measures, such as Portugal's Dissuasion Commissions and LEAD—Law Enforcement Assisted Diversion of Seattle—to limit entry into the criminal justice system).

¹⁸¹ Organization of American States (OAS), "EU-LAC Drug Treatment City Partnerships," http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/eulac/pdescription/project_description_eng.asp (accessed January 31, 2018).

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both within and among countries. This section considers the following features of drug courts based on the information available at the time of writing:

- **Criminal Process:** Drug courts vary with respect to their position in the overall legal system, which determines the diversion point for participants (pre- or post-trial), the benefits offered, who may request referral to the program (judge, prosecutor, offender, or victim), and the criteria for admissibility, such as types of offenses accepted, whether a guilty plea is required, and related costs and fees.
- **Participants:** Information about eligibility criteria for drug courts, the numbers of people eligible to participate, their acceptance into, participation in, and successful completion of the program, and their demographics (age, gender, and other applicable characteristics) is essential to understanding whether drug courts are reaching the intended population and how the courts are progressing toward their stated goals.
- **Treatment:** The availability, acceptability, and quality of treatment, the methods available, the providers, the duration of treatment, and the actors responsible for overseeing the treatment course are all of fundamental importance in evaluating the effectiveness of these courts.
- **Incentives and Sanctions:** Drug courts rely on a system of incentives and sanctions imposed based on compliance with program requirements. Many programs require abstinence, which is monitored by either random or scheduled drug tests. Despite the known relapsing nature of drug dependence, failure to abstain from drug use often results in sanctions that negatively affect participation in the program. These may include detention, additional court appearances, more frequent drug testing, extension

of the term of supervision, or even dismissal from the program.

- **Specialization:** Some countries have established specialized drug courts focusing on particular groups (such as minors, women, indigenous people, and others).
- **Monitoring and Evaluation:** Monitoring and evaluation covers any such processes that may be in place, whether the drug court has been evaluated, and what type of evaluator (internal, independent researcher, or international organization) has carried it out.

This section begins with an overview of drug courts in three countries, Chile, Mexico, and Costa Rica, that have implemented programs in more than one region or state. It continues with Argentina, Panama, the Dominican Republic, and Colombia, which have established pilot programs that have not yet expanded to the national level, and it comments on Peru and Ecuador, which have not established drug courts but have either recently considered or are in the process of considering their implementation. The section concludes with some general comments on the insights provided by this mapping, as well as on gaps in the information identified in the overview.

CHILE

Chile's Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta¹⁸² is the oldest drug treatment court in Latin America. A pilot project was initiated in Valparaíso in 2004, with the US Embassy and Fundación Paz Ciudadana, a local nonprofit organization that supports the establishment of drug courts, as key actors in its installation.¹⁸³ A second pilot project was started in Región Metropolitana's south zone in 2005 and a third in Región Metropolitana's center-north zone in 2006.¹⁸⁴

¹⁸² An earlier version of the program did not specify alcohol and was titled Tribunales de Tratamiento de Drogas (Drug Treatment Courts); it is not clear when the change occurred.

¹⁸³ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 8.

¹⁸⁴ Fundación Paz Ciudadana, *Tribunales de Tratamiento de Drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 6.

Drug Courts in Latin America: An Adequate Response?

In December 2007, Chilean government law enforcement, justice, and children's service entities, together with Fundación Paz Ciudadana, signed a memorandum of understanding (MOU) to expand the program beyond its pilot projects, thus taking an important step toward making drug courts public policy in the country.¹⁸⁵ In the course of 2008, drug courts were started in Iquique, Antofagasta, and Región Metropolitana's east and west zones.¹⁸⁶ In addition to the expansion of adult drug courts, a pilot project for a drug court for adolescents was installed in Región Metropolitana's center-north zone in September 2008.¹⁸⁷

The expansion of the adult program across the country was planned by the Ministry of Justice and the National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption (SENDA), with Fundación Paz Ciudadana conducting a feasibility study.¹⁸⁸ The Ministry of Justice's Coordinating Office of DTC was created in 2012 to manage and coordinate the program. The United States was a key player in the development and implementation of Chile's drug courts, and the United Nations Office on Drugs and Crime (UNODC)

contributed training and supervision.¹⁸⁹

As of 2016, twenty-nine Guarantee Courts¹⁹⁰ operated the DTC program for adults in ten of the country's fifteen regions.¹⁹¹ In 2016, the national government decided to expand the juvenile program to all twenty-nine Guarantee Courts already operating adult programs,¹⁹² and twenty-eight of those courts appear to have added programs targeting adolescents as of December 2017.¹⁹³

CICAD points to Chile as a pioneer in the adaptation and implementation of DTCs in the Southern Hemisphere. In fact, CICAD cites the Chilean experience to promote this model in other countries. The Chilean government also sees its drug court model as one to be expanded to other countries in the region. It points, for example, to the creation at the end of the eighteenth Ibero-American Judicial Summit of the Ibero-American Commission of Alternative and Restorative Conflict Resolution Mechanisms and Drug and/or Alcohol Treatment Courts, or Commission MARC-TTD (Comisión Iberoamericana de Mecanismos Alternativos y Restaurativos de Resolución

¹⁸⁵ The MOU was signed by the National Council for the Control of Narcotic Drugs (CONACE), the public defender's and the public prosecutor's offices, the Judiciary, the Ministry of Government, the Ministry of Justice, and the National Children's Service (SENAME). Catalina Droppelmann Roepke, *Análisis del proceso de implementación de los tribunales de tratamiento de drogas en Chile: Avanzando hacia una política pública* (Chile: Fundación Paz Ciudadana, 2008); Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 20–21.

¹⁸⁶ Fundación Paz Ciudadana, *Tribunales de Tratamiento de Drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 6.

¹⁸⁷ Many institutions participated in the implementation of the program for adolescents, such as the North Metropolitan Public Prosecutor, the North Metropolitan Ombudsman, CONACE, SENAME, Fundación Paz Ciudadana, and the Ministry of Justice. Fundación Paz Ciudadana, *Tribunales de Tratamiento de Drogas: compendio Estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 6.

¹⁸⁸ *Ibid.* According to this organization, the studies are the following: Ana María Morales, Gherman Welsch, Javiera Cárcamo, and Nicolás Muñoz, *Estudio de estimación del presupuesto general para la implementación del programa de tribunal de tratamiento de drogas a nivel nacional, tanto para población adolescente como adulta*, April 2011, http://www.pazciudadana.cl/wp-content/uploads/2013/07/2011-04-01_estudio-de-estimacion.pdf; and Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011).

¹⁸⁹ Catalina Droppelmann Roepke, *Análisis del proceso de implementación de los tribunales de tratamiento de drogas en Chile: Avanzando hacia una política pública* (Chile: Fundación Paz Ciudadana, 2008), 29.

¹⁹⁰ Of the twenty-nine Guarantee Courts where DTCs are currently operating, fifteen are located in the city of Santiago. The other fourteen are located in the following cities: Puente Alto, San Bernardo, Alagante, Colina, Arica, Iquique, Antofagasta, Coquimbo, Valparaíso, Viña del Mar, Rancagua, Curicó, Concepción, and Temuco. Luis Toledo Ríos, *Tribunales de Tratamiento de Drogas (TTD) en Adultos y Adolescentes*, presentation on December 14, 2017 at the 62nd Regular Session of the CICAD, <http://www.cicad.oas.org/apps/Document.aspx?Id=4510>, 15 (accessed January 29, 2018).

¹⁹¹ Poder Judicial de la República de Chile, "Hitos importantes del programa TTD - Año 2016," <http://ttd.pjud.cl/ttd/documentos/>, 1.

¹⁹² *Ibid.*, 2.

¹⁹³ Luis Toledo Ríos, "Tribunales de tratamiento de drogas (TTD) en adultos y adolescentes," presented at the 62nd Regular Session of the CICAD, December 14, 2017, 10–11, <http://www.cicad.oas.org/apps/Document.aspx?Id=4510> (accessed January 29, 2018).

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de Conflictos y Tribunales de Tratamiento de Drogas y/o Alcohol),¹⁹⁴ as a step in such an expansion.¹⁹⁵ Co-presided over by Costa Rica and Chile (with the latter responsible for the Commission's Technical Secretariat),¹⁹⁶ the Commission MARC-TTD's main goal is to support and advise the countries that make up the Ibero-American Judicial Summit about good practices related to drug and/or alcohol treatment courts.¹⁹⁷

The drug court program in Chile is guided by the MOU, which outlines the participation of all the institutions and authorities involved, and a procedure manual details its operation. The main aspects of the DTC program are described below.

Criminal Process

The Chilean drug courts are not specialized courts like those in the United States, but rather a program developed as a group of hearings within the regular schedule of Guarantee Courts¹⁹⁸ and governed by the rules of the conditional suspension of criminal proceedings.¹⁹⁹ Those eligible to participate in the DTC program must fulfill legal and clinical criteria—that is, they

must be first-time offenders diagnosed with drug dependence or abuse problems who have no previous convictions or other conditional suspensions at the time of the hearing.²⁰⁰ The program is limited to offenses carrying a maximum penalty of up to three years of imprisonment,²⁰¹ such as drug possession, crimes against property, domestic violence, and crimes against public security, among others.²⁰²

According to the information available, the DTC personnel should include the judge, prosecutor, defender, and psychosocial team, as well as a coordinating lawyer in charge of the program.²⁰³ The judge is in charge of evaluating the progress or failure of participants and makes the most important decisions about the case. Despite this central role, an independent 2011 study commissioned by the National Council for the Control of Narcotic Drugs (Consejo Nacional para el Control de Estupefacientes, CONACE) and prepared by the Center for Studies on Public Safety (Centro de Estudios en Seguridad Ciudadana, CESC), a specialized research unit within the Institute for Public Affairs (Instituto de Asuntos

194 At the time of its creation the name of the Commission MARC-TTD did not specify alcohol, but since then it has been included in all references to the Commission. "Acta de la Primera Reunión de la Comisión Iberoamericana de Mecanismos Alternativos y Restaurativos de Resolución de Conflictos y Tribunales de Tratamiento de Drogas," Cumbre Judicial Iberoamericana, <http://www.cumbrejudicial.org/comision-de-mecanismos-alternativos-y-restaurativos-de-resolucion-de-conflictos-y-tribunales-de-tratamiento-de-drogas-y-o-alcohol-marc-ttd/documentos-comision-de-mecanismos-alternativos-y-restaurativos-de-resolucion-de-conflictos-y-tribunales-de-tratamiento-de-drogas-y-o-alcohol-marc-ttd/item/469-acta-n-1-comision-marc-ttd> (accessed February 16, 2018).

195 Poder Judicial de la República de Chile, "Hitos importantes del programa TTD - Año 2016," <http://ttd.pjud.cl/ttd/documentos/>, 3.

196 Eleven countries signed the minutes for the creation of the Commission: Bolivia, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, Honduras, Nicaragua, Panama, Paraguay, and Spain.

197 Cumbre Judicial Iberoamericana, "Comisión Iberoamericana de Mecanismos Alternativos y Restaurativos de Resolución de Conflictos y Tribunales de Tratamiento de Drogas y/o Alcohol," October 5, 2017, <http://www.cumbrejudicial.org/comision-de-mecanismos-alternativos-y-restaurativos-de-resolucion-de-conflictos-y-tribunales-de-tratamiento-de-drogas-y-o-alcohol-marc-ttd> (accessed February 16, 2018).

198 Guarantee Courts, or Juzgados de Garantía, are tasked with safeguarding the constitutional rights of the accused, the victim, and the witnesses during the investigation phase of the criminal process.

199 The conditional suspension of proceedings (suspensión condicional del procedimiento) is one of the previously nonexistent mechanisms included in the Chilean legal system after its reform from 2000 onward, which replaced the country's inquisitorial system with an adversarial one. Established by articles 237–240, 245, and 246 of the Criminal Procedure Code, it functions as an alternative dispute resolution mechanism by allowing deferred adjudication for certain offenses considered to be less severe. For more information, see Katherine Kauffman, "Chile's Revamped Criminal Justice System," *Georgetown Journal of International Law Online*, 40 (2010): 621–643, <https://www.law.georgetown.edu/academics/law-journals/gjil/upload/5-KauffmanFIXED.pdf>.

200 Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento) and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 17–18, 21; Criminal Procedure Code, Article 237.

201 Criminal Procedure Code, Article 237.

202 Fundación Paz Ciudadana, *Tribunales de tratamiento de drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 9.

203 Lorena Rebolledo Latorre, "El rol del fiscal en los tribunales de tratamiento de drogas," in *Tribunales de Tratamiento de Drogas en Chile, Material educativo*, ed. Catalina Drippelmann Roepeke (Chile: Fundación Paz Ciudadana, 2010), 141.

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Públicos, INAP) at Universidad de Chile, suggested judges were only devoting time to the DTC as long as it did not interfere with their regular functions.²⁰⁴ A system of rotation that helps identify judges best suited for this work has seemed to improve their participation.²⁰⁵

The conditional suspension of the criminal proceedings may be revoked in some cases, such as when the participant is prosecuted for new charges. The process is also restarted if the participant decides not to continue with the drug court program.²⁰⁶

Although the procedure manual highlights the importance of voluntary participation in the program, the 2011 review by CESC found some prospective participants did not fully understand that the crimes with which they were charged did not carry a prison sanction.²⁰⁷ Failure to clarify this point could mislead some into assuming they would be avoiding jail time by entering the program, regardless of their actual need for treatment, and raises questions as to whether participation in the program and in drug treatment is truly voluntary.

The program manual lists three general admission stages.²⁰⁸ First, the psychosocial team interviews alleged offenders identified by the prosecutor or the public defender's office. Sometimes, if the alleged offender is identified as having

problematic drug use, a second evaluation by a psychiatrist is done to corroborate the diagnosis and its relationship to the commission of the crime—in any case, a perceived link between the drug use and the alleged crime is necessary. The prosecutor then holds a “pre-hearing” meeting with the potential participant, in which the legal and psychosocial teams discuss a treatment course. A lawyer is present to negotiate the conditions.²⁰⁹ The requirements the potential participant must meet to enter the program are reviewed during a legal eligibility assessment. The third stage is a hearing to declare the conditional suspension of the criminal process, at which the terms of the agreement established at the pre-hearing meeting (such as the treatment program, frequency of court monitoring and judicial hearings, and so on) should be clarified.

One criticism of the Chilean model is related to the legal basis for the program. Although it functions under the conditional suspension of criminal proceedings mechanism, the program lacks a dedicated legal framework.²¹⁰ The rules and standards it follows, established in the operation manual and protocols signed by the judiciary and other institutions and treatment providers, do not offer sufficient flexibility to adjust the program as necessary. More important, the lack of a specific legal framework creates uncertainty about the program's limits.

²⁰⁴ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 77.

²⁰⁵ Ibid.

²⁰⁶ Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento), and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 18.

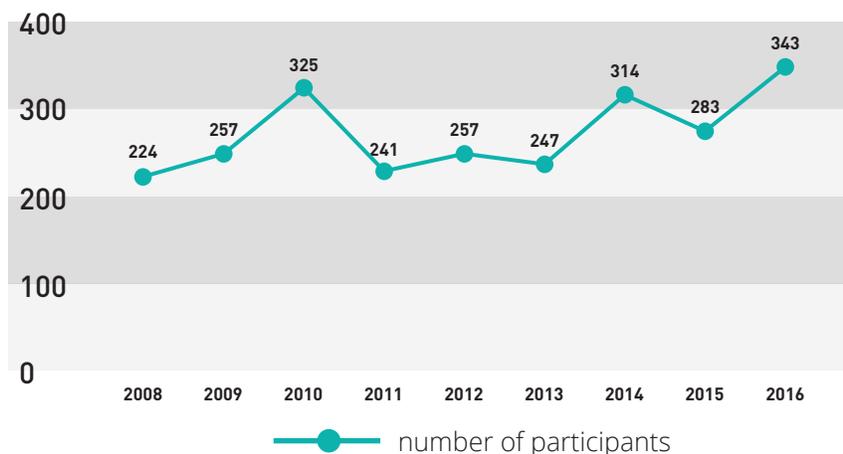
²⁰⁷ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 97.

²⁰⁸ Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento), and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 15.

²⁰⁹ Ibid., 35.

²¹⁰ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 24.

FIGURE 1: NUMBER OF DTC PARTICIPANTS PER YEAR, 2008–2016



Source: Adapted from Luis Toledo Ríos, "Tribunales de tratamiento de drogas (TTD) en adultos y adolescentes," presented at the 62nd Regular Session of the CICAD, December 14, 2017, <http://www.cicad.oas.org/apps/Document.aspx?id=4510> (accessed January 29, 2018), 18.

Participants

Information about the exact number of participants in Chilean drug courts is inconsistent. A presentation by Luis Toledo Ríos, director of the Special Unit for Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of the Public Prosecutor's Office, during the 62nd Regular Session of the CICAD in December 2017 offered a general overview of how participation numbers (but not graduation rates) had evolved over the years, although no official source was indicated and the numbers differed from those available from other sources.²¹¹

The 2011 evaluation commissioned by CONACE reported that participation in the DTC program had to date been below expectations and indicated this was strongly related to the program's design and the legal requirements for the

conditional suspension of the criminal proceedings.²¹² To receive the benefit of suspension, participants must, in addition to presenting drug dependence, fulfill specific requirements (first-time offenders, minor crimes, and others mentioned above). The admission criteria are inflexible, meaning that an offender who, for example, is a drug user and could benefit from treatment will not be accepted if he or she is not a first-time offender. As a result, the program's target population is relatively small. The study suggests one way to increase participation would be to make the program available not only to those entitled to the conditional suspension, but also during other stages of the criminal process²¹³—for instance, as an alternative to carrying out a sentence once an offender has been convicted.

²¹¹ According to Fundación Paz Ciudadana, Chilean drug courts had 325 participants in 2010, 265 in 2011, and 223 in 2012. Fundación Paz Ciudadana, *Tribunales de tratamiento de drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 9–20. A more recent study reported 306 participants in the period between January 2014 and March 2015, and a third indicated most were males between the ages of eighteen and forty-five. Roberto Contreras Olivares, G. Urra García, Violeta Díaz, and Nicolás Villalobos, *Tribunales de Tratamiento de Drogas y/o Alcohol en Chile. Diagnóstico y proyecciones* (Chile: Poder Judicial, 2016), 19; Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 90.

²¹² Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 30–32.

²¹³ *Ibid.*, 40.

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The program accepts participants whose crimes could be linked to use of either drugs or alcohol,²¹⁴ with those most commonly committed varying by year; table 5 shows the latest data available, from 2014.²¹⁵ Unfortunately, the data are not disaggregated by specific crime, just by general category of offense, and not all case files record the crimes.

According to a 2008 study by Fundación Paz Ciudadana,²¹⁶ the drug most commonly used by drug court participants was *pasta base*²¹⁷ (67 percent), followed by alcohol (17 percent), cocaine (11 percent), and marijuana (5 percent). In a 2014 study by the same organization, *pasta base* was still the most

consumed drug by DTC participants (51.7 percent), followed by marijuana (21.1 percent), and cocaine (19.5 percent).²¹⁸ This latter study highlighted, however, that, first, no attention was given to alcohol as the primary or sole drug consumed, and, second, although patterns of consumption had been recorded inconsistently in different years and regions, the figures seemed to indicate alcohol remained a secondary drug of choice in some regions.²¹⁹ On this issue of alcohol use, the 2011 study commissioned by CONACE suggested that certain regions may have intentionally screened out alcohol usage, considering the low number of such cases in the system vis-à-vis national consumption levels, citing as an example three

TABLE 5: MOST COMMON CRIMES COMMITTED BY DRUG COURT PARTICIPANTS IN CHILE, BY OFFENSE

OFFENSES	NUMBER OF PARTICIPANTS
Crimes against corporal integrity (e.g., assault)	23
Property crimes (e.g., robbery)	30
Crimes against health and public security (e.g., trafficking of small amounts of drugs, drug possession, and weapons possession)	28
Crimes against life, physical, and psychic integrity (e.g., domestic violence)	25

Source: Roberto Contreras Olivares, G. Urra García, Violeta Díaz, and Nicolás Villalobos, *Tribunales de Tratamiento de Drogas y/o Alcohol en Chile. Diagnóstico y proyecciones* (Chile: Poder Judicial, 2016), 42.

²¹⁴ Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento), and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 21.

²¹⁵ Roberto Contreras Olivares, G. Urra García, Violeta Díaz and Nicolás Villalobos, *Tribunales de Tratamiento de Drogas y/o Alcohol en Chile. Diagnóstico y proyecciones* (Chile: Poder Judicial, 2016), 42.

²¹⁶ Catalina Droppelmann Roepke, *Análisis del proceso de implementación de los tribunales de tratamiento de drogas en Chile: Avanzando hacia una política pública* (Chile: Fundación Paz Ciudadana, 2008), 17–18.

²¹⁷ Coca or cocaine paste, also known in Latin America as *paco*, *basuco*, or *oxi*, “is an intermediary product in the chemical extraction of cocaine from coca leaves. Abusers smoke coca paste in a dried form, which contains from 40 to 91 percent cocaine.” F. Ra and L. Jeri, “Coca-Paste Smoking in Some Latin American Countries: A Severe and Unabated Form of Addiction,” *Anxiety* 285 (1984): 81–89.

²¹⁸ Fundación Paz Ciudadana, *Tribunales de tratamiento de drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 24.

²¹⁹ *Ibid.*, 15, 25, 36–37, 41–42.

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provinces—Antofagasta, Región Metropolitana’s south zone, and Iquique—where no alcohol cases were registered.²²⁰

The type of drugs consumed by participants also varies among places. In some regions, such as Antofagasta and Tarapacá, up to 90 percent of cases involve the consumption of *pasta base*.²²¹ In others, such as Región Metropolitana’s east and west zones and Valparaíso, marijuana consumption is more prevalent.²²² Overall, however, participants and treatment providers maintain that *pasta base* is the most common drug in the Chilean DTC.²²³

Treatment

Treatment is provided to participants in the DTC program by public and private centers.²²⁴ In general terms, drug testing

is not mandatory in the Chilean drug court model,²²⁵ but participants must undergo drug screening through the ASSIST Questionnaire²²⁶ and formally consent to drug testing to enter the program.²²⁷ Some centers, such as the Valparaíso DTC, require providers to test for drug use during treatment, but this seems to be an exception.²²⁸ The DTC manual expressly indicates that relapse into drug use does not cause the revocation of the conditional suspension, since it is understood it can be part of the rehabilitation process,²²⁹ and a 2008 report by Fundación Paz Ciudadana said judges and prosecutors had been quite flexible on this point and respected the position of treatment providers.²³⁰ A 2011 study by CESC suggests, however, that incorporating drug testing into the Chilean DTC system would discourage potential participants from entering the program because some consider it invasive and an obstacle

²²⁰ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 96.

²²¹ Fundación Paz Ciudadana, *Tribunales de tratamiento de drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 24.

²²² Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 96–97.

²²³ *Ibid.*, 97.

²²⁴ Servicio Nacional de Prevención y Rehabilitación del Consumo de Drogas y Alcohol, *Informe anual 2016—Informe de evaluación técnica* (Santiago de Chile: Ministry of Health, March 2017), <http://sistemas.senda.gob.cl/sistema-monitoreo/biblioteca/files/informes%20web/evaluaciones2016/Informe%20%20Anual%20%202016%20SENA%20MINSAL.pdf>, 4.

²²⁵ The procedure manual mentions drug testing as a tool to track progress but not as a mandatory step for participation. See Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento), and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 24–27; Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 26, 108–109.

²²⁶ According to the World Health Organization, “The Alcohol, Smoking and Substance Involvement Screening Test (ASSIST) was developed for the World Health Organization (WHO) by an international group of substance abuse researchers to detect and manage substance use and related problems in primary and general medical care settings.” For more information, see World Health Organization, “The ASSIST Project – Alcohol, Smoking and Substance Involvement Screening Test,” http://www.who.int/substance_abuse/activities/assist/en/ (accessed January 29, 2018).

²²⁷ Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento), and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 27 and Appendix 6.

²²⁸ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 108–109, 116.

²²⁹ Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento), and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 38.

²³⁰ Catalina DroppeImann Roepke, *Análisis del proceso de implementación de los tribunales de tratamiento de drogas en Chile: Avanzando hacia una política pública* (Chile: Fundación Paz Ciudadana, 2008), 33.

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to voluntary participation.²³¹ Once in the program, a participant can be expelled only if he or she severely or repeatedly violates without justification the conditions imposed.

The treatment center is required to provide a monthly report about the participant's progress to the psychosocial team, and occasionally a center representative is asked to attend program team meetings. Hearings are held monthly to review the participant's compliance with the treatment and determine new goals. A final hearing is held to dismiss the charges once the treatment program has been completed.²³²

Since the initiation of the program, a number of problems have arisen. Many operators (psychosocial teams, prosecutors, and judges) have expressed concern about the quality of treatment centers' progress reports, which have in some cases been criticized as incomplete or inaccurate.²³³ This flawed communication may reflect or conceal deficiencies in treatment, lack of training of treatment providers, and lack of coordination between the providers and the judicial team, all of which can seriously affect the treatment received by participants.

Another problem is that although, in principle, program participants should receive treatment immediately, it is often delayed because of overcrowding in both public and private centers.²³⁴ This has serious consequences for participants, who in some instances have seen the conditional suspension of the criminal proceedings granted them for treatment expire while they waited for the treatment.²³⁵

Incentives and Sanctions

While the DTC procedure manual mentions that incentives and sanctions are imposed during follow-up hearings, it does not specify what, exactly, they entail.²³⁶

Juvenile Drug Courts

DTCs were available only for adults until 2007, when the Adolescent Criminal Responsibility Act (Ley de Responsabilidad Penal Adolescente) created a separate system²³⁷ for youths over fourteen and under eighteen years of age charged with criminal offenses.²³⁸ This law allowed judges to mandate participation in dependence treatment for alcohol or other drugs in addition to other sanctions²³⁹ for juveniles in this age group for crimes related to drug trafficking,²⁴⁰ disorder in public places, threats, minor assault, arson, and theft.²⁴¹ It

²³¹ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 26–27.

²³² *Ibid.*, 76.

²³³ *Ibid.*, 85–86.

²³⁴ *Ibid.*, 62, 74, 104, 121.

²³⁵ *Ibid.*, 102, 117, 125.

²³⁶ Ministerio de Justicia y Derechos Humanos (Unidad Coordinadora de los Tribunales de Tratamiento de Drogas), Poder Judicial (Unidad de Seguimiento de los Tribunales de Tratamiento de Drogas), Ministerio Público (Unidad Especializada en Tráfico Ilícito de Estupefacientes y Sustancias), Defensoría Penal Pública (Unidad de Estudios), SENDA (Área de Tratamiento), and Fundación Paz Ciudadana, *Manual de procedimiento sobre los Tribunales de Tratamiento de Drogas y/o Alcohol en Población Adulta (Procedure Manual for Drugs and/or Alcohol Treatment Courts for Adult Population)* (Santiago, Chile: Government of Chile, December 2016), <http://www.reinsercionsocial.cl/media/2017/08/MANUAL-DE-PROCEDIMIENTOS-TTD.pdf>, 29.

²³⁷ The legal framework of this system is given by Law No. 20,084, promulgated on November 28, 2005, which substantially modified the principles that govern the criminal system's relationship with young offenders. This law came into force in June 2007. SENAME, "Marco legal: ley de responsabilidad penal adolescente" ("Legal Framework for the Adolescent Criminal Responsibility Act"), <http://www.sename.cl/web/marco-legal-ley-responsabilidad-penal-adolescente/> (accessed February 4, 2018).

²³⁸ Alejandro Sánchez Mondaca, *Análisis del programa de tribunales de tratamiento de drogas en la zona de la Fiscalía Regional Metropolitana Centro Norte. Una aproximación al funcionamiento de los tribunales de tratamiento de drogas en nuestro país* (degree thesis, University of Chile, 2011), 38.

²³⁹ According to article 7 of Law 20,084, the judge has the discretionary power to mandate participation in a drug addiction treatment for alcohol or drugs in addition to the range of sanctions established in article 6 of that law (custodial sentences under closed and semi-open regimes, combined with a social reintegration program, probation and special probation [*libertad asistida and libertad asistida especial*], community service, reparation of harm, fine, and reprimand).

²⁴⁰ The illicit traffic of narcotics and psychotropic substances is governed by Law 20,000/2005.

²⁴¹ Law 20,084, Article 1: "In the case of offenses, only adolescents of sixteen years of age or older will be responsible under the terms of this law, exclusively in the case of the offenses typified in articles 494 numbers 1, 4, 5 and 19, only in relation to article 477, 494 bis, 495, number 21, and 496, numbers 5 and 26, of the Criminal Code and those defined in Law No. 20,000."

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also provided the legal basis for the judiciary, attorney general, Ministry of Justice, and Ministry of Health to sign an MOU to formally create juvenile drug courts.²⁴²

As previously mentioned, drug courts for adolescents were first installed as a pilot project in 2008 in Región Metropolitana's center-north zone.²⁴³ In 2016, the government announced plans to expand the drug program for adolescents to the same ten regions²⁴⁴ where adult drug courts already operate and, eventually, to the entire country.²⁴⁵ This promise turned into a rapid expansion of the adolescent drug courts; between November 2016 and August 2017, adolescent DTCs were installed in twenty-eight of the twenty-nine Guarantee Courts

that already had programs for adults (as of December 2017, the Guarantee Court in the city of Temuco was the only one without an adolescent program).²⁴⁶

According to a 2010 study, 15 percent of the cases in the program for adolescents were related to drug crimes, including possession and micro retail,²⁴⁷ but that information has not been corroborated.

Monitoring and Evaluation

Unlike elsewhere in the region, monitoring and evaluation are part of Chile's DTC program, at least in theory. Over the years, Fundación Paz Ciudadana, in coordination with the

TABLE 6: RECIDIVISM RATES IN THE FIRST YEAR POST-GRADUATION / PARTICIPATION, 2010–2013

POPULATION	TOTAL NUMBER	RECIDIVIST	NON-RECIDIVIST
Participants who graduated in 2010	75 ^a	23%	77%
Participants who graduated in 2011	46 ^a	11%	89%
Participants who graduated in 2012	N/A ^b	32%	68%
Non-graduating participants who left the program in 2012	N/A ^c	14%	86%

Source: Fundación Paz Ciudadana, *Tribunales de tratamiento de drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 18, 28, 39–40.

^a The data available only indicate total number of graduates.

^b The data for this year do not indicate the number of graduates.

^c The data for this year do not indicate the number of participants who exited the program or the reasons for leaving; it is also the first year such information had been reported.

²⁴² SENDA, *Estudio de evaluación de la implementación y el proceso del programa de tratamiento integral de adolescentes infractores de ley con consumo problemático de alcohol-drogas y otros trastornos de salud mental* (Chile: SENDA, 2011), 136.

²⁴³ Alejandro Sánchez Mondaca, "Análisis del programa de tribunales de tratamiento de drogas en la zona de la Fiscalía Regional Metropolitana Centro Norte. Una aproximación al funcionamiento de los tribunales de tratamiento de drogas en nuestro país," (degree thesis, University of Chile, 2011), 38.

²⁴⁴ Arica-Parinacota (Arica), Tarapacá (Iquique), Antofagasta (Antofagasta), Coquimbo (Coquimbo), Valparaíso (Valparaíso and Viña del Mar), O'Higgins (Rancagua), Maule (Curicó), Biobío (Concepción), Araucanía (Temuco) and Metropolitana.

²⁴⁵ Ministerio del Interior y Seguridad Pública Chile, "Gobierno anuncia ampliación de tribunales de tratamiento de drogas a la población adolescente," Press note, May 6, 2016, <http://www.senda.gob.cl/gobierno-anuncia-ampliacion-de-tribunales-de-tratamiento-de-drogas-a-la-poblacion-adolescente/> (accessed January 29, 2018).

²⁴⁶ Luis Toledo Ríos, *Tribunales de tratamiento de drogas (TTD) en adultos y adolescentes*, presented at the 62nd Regular Session of the CICAD, December 14, 2017, 10–12, <http://www.cicad.oas.org/apps/Document.aspx?id=4510> (accessed January 29, 2018).

²⁴⁷ Alejandro Sánchez Mondaca, "Análisis del programa de tribunales de tratamiento de drogas en la zona de la Fiscalía Regional Metropolitana Centro Norte. Una aproximación al funcionamiento de los tribunales de tratamiento de drogas en nuestro país," 112–113.

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government, has participated in data collection and the publication of statistical bulletins. One independent study of this program—the 2011 study commissioned by CONACE and conducted by CESC—has also been produced.²⁴⁸

Although data provided consistently and periodically by official sources are lacking, the evaluations of the program that are publicly available reveal several aspects worth mentioning. The available information seems to indicate, for instance, that recidivism rates have varied over the years; table 6 showcases the fluctuating rates for 2010–2013 reported by Fundación Paz Ciudadana²⁴⁹ for recidivism in the first year after graduation/exit. It is important to remember when analyzing these data, however, that only those who received a final sentence in the first year post-participation were considered recidivists—a caveat that most likely excludes any participants who may have reoffended post-drug court participation but had not yet been sentenced at that time.

A 2016 study by Chile's judicial branch offered a more detailed consideration of the recidivism rate, both at the end of 2015 and by March 2016, for participants who were admitted to drug court program in 2014.²⁵⁰ For a better understanding of the information presented in table 7, it should be noted that the total number of candidates admitted to the DTC program in 2014 was 314; of those, 174 (of whom 75 maintained the DTC

status and 99 did not) permanently left the program.²⁵¹ The study also adopted a slightly different definition of recidivism for each date. For recidivism rates on December 15, 2015, it considered all new cases admitted to the Court Management Support Information System (Sistema de Información de Apoyo a la Gestión Judicial, SIAGJ) with a date of admission subsequent to the original charge,²⁵² discarding the charges that were closed for reasons that exempted the accused from liability.²⁵³ The criteria for the measurement of recidivism as of March 30, 2016, was the same as those used as of December 15, 2015, with the difference that the cases in process in which the accused had not been formally notified²⁵⁴ would not be counted.²⁵⁵

As can be seen from the tables 6 and 7, a main issue when verifying recidivism rates is comparability; the lack of consistent collection of comparable data over time may call the methodology of any assessment into question. Beyond the discussion of recidivism rates, one reason for recidivism itself could be the lack of complementary activities or support networks during and after treatment, which are important for social reinsertion, which, in turn, has been found to be an important step in preventing recidivism.²⁵⁶ The program does not assist participants with finding jobs, improving their skills, and/or obtaining training. Also important to take into account is that many DTC participants are socially vulnerable; most are

²⁴⁸ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011).

²⁴⁹ Fundación Paz Ciudadana, *Tribunales de tratamiento de drogas: compendio estadístico 2010, 2011 y 2012* (Chile: Fundación Paz Ciudadana, 2014), 18, 28, 39–40.

²⁵⁰ Roberto Contreras Olivares, G. Urra García, Violeta Díaz, and Nicolás Villalobos, *Tribunales de Tratamiento de Drogas y/o Alcohol en Chile. Diagnóstico y proyecciones* (Chile: Poder Judicial, 2016), 58.

²⁵¹ *Ibid.*, 50–51.

²⁵² Original charges are those associated with the 314 participants upon admission to the program in 2014.

²⁵³ According to the study, the reasons that would exempt the accused from responsibility for the purpose of recidivism verification were abandonment of the complaint, lack of investigation, discontinuation of procedure, use of the *principio de oportunidad* (the Office of the Public Prosecutor's discretionary choice of not initiating or discontinuing an investigation), and dismissal, among others. Any charge faced by an offender that at the date of measurement was in process or concluded for a reason other than these would be counted. Roberto Contreras Olivares, G. Urra García, Violeta Díaz, and Nicolás Villalobos, *Tribunales de Tratamiento de Drogas y/o Alcohol en Chile. Diagnóstico y proyecciones* (Chile: Poder Judicial, 2016), 57.

²⁵⁴ The “formalización” is a specific procedural phase in Chile established in article 229 of the Criminal Procedure Code. It consists of the communication from the prosecutor to the accused, in the presence of the Guarantee Judge, that an investigation against the accused for one or more crimes is being conducted.

²⁵⁵ Roberto Contreras Olivares, G. Urra García, Violeta Díaz, and Nicolás Villalobos, *Tribunales de Tratamiento de Drogas y/o Alcohol en Chile. Diagnóstico y proyecciones* (Chile: Poder Judicial, 2016), 57.

²⁵⁶ Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 23, 28.

TABLE 7: RECIDIVISM RATES FOR 2014 PARTICIPANTS BY DECEMBER 2015 AND MARCH 2016

POPULATION	NUMBER IN DECEMBER 2015	PERCENTAGE IN DECEMBER 2015	NUMBER IN MARCH 2016	PERCENTAGE IN MARCH 2016
Total participants admitted	314	100%	–	–
Recidivist among total participants	82 ^a	26%	–	–
Non-recidivist among total participants	232	74%	–	–
Total participants who left program	174	100%	211	100%
Recidivist among exited participants	39	22%	35	17%
Non-recidivist among exited participants	135	78%	176	83%
Total dismissed participants with DTC status^b	75	100%	82^c	–
Recidivist among dismissed participants with DTC status	16	21%	10	12%
Non-recidivist among dismissed participants with DTC status	59	79%	72%	88%
Total dismissed participants w/o DTC status^b	99	100%	129	100%
Recidivist among dismissed participants w/o DTC status	23	23%	25%	19%
Non-recidivist among dismissed participants w/o DTC status	76	77%	104	81%
Total participants who successfully graduated program	51	100%	61^c	100%
Recidivist among participants who successfully graduated program	9	17%	7	11%
Non-recidivist among participants who successfully graduated program	42	83%	54	89%

Source: Adapted and translated from Robert Contreras Olivares, G. Urra García, Violeta Díaz, and Nicolás Villalobos, *Tribunales de tratamiento de Drogas y/o alcohol en Chile. Diagnóstico y proyecciones* (Chile: Poder Judicial, 2016), 53–59.

^a The study does not specify any additional criteria to identify who is included in this statistic (number is higher than the sum of the recidivist among those dismissed with and without DTC status).

^b Although the study does not provide a clear definition of what should be understood as maintenance of DTC status and the criteria for it, it does mention cases in which the unsatisfactory exit of the program is also either accompanied by revocation of the conditional suspension or results in the elimination of the drug treatment condition but leaves the participant subject to the general requirements of the conditional suspension other than treatment.

^c The total number of participants who left the program by March 2016 and maintained DTC status includes those who successfully graduated the program; the same clarification was not made for those who left the program by December 2015.

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poor and lack support networks.²⁵⁷ A study found that in the Iquique region, for instance, most participants did not have a place to live,²⁵⁸ which may have made them more subject to arrest in the first place.

Another issue is the program's high dropout rate, which was 28 percent in 2008 and 43 percent in 2010.²⁵⁹ People leave the program for different reasons—committing a new offense or failing to follow the treatment plan, for instance—which need to be better understood. As we will see below, other Latin American countries have, in general, mostly followed the Chilean model when establishing drug courts. It is worth noting, however, that Chile's disinclination to make a failing drug test grounds for expulsion from the program has not been replicated elsewhere in the region. More important, the differences from Chile in institutional and socioeconomic characteristics and development levels may also magnify in other countries the shortcomings (such as lack of treatment options) that we see in the Chilean model.

MEXICO

Mexico's first iteration of its drug court program, Programa de Tribunales para el Tratamiento de Adicciones, began in September 2009 with a pilot program in the state of Nuevo

León. Technical assistance and training support came from the US Office of National Drug Control Policy, the NADCP, and CICAD.

In 2013, Mexico's federal government decided to implement the program nationally,²⁶⁰ expanding it in coordination with local authorities in such areas as justice, health, labor, and education, with training support provided by CICAD.²⁶¹ Since then, five more states—Morelos, the State of México, Chihuahua, Durango, and Chiapas—have established drug courts, and two more—Mexico City and Baja California—have conducted feasibility assessments for their implementation (results have not been shared publicly).²⁶² According to the Mexican government, the main goals were to use new mechanisms to resolve crimes, reduce drug use, diminish recidivism, and reinstate individuals in their families and communities.²⁶³

In 2016, two laws were approved as part of a broader overhaul of the criminal system in Mexico²⁶⁴ that included some important provisions related to Mexico's drug court model: the Ley Nacional de Ejecución Penal (National Penal Enforcement Act)²⁶⁵ and the Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes (National Comprehensive Criminal Justice System for Adolescents Act).²⁶⁶ The first introduced the

²⁵⁷ Ibid., 92.

²⁵⁸ Ibid.

²⁵⁹ Lorena Rebolledo Latorre, "El rol del fiscal en los tribunales de tratamiento de drogas," in *Tribunales de Tratamiento de Drogas en Chile, Material educativo*, ed. Catalina Droppelmann Roepke (Chile: Fundación Paz Ciudadana, 2010), 143.

²⁶⁰ Antonio Baranda, "Expande Segob cortes de drogas," *Reforma*, August 2, 2013.

²⁶¹ Secretaría de Gobernación (SEGOB) and Secretaría de Salud (SSA), "Tribunales para el Tratamiento de las Adicciones," 2014.

²⁶² Berenice Santamaría González, "Tribunales para el Tratamiento de Adicciones en México y su prospectiva" (Mexico: CONADIC, Ministry of Health, September 2014), <http://www.cicad.oas.org/apps/Document.aspx?ld=3134>.

²⁶³ Ibid.

²⁶⁴ As explained by the Washington Office on Latin America, "On June 18, 2016, Mexico's Congress amended the country's Constitution to establish a new criminal justice system (*Nuevo Sistema de Justicia Penal*) that shifts from a written-based system to an adversarial, oral-based system in which the prosecution and defense present competing evidence and arguments in open court. Because the new system required updating many of the country's laws and institutions and changing the entrenched practices of justice system officials, Mexico's 31 states, federal district, and federal authorities were given eight years to transition to the reformed system. The deadline to implement the new criminal justice system in Mexico officially passed on June 18, 2016, but there have been serious obstacles to making it fully operational." Ximena Suárez Enríquez, "Q&A: Mexico's New Criminal Justice System," Washington Office on Latin America, July 14, 2016, <https://www.wola.org/analysis/qa-mexicos-new-criminal-justice-system/> (accessed January 30, 2018).

²⁶⁵ The Ley Nacional de Ejecución Penal (National Penal Enforcement Act) is available in Spanish at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LNEP.pdf>.

²⁶⁶ The Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes (National Comprehensive Criminal Justice System for Adolescents Act) is available in Spanish at <http://www.diputados.gob.mx/LeyesBiblio/ref/Insjpa.htm>.

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concept of therapeutic justice for people who have already been sentenced; its main purpose is to allow the insertion of comprehensive care, rehabilitation, and integration for offenders into the sentence execution phase.²⁶⁷ It is important to highlight that programs offering such services will operate under the supervision of a judge and will only be available for offenders sentenced for nonviolent crimes against property. The second law established a set of conditions that adolescents who commit crimes must fulfill during the conditional suspension of the criminal proceedings; these include participation in special programs for the prevention and treatment of drug dependence.²⁶⁸

In November 2016, the Mexican government presented a new program called *Modelo Mexicano del Programa de Justicia Terapéutica para Personas con Consumo de Sustancias Psicoactivas* (Mexican Model of Therapeutic Justice Program for People with Psychoactive Substance Use), which represents a new stage in the expansion of the drug court model. This new version intends to systematize and standardize practices and, in doing so, to take into consideration the cultural, geographical, and economic diversity of the different regions of the country.²⁶⁹

This new approach, which is being implemented in Mexico, will replace the original drug treatment courts model. As explained in the new methodological guide for the program,

The first alternative to incarceration program that took therapeutic justice into account was initiated in 2009 in the City of Guadalupe, Nuevo León, with the name “Addiction Treatment Court.” Subsequently, a second experience was created during the years 2013 and 2014, as a result of various negotiations among CONADIC, SEGOB, and the Executive Secretariat of CICAD-OAS, which led to the beginning of this practice in the states of Chihuahua, Durango, Morelos and México, federative entities that configured the second phase of implementation. Seven years after the first implementation phase, and before expansion of the practice to other states, it has been considered important to systematize and standardize the criteria to build a Mexican Model of Therapeutic Justice for people with psychoactive substance use, the implementation of which aims to take into consideration the cultural, geographical, and economic diversity of the different regions of the country.²⁷⁰

The National Commission against Addictions (Comisión Nacional contra las Adicciones, CONADIC) is an agency of the Ministry of Health tasked with developing and executing public policy on issues related to dependence treatment;²⁷¹ the Secretariat of Interior (Secretaría de Gobernación, SEGOB) is

²⁶⁷ Inter-American Drug Abuse Control Commission (ed. and coord.), *Modelo Mexicano del Programa de Justicia Terapéutica para personas con consumo de sustancias psicoactivas: Guía metodológica* (Mexico: OAS, 2016), 41; Ley Nacional de Ejecución Penal (National Penal Enforcement Act), article 170.

²⁶⁸ Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes (National Comprehensive Criminal Justice System for Adolescents Act), article 102.

²⁶⁹ Inter-American Drug Abuse Control Commission (ed. and coord.), *Modelo Mexicano del Programa de Justicia Terapéutica para personas con consumo de sustancias psicoactivas: Guía metodológica* (Mexico: OAS, 2016), 28.

²⁷⁰ Translated to English from the original in Spanish: “El primer programa alternativo al encarcelamiento que tomó en cuenta a la justicia terapéutica se aplicó en 2009 en la Ciudad de Guadalupe, Nuevo León con el nombre: ‘Tribunal de Tratamiento de Adicciones.’ Posteriormente, se originó una segunda experiencia durante los años 2013 y 2014, como consecuencia de diversas negociaciones entre la CONADIC, la SEGOB y la Secretaría Ejecutiva de la CICAD-OEA, que derivaron en el inicio de esta práctica en los Estados de Chihuahua, Durango, Morelos y Estado de México, entidades federativas que configuran la segunda fase de la implementación. A siete años de la primera fase de implementación, y antes de su expansión a otras entidades federativas, se ha considerado importante sistematizar y homologar los criterios, para construir un *Modelo Mexicano de Justicia Terapéutica para personas con consumo de sustancias psicoactivas*, cuya implementación pretende considerar la diversidad cultural, geográfica y económica de las distintas regiones del país.” Inter-American Drug Abuse Control Commission (ed. and coord.), *Modelo Mexicano del Programa de Justicia Terapéutica para personas con consumo de sustancias psicoactivas: Guía metodológica* (Mexico: OAS, 2016), 28.

²⁷¹ CONADIC, “¿Qué es la Comisión Nacional contra las Adicciones?” <https://www.gob.mx/salud/conadic> (accessed February 15, 2018).

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TABLE 8: NUMBER OF GRADUATES PER YEAR IN NUEVO LEÓN

COHORTS	DATE OF GRADUATION	NUMBER OF PARTICIPANTS
1	June 2011	4
2	March 2012	14
3	October 2012	13
4	June 2013	15
5	December 2013	15
6	September 2014	4
7	February 2015	5
8	September 2015	13
9	April 2016	11
10	October 2016	8
11	June 2017	11
TOTAL		113

Source: Judiciary of the State of Nuevo León, Tribunales de Tratamiento de Adicciones, "Avances del programa," <https://www.pjenl.gob.mx/TTA/> (accessed February 15, 2018).

responsible for the political development of the country and assists with managing the relationship of the executive power with the other government branches and government levels.²⁷²

The following subsections present the only information on the model available at the time of writing, which pertains to that which has been in place since 2009 unless otherwise noted. The data and information are provided with the caveat that significant change is underway in Mexico.

Criminal Process

In Mexico, drug courts do not function as specialized courts, but rather as specific programs in existing Guarantee Courts. The drug treatment court is a mechanism of alternative justice for first offenders whose crime is related to substance abuse or dependence, and it functions under the conditional

suspension of criminal proceedings mechanism within an adversarial criminal system.

The prosecutor and the defendant can request conditional suspension of the proceedings while the defendant participates in the program. If the judge accepts the request, the defendant is directed to the health authorities or a treatment provider for analysis and diagnosis. Upon a diagnosis of drug dependence, the judge decides if that person is to be admitted to the program. If the defendant accepts the conditions (duration of the program, treatment, and a plan to repair damage caused), the judge declares the conditional suspension of the process.

As with all mechanisms of conditional suspension, eligibility for the program must meet legal requirements.²⁷³ It is only for minor crimes,²⁷⁴ the consent of the victim (when applicable)

²⁷² SEGOB, "¿Qué hacemos?" <https://www.gob.mx/segob/que-hacemos> (accessed February 15, 2018).

²⁷³ All the terms and requirements of Mexico's criminal suspension of criminal procedures are established in the Código Nacional de Procedimientos Penales (National Criminal Procedure Code), Article 192 et seq, http://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP_170616.pdf.

²⁷⁴ A crime carrying a five-year maximum jail sentence, such as robbery or property damage.

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is required, and a plan to repair damage caused must be devised, among others.²⁷⁵ Admission also requires that a link be established between drug use and the commission of the crime (that is, the crime was to obtain drugs or was committed while under the influence of drugs) and that participation by the defendant be voluntary.

Participants

Nuevo León

Out of 258 offenders in Nuevo León between 2009 and 2015 whose cases were reviewed, 209 were admitted to the program, 38 were rejected, and 11 decided to leave the program. Causes for ineligibility included nonproblematic patterns of drug consumption and refusal to participate in the program.²⁷⁶

Of those admitted, at least 175 were prosecuted for domestic violence and one for forced entry. All but one were men, and most were admitted for alcohol dependence. By December 2015, 84 participants had completed the program.²⁷⁷

From the beginning of the program until June 2017, eleven cohorts of participants were graduated.²⁷⁸

Of the 94 who participated between January 2015 and December 2016, 37 (39 percent) were graduated, 33 (35

percent) were expelled, and 24 (26 percent) continued in the program.²⁷⁹ Eighty-one were prosecuted for domestic violence and only four for drug crimes.²⁸⁰ Twenty percent had only elementary school educations.²⁸¹

Morelos, State of México, Chihuahua, Durango, and Chiapas

Drug courts were established between 2013 and 2015 in Morelos, the State of México, Chihuahua, and Durango. Most participants were charged with simple drug possession, particularly of marijuana. A new drug court targeting adults was established in Chiapas in January 2017. According to the Judicial Branch of Chiapas, in November 2014 the government of the state signed an MOU with the Organization of American States to implement the DTC program.²⁸² The three judges overseeing the adult drug courts in Chiapas were trained by CICAD.²⁸³ Unfortunately, as this program is very new, no information is available about participants.

Information provided by the Superior Court of the State of Morelos indicates that as of December 2015, 82 of the 112 candidates for the DTC program had been rejected and 30 admitted, all of them men.²⁸⁴ As of February 2017, 38 people were participating, 14 had completed the program, and 9 had been expelled.²⁸⁵ The inclusion of a participant arrested for

²⁷⁵ Código Nacional de Procedimientos Penales, Article 192 et seq.

²⁷⁶ Response to an information request (518/15), Poder Judicial del Estado de Nuevo León, November 2015.

²⁷⁷ Ibid.

²⁷⁸ Poder Judicial del Estado de Nuevo León, Tribunales de Tratamiento de Adicciones, "Avances del programa," <https://www.pjenl.gob.mx/TTA/> (accessed February 15, 2018).

²⁷⁹ Consejo de la Judicatura, Coordinación de Investigación y Desarrollo Institucional, "Indicadores de medición de TTA." December 2016, <https://www.pjenl.gob.mx/TTA/download/pjenl-tta-reporte-estadistico-12-2016.pdf> (accessed February 15, 2018).

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² "Acuerdo No. PGJE/001/2017 por el que se establece el procedimiento y requisitos para la participación de los operadores en las audiencias de seguimiento, verificación de cumplimiento, graduación de beneficiarios y revocación del Programa de Justicia Terapéutica en virtud de una suspensión condicional del proceso decretada por los jueces de control o en su caso, el criterio de oportunidad que aplique el fiscal del Ministerio Público," January 18, 2017.

²⁸³ Acuerdo General 01/2017, head of judicial branch, Chiapas, January 16, 2017.

²⁸⁴ Response to an information request (00563015), Tribunal Superior de Justicia del Estado de Morelos, December 2015.

²⁸⁵ Response to an information request, Tribunal Superior de Justicia del Estado de Morelos, February 2017.

TABLE 9: DRUG COURT PARTICIPANTS BY CRIME COMMITTED IN MORELOS

CRIME	NUMBER OF PARTICIPANTS
Simple possession of marijuana	11
Possession of marijuana to sell	8
Possession of cocaine to sell	2
Attempted robbery	1
Robbery	9
Assault	1
Domestic violence	3
Sexual assault	1
Possession of weapons	1
Simple possession of marijuana and domestic violence (combined charges)	1
TOTAL	38

Source: Response to an information request, Tribunal Superior de Justicia del Estado de Morelos, February 2017.

Note: Only two municipalities in Morelos, Cuernavaca and Cuautla, provided information on active participants. The third municipality where DTCs have been established, Jojutla, did not provide this statistic.

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sexual assault is notable. Most participants were men (only two were women) between twenty-one and thirty-six years of age. The substance most frequently used was marijuana.²⁸⁶

The Judicial Branch of the State of México reported that as of December 2015, twenty-three of the twenty-seven candidates were accepted to its drug court program, all of them charged with simple possession of cannabis. All but one of the participants were men, and their average age was twenty-seven.²⁸⁷

According to the Judicial Branch of Chihuahua, sixteen participants were in the state's program as of December 2015, of whom fifteen were men and one a woman, with an average age of twenty-eight years.²⁸⁸ Eleven were charged with simple possession: five for marijuana, two for marijuana and cocaine, one for alcohol, one for crystal meth, and two for heroin. Four participants were charged with domestic violence and one with robbery. One participant was expelled from the program. In addition, twenty-two people were rejected as participants, and thirty-six were in the process of being assessed at the time the information was obtained; most were prosecuted for simple

TABLE 10: DRUG COURT PARTICIPANTS BY CATEGORY OF OFFENSE

LOCATION	POSSESSION	ROBBERY / ATTEMPTED ROBBERY	SEXUAL ASSAULT	DOMESTIC VIOLENCE	COMBINED POSSESSION / DOMESTIC VIOLENCE	OTHERS	OVERALL
Morelos	21	10	1	3	1	2	38
State of México	23	–	–	–	–	–	23
Chihuahua ^a	11	–	–	4	–	–	15
Overall	55	10	1	7	1	2	76

Source: Response to an information request, Tribunal Superior de Justicia del Estado de Morelos, February 2017; response to an information request (3013600000/04/2016), Poder Judicial del Estado de México, October 2015; response to an information request (UI-0502/15), Poder Judicial del Estado de Chihuahua, December 2015.

^a Although the information from Chihuahua mentions fifteen participants, it only disaggregated data regarding crimes committed by fourteen of them.

Note: Possession includes simple possession of marijuana, possession of marijuana to sell, simple possession of cocaine, and possession of cocaine to sell for the locations for which such information was disaggregated.

²⁸⁶ Poder Judicial del Estado de Morelos, Tribunal para el Tratamiento de Adicciones, "Estadísticas," <http://tsjmorelos2.gob.mx/2016/tta/estadisticas/> (accessed February 2017).

²⁸⁷ Response to an information request (3013600000/04/2016), Poder Judicial del Estado de México, October 2015.

²⁸⁸ Response to an information request (UI-0502/15), Poder Judicial del Estado de Chihuahua, December 2015.

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TABLE 11: PREVALENCE OF SIMPLE POSSESSION CHARGES IN DRUG COURTS

LOCATION	SIMPLE POSSESSION	OTHER CHARGES
Morelos	31%	69%
State of México	100%	–
Chihuahua	73%	27%

Source: Calculations based on information obtained through direct requests to the judiciaries of all the Mexican states.²⁹² No information was available on Durango.

possession.²⁸⁹ Unfortunately, no information was available from Durango.

Finally, looking at the drug courts program at the end of 2015 in Morelos, the State of México, and Chihuahua combined, sixty-seven of sixty-nine participants were male, and two were female.²⁹⁰ Fifty-five—more than 80 percent—were charged with simple possession, the great majority for marijuana possession,²⁹¹ and participants' average age was twenty-six. In other words, these were predominantly young consumers of marijuana charged with no other offense who, most likely, were opting to participate in drug courts to avoid jail time rather than because they needed treatment. In this regard, the DTC program promoted by the government has been reinforcing the criminalization of drug users.

The high prevalence among participants of simple possession charges deserves to be further contextualized within Mexico's

legal system. In 2009, as part of a broader security strategy, an amendment to the country's *Ley General de Salud* (General Health Law)²⁹³ was enacted, with the purpose of reforming a few aspects of that country's drug laws. One of its highlights was the partial decriminalization of small quantities of narcotics for personal use. In an effort to differentiate between drug users and drug traffickers, the amendment introduced maximum quantities for simple possession (understood as intended for personal consumption and, therefore, not resulting in a prison sentence). The law now establishes that simple possession of, for instance, up to five grams of marijuana or half a gram of cocaine should not result in a prison sentence, but simple possession of higher quantities are criminal offenses subject to a penalty of ten months to three years in prison, plus a fine.²⁹⁴ The amendment covers many other complex topics and has been the target of much criticism,²⁹⁵ but the quantity limitation is of particular importance in the analysis of drug courts. While differentiating between drug use and drug trafficking is an

²⁸⁹ Ibid.

²⁹⁰ Data obtained by the author based on response to an information request, Tribunal Superior de Justicia del Estado de Morelos, February 2017; response to an information request (301360000/04/2016), Poder Judicial del Estado de México, October 2015; response to an information request (UI-0502/15), Poder Judicial del Estado de Chihuahua, December 2015.

²⁹¹ Ibid.

²⁹² Response to an information request, Tribunal Superior de Justicia del Estado de Morelos, February 2017; response to an information request (301360000/04/2016), Poder Judicial del Estado de México, October 2015; response to an information request (UI-0502/15), Poder Judicial del Estado de Chihuahua, December 2015.

²⁹³ Commonly known as the *Ley de Narcomenudeo* ("*narcomenudeo*" refers to small-scale/retail drug dealing), the Decree amending the *Ley General de Salud* (General Health Law) was enacted on August 10, 2009, http://dof.gob.mx/nota_detalle_popup.php?codigo=5106093.

²⁹⁴ *Ley General de Salud* (General Health Law), articles 475–478.

²⁹⁵ Catalina Pérez Correa, "¿Qué ha pasado con la Ley de Narcomenudeo?" *Animal Político*, August 7, 2013, <http://www.animalpolitico.com/blogeros-no-hay-derecho/2013/08/07/que-ha-pasado-con-la-ley-de-narcomenudeo/> (accessed February 5, 2018).

important and necessary consideration, it is essential that any such reform be based on actual patterns of use rather than on a discretionary determination not substantiated by evidence.²⁹⁶ Further research is necessary to evaluate how these quantity limitations have affected the simple possession charges faced by drug court participants in Mexico.

Treatment

According to the Ministry of Health, treatment under the 2009 version of the program was divided into four general phases: coordinated multidisciplinary evaluation and intervention; determination of participant's clinical status; intervention by an interdisciplinary team coordinated by the local authority on drug dependence; and integral treatment, with emphasis on rehabilitation and social reintegration.²⁹⁷ Despite this general framework, the duration and/or specific denomination of each phase differs among states. Morelos follows a scheme with four phases: diagnosis and therapeutic adherence (two months, on average); intensive treatment (six months, on average); abstinence (five months, on average); and, finally, social reintegration and prevention of relapse (five months, on average).²⁹⁸ In Morelos and Nuevo León, the treatment lasts eighteen months, on average.²⁹⁹ Under the new National Penal Enforcement Act,³⁰⁰ people who are already incarcerated undergo five treatment phases under the therapeutic justice program: initial diagnostic evaluation; design of a personalized treatment program; treatment; rehabilitation and social integration; and evaluation and monitoring.³⁰¹

Treatment may be conducted on either an inpatient or outpatient basis and can include individual and group psychotherapy. Most providers, whether private or public, offer abstinence-based treatment. Government agencies such as the National Center for the Prevention and Control of Addictions (Centro Nacional para la Prevención y el Control de las Adicciones, CENADIC) and Primary Care Centers for Addictions (Centro de Atención Primaria en Adicciones, CAPA), as well as Juvenile Integration Centers (Centros de Integración Juvenil, CIJ), an organization sponsored by the government, are responsible for the treatment component.

Some participants may not actually need treatment for drug dependence. Conversely, treatment is not readily available for all people who do need it. Thus, the program may not fulfill the principle of accessibility, which is part of the right to the highest attainable standard of health.

The judge periodically supervises participant compliance through meetings, visits by social workers or the police, and drug testing.³⁰² If the participant successfully concludes the treatment, the charges are dismissed. If the participant fails and is expelled from the program, however, the criminal process is restarted, possibly leading to a prison sentence.

As of September 1, 2014, 709 inpatient and 429 outpatient treatment centers were officially recognized by CONADIC and CENADIC.³⁰³ Occurrences of serious abuses have been

²⁹⁶ For further analysis, see Catalina Pérez Correa (coord. and author), Alejandro Corda, Rose Marie de Achá, João Pedro Padua, Luciana Boiteux, Diana Esther Guzmán, Jorge Alberto Parra, Rodrigo Uprimny, Jorge Vicente Paladines, Jérôme Mangelinckx, *Justicia desmedida: Proporcionalidad y delitos de drogas en América Latina* (México, DF: Editorial Fontamara, 2012).

²⁹⁷ Berenice Santamaría González, "Tribunales para el Tratamiento de Adicciones en México y su prospectiva" (Mexico: CONADIC, Ministry of Health, September 2014), 20, <http://www.cicad.oas.org/apps/Document.aspx?id=3134>.

²⁹⁸ Poder Judicial del Estado de Morelos, Tribunal para el Tratamiento de las Adicciones, "Programa Piloto-Manual de Operación," July 1, 2014, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/manual/Referencias/Jimenez/MANUAL%20DE%20OPERACION%20TTA.%20modificado.doc.

²⁹⁹ *Ibid.*; Poder Judicial del Estado de Nuevo León, "Manual de Operación," copy provided as a response to Information request (522/15), November 2015.

³⁰⁰ Ley Nacional de Ejecución Penal (National Penal Enforcement Act), articles 174–175.

³⁰¹ Inter-American Drug Abuse Control Commission (ed. and coord.), *Modelo Mexicano del Programa de Justicia Terapéutica para personas con consumo de sustancias psicoactivas: Guía metodológica* (Mexico: OAS, 2016), 88–92.

³⁰² Ley Nacional de Ejecución Penal (National Penal Enforcement Act), Title IV, Chapter VIII.

³⁰³ Response to an information request (0001200260314), Health Secretariat, September 1, 2014.

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documented in many inpatient treatment centers not operated by the state, such as involuntary and prolonged internment, overcrowding, poor diet, solitary confinement and isolation, severe punishments, and even torture and sexual abuse. These abuses constitute violations of the participants' human rights.³⁰⁴

Incentives and Sanctions

The judge decides on the application of incentives and penalties according to the participant's progress, with drug testing a key measure of compliance. The frequency of testing depends on participants' personalized programs. The goal for all participants is to achieve abstinence, as measured by drug tests. As mentioned previously, the requirement of abstinence is counter to the relapsing nature of drug dependence.

Incentives vary among states. In Nuevo León and Morelos, they include publicly recognizing the participant's progress, reducing the length of treatment or the frequency of judicial supervision, reducing home restrictions on work and study,

and increasing family interaction, among others.³⁰⁵

Common penalties imposed in Nuevo León, Morelos, and the State of México include public shaming during court hearings, increased frequency of judicial supervision and drug tests, community service, increased household restriction, and expulsion from the program. Detention for up to thirty-six hours is possible in Nuevo León. The State of México may impose temporary suspension of treatment, which could be detrimental to the participant and reduce his or her chances of successfully completing the treatment.

The manual of operation for the DTC in Morelos is the only one that establishes specific causes for expulsion from the program: positive drug tests; failure to attend treatment sessions; refusal to allow police home visits; arriving late to meetings; verbal or physical attacks on program operators; possession of weapons, drugs, or alcohol; commission of another crime or being arrested; and failure to report a change of residence.³⁰⁶

TABLE 12: CHARGES FACED BY PARTICIPANTS AND CANDIDATES IN ADOLESCENT DRUG COURTS

CHARGE	NUEVO LEÓN		CHIHUAHUA	
	PARTICIPANTS	CANDIDATES	PARTICIPANTS	CANDIDATES
Simple Possession	12	–	1	17
Robbery	–	–	–	1
Overall	12	–	1	18

Source: Response to an information request (522/15), Poder Judicial del Estado de Nuevo León, November 2015; response to an information request (UI-0502/15), Poder Judicial del Estado de Chihuahua, December 2015.

³⁰⁴ Carlos Zamudio, Pamela Chávez, and Eduardo Zafra, *Abusos en centros de tratamiento con internamiento para usuarios de drogas en México*, Cuadernos Cupihd, no. 8 (Mexico: Cupihd, 2015).

³⁰⁵ Poder Judicial del Estado de Morelos, Tribunal para el Tratamiento de las Adicciones, "Programa Piloto-Manual de Operación," July 2014, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/manual/Referencias/Jimenez/MANUAL%20DE%20OPERACION%20TTA.%20modificado.doc; Poder Judicial del Estado de Nuevo León, "Manual de Operación," copy provided as a response to Information request (522/15), November 2015.

³⁰⁶ Poder Judicial del Estado de Morelos, Tribunal para el Tratamiento de las Adicciones, "Programa Piloto-Manual de Operación," July 1, 2014, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/manual/Referencias/Jimenez/MANUAL%20DE%20OPERACION%20TTA.%20modificado.doc.

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Juvenile Drug Courts

Three states, Nuevo León, Chihuahua, and Chiapas, have drug courts for adolescents. In Chiapas, the DTC for adolescents was established in August 2017,³⁰⁷ and no public information is currently available about its participants. In Nuevo León and Chihuahua, the juvenile drug courts were established in 2014 and 2015, respectively. As of the end of 2015, thirteen adolescents had participated in these programs and eighteen were being considered for participation. All but two were male, and the average age was sixteen. Much like the adult drug courts, the adolescent courts appeared to target consumers of marijuana, with all but one participant charged with simple possession.³⁰⁸

In November 2015, the adolescent DTC program in Nuevo León had twelve participants, eleven male and one female, with an average age of sixteen. All were prosecuted for simple possession of marijuana.³⁰⁹ In Chihuahua as of December 2015, three candidates had been rejected, just one was admitted, and eighteen were under consideration. Seventeen of the candidates were charged with simple possession of marijuana and one with robbery. Only one participant was female, and the average age was sixteen.³¹⁰

All in all, until the end of 2015, thirty-one teenagers had been in this program in Mexico, of whom thirty were prosecuted for simple drug possession.

Monitoring and Evaluation

A 2014 evaluation by CICAD of the DTC in Guadalupe, Nuevo León³¹¹—the only evaluation carried out by CICAD specifically on a Mexican program to date—found that participants were not provided with complete information about the duration and dynamics of the program before they reached the treatment center,³¹² which interfered with their ability to make an informed decision about whether or not to join.

This evaluation also found the program length (about fifteen months),³¹³ treatment schedule, and penalties³¹⁴ burdensome, obstructing participants' work schedules and possibly influencing some to drop out.³¹⁵ The evaluation recommended reducing the program's length and offering treatment at different times to accommodate participants' schedules.³¹⁶

CICAD also found the decision to enter the program was influenced by wishing to avoid imprisonment or payment of bail³¹⁷ rather than a true desire to undergo treatment, thus undermining the voluntary aspect of the DTC. Since

³⁰⁷ Acuerdo General 06/2017, head of judicial branch, Chiapas, August 10, 2017.

³⁰⁸ Response to an information request (522/15), Poder Judicial del Estado de Nuevo León, November 2015; response to an information request (UI-0502/15), Poder Judicial del Estado de Chihuahua, December 2015.

³⁰⁹ Response to an information request (522/15), Poder Judicial del Estado de Nuevo León, November 2015.

³¹⁰ Response to an information request (UI-0502/15), Poder Judicial del Estado de Chihuahua, December 2015.

³¹¹ CICAD, *A Diagnostic Study of the Addiction Treatment Court in Guadalupe, Nuevo León, Mexico: Findings and Recommendations* (Washington, DC: OAS, August 2014), http://www.cicad.oas.org/fortalecimiento_institucional/dtca/publications/files/diagnostic_study_nuevo_leon_ENG.pdf. Report drafted by the Inter-American Drug Abuse Control Commission and the Center for Court Innovation, in cooperation with the Department of Justice, Law and Criminology at the School of Public Affairs at American University.

³¹² *Ibid.*, 52.

³¹³ *Ibid.*, 66.

³¹⁴ If, for example, someone were arrested while undergoing the DTC program, he or she would be punished by having to attend one hundred additional and consecutive days of treatment, in addition to returning to the first treatment phase—a disproportionate penalty that could discourage those still in need of treatment from continuing it.

³¹⁵ CICAD, *A Diagnostic Study of the Addiction Treatment Court in Guadalupe, Nuevo León, Mexico: Findings and Recommendations* (Washington, DC: OAS, August 2014), 49.

³¹⁶ *Ibid.*, 66.

³¹⁷ *Ibid.*, 52.

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informed consent is a fundamental principle of medical ethics and international human rights law, the failure to provide complete, accurate information about available sanctions, especially where a non-prison sanction (apart from drug court) is a possibility, may vitiate consent to participate in the DTC.

COSTA RICA

The Costa Rican Drug Institute (Instituto Costarricense sobre las Drogas, ICD), in coordination with the Supreme Court, the Institute on Alcoholism and Drug Dependence (Instituto sobre Alcoholismo y Farmacodependencia, IAFA), and other institutions conducted a feasibility study of a DTC model to be established in Costa Rica, which was finalized in September 2011 but is not publicly available.³¹⁸ It is not clear if CICAD collaborated on the preparation of the study, but it did offer support for the investigation, training, and gathering and analysis of information needed to start a drug court program in Costa Rica.³¹⁹

In November 2012, the government of Costa Rica signed an

MOU with CICAD and ICD to develop a DTC program in that country, which was followed in February 2013 by a letter of intent between ICD and Costa Rica's judicial branch to determine each institution's obligations for such a program.³²⁰ Interestingly, Costa Rica opted to name its program the Judicially Supervised Drug Treatment Program (Programa de Tratamiento en Drogas bajo Supervisión Judicial, PTDJ) rather than "drug treatment court," so it would reflect the international model's adaptive nature to local norms, and "con la finalidad de no generar una reacción contraproducente, tanto en usuarios del programa como para la población civil" (with the purpose of not generating a counterproductive reaction, both in program users and for the civilian population).³²¹ An initial two-year pilot drug court program³²² was established in San José and conducted between August 2013 and August 2015.³²³ Since then, the program has been officially adopted as policy and expanded to other two locations, Pavas and Heredia.³²⁴ According to the 2014 Annual Report of the Restorative Justice Program, the publication of a PTDJ Protocol was a goal for 2015.³²⁵ A protocol for the Restorative Justice Program (which also includes the PTDJ) was approved in 2016,³²⁶ but although

³¹⁸ CICAD, "Drug Treatment Courts, Costa Rica." http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/costa_rica_spa.asp (accessed February 15, 2018); Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial: La experiencia de Costa Rica*, http://www.poder-judicial.go.cr/justiciarestaurativa/index.php?option=com_content&view=article&id=47&Itemid=152 (accessed February 15, 2018).

³¹⁹ Ibid.

³²⁰ "Protocolo de intervención para Programa de Tratamiento en Drogas bajo Supervisión Judicial." http://www.cicad.oas.org/fortalecimiento_institucional/dtca/manual/Referencias/Barahona/Protocolo%20de%20intervenci%C3%B3n%20de%20PTDJ%20Contenido%20CON%20AVANCES.doc (accessed February 15, 2018). Although undated, this document seems to be a draft of a protocol offering the justification for the establishment of the program. A justification for the program's official name was offered along the same lines by Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial: La experiencia de Costa Rica*, https://www.poder-judicial.go.cr/justiciarestaurativa/index.php?option=com_content&view=article&id=47&Itemid=152 (accessed February 16, 2018).

³²¹ Ibid.

³²² Most sources refer to one pilot program, but CICAD makes reference to two starting in San José at the same time. See CICAD, "Costa Rica Opens Two Pilot Drug Treatment Courts with OAS Support," February 8, 2013, http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/activities/costa_rica/costa_rica_feb082013_eng.asp (accessed February 16, 2018).

³²³ Although sources differ on the exact date, arrangements for the pilot project seem to have started immediately after the signature of the letter of intent in February 2013, but it only started operating in August of that year. See Doris M. Arias Madrigal, "Programa de Tratamiento en Drogas bajo Supervisión Judicial en Costa Rica," remarks presented at the High Level Dialogue on Alternatives to Incarceration for Drug-Related Offenses, Washington, DC, December 1–3, 2015, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/08_DorisArias_CostaRica.pdf (accessed February 16, 2018); IAFA-PTDJ Technical Team, *Protocolo de intervención del AFA en el programa de Tratamiento de Drogas bajo Supervisión Judicial (PTDJ)*, http://sisco.copolad.eu/web/uploads/documentos/P2_3_COSTA_RICA_Protocolo_de_Intervencion_de_IAFA_en_el_Programa_de_Tratamiento_de_Drogas_bajo_Supervision_Judicial_PTDJ.pdf (accessed February 15, 2018).

³²⁴ Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial: La experiencia de Costa Rica*, http://www.poder-judicial.go.cr/justiciarestaurativa/index.php?option=com_content&view=article&id=47&Itemid=152 (accessed February 9, 2018).

³²⁵ Poder Judicial de Costa Rica, Informes Anuales, "Informe de Labores Año 2014, Programa de Justicia Restaurativa," <https://justiciarestaurativa.poder-judicial.go.cr/index.php/informes/category/22-a2014?download=74:informe-anual-programa-de-justicia-restaurativa-2014> (accessed February 15, 2018).

³²⁶ Oficio 6801-16 of June 29, 2016, Consejo Superior del Poder Judicial, https://www.poder-judicial.go.cr/justiciarestaurativa/index.php?option=com_phocadownload&view=category&download=53:acuerdo-consejo-suiprotocolos-de-actuacion-justicia-restaurativa-penal&id=3:protocolos-jpr&Itemid=231 (accessed February 15, 2018).

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an undated draft of a dedicated PTDJ protocol has been made available on CICAD's website,³²⁷ there seems to be no final official document.³²⁸

Criminal Process

The PTDJ is part of a restorative justice program,³²⁹ and referral to it follows the application of alternative measures to incarceration,³³⁰ which include suspension of criminal proceedings, reparation of damage, and reconciliation.³³¹ Offenders who have committed minor crimes related to their problematic use of drugs and who have not benefited from alternative measures to incarceration in the five years prior are given the opportunity to enter the PTDJ as part of a plan for reparation of damage. Admission to the program is conditional on the crime victim's approval and on a plea of guilty by the offender.³³²

Only first-time offenders under the jurisdiction of the cities

of Heredia, San José, and San José-Pavas, where the PTDJ has been implemented, are eligible to participate.³³³

The PTDJ only admits people charged with crimes carrying punishments of no more than three years of incarceration,³³⁴ which include theft, illegal possession of weapons, aggravated threats, *daño agravado* (aggravated destruction of property), use of a false document, attempted murder, assault with a weapon, and mistreatment of animals.³³⁵ A plan to fully repair the harm or damage inflicted is also required to participate in a restorative justice program.³³⁶

It is important to highlight that neither drug consumption nor possession for personal use are crimes in Costa Rica. Also, the judicial branch has excluded from the PTDJ³³⁷ crimes contained in Law 8,204³³⁸ concerning "narcotic drugs, psychotropic substances, drugs of unauthorized use, related activities, [and] legitimization of capital and financing of terrorism,"³³⁹ as well as

³²⁷ "Protocolo de intervención para programa de Tratamiento en Drogas bajo Supervisión Judicial," http://www.cicad.oas.org/fortalecimiento_institucional/dtca/manual/Referencias/Barahona/Protocolo%20de%20intervenci%C3%B3n%20de%20PTDJ%20Contenido%20CON%20AVANCES.doc (accessed February 15, 2018).

³²⁸ The 2016 Annual Report of the Restorative Justice Program did mention meetings being held to discuss such a document, but it did not indicate whether or not the final version had been approved. See Poder Judicial de Costa Rica, Informes Anuales, "Informe de Labores Año 2016, Programa de Justicia Restaurativa," https://www.poder-judicial.go.cr/justiciaabierta/images/RendicionCuentas/InformeLabores2016/pdfs_2016/informes/Programas%20institucionales/Programa%20Justicia%20Restaurativa.pdf (accessed February 15, 2018).

³²⁹ The Office of the Public Prosecutor in Costa Rica established the restorative justice program as a conflict resolution mechanism in 2010 (see Política de Persecución Penal 03-PPP-2010, Circular Administrativa del Ministerio Público 06-ADM- 2012, and Circular Administrativa del Ministerio Público 08-ADM- 2012). According to the judiciary, the restorative justice program is "identified as a more effective response to crime, with respect for human dignity and equality of people, favoring the victim, the accused person and the community. It aims to provide specialized and comprehensive care to accused persons who present problematic use of psychoactive substances and who, as a consequence of this problem, engage in criminal activity. For this reason, in order to achieve effective intervention, it integrates an institutional link between the judicial and health components. By favoring the treatment of the accused in parallel to an effective reintegration, it benefits the victims and society by increasing the levels of satisfaction with the judicial intervention" (translated from the original in Spanish, Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial: La experiencia de Costa Rica*, <https://justiciarestaurativa.poder-judicial.go.cr/index.php/experiencias-del-programa> (accessed February 9, 2018).

³³⁰ Ley 7,594, Código Procesal Penal, articles 25, 30, 35, and 244, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41297&nValor3=107536&strTipM=TC.

³³¹ Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial: La experiencia de Costa Rica*, <https://justiciarestaurativa.poder-judicial.go.cr/index.php/experiencias-del-programa> (accessed February 9, 2018).

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Ministerio Público de Costa Rica, Poder Judicial, Circular 06 ADM, Fiscalía General de la República, March 7, 2012, <http://relapt.usta.edu.co/images/2012-circular-06-ADM-onat.pdf> (accessed February 2018).

³³⁷ Circulares 06-ADM-2012, 08-ADM-2012 and 12-ADM-2012 established crimes admitted into the program. None of them included those under Law 8,204.

³³⁸ Ley Sobre Estupefacientes, Sustancias Psicotrópicas, Drogas de Uso No Autorizado, Legitimación de Capitales y Financiamiento al Terrorismo (Narcotic Drugs, Psychotropic Substances, Drugs of Unauthorized Use, Legitimation of Capital and Terrorism Financing Act), http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=48392&nValor3=93996&strTipM=TC.

³³⁹ Ibid.

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those related to organized crime and human trafficking.³⁴⁰

Participants

The initial goal of the program was to serve twenty people per year.³⁴¹ According to the ICD, thirty-five people—three women and thirty-two men—had participated as of July 2016; however, only six had completed the program (five men and one woman) since its establishment.³⁴² The most recent information, provided by IAFA, indicates that as of 2017, there were seven active participants (all male); ten participants had graduated (nine men and one woman); twenty-four had left the program (twenty-two men and two women); and six had never initiated the program.³⁴³ Specific information about participants, such as age, and crime, was requested but not provided.

Treatment

According to the available information, six intervention stages take place under the PTDJ over the course of eighteen months: screening (pre-phase, in which eligibility for the PTDJ program is assessed, fifteen-day duration); clinical evaluation (Phase I, in which a detailed clinical assessment is conducted and a treatment plan is established, one-month duration); recognizing one's life condition (Phase II, in which the participant is expected to reevaluate his or her life situation with the purpose of identifying the consequences of the

substance use, three-month duration); search for solutions (Phase III, in which the participant will develop tools to increase his or her quality of life, four-month duration); life skills (Phase IV, in which the participant will develop new alternatives for personal development, four-month duration); and maintenance (Phase V, in which the participant will focus on reinforcing achievements, preventing relapses, and preparing for exit, maximum three-month duration).³⁴⁴ Abstinence for a certain period of time is a requirement in each treatment phase, and drug testing is used throughout treatment, with positive results preventing the participant from advancing in the program.³⁴⁵

An individual treatment plan is designed for each participant; treatment can be either ambulatory or residential. Interdisciplinary teams from the Restorative Justice Program comprising public defenders, members of the judiciary, social workers, and psychologists work together to supervise and monitor program participants, including administering drug tests and overseeing hearings.³⁴⁶ The ICD found it necessary to contract with a nongovernmental organization to provide inpatient treatment. Fundación Genesis,³⁴⁷ a local private institution, is the official treatment provider,³⁴⁸ providing psychological, family, occupational, and spiritual support.³⁴⁹

³⁴⁰ Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial: La experiencia de Costa Rica*, <https://justiciarestaurativa.poder-judicial.go.cr/index.php/experiencias-del-programa> (accessed February 9, 2018).

³⁴¹ *Ibid.*

³⁴² Instituto Costarricense sobre Drogas, "Programas de Tratamiento en Drogas bajo Supervisión Judicial," July 14, 2016, <http://www.icd.go.cr/portalicd/index.php/capacitaciones-upp/prog-tratamiento-upp> (accessed February 9, 2018).

³⁴³ IAFA-PTDJ Technical Team, *Protocolo de intervención del AFA en el Programa de Tratamiento de Drogas bajo Supervisión Judicial (PTDJ)*, http://sisco.copolad.eu/web/uploads/documentos/P2_3_COSTA_RICA_Protocolo_de_Intervencion_de_IAFA_en_el_Programa_de_Tratamiento_de_Drogas_bajo_Supervision_Judicial_PTDJ.pdf (accessed February 15, 2018).

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*

³⁴⁶ "Protocolo de intervención para Programa de Tratamiento en Drogas bajo Supervisión Judicial," http://www.cicad.oas.org/fortalecimiento_institucional/dtca/manual/Referencias/Barahona/Protocolo%20de%20intervenci%C3%B3n%20de%20PTDJ%20Contenido%20CON%20AVANCES.doc (accessed February 15, 2018).

³⁴⁷ The website of Fundación Genesis states that the organization is dedicated to promoting and developing actions to provide comprehensive assistance to people at social risk in poverty, extreme poverty, and social vulnerability. For more information, see <http://www.fgenesis.org/nosotros.php>.

³⁴⁸ Instituto Costarricense sobre Drogas, "Programas de Tratamiento en Drogas Bajo Supervisión Judicial," July 14, 2016, <http://www.icd.go.cr/portalicd/index.php/capacitaciones-upp/prog-tratamiento-upp> (accessed February 16, 2018).

³⁴⁹ *Ibid.*

TABLE 13: INCENTIVES AND SANCTIONS IN COSTA RICA'S DTCs

PHASE	SANCTIONS	INCENTIVES
I (Clinical evaluation)	<ul style="list-style-type: none"> • Restart Phase I until drug test results are negative • Extraordinary hearings with the judge • Increased number of drug tests • Community service 	<ul style="list-style-type: none"> • Appreciation • Certificate • Advancement to next phase
II (Recognizing one's life condition)	<ul style="list-style-type: none"> • Restart Phase II until drug test results are negative • Extraordinary hearings with the judge • Increased number of drug tests • Community service 	<ul style="list-style-type: none"> • Appreciation • Certificate • Fewer visits to court • Advancement to next phase
III (Search for solutions)	<ul style="list-style-type: none"> • Restart Phase III until drug test results are negative • Extraordinary hearings with the judge • Increased number of drug tests • Community service 	<ul style="list-style-type: none"> • Appreciation • Certificate • Advancement to next phase
IV (Life skills)	<ul style="list-style-type: none"> • Restart Phase IV until drug test results are negative • Extraordinary hearings with the judge • Increased number of drug tests • Community service 	<ul style="list-style-type: none"> • Appreciation • Certificate • Fewer visits to court • Advancement to next phase
V (Maintenance)	<ul style="list-style-type: none"> • Restart Phase V until drug test results are negative 	<ul style="list-style-type: none"> • Appreciation • Certificate • Finalization of treatment and graduation

Source: Adapted and translated from IAFA-PTDJ Technical Team, Protocolo de intervención del AFA en el Programa de Tratamiento de Drogas bajo Supervisión Judicial (PTDJ), http://sisco.copolad.eu/web/uploads/documentos/P2_3_COSTA_RICA_Protocolo_de_Intervencion_de_IAFA_en_el_Programa_de_Tratamiento_de_Drogas_bajo_Supervision_Judicial_PTDJ.pdf.

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Incentives and Sanctions

Although no official protocol or procedure manual is publicly available, table 13 reflects the information found in a PowerPoint presentation by IAFA³⁵⁰ indicating the treatment phases and the sanctions and incentives associated with each one.

Juvenile Drug Courts

Costa Rica has had a dedicated national policy for adolescent restorative justice since 2015, which is codified by the Office of the President's Regulation 067.³⁵¹ According to the ICD, plans were made to include adolescents under the PTDJ,³⁵² and the judiciary has insisted that a juvenile PTDJ include a socio-educational approach.³⁵³ Although a presentation during the 61st Regular Session of the CICAD by Jovanna María Calderón Altamirano³⁵⁴ made the case for a PTDJ for adolescents in Costa Rica, it did not clarify whether or not they were already in operation, and no further information on this was publicly available as of this writing.

Monitoring and Evaluation

Costa Rica has actively promoted its drug court model in Latin America. At the end of the eighteenth Ibero-American Judicial

Summit in 2016, for example, it endorsed³⁵⁵ the creation of the Ibero-American Commission of Alternative and Restorative Conflict Resolution Mechanisms and Drug and/or Alcohol Treatment Courts, or Commission MARC-TTD (Comisión Iberoamericana de Mecanismos Alternativos y Restaurativos de Resolución de Conflictos y Tribunales de Tratamiento de Drogas y/o Alcohol), over which Chile and Costa Rica currently co-preside.³⁵⁶

Yet Costa Rica's support for its model does not appear to be based on evidence from assessments of its success. In fact, no official or independent evaluations of this program have been carried out. The judiciary has identified some problems, such as a lack of human resources in the health care area, the availability of the program only for crimes with maximum prison terms of three years, rejection of candidates due to very strict admission requirements, and noncompliance with treatment by participants.³⁵⁷

ARGENTINA

CICAD has provided technical and financial resources to support the establishment of drug courts in Argentina,

³⁵⁰ Ibid.

³⁵¹ Política Nacional de Justicia Juvenil Restaurativa Costa Rica, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=83946&nValor3=108088&strTipM=TC.

³⁵² Instituto Costarricense sobre Drogas, "Programas de Tratamiento en Drogas bajo Supervisión Judicial," July 14, 2016, <http://www.icd.go.cr/portalicd/index.php/capacitaciones-upp/prog-tratamiento-upp>, (accessed February 9, 2018).

³⁵³ Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial: La experiencia de Costa Rica*, <https://justiciarestaurativa.poder-judicial.go.cr/index.php/experiencias-del-programa> (accessed February 9, 2018).

³⁵⁴ Jovanna María Calderón Altamirano, "Drug Treatment Program under Judicial Supervision—Juvenile Justice," presented at the 61st Regular Session of the CICAD, April 25, 2017, <http://www.cicad.oas.org/apps/Document.aspx?Id=4173> (accessed February 18, 2018).

³⁵⁵ Doris M. Arias Madrigal, "La Comisión MARC-TTD," <http://www.cumbrejudicial.org/comision-de-mecanismos-alternativos-y-restaurativos-de-resolucion-de-conflictos-y-tribunales-de-tratamiento-de-drogas-y-o-alcohol-marc-ttd/documentos-comision-de-mecanismos-alternativos-y-restaurativos-de-resolucion-de-conflictos-y-tribunales-de-tratamiento-de-drogas-y-o-alcohol-marc-ttd/download/136/166/15> (accessed February 16, 2018).

³⁵⁶ Cumbre Judicial Iberoamericana, "Comisión Iberoamericana de Mecanismos Alternativos y Restaurativos de Resolución de Conflictos y Tribunales de Tratamiento de Drogas y/o Alcohol," October 5, 2017, <http://www.cumbrejudicial.org/comision-de-mecanismos-alternativos-y-restaurativos-de-resolucion-de-conflictos-y-tribunales-de-tratamiento-de-drogas-y-o-alcohol-marc-ttd> (accessed February 16, 2018).

³⁵⁷ Doris M. Arias Madrigal, *Programa de Tratamiento de Drogas bajo Supervisión Judicial en Costa Rica*, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/08_DorisArias_CostaRica.pdf (accessed February 9, 2018).

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including training for judges in the cities of Santiago de Chile and Washington, DC, since 2011.³⁵⁸ In December 2012, for example, judges, prosecutors, and judicial officials from Salta participated in a training session to implement the drug court model in that province.³⁵⁹

In October 2013, judges of the Court of Salta signed an MOU to create a pilot drug treatment program, which was launched that month in the province's District of Centro.³⁶⁰ Local authorities and CICAD representatives attended the opening ceremony in Salta,³⁶¹ and CICAD coordinated a training workshop. The first hearing was in November of that year.³⁶²

In contrast to other Latin American countries, the pilot program was not established in Argentina by the national government but rather by the Salta court. According to a December 2016 press report, however, the government intended to expand the DTC program around the country.³⁶³ Another news article that same month reported that the ministries of justice and security and the Secretariat of Integral Policies on Drugs (Secretaría de Políticas Integrales sobre Drogas de la Nación Argentina, SEDRONAR) were drafting a national law project to be presented before the Argentinian Congress in 2017.³⁶⁴

While no such legislation has been enacted as of this writing, SEDRONAR elaborated a five-year plan that does include DTCs as part of Argentina's national strategy. The National Plan for the Reduction of Drug Demand 2016–2020³⁶⁵ expressly states as an objective the promotion and implementation of DTCs in Argentina's local courts as an alternative approach to resolving criminal cases linked to people with problematic drug use.³⁶⁶

Criminal Process

Like other programs in Latin America, the Argentinian drug court functions under the conditional suspension of the criminal proceedings. The program is focused on people whose offenses are related to their drug abuse and gives them immediate access to treatment under the judge's supervision. The defendant can request admission into the program. The judge then orders an evaluation of the case by health officials, the result of which provides the basis for the judge's decision.

Two tribunals in Salta (Guarantee Courts no. 4 and 5)³⁶⁷ are in charge of the program, with each court responsible for running it every other month. According to the judiciary in Salta, qualifying offenses for admission to the program are judicial disobedience,³⁶⁸ threats and threats with weapons, robbery,

³⁵⁸ Organization of American States, "Drug Treatment Courts, Countries: Argentina," http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/argentina_eng.asp (accessed November 25, 2017).

³⁵⁹ Argentina, Government of Salta, "Training on Drug Treatment Courts with International Judges," October 17, 2013, <http://www.salta.gov.ar/prensa/noticias/capacitacion-sobre-tribunales-de-tratamiento-de-drogas-con-jueces-internacionales/26707> (accessed February 9, 2018).

³⁶⁰ Acordada 11480, approved by Circular No. 103/2013 on October 3, 2013, <http://www.justiciasalta.gov.ar/images/uploads/11480.pdf>.

³⁶¹ Organization of American States, "Argentina inaugura con apoyo de la OEA su primer Tribunal de Tratamiento de Drogas," October 16, 2013, http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-393/13 (accessed November 25, 2017).

³⁶² Organization of American States, "Taller capacitación para Tribunales de Tratamiento de Drogas (TTD) en Salta, Argentina, del 16 al 18 de Octubre de 2013," http://www.cicad.oas.org/main/aboutcicad/activities_spa.asp?IE=AR031F (accessed November 25, 2017).

³⁶³ Mike LaSusa, "Argentina Considering Drug Treatment as Alternative to Incarceration," *InSight Crime*, December 21, 2016, <http://www.insightcrime.org/news-briefs/argentina-considering-drug-treatment-as-alternative-to-incarceration>.

³⁶⁴ Daniel Gallo, "Proponen crear tribunales de tratamiento de drogas para delincuentes adictos," *La Nación*, December 19, 2016, <https://www.lanacion.com.ar/1968397-proponen-crear-tribunales-de-tratamiento-de-drogas-para-delincuentes-adictos> (accessed February 18, 2018).

³⁶⁵ SEDRONAR, "Plan Nacional de Reducción de la Demanda de Drogas 2016–2020," https://www.argentina.gob.ar/sites/default/files/plan_nacional-reduccion-demanda-drogas.pdf (accessed February 18, 2018).

³⁶⁶ *Ibid.*, 40, 43–44.

³⁶⁷ *Ibid.*, 43.

³⁶⁸ Criminal Code, Article 239: "Será reprimido con prisión de quince días a un año, el que resistiere o desobedeciere a un funcionario público en el ejercicio legítimo de sus funciones o a la persona que le preste asistencia a requerimiento de aquél o en virtud de una obligación legal."

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aggravated theft, burglary, and actions causing damage (*daños*) and injury (*lesiones*).³⁶⁹ It is important to mention that the MOU³⁷⁰ does not allow into the program those who have committed any crime under the Federal Narcotics Law, pertaining to drug trafficking.³⁷¹

The purpose of the DTC is to reduce the incidence of drug and alcohol dependence and related criminal activity. To this end, many different institutions participate in the program, such as the Ministry of Health, the Ministry of Justice and Human Rights, and the Ministry of Labor, Employment, and Social Security, which helps participants find employment after the DTC.

Participants

According to the Judicial Branch of Salta, the program had had twenty-one candidates for participation in Guarantee Court no. 4 since its beginning, comprising two women and nineteen men between the ages of eighteen and fifty, when this information was provided.³⁷² Most were young people, with approximately 70 percent between the ages of eighteen and thirty, 25 percent between thirty and forty, and 5 percent between forty and fifty.³⁷³

Thirteen people were admitted to the program upon evaluation, and eight were rejected, reportedly because their profiles did not meet program requirements.³⁷⁴ Of the thirteen who were admitted, seven did not finish the treatment; the reasons were not reported.³⁷⁵ The first cohort of participants included two charged with theft and one with theft and damage;³⁷⁶ they graduated the program in December 2015.³⁷⁷ As of February 2016, one more participant, accused of domestic violence, had concluded his participation in the program, and two others were continuing in the DTC.³⁷⁸

Treatment

The Ministry of Health is in charge of the initial screening of candidates for the program. Once the offender is admitted, the ministry makes the referral to treatment. A social worker and a psychologist monitor the participant's progress and participate in hearings about the participant with the judge.

Treatment takes two forms, inpatient and outpatient rehab, and is provided by public and private institutions selected by the government.³⁷⁹ Some provide training and workshops in different areas, such as plastic arts, physical education, bakery, and entrepreneurship, among others.

³⁶⁹ "Primer Informe Sobre el Plan Piloto de Tribunales de Tratamiento de Drogas (TTD) Juzgado de Garantías N° 4," February 18, 2016. Information provided by the press office of Salta's judicial branch on November 30, 2016, in response to a direct request.

³⁷⁰ Acordada 11,480, Article 3.

³⁷¹ Law 23,737.

³⁷² "Primer Informe Sobre el Plan Piloto de Tribunales de Tratamiento de Drogas (TTD) Juzgado de Garantías No. 4," February 18, 2016. Information provided by press office of Salta's judicial branch on November 30, 2016, in response to a direct request.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Memoria Anual 2015, Provincia de Salta, Poder Judicial, 16, http://www.justiciasalta.gov.ar/images/uploads/memoria_anual_2015.pdf.

³⁷⁷ Argentina, Poder Judicial de Salta, "Entregaron certificados a los primeros egresados del Plan Piloto de Tribunales de Tratamiento de Drogas," December 9, 2015, <http://www.justiciasalta.gov.ar/noticia-poder-judicial-salta.php?ildNoticia=2961> (accessed February 18, 2018).

³⁷⁸ Argentina, Poder Judicial de Salta, "Un nuevo egresado del Tribunal de Tratamiento de Drogas," February 18, 2016, <http://www.justiciasalta.gov.ar/noticia-poder-judicial-salta.php?ildNoticia=3193> (accessed February 18, 2018).

³⁷⁹ Such as "Fundación Revivir," "María Reina," "Asociación Betania," and "CEDIT." "Primer Informe Sobre el Plan Piloto de Tribunales de Tratamiento de Drogas (TTD) Juzgado de Garantías No. 4," February 18, 2016. Information provided by press office of Salta's judicial branch on November 30, 2016, in response to a direct request.

According to information provided by the Press and Communications Office of the Judicial Branch of Salta, to obtain a government authorization as treatment providers for the program, private institutions must meet requirements such as providing services, counseling, diagnosis, dishabituación, rehabilitation, and family and social reintegration of people who use psychoactive substances, as well as any therapeutic measures aimed at improving their physical, psychological, and social status.³⁸⁰ Providers must also have teams, each comprising a therapeutic director, psychologist, social worker, physician, nutritionist, and psychiatrist. They can provide different interventions, such as individual sessions with a psychologist, group sessions, family therapy, and consultation with a medical doctor.³⁸¹ Inpatient treatment should always be offered in accordance with the National Mental Health Law and be considered the last therapeutic resort. The maximum duration of treatment is ten months with a possible extension of two months, with the approval of the judge.³⁸²

In terms of the actual type of treatment provided and whether or not it conforms to the required standards of the right to health, no further information was given (including about the use of drug testing).

Incentives and Sanctions

No information concerning the incentives and sanctions associated with participation in Argentina's pilot drug treatment court program was available as of this writing.

Juvenile Drug Courts

Argentina has no specialized juvenile drug courts.

Monitoring and Evaluation

No external evaluations of this program have been conducted. Salta's judicial branch has recognized that the program may be affected by a lack of resources to address issues such as those related to education, jobs, social situation, and transportation as an important barrier to participants' ability to continue treatment. The DTC program has thus made some arrangements for other institutions to provide certain benefits, such as transportation. The Ministry of Labor of Salta also offers assistance to graduated participants in their search for jobs or internships.³⁸³

The court's report also stated that program participants had not been prosecuted for new crimes, which, it claimed, indicated the DTC was reducing the recidivism rates.³⁸⁴ This claim is questionable, however, in that, in addition to its not being an independent evaluation, the report does not provide any data to substantiate it.

Finally, the report highlights what it sees as positive effects of the drug court on victims of the alleged crimes. Provided with information about the program and its objectives, they ultimately approve of it, and some go as far as to waive patrimonial claims (financial damages) because they believe they are in this way contributing to the defendant's recovery.³⁸⁵

PANAMA

Panama's drug court (Programa Judicial de Tratamiento de Drogas [PJTDD]) was launched in February 2014 in the Province of Coclé. CICAD, which had been consulted by the government

³⁸⁰ "Primer Informe Sobre el Plan Piloto de Tribunales de Tratamiento de Drogas (TTD) Juzgado de Garantías No. 4," February 18, 2016. Information provided by press office of Salta's judicial branch on November 30, 2016, in response to a direct request.

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

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about drug courts since 2010, trained 150 officials in the areas of justice, health, and treatment and rehabilitation during a three-day workshop held in November 2014.³⁸⁶

According to the judiciary, a number of international organizations are involved in the program. Besides the OAS's CICAD, they include the Pan American Health Organization (PAHO) and UNODC; the nature and degree of their involvement are not specified, however.³⁸⁷ Many national institutions also participate in the program, including those that operate the criminal justice system (Judicial Branch, Public Prosecutor's Office and Public Defender's Office), the Ministry of Health, the National Commission for the Study and Prevention of Drug Crimes (Comisión Nacional para el Estudio y la Prevención de Delitos Relacionados con Drogas, CONAPRED), the Social Security Office, the Ministry of Public Security, and the Ministry of Government, among others. Together these offices constitute the Interinstitutional Commission for the PJTD.

Criminal Process

As in other countries already discussed, drug courts in Panama operate under the conditional suspension of proceedings mechanism, which allows for the suspension of a criminal process provided the legal conditions are met.³⁸⁸ The program is designed for first-time offenders who are charged with crimes punishable by incarceration for up to three years, including for the crime of drug possession, where a link exists between the crime and problematic drug use.³⁸⁹ In addition to receiving treatment, participants must agree to a plan to

provide reparations to the victim.³⁹⁰

Participants

Between 2014 and 2015, twelve candidates were deemed eligible for participation in the PJTD. Nine were charged with domestic violence and three with simple possession of drugs.³⁹¹ Of the eleven who ultimately became participants, one abandoned the program voluntarily, and two were expelled for not complying with treatment. Four participants concluded the program in September 2015, and, as of December 2015, four were continuing with it.³⁹²

Treatment

Information about treatment methods and availability in Panama is not publicly available.

Incentives and Sanctions

Information about incentives and penalties adopted in Panama's drug courts is not publicly available.

Juvenile Drug Courts

There are currently no known plans for the creation of a specialized drug court program for adolescents in Panama.

Monitoring and Evaluation

No information is available about external evaluations. During an OAS meeting in December 2015, however, the representative of Panama's judiciary (José Eduardo Ayú Prado Canals, president of Panama's Supreme Court of

³⁸⁶ Organization of American States, "OEA capacita a funcionarios de Panamá para expandir Programa de Tribunales de Tratamiento de Drogas," Press Release C-491/14, November 12, 2014, http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-491/14 (accessed February 19, 2018).

³⁸⁷ Órgano Judicial de la República de Panamá, Secretaría de Comunicación, "Realizan primera audiencia en el Programa Judicial de Tratamiento de Drogas," Press Release, February 6, 2014, <http://www.organojudicial.gob.pa/noticias/realizan-primer-audiencia-en-el-programa-judicial-de-tratamiento-de-drogas/> (accessed January 30, 2018).

³⁸⁸ The conditions are set in the Código Penal (Criminal Code), Article 98 et seq, <http://www.organojudicial.gob.pa/wp-content/uploads/2016/11/Texto-%C3%9Anico-del-C%C3%B3digo-Penal-2010.pdf>, and the Código Procesal Penal (Criminal Procedure Code), Article 215 et seq, <http://www.organojudicial.gob.pa/wp-content/uploads/2011/01/codigo-penal-ley-63.pdf>.

³⁸⁹ Código Penal (Criminal Code), Article 98, and Código Procesal Penal (Criminal Procedure Code), Article 216.

³⁹⁰ Gladys Argelis Morán Núñez, "Criterios de elegibilidad adoptados por Panamá para la implementación del modelo de los TTD," presentation during the Workshop on the Implementation of Drug Treatment Courts, Washington, DC, July 13 2013, https://issuu.com/dtc.cicad/docs/14.gladys_moran._criterios_de_eligi (accessed January 30, 2018).

³⁹¹ José Eduardo Ayú Prado Canals, "Alternativas al encarcelamiento para delitos relacionados con drogas. Estado del PJTD en Panamá," remarks presented at the High Level Dialogue on Alternatives to Incarceration for Drug-Related Offenses, Washington, DC, December 1–3, 2015, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/02_JoseAyuPrado_PJTD_PRESENTACION.ppt (accessed January 30, 2018).

³⁹² *Ibid.*

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Justice) expressed concern about difficulties faced by the program. Because health centers do not have the necessary capability for drug screening, for example, it has to be done by the Institute of Forensic Medicine of Panama,³⁹³ resulting in a delay in obtaining results. More crucial challenges to the program are, first, a lack of health services generally and of a health care team dedicated exclusively to the program.³⁹⁴ Second, Panama has no drug abuse treatment centers, which are vital for the proper implementation of drug courts.³⁹⁵ In fact, the judiciary has identified the creation of a drug abuse treatment center as a main goal of the program.³⁹⁶ In response to these concerns, the Ministry of Health has stressed a lack of funds, both for drug treatment and for a team of medical professionals working exclusively for the PJTD.³⁹⁷

Another major obstacle to the implementation of the program relates to the crimes committed by the participants. According to the PJTD's manual of operations, the prosecutor is in charge of choosing the candidates for the program. As of December 2015, however, the prosecutor had only selected people charged with domestic violence and simple possession of drugs. As Ayú Prado explained during the December 2015 OAS meeting, "La violencia doméstica se manifiesta por otras causas diferente al consumo de drogas y la posesión simple de drogas no significa por si misma un consumo problemático" (Domestic violence has causes other than drug consumption, and simple drug possession, by itself, does not represent a problematic

pattern of consumption).³⁹⁸ This is an important point that should be taken into account in the future implementation of the program.

DOMINICAN REPUBLIC

The Dominican Republic became part of CICAD's Drug Treatment Courts Program in 2010. In 2011, the National Drug Commission of the Dominican Republic carried out a feasibility study in coordination with CICAD,³⁹⁹ which also financed training visits and participation in conferences and workshops from then on.

In 2013, a formal MOU establishing pilot programs for drug courts was signed by the judiciary, the Public Prosecutor's Office, the Public Defender's Office, the National Drug Commission, and the Ministry of Public Health.⁴⁰⁰ That same year, the first pilot program, Tratamiento Bajo Supervisión Judicial (TSJ), was implemented in Santo Domingo. A second pilot is planned for Santiago.⁴⁰¹

Criminal Process and Participants

The pilot program launched in the Seventh Jurisdiction of Santo Domingo is part of the conditional suspension of criminal proceedings mechanism and is only for adults. In practice, the program is focused on offenders charged with simple

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

³⁹⁷ Ibid.

³⁹⁸ Ibid.

³⁹⁹ Organization of American States, "Drug Treatment Courts, Countries: Dominican Republic," http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/dominican_republic_eng.asp (accessed January 30, 2018). Note: The study itself is not publicly available.

⁴⁰⁰ Consejo Nacional de Drogas, Poder Judicial, Ministerio Público, Ministerio de Salud Pública, Oficina Nacional de Defensa Pública, "Convenio Interinstitucional Tratamiento Bajo Supervisión Judicial," February 20, 2013, http://www.oas.org/juridico/pdfs/mesicic4_repdom_conv1.pdf (accessed February 25, 2018).

⁴⁰¹ Organization of American States, "Drug Treatment Courts, Countries: Dominican Republic," http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/dominican_republic_eng.asp (accessed January 30, 2018).

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possession of drugs; all of the seventeen participants accepted from among twenty-five candidates since 2015 were charged with this offense.⁴⁰² Other offenses are eligible, however, such as theft, illegal possession of weapons, and domestic violence, among others.⁴⁰³

Available information related to participants, treatment and prevalence of drug testing, penalties and incentives, and monitoring and evaluation mechanisms is scarce, and so far no evaluations have taken place.

COLOMBIA

In June 2015, CICAD and the Colombian government organized a seminar to discuss the viability of the drug court model in that country,⁴⁰⁴ and at the end of the year the Colombian Ministry of Justice and Law announced it was analyzing the possibility of establishing a drug court.⁴⁰⁵ In a December 2016 internal report, the Ministry of Justice and Law reported that a study by Colombian authorities had deemed the model viable, recommended the implementation of a pilot program

for adolescents, and announced it was working with local authorities to implement such a pilot in Medellín.⁴⁰⁶ According to a memorandum provided by its Subdirector of Strategy and Analysis in June 2017, the Ministry of Justice and Law was tasked with leading the design and implementation of a program offering an alternative approach to adolescents who had been prosecuted for crimes that could be linked to problematic drug use.⁴⁰⁷ The memorandum mentioned that, among other steps,⁴⁰⁸ a viability study of the drug court model vis-à-vis the legal peculiarities of establishing such a program in Colombia was conducted, but this document was not available publicly as of this writing.⁴⁰⁹

The pilot program, called Programa de Seguimiento Judicial al Tratamiento de Drogas en el Sistema de Responsabilidad Penal para Adolescentes (Program for Judicial Oversight of Substance Abuse Treatment in the Juvenile Criminal Responsibility System), began operation in Medellín on December 13, 2016.⁴¹⁰ According to the Ministry of Justice and Law, this program is based on the drug court model as adapted for Colombia and particularly for the Colombian juvenile criminal justice system.⁴¹¹ As in other drug treatment courts, treatment

⁴⁰² Wanda Méndez, “Justicia terapéutica,” *Listin Diario*, June 8, 2015, <https://www.listindiario.com/la-republica/2015/06/08/375678/justicia-terapeutica> (accessed February 4, 2018).

⁴⁰³ *Ibid.*

⁴⁰⁴ Organization of American States, “Workshop to Discuss the Viability of Implementing the Drug Treatment Courts Model in Colombia,” June 15, 2015, http://www.cicad.oas.org/Main/AboutCICAD/Activities_spa.asp?IE=CO0345 (accessed February 4, 2018).

⁴⁰⁵ “Gobierno evalúa propuesta de crear tribunales de drogas en Colombia,” *El País*, November 30, 2015, <http://www.elpais.com.co/judicial/gobierno-evalua-propuesta-de-crear-tribunales-de-drogas-en-colombia.html> (accessed February 4, 2018).

⁴⁰⁶ Ministerio de Justicia y del Derecho, Oficina de Control Interno, “Programa de Seguimiento Judicial al Tratamiento de Drogas en el Sistema de Responsabilidad Penal para Adolescentes (SRPA),” Memorando MEM16-001 1 049-OCI-1400, evaluación de gestión por dependencia, December 14, 2016, http://www.minjusticia.gov.co/Portals/0/Ministerio/Planeacion_gestion_y_control/auditorias%20control%20interno/auditorias%20internas/2016/Informe%20consolidado%20planes%20de%20acci%C3%B3n%20MJD%20corte%20sep-16.pdf (accessed February 4, 2018).

⁴⁰⁷ Ministerio de Justicia y del Derecho, “Informe sobre avances del Programa de Seguimiento Judicial al Tratamiento de Drogas en el SRPA-Medellín,” memorandum provided by the Ministry of Justice in June 2017.

⁴⁰⁸ The other four steps were to review drug courts in other countries; discuss the program with other government entities responsible for aspects of the System of Criminal Responsibility for Adolescents (Sistema de Responsabilidad Penal para Adolescentes, SRPA); formulate and validate an integral approach; and conduct trainings.

⁴⁰⁹ The memorandum mentioned that the viability study is titled “Tribunales de tratamiento de drogas—Estudio sobre su viabilidad en Colombia” (“Drug Treatment Courts—Study of Their Viability in Colombia”), and that it was conducted by Farid Benavides and Miguel Cote.

⁴¹⁰ Government of Colombia, Ministerio de Justicia y del Derecho, “Informe sobre avances del Programa de Seguimiento Judicial al Tratamiento de Drogas en el SRPA-Medellín,” memorandum provided by the Ministry of Justice in June 2017.

⁴¹¹ *Ibid.*

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is supervised by the judicial branch.⁴¹² Other institutions, such as the Ministry of Health, the Attorney General, and the Colombian Institute of Family Welfare (Instituto Colombiano de Bienestar Familiar), are also involved.⁴¹³ As of December 2016, the Colombian government was preparing an MOU to be signed with a private treatment provider (E.S.E. Hospital Carisma),⁴¹⁴ which would be in charge of attending participants of the program.⁴¹⁵

The program, which targets minors between fourteen and eighteen years of age who commit crimes such as theft, personal injury, trafficking, and possession of firearms, as well as the manufacture and trafficking of drugs, takes advantage of different procedural tools for adolescents, such as “*principio de oportunidad*” (principle of opportunity),⁴¹⁶ conditional liberty, and supplementary measures under Article 18.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).⁴¹⁷ Failure to meet program requirements may lead to detention or expulsion.⁴¹⁸

Between December 2016 and May 2017, fifteen juvenile

offenders participated in the program for crimes such as drug trafficking and possession, theft, and domestic violence.⁴¹⁹ No information about their profiles is available. According to the Ministry of Justice and Law, the program was expected to have thirty participants during 2017.⁴²⁰

In 2017, Colombia’s Ministry of Justice and Law⁴²¹ published the Documento Metodológico para la Implementación del Programa de Seguimiento Judicial al Tratamiento de Drogas en el Sistema de Responsabilidad Penal para Adolescentes-SRPA (Methodological Document for the Implementation of the Judicial Monitoring Program for Drug Treatment in the System of Criminal Responsibility for Adolescents-SRPA).⁴²² This document set out general guidelines for the program (including instructions for an evaluation phase),⁴²³ with a stated goal being its implementation throughout Colombia, depending on the results of the pilot project.⁴²⁴ This goal was reiterated during a presentation at the 62nd Regular Session of the CICAD by Martha Paredes Rosero, Deputy Director, Strategy and Analysis, of the Ministry of Justice and Law’s Drug Policy Directorate.⁴²⁵

⁴¹² Ibid.

⁴¹³ Ibid.

⁴¹⁴ “Gobierno evalúa propuesta de crear tribunales de drogas en Colombia,” *El País*, November 30, 2015, <http://www.elpais.com.co/judicial/gobierno-evalua-propuesta-de-crear-tribunales-de-drogas-en-colombia.html> (accessed February 4, 2018).

⁴¹⁵ Gobernación de Antioquia, “ESE Hospital Carisma actor estratégico del programa piloto ‘Seguimiento Judicial al Tratamiento de Drogas, en el Sistema de Responsabilidad Penal para Adolescentes (SRPA),” April 24, 2017, <http://antioquia.gov.co/index.php/component/k2/item/2173-ese-hospital-carisma-actor-estrategico-del-programa-piloto> (accessed February 4, 2018).

⁴¹⁶ According to Law 1,312 enacted in 2009, Colombia’s principle of opportunity is the constitutional power that allows the attorney general to suspend, interrupt, or waive a criminal prosecution for reasons of criminal policy, according to the grounds definitely defined by law, despite having the legal basis to pursue it.

⁴¹⁷ Ministerio de Justicia y del Derecho, “Informe sobre avances del Programa de Seguimiento Judicial al Tratamiento de Drogas en el SRPA-Medellín,” memorandum provided by the Ministry of Justice in June 2017.

⁴¹⁸ Ibid.

⁴¹⁹ Ibid.

⁴²⁰ Ibid.

⁴²¹ In coordination with the Ministry of Health and Social Protection, the Colombian Institute of Family Welfare, the Office of the Attorney General of the Nation, the US Embassy in Colombia, and the E.S.E Hospital Carisma.

⁴²² Ministry of Justice and Law (coord.), “Documento metodológico para la implementación del programa de seguimiento judicial al tratamiento de drogas en el Sistema de Responsabilidad Penal para Adolescentes-SRPA” http://www.odc.gov.co/Portals/1/publicaciones/pdf/criminalidad/encarcelamiento/CR15222017_documento_metodologico_implementacion_programa_seguimiento_judicial_tratamiento_drogas_sistema_responsabilidad_penal_%20adolescentes.pdf.

⁴²³ Ibid., 113–119.

⁴²⁴ Ibid., 13.

⁴²⁵ Martha Paredes Rosero, “Alternatives to Incarceration for Drug Offenses in Colombia,” presented at the 62nd Regular Session of the CICAD, December 15, 2017, <http://www.cicad.oas.org/apps/Document.aspx?Id=4513> (accessed February 19, 2018).

Drug Courts in Latin America: An Adequate Response?

It is important to note that Colombia does not criminalize drug use.⁴²⁶ In practice, this means no one should be diverted to a drug court program for drug use-related activities. As we have seen in other countries in the region, however, it is not uncommon for participants to be led to believe otherwise; thus, special attention must be paid to how Colombia will implement this program in practice.

OTHER COUNTRIES

According to information currently available, Peru and Ecuador are also considering implementation of drug court programs. Peruvian authorities have participated in workshops on drug court implementation since 2013,⁴²⁷ and in 2015 the country's judicial branch proposed establishing drug courts in Peru; but no further information on the progress of this proposal is currently available.⁴²⁸ A news report from January 2018, however, indicates that the interest in drug courts still exists, with Peruvian authorities looking to Chile as an example.⁴²⁹

The Ministry of Justice of Ecuador reports it signed an MOU in 2014 with the Ministry of Justice of Chile and a private university for the exchange of information about human rights and

social reintegration, including drug courts,⁴³⁰ but no further progress has been reported. Although Ecuador was lauded for promoting reforms in drug policies in 2015,⁴³¹ these were quickly undone.⁴³² Since then, a policy reversal has sought to impose harsher penalties for drug-related crimes,⁴³³ including the criminalization of drug possession and consumption in public spaces.⁴³⁴ In this uncertain situation, any movement toward the implementation of drug courts should be carefully considered by the government.

GENERAL COMMENTS

Despite the lack of detailed data, this brief mapping of the available information about drug courts in Latin America offers some insight into how they have been implemented throughout the region.

The model is more advanced in three countries (Chile, Mexico, and Costa Rica) and in a pilot phase in four others (Argentina, Panama, Dominican Republic, and Colombia). With the exception of Chile, which pioneered DTCs in Latin America, the model is relatively new to the region; most DTC programs were established in or after 2012. CICAD's support has contributed

⁴²⁶ Gobernación de Antioquia, "ESE hospital carisma actor estratégico del programa piloto 'Seguimiento Judicial al Tratamiento de Drogas, en el Sistema de Responsabilidad Penal para Adolescentes (SRPA)," April 24, 2017, <http://antioquia.gov.co/index.php/component/k2/item/2173-ese-hospital-carisma-actor-estrategico-del-programa-piloto> (accessed February 4, 2018).

⁴²⁷ Comisión Nacional para el Desarrollo y Vida sin Drogas – DEVIDA, "Evalúan implementación de programa piloto de tribunales de tratamiento de drogas en Perú," July 4, 2013, <http://www.devida.gob.pe/2013/07/evaluan-implementacion-de-programa-piloto-de-tribunales-de-tratamiento-de-drogas-en-peru/> (accessed February 19, 2018).

⁴²⁸ Poder Judicial del Perú, "PJ propone tribunales para supervisar tratamiento de adictos a drogas," July 16, 2015, https://www.pj.gob.pe/wps/wcm/connect/cortesuprema/s_cortes_suprema_home/as_inicio/as_enlaces_destacados/as_imagen_prensa/as_notas_noticias/2015/cs_n_conasec_16072015 (accessed February 19, 2018).

⁴²⁹ "Perú y Chile compartirán información para reforzar lucha antidrogas," *Info región*, January 25, 2018, <http://www.inforegion.pe/248398/peru-y-chile-compartiran-informacion-para-reforzar-lucha-antidrogas/> (accessed February 20, 2018).

⁴³⁰ Ministerio de Justicia, Derechos Humanos y Cultos, "Ministras de Justicia de Ecuador y Chile fortalecen relaciones de cooperación con la firma de convenios," <http://www.justicia.gob.ec/ministras-de-justicia-de-ecuador-y-chile-fortalecen-relaciones-de-cooperacion-con-la-firma-de-convenios/> (accessed November 29, 2017).

⁴³¹ Jorge Vicente Paladines, "The Seven Steps of Drug Policy Reform in Ecuador," Washington Office on Latin America, June 10, 2015, <https://www.wola.org/analysis/the-seven-steps-of-drug-policy-reform-in-ecuador/> (accessed February 4, 2018).

⁴³² For more information see Coletta Youngers, "Dos pasos adelante, un paso hacia atrás: La proporcionalidad de las penas en Ecuador," in *Enfoques innovadores globales* (Washington, DC: WOLA, 2017), https://www.wola.org/wp-content/uploads/2017/05/DONE-5-Proportionality-in-Ecuador_SPA_FINAL-1.pdf; Drug Policy Alliance, "Ecuador Backtracks on Criminal Justice Reforms, Increases Penalties for Drug Selling," press release, October 1, 2015, <http://www.drugpolicy.org/news/2015/10/ecuador-backtracks-criminal-justice-reforms-increases-penalties-drug-selling> (accessed February 4, 2018).

⁴³³ WOLA, "Olas y contraolas en las reformas de políticas de drogas en Ecuador," <https://www.wola.org/es/2017/03/olas-y-contraolas-en-las-reformas-de-politicas-de-drogas-en-ecuador/> (accessed August 31, 2017).

⁴³⁴ Jorge Vicente Paladines, "Consumir y castigar. La penalización del consumo en tiempos de cólera," *La Barra Espaciadora*, March 5, 2017, <http://labarraespaciadora.com/libertades/consumir-y-castigar-penalizacion-consumo/> (accessed February 6, 2018).

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to the growth of the program in other countries since 2013.⁴³⁵ Perhaps the country most influenced by CICAD has been Mexico, where the drug court program has expanded rapidly. The oldest programs (in Chile and Nuevo León in Mexico) have hundreds of participants; those more recently established have had fewer than twenty.

Criminal Process

Drug courts in Latin America are not specialized courts but specific programs within general jurisdictions. All operate in existing court systems also in charge of other cases. According to the respective judiciaries, their drug court programs are based on the fundamentals of therapeutic jurisprudence⁴³⁶ and restorative justice.⁴³⁷

Most programs were created under the conditional suspension of criminal proceedings, in the context of an accusatory criminal system. For the most part, this mechanism is applied before conviction.⁴³⁸ Courts defer prosecution before a plea is entered, and the process is suspended while defendants are in the program. In contrast to many US drug courts, defendants do not have to plead guilty to be accepted into the program. If the accused successfully completes it, charges are dismissed. If the criminal procedure needs to be restarted, the accused does not have the burden of having already pleaded guilty as a condition for participation in the program—a relevant point because, in many cases, serious questions exist about whether or not participation in the program is truly voluntary.⁴³⁹

Furthermore, it is important to mention that failing to complete the program could result in harsher punishment

than the offender would otherwise have incurred had he or she opted not to participate. This is because many programs carry harsh penalties as sanctions in the course of treatment, thus potentially leading to a situation where an offender could receive a “double sanction” if he or she fails the program and then goes on to be sentenced to prison. Moreover, failure to complete treatment might also stigmatize the participants and their families.

To enter a DTC program, a defendant must, first, be prosecuted for an eligible offense and, second, receive a diagnosis of problematic drug use related to the commission of the crime. Once the petition to enter the program is accepted, the judge sends the participant to an evaluation, on the basis of which the judge determines whether the offender is eligible for the program or not.

Participants and Offenses

As we have seen, despite CICAD's support for expanding the model in the region, Latin American drug treatment courts collectively have few participants and are not as prevalent as drug courts in the United States. The model is being implemented in quite a few countries, however, so this scenario could change.

Unfortunately, detailed information publicly available from the local authorities about program participants is significantly lacking, and independent evaluations remain a rarity. This presents an enormous obstacle to a proper analysis of how programs are operating and thus to improving them.

⁴³⁵ OAS-CICAD, *Hemispheric Strategy of 2010* (Washington, DC: OAS, 2009).

⁴³⁶ As in Mexico. See, for example, P. Hora, W. Schma, and J. Rosenthal, “Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America,” *Notre Dame Law Review* 74, no. 2 (1999), 439–538.

⁴³⁷ As Costa Rica.

⁴³⁸ In other words, it suspends the procedure. If the participant successfully completes the treatment, the procedure is dismissed. If not, the trial continues normally.

⁴³⁹ The main concerns raised about the voluntariness of treatment programs are related to the lack of information about the program. Many times participants are not given complete information about their legal situation and/or the commitments that participating in the DTC will entail.

Drug Courts in Latin America: An Adequate Response?

Based on the information available, the number of participants and graduates seems surprisingly low. While we could speculate on the reasons for that,⁴⁴⁰ independent evaluations should be conducted to determine why and whether or not the low participation calls into question the viability of the model in Latin American countries.

With regard to the cost of drug court programs in Latin America, almost no information is available. In Mexico, for example, authorities state that the program operates without a specific budget,⁴⁴¹ making a proper cost-benefit analysis of the model impossible.

In terms of what kinds of offenders participate in DTCs, in most countries only people charged with minor and nonviolent crimes (with maximum prison penalties of three to five years) are eligible. Generally, these are “stranger” crimes like robbery, but sometimes domestic violence is also included. In most cases, participants must be first-time offenders.

According to the available data, the defendants most often before the drug courts in the region are males charged with crimes against property, domestic violence, and drug possession, with simple possession one of the most frequently seen crimes in programs that include drug offenses. The selection indicates governments agree imprisonment is not necessary for such offenses. It also suggests these governments might be open to other alternatives to incarceration for minor crimes, such as community service or even diversion from the criminal justice system.

Drug courts in Chile, Mexico, the Dominican Republic, and Panama accept participants charged with drug possession into their programs. In Mexico and Panama, a great proportion has been charged with drug possession, while in the Dominican Republic all have. In contrast, Costa Rica and Argentina explicitly exclude these offenses.

The inclusion of minor drug possession among the eligible offenses is very problematic,⁴⁴² as it may channel nondependent drug users into DTC programs. Police, usually the first point of contact, may be inclined to charge people with possession more often if they erroneously believe sending them to drug courts is a true alternative to the criminal justice system, or if they have to meet arrest quotas, while courts that admit participants so charged are likely to see better treatment “success” rates, since not all participants charged with simple possession might actually have substance abuse problems.⁴⁴³ Numerous studies have recommended that drug use should not be dealt with in the criminal justice system, as prosecution and incarceration of low-level drug offenders has adverse effects.⁴⁴⁴

Juvenile Drug Courts

Juvenile drug courts have been established in Chile, Mexico, Costa Rica, and Colombia, and other countries have plans for their creation.

Treatment

Drug courts in Latin America typically provide abstinence-based treatment and exclude other scientifically and medically appropriate forms of treatment. Abstinence-only approaches

⁴⁴⁰ Among many possible explanations to be further investigated are the high threshold for admission presented by eligibility requirements; the inherent issues with diagnosing problematic drug use in a judicial context; the considerable time commitment required by programs; lack of access to proper treatment; and the difficulties in establishing a strong causal link between drug use and criminal behavior.

⁴⁴¹ According to the Ministry of Government’s Response to Information Request 00037/SEGEGOB/IP/2015, there is no specific budget line, but rather just the funds already assigned to the participating units.

⁴⁴² Diana Esther Guzmán, *Drug Courts: Scope and Challenges of an Alternative to Incarceration*, IDPC Briefing Paper, 2012, 16; Drug Policy Alliance, *Drug Courts Are Not the Answer: Toward a Health Centered Approach to Drug Use* (USA: DPA, 2011).

⁴⁴³ Diana Esther Guzmán, *Drug Courts: Scope and Challenges of an Alternative to Incarceration*, IDPC Briefing Paper, 2012, 16.

⁴⁴⁴ Catalina Pérez Correa (coord. and author), Alejandro Corda, Rose Marie de Achá, João Pedro Padua, Luciana Boiteux, Diana Esther Guzmán, Jorge Alberto Parra, Rodrigo Uprimny, Jorge Vicente Paladines, Jérôme Mangelinckx, *Justicia desmedida: Proporcionalidad y delitos de drogas en America Latina* (México, DF: Editorial Fontamara, 2012).

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ignore cases that would be better addressed through other types of interventions, such as substitution treatment or treatment with methadone (MMT)⁴⁴⁵ or opioids.⁴⁴⁶ In addition, enforced abstinence can increase the chance of overdose in case of relapse. Like US drug courts, Latin American programs typically require participants to remain drug free and sometimes impose sanctions for positive drug tests. Drug testing is intrusive and can discourage participation in DTC programs (notably, the Chilean program does not require it).

While it is widely recognized that treatment plans should be designed by health care professionals in collaboration with patients, tailored to the patients' needs, and based on medical evidence, in most programs determinations regarding admission and treatment are ultimately made by the drug court judge. Some drug court judges may tend toward paternalism, assuming they are protecting participants from the negative influence of alcohol and drugs.⁴⁴⁷

Another issue is that, in some cases, candidates have not received complete information about the program before deciding to participate—a problem that has been documented

in Mexico's Nuevo León program.⁴⁴⁸ Instances have also occurred in which health care providers have pressured people to participate in DTC programs. In Chile, for example, treatment centers encourage participation to reach institutional goals.⁴⁴⁹ This pressure may influence candidates' decision-making processes, thus interfering with the programs' goal of being perceived as voluntary.

Turning to the question of duration of treatment, CICAD has recognized that treatment in Nuevo León, for example, is too long (eighteen months).⁴⁵⁰ In Chile, this has been documented as a disincentive to potential participants to enter the program.⁴⁵¹ In Mexico, the time required for both treatment and monitoring has caused some participants to miss work.⁴⁵² In short, lengthy treatment programs present a serious obstacle to social reintegration and can prevent participants from finding or keeping jobs.

Yet another problem may be presented by the home visits by the program team required by some courts as part of the supervision of treatment. Visits by government representatives threaten people's right to privacy and the confidentiality of their

445 L. A. Marsch, "The Efficacy of Methadone Maintenance Interventions in Reducing Illicit Opiate Use, HIV Risk Behavior and Criminality: A Meta-Analysis," *Addiction* 93, no. 4 (1998): 515–532.

446 A. S. Ludwig and R. H. Peters, "Medication-Assisted Treatment for Opioid Use Disorders in Correctional Settings: An Ethics Review," *International Journal of Drug Policy* 25, no. 6 (2014): 1041–1046.

447 See, for example, the description of the role of the judges in Salta: "In sum, the drug court judge is: a leader, a communicator, an educator, a community worker, and an institutional founder... the judge is always a judge, that is to say that he does not lose his independence of judicial criterion nor diminish his jurisdictional faculties when integrating a drug court, but he acts in a dynamic, legal way and contributes to solve a social conflict directly". "Primer Informe Sobre el Plan Piloto de Tribunales de Tratamiento de Drogas (TTD) Juzgado de Garantías N° 4," February 18, 2016. Information provided by Press Office of Salta's judicial branch. Also, the declarations of a judge of Morelos: "I aspire to these young people to know that the attention they desperately sought, perhaps with their reprehensible actions, finally came; and show them that their stumbling on the road are an opportunity to strengthen themselves and to revise the way they have gone, to walk for a way less rugged. After all, what is it that makes us human beings? ... precisely in our freedom of choice; that capacity to choose our destiny, to make our own decisions, to tame our will with the reins of reason and reflection. There is the superiority of the human being, in his willpower!" (translated from the original in Spanish). Armando David Prieto Limón, "Adolescentes, drogas y delito," May 24, 2016, http://cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/tta_mexico/actividades/adolescentesDrogaDelito_2016_spa.asp (accessed February 15, 2018).

448 CICAD, *A Diagnostic Study of the Addiction Treatment Court in Guadalupe, Nuevo León, Mexico: Findings and Recommendations* (Washington, DC: OAS, August 2014); Mónica Treviño, *Formative and Summative Evaluation: Drug Treatment Court Program for the Americas—Evaluation Report* (Washington, DC: OAS, July 2014), 15–16, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/publications/files/Evaluation_DTCprogram2014_ENG.pdf.

449 Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011).

450 Débora Upegui-Hernández and Rafael A. Torruella, *Humiliation and Abuses in Drug "Treatment" Centers in Puerto Rico* (Puerto Rico: Intercambios Puerto Rico, 2015), 19, <http://intercambiospr.org/wp-content/uploads/2015/11/Humiliation-Abuse-in-Drug-Treatment-in-Puerto-Rico-Intercambios-PR-2015.pdf>.

451 Diego Piñol, Catalina Mellado, Iván Fuenzalida, and Olga Espinoza, *Estudio de evaluación de implementación, proceso y resultados del modelo tribunales de tratamiento de drogas bajo supervisión judicial aplicado en Chile* (Chile: Centro de Estudios en Seguridad Ciudadana, Instituto de Asuntos Públicos, Universidad de Chile, May 2011), 22.

452 CICAD, *A Diagnostic Study of the Addiction Treatment Court in Guadalupe, Nuevo León, Mexico: Findings and Recommendations* (Washington, DC: OAS, August 2014); Mónica Treviño, *Formative and Summative Evaluation: Drug Treatment Court Program for the Americas—Evaluation Report* (Washington, DC: OAS, July 2014).

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medical information and may expose them to discrimination and even violence by their families and people in their communities. Police visits also may create social stigma.⁴⁵³ In these cases, visits from social workers are preferable.

Available Information and Evaluations

In marked contrast to the United States, information about drug courts in Latin America is quite limited. Public information from the judiciary and other institutions is scarce and not very specific. The process for requesting information is lengthy, and, in most cases, data are incomplete. With few exceptions, important documents such as feasibility studies, MOUs, and manuals of operations are not available; indeed, some drug courts operate without a manual. Information available in Latin America about recidivism, sanctions, or cost-benefit analysis is scant, and many drug courts lack systems to maintain records of the types of or reasons for sanctions imposed. Such information is important, both for governments to evaluate whether drug courts are an appropriate intervention and for people charged with eligible offenses to make informed decisions about whether to participate in drug court programs. Its absence also represents an important obstacle to independent analysis of the programs.

Future evaluations should take into account any methodological issues found in the US drug court research so as not to replicate them.⁴⁵⁴ It is essential to conduct any study, for example, through an intersectional lens that includes gender, age, race, and other characteristics of the participants and to avoid selection bias.

In contrast to the extensive literature available about US drug courts, monitoring and evaluation reviews are not common in Latin American DTC programs. Only the Mexican and Chilean programs have been externally evaluated.⁴⁵⁵ One could argue that since most of these programs were established only recently and have few participants, conducting extensive evaluations is not yet possible. It is important, however, to document the operation of drug courts through studies and independent reviews, which should include analysis of recidivism and net incarceration rates and information about rejected and expelled participants. Analysis supported by governments or CICAD⁴⁵⁶ is important, but external evaluations are essential⁴⁵⁷ to identify good and bad practices and to compare the effectiveness of drug courts to that of other mechanisms for people charged with minor crimes. Such evaluations will only be possible if governments strengthen the availability of data and information about their programs.

⁴⁵³ CICAD, *A Diagnostic Study of the Addiction Treatment Court in Guadalupe, Nuevo León, Mexico. Findings and Recommendations* (Washington, DC: OAS, August 2014).

⁴⁵⁴ S. Belenko, "The challenges of conducting research in drug treatment court settings," *Substance Use & Misuse* 37 (12-13), 2002, 1635-1664.

⁴⁵⁵ CICAD, *A Diagnostic Study of the Addiction Treatment Court in Guadalupe, Nuevo León, Mexico: Findings and Recommendations* (Washington, DC: OAS, August 2014); Mónica Treviño, *Formative and Summative Evaluation: Drug Treatment Court Program for the Americas—Evaluation Report* (Washington, DC: OAS, July 2014).

⁴⁵⁶ Catalina Droppelmann Roepke, *Análisis del proceso de implementación de los Tribunales de Tratamiento de Drogas en Chile: Avanzando hacia una política pública* (Chile: Fundación Paz Ciudadana, 2008).

⁴⁵⁷ Alejandro Sánchez Mondaca, *Análisis del programa de tribunales de tratamiento de drogas en la zona de la Fiscalía Regional Metropolitana Centro Norte. Una aproximación al funcionamiento de los tribunales de tratamiento de drogas en nuestro país* (degree thesis, University of Chile, 2011), 112-113.

DRUG COURTS IN LATIN AMERICA – MAIN FINDINGS

- Generally speaking, detailed and current data are lacking in almost all the Latin American countries studied, and independent evaluations are scarce.
- The model is more advanced in three countries (Chile, Mexico, and Costa Rica) and in a pilot phase in four others (Argentina, Panama, Dominican Republic, and Colombia). Ecuador and Peru are also considering whether to establish drug courts.
- Most programs in the region were established in 2012 or later, except for the Chilean model, which was implemented in 2004.
- Drug courts in Latin America function as specific programs within the legal jurisdictions where they have been established rather than as special courts. They function under the conditional suspension of criminal proceedings mechanism and adopt a pre-plea approach that diverts participants before conviction.
- Candidates must meet two basic requirements to enter the programs: they must be prosecuted for an eligible offense, and they must receive a diagnosis of problematic drug use related to the commission of the crime.
- Only people charged with what the local jurisdictions consider to be minor and/or nonviolent crimes (charges carrying sentences of no more than three to five years in prison) are accepted in the programs.
- Many programs carry harsh penalties as sanctions during the course of treatment.
- In most programs, participants must be first-time offenders.
- In contrast to the US experience, Latin American drug treatment courts graduate few participants.
- The drug courts in the region most commonly address crimes against property, domestic violence, and drug possession. Based on available information, simple possession is one of the most frequent crimes in drug court programs that include drug offenses (those in Chile, Dominican Republic, Mexico, and Panama).
- Most participants in drug court programs are male.
- Juvenile courts have been established in Chile, Colombia, Costa Rica, and Mexico, and other countries plan to create such programs.
- Much as in the United States, participation in Latin American drug courts typically requires that participants remain drug free and sometimes sanction them for positive drug tests.
- Most countries clearly lack the capacity to provide appropriate treatment to all program participants.

DRUG COURTS IN THE ENGLISH-SPEAKING CARIBBEAN: A BRIEF OVERVIEW

BY ELIZABETH WARD AND CAROL WATSON WILLIAMS

Drug treatment courts have operated in the English-speaking Caribbean since the early 2000s. This section looks at the procedures and operations of these courts and presents data gathered primarily from government sources. Much of the data cannot be independently verified, as these programs have not been evaluated since their establishment.

The first Caribbean DTCs were established in Bermuda and Jamaica in 2001, followed by the Cayman Islands in 2006, Trinidad and Tobago in 2012, and Barbados in 2014. Belize has also started a pilot project, and the Bahamas is considering implementing drug courts as well. These courts originally received both technical and financial assistance from the government of Canada and OAS' CICAD. The DTCs in Caribbean countries operate under different legal structures, with Jamaica, the Cayman Islands, and Bermuda having enacted specific legislation to guide them while Trinidad and Tobago

and Barbados signed memoranda of understanding (MOUs) with the OAS in 2012⁴⁵⁸ and 2014,⁴⁵⁹ respectively.

In general terms, the DTCs across the English-speaking Caribbean follow the model outlined in the Drug Court (Treatment and Rehabilitation of Offenders) Act in Jamaica.⁴⁶⁰ DTCs are specialized lower courts,⁴⁶¹ and any eligible person who has been charged with an offense that can be adjudicated in the Resident Magistrates Court⁴⁶² (also known as Parish Courts in some jurisdictions) can be referred to the DTC. The Judicature (Parish Court Act) includes as eligible offenses common assaults, aggravated assaults, and assaults occasioning bodily harm; offenses under the Larceny Act (stealing); malicious injury to property; forgery; some sexual offenses; and burglary.

In Jamaica, the Drug Court (Treatment and Rehabilitation of Offenders) Act defines an eligible person as someone who is charged with a relevant offense, appears to be dependent on drugs, and satisfies other criteria as prescribed.⁴⁶³ Potential participants can be assessed by an approved treatment provider if the arresting officer has reasonable cause to believe the person is dependent on any drug. In Jamaica this assessment has two components: a social enquiry report⁴⁶⁴ and a psychiatric report. In Bermuda, under the eligibility criteria,⁴⁶⁵ people who have tested positive for illicit drugs

⁴⁵⁸ Government of Trinidad and Tobago, Drug Treatment Court Steering Committee, "A Policy to Establish Drug Treatment Courts in Trinidad and Tobago," http://www.cicad.oas.org/fortalecimiento_institucional/dtca/activities/Trinidad/FINAL%20DTC.%20TRINIDAD%20AND%20TOBAGO.%20ENGLISH%20PDF.pdf

⁴⁵⁹ Marston C. D. Gibson, "The Drug Treatment Court in Barbados—An Overview," remarks presented at the High Level Dialogue on Alternatives to Incarceration for Drug-Related Offenses, Washington, DC, December 1–3, 2015, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/03_Gibson_Overview-DrugTreatmentCourt_Barbados.ppt.

⁴⁶⁰ The Jamaican legislation regarding drug courts can be found at <http://moj.gov.jm/sites/default/files/laws/The%20Drug%20Court%20and%20Treatment%20and%20Rehabilitation%20Act.pdf>.

⁴⁶¹ With the exception of the Cayman Islands, where they are also part of the High (Grand) Court.

⁴⁶² This will exclude major criminal offenses such as murder, some sexual offenses, and firearm-related offenses.

⁴⁶³ Government of Jamaica, Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 5, <http://moj.gov.jm/sites/default/files/laws/The%20Drug%20Court%20and%20Treatment%20and%20Rehabilitation%20Act.pdf>.

⁴⁶⁴ A Social Enquiry Report, done by a social worker appointed by the court, provides details of the offender's background, family setting, and community and may include testimonials from respected persons who are familiar with offender. Its purpose is to provide a more complete understanding of the offender and his or her environment.

⁴⁶⁵ Government of Bermuda, "Eligibility Criteria (Drug Treatment Programmes) Notice 2001," [http://www.bermulaws.bm/laws/Consolidated%20Laws/Eligibility%20Criteria%20\(Drug%20Treatment%20Programmes\)%20Notice%202001.pdf](http://www.bermulaws.bm/laws/Consolidated%20Laws/Eligibility%20Criteria%20(Drug%20Treatment%20Programmes)%20Notice%202001.pdf).

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at least three times in the previous twelve months,⁴⁶⁶ have a verified history of substance abuse in the previous twelve months,⁴⁶⁷ or have tested positive for drugs on the day of their arrest or attendance at initial hearing are eligible for the DTC.

Once satisfied of eligibility, the clerk of the courts can recommend to the court that the person enter the DTC program. Once the person is brought before the DTC, the court may either defer the prosecution of the offense or defer the imposition of a sentence after a guilty plea. It is important to note that a guilty plea prior to diversion is a requirement in the DTC programs across the Caribbean, with the exception of Jamaica (information about this is not available in Barbados and Belize). In Jamaica, once a person agrees to enter the program, charges are deferred. Some people may have pleaded guilty before diversion, however; in these cases, sentencing is deferred until after treatment. In Trinidad and Tobago and Bermuda, the accused offender must plead guilty before they can be diverted to the DTC. This guilty plea is irrevocable. Participation is voluntary, and not all people who are eligible and recommended for the program will choose to take part, although whether such a decision is truly voluntary is questionable when the alternative is a threat of prison. Moreover, DTCs in the Caribbean countries do not admit people who are diagnosed with mental illnesses,⁴⁶⁸ and only those over the age seventeen are eligible to participate.

Our review of the information publicly available indicates the main objectives of these courts are to reduce the incidence of drug use and dependence by people whose criminal activities are found to be linked to such dependence and to reduce the level of criminal activity that results from problematic drug use. Very few details are available about the treatment provided by DTCs in the Caribbean. This makes it difficult to assess whether

their practices are in keeping with international standards for the treatment of drug dependence.

The drug court in most countries is presided over by a resident magistrate (or parish judge)⁴⁶⁹ who works alongside a treatment provider team tasked with assessing, treating, and monitoring the progress of participants. The DTC sits weekly, and before the court commences all team members attend a meeting to discuss the participants on the list for the day and assess their progress. People who have successfully completed the treatment program are graduated, and although they have pleaded guilty their sentencing will be waived. People who have not successfully completed the program will be rerouted to the normal court system, where they will be tried for the offenses and sentenced accordingly if found guilty (if a guilty plea has not already been entered). One major legal benefit of participation in the DTC is that a graduate does not get a criminal record arising from the offense for which he or she entered the program. This is true both of jurisdictions in which a pretreatment guilty plea is required and of Jamaica, where participants are not required to plead guilty. At the end of the program, the judge makes the determination that no criminal record will be created, so participants do not have to apply for expungement at a later date.

Although the general model just described is used throughout the region, different countries have had different experiences with these courts and the treatment programs that support their work. Following is a brief overview of the information available on DTCs in English-speaking Caribbean countries, presented in the order in which the countries established their programs. First, we cover the five countries where the DTC model has been established (Bermuda, Jamaica, Cayman Islands, Trinidad and Tobago, and Barbados), followed by

⁴⁶⁶ Although this does not always mean the person is dependent on drugs, but rather may simply give an indication of frequency of use.

⁴⁶⁷ This must be verified by a professional, such as a medical practitioner.

⁴⁶⁸ Such persons are referred to other appropriate treatment programs.

⁴⁶⁹ In Jamaica, the legislation requires the judge be supported by two justices of the peace (JPs), one of whom must be a woman. JPs are lay persons who are well respected in their communities and, once appointed, have some quasi-judicial authority. Observation of DTC proceedings revealed this requirement is not strictly adhered to, as the parish judge generally sits alone.

Drug Courts in the English-Speaking Caribbean: A Brief Overview

Belize, where a pilot program has been established, and the Bahamas, which has not established drug courts but is considering their implementation.

BERMUDA

In 1999, in an attempt to address weaknesses in its criminal justice system, the government of Bermuda introduced the Alternatives to Incarceration Initiative (ATI). In a presentation at the first Inter-regional Forum of EU-LAC Cities in 2008, Alfred Maybury, former ATI manager,⁴⁷⁰ explained that the purpose of the ATI was “to ensure that incarceration was used as a last resort for non-violent offenders who could be otherwise supervised in the community.”⁴⁷¹ Drug courts were part of the ATI’s multi-pronged approach to reforming Bermuda’s criminal justice system, but the review that culminated in the creation of ATI had its roots in two other initiatives that long predated it. The first was a review of that country’s criminal justice system in the early 1990s by a team led by Judge Stephen Tumim,⁴⁷² and the second was the creation of the National Drug Commission

in 1993,⁴⁷³ which itself followed a study conducted in the 1980s by David Archibald on substance abuse in Bermuda.⁴⁷⁴ Following the approval of ATI’s report by the government of Bermuda,⁴⁷⁵ an amendment to the country’s Criminal Code was enacted in 2001,⁴⁷⁶ thus providing a legal basis for the establishment of the Drug Treatment Court Program in that country.

Criminal Process

Although a British Overseas Territory, Bermuda’s legislation is enacted by its own legislature in a common law-based legal system. Drug treatment courts in this country are one of the specialized courts that operate under the Magistrates’ Court,⁴⁷⁷ and Bermuda’s chief justice has the authority to designate any magistrate as judge of the drug treatment court.⁴⁷⁸

As in other jurisdictions, the DTC program in Bermuda targets participants with drug dependence who are charged with nonviolent offenses and who voluntarily agree to participate in the program. Referral to the DTC may occur when the accused

⁴⁷⁰ Ministry of Culture and Social Rehabilitation, Department of Court Services, *The Bermuda Drug Treatment Court Programme*, http://www.nadcp.org/sites/default/files/nadcp/THE_BERMUDA_DRUG_TREATMENT_COURT_PROGRAMME_0.pdf.

⁴⁷¹ Alfred Maybury, *Alternatives to Incarceration Initiative—A Better Bermuda*, remarks presented at the First Inter-regional Forum of EU-LAC Cities, Santo Domingo, Dominican Republic, April 2–5, 2008, http://www.cicad.oas.org/fortalecimiento_institucional/eulac/forum_exchanges/santodomingo/files/DOC_33ALFRED_MAYBURY.pdf (accessed February 4, 2018).

⁴⁷² The 1992 Report of the Criminal Justice Board, known as the Tumim Report, offered thirty-four recommendations on a range of topics that included the need for further review of the criminal system to evaluate alternative sentencing mechanisms and the exploration of noncustodial sentences. It also recommended that “distinctions be drawn between those who trade in drugs and those who use them, and that the criminal justice system be flexible enough to develop non-custodial treatment programmes whenever possible (Recommendation 31).” Stephen Tumim, Melvyn Basset, Lowdru Robinson, Norma Wade, Stephen Bass, Tony French, and David Jenkins, *Report on the Criminal Justice System in Bermuda*, October 2, 1992, <http://decouto.bm/reports/Tumin-Report-1992-10-02.pdf>, 85–92 (accessed February 4, 2018).

⁴⁷³ The National Drug Commission was created by the National Drug Commission Act, which was enacted on July 9, 1993, and came into force on January 4, 1994. The purposes of the act were, among others, “(i) to formulate policies and develop programmes intended to prevent or reduce drug abuse and to promote and encourage the implementation of such policies and programme; and (ii) to promote and encourage the establishment of a system to co-ordinate the treatment and rehabilitation of drug abusers and the care of connected persons.” National Drug Commission Act, <http://bermulalaws.bm/laws/Annual%20Laws/1993/Acts/National%20Drug%20Commission%20Act%201993.pdf> (accessed February 4, 2018).

⁴⁷⁴ H. David Archibald (Commissioner), *The Final Report of the Royal Commission into the Use and Misuse of Illicit Drugs and Alcohol* (Bermuda: Government of Bermuda, 1985).

⁴⁷⁵ Ministry of Culture and Social Rehabilitation, Department of Court Services, *The Bermuda Drug Treatment Court Programme*, http://www.nadcp.org/sites/default/files/nadcp/THE_BERMUDA_DRUG_TREATMENT_COURT_PROGRAMME_0.pdf.

⁴⁷⁶ Section 68 et seq. of the Criminal Code Amendment Act, enacted August 13, 2001, <http://www.bermulalaws.bm/laws/Annual%20Laws/2001/Acts/Criminal%20Code%20Amendment%20Act%202001.pdf>.

⁴⁷⁷ Bermuda’s court system has four courts: the Magistrates’ Court, Supreme Court, Court of Appeal, and Privy Court. According to the government of Bermuda, “the main function of the Magistrates’ Court is to decide on the summary of criminal matters. This court studies the evidence and decides on a sentence, without a jury.” Government of Bermuda, “Bermuda’s Court System,” <https://www.gov.bm/bermulas-court-system> (accessed February 20, 2018).

⁴⁷⁸ Criminal Code, Section 68(1) and (2).

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pleads guilty to or is found guilty of an offense; appears to the court to satisfy the eligibility criteria;⁴⁷⁹ and is willing to undergo an assessment by a qualified person to determine his or her suitability for a drug treatment program.⁴⁸⁰ If the judge in charge of the drug treatment court finds the offender suitable to enroll in a drug treatment program and that this course of action is in the offender's best interest, and the offender agrees to participate, then the offender may enroll in a drug treatment program instead of being convicted.⁴⁸¹ Participation in the

Bermudian drug court program has five phases, throughout which people are monitored by a treatment team and regular reports are made to the court on their progress. It is important to highlight that the plea entered by the accused prior to their enrollment in a drug treatment program under the DTC is irrevocable, and failure to complete treatment may result in the return of offenders to the regular courts to be tried for the offenses with which they were charged.⁴⁸²

TABLE 14: BERMUDA DRUG TREATMENT COURT STATISTICS, 2011–2016

	2011	2012	2013	2014	2015	2016
New Referrals ^a	28	25	20	32	53	44
Program Admission ^b	11	11	10	19	14	6
Successful Completion of Phase IV	13	4	6	9	5	4
Successful Completion of Phase V	–	1	1	1	1	4

Source: Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2017* (Bermuda: Government of Bermuda, October 2017), 48, <https://www.gov.bm/sites/default/files/BerDIN-Report-2017.pdf>; *Annual Report of the Bermuda Drug Information Network 2016* (Bermuda: Government of Bermuda, October 2016), 47, <https://www.gov.bm/sites/default/files/2016-BerDIN-Report-Final.pdf>; *Annual Report of the Bermuda Drug Information Network 2015* (Bermuda: Government of Bermuda, October 2015), 48, https://www.gov.bm/sites/default/files/2015_berdin_report_final_draft_.pdf; *Annual Report of the Bermuda Drug Information Network 2014* (Bermuda: Government of Bermuda, October 2014), 45, http://www.parliament.bm/uploadedFiles/Content/House_Business/Presentation_of_Papers_and_of_Reports/2014berdin%20report.pdf; *Annual Report of the Bermuda Drug Information Network 2013* (Bermuda: Government of Bermuda, October 2013), 42, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.592.8903&rep=rep1&type=pdf>.

^a Number of persons who were referred to the program for consideration.

^b Number of persons accepted into the program for that year. This number does not seem to be equivalent to the total number of active participants in the given year.

⁴⁷⁹ The eligibility criteria for participation in Bermuda's DTC are detailed in the "Eligibility Criteria (Drug Treatment Programmes) Notice 2001," [http://www.bermulaws.bm/laws/Consolidated%20Laws/Eligibility%20Criteria%20\(Drug%20Treatment%20Programmes\)%20Notice%202001.pdf](http://www.bermulaws.bm/laws/Consolidated%20Laws/Eligibility%20Criteria%20(Drug%20Treatment%20Programmes)%20Notice%202001.pdf).

⁴⁸⁰ Criminal Code, Section 68(3).

⁴⁸¹ Criminal Code, Section 68(4).

⁴⁸² Criminal Code, Section 68(6) and (7).

Drug Courts in the English-Speaking Caribbean: A Brief Overview

According to the information available on the government's Department of Court Services' website,⁴⁸³ which has not been independently verified, the DTC team consists of the treatment provider, magistrate, police, prosecutor, defense counsel, and case manager/probation officer.⁴⁸⁴ People charged with violent crimes and with the importation or supplying of drugs are not eligible for the DTC program.⁴⁸⁵ An offender's criminal history is also taken into account when determining eligibility, and a conviction, sentence, or probation for one of the excluded offenses within the three years prior will cause a candidate to be ineligible.⁴⁸⁶

Participants

Unlike most governments in Latin American and Caribbean countries where drug treatment courts have been established, the government of Bermuda has published information about participation in its drug treatment courts, among other drug-related statistics, for the past few years. The Bermuda Drug Information Network (BerDIN)'s annual reports have been published since 2010 and, with the exception of those published in 2010, 2011, and 2012, they are available online. Table 14 compiles information provided in the annual reports published between 2013 and 2017 and shows how participation in Bermuda's DTC program evolved from 2011 to 2016.⁴⁸⁷

Until 2014, the DTC program was considered to be completed when participants finalized Phase IV, with Phase V (a year-long program consisting of monitoring and support) being voluntary. Phase V became mandatory for all participants in 2014, however, and thus the participants indicated in table 14 as having completed Phase IV in 2014, 2015, and 2016 are not considered to have finished the program until they have completed Phase V.⁴⁸⁸ The 2017 BerDIN Report presents conflicting information regarding the number of participants who have completed the DTC program since its inception in 2001, with the total reported as either 35 or 37.⁴⁸⁹

The DTC program in Bermuda allows candidates to apply to the program multiple times and, in some instances, to return to the program even if they have successfully completed it.⁴⁹⁰ This, combined with the different rates at which participants complete the program and the omission from the BerDIN reports of current enrollment in other treatment phases, makes it difficult to compare graduation and dropout rates properly. Over the years, however, the BerDIN reports have provided some information about participants who did not complete the program, which is reflected in table 15.

⁴⁸³ The Department of Court Services is responsible for the Drug Treatment Program in Bermuda. For more information, see <https://www.gov.bm/department/court-services>.

⁴⁸⁴ Ministry of Culture and Social Rehabilitation, Department of Court Services, *The Bermuda Drug Treatment Court Programme*, http://www.nadcp.org/sites/default/files/nadcp/THE_BERMUDA_DRUG_TREATMENT_COURT_PROGRAMME_0.pdf.

⁴⁸⁵ For the purpose of determining eligibility for DTC participation, excluded offenses include murder, manslaughter, sexual assault resulting in a sentence of imprisonment, violent offenses against children (including infanticide), robbery, arson, deprivation of liberty, all offenses under the Firearms Act 1973, importation or supply of drugs or possession with intent to supply, felony assaults, and attempt or conspiracy to commit any of the above offenses. Government of Bermuda, "Eligibility Criteria (Drug Treatment Programmes) Notice 2001," [http://www.bermulaws.bm/laws/Consolidated%20Laws/Eligibility%20Criteria%20\(Drug%20Treatment%20Programmes\)%20Notice%202001.pdf](http://www.bermulaws.bm/laws/Consolidated%20Laws/Eligibility%20Criteria%20(Drug%20Treatment%20Programmes)%20Notice%202001.pdf).

⁴⁸⁶ *Ibid.*

⁴⁸⁷ Each annual BerDIN report covers the information for the previous year (for example, the 2017 report discloses 2016 data), and the statistic for the year before that, thus allowing the table to include 2011 information even though the 2012 annual report is not available online.

⁴⁸⁸ Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2017* (Bermuda: Government of Bermuda, October 2017), <https://www.gov.bm/sites/default/files/BerDIN-Report-2017.pdf>, 48.

⁴⁸⁹ The inconsistency seems to arise from the addition for 2016 of only two people as having completed Phase V (bringing the stated total to 35), when the numbers provided in the 2017 report's table 4.3.1 indicate four had finished that phase (which would bring the total of people having finished the program to 37). See Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2017* (Bermuda: Government of Bermuda, October 2017), <https://www.gov.bm/sites/default/files/BerDIN-Report-2017.pdf>, 48, and *Annual Report of the Bermuda Drug Information Network 2016* (Bermuda: Government of Bermuda, October 2016), <https://www.gov.bm/sites/default/files/2016-BerDIN-Report-Final.pdf>, 47.

⁴⁹⁰ According to the 2013 and 2014 BerDIN reports, in 2011 some offenders were not successful on their first attempts, but were allowed reentry subsequently and completed the program. In 2012, one participant reentered the program after completing it and relapsing, one reentry was denied, and the reports made general mention that some people were allowed to reenter after relapsing and reoffending after completing Phase IV. In 2013, three offenders reentered the program, having previously completed it.

TABLE 15: NUMBER OF PARTICIPANTS WHO DID NOT COMPLETE THE DTC PROGRAM IN 2011–2016

YEAR	NUMBER OF PARTICIPANTS WHO DID NOT COMPLETE THE PROGRAM	CONSEQUENCES FOR NON-COMPLETING PARTICIPANT AS REPORTED
2011	30	N/A
2012	12	<ul style="list-style-type: none"> • Ten were sentenced to probation. • No information is available for other two.
2013	7	<ul style="list-style-type: none"> • All were sentenced to periods of incarceration (one individual had that sentence suspended).
2014	4	<ul style="list-style-type: none"> • One was released for legal reasons, one was sentenced to time served following a period of remand, and two were incarcerated.
2015	13	<ul style="list-style-type: none"> • Nine were sentenced and one sent to probation, as that individual's index offense was deemed insufficient for the program's rigorous nature. • Three were released, as they had completed Phase IV and were deemed voluntary participants in Phase V, having entered under the previous conditions of voluntary Phase V placement.
2016	2	<ul style="list-style-type: none"> • The two participants were terminated from treatment due to violations. As a result, they were no longer able to participate in the DTC.

Source: Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2017* (Bermuda: Government of Bermuda, October 2017), 48, <https://www.gov.bm/sites/default/files/BerDIN-Report-2017.pdf>; *Annual Report of the Bermuda Drug Information Network 2016* (Bermuda: Government of Bermuda, October 2016), 47, <https://www.gov.bm/sites/default/files/2016-BerDIN-Report-Final.pdf>; *Annual Report of the Bermuda Drug Information Network 2015* (Bermuda: Government of Bermuda, October 2015), 48, https://www.gov.bm/sites/default/files/2015_berdin_report_final_draft_.pdf; *Annual Report of the Bermuda Drug Information Network 2014* (Bermuda: Government of Bermuda, October 2014), 45, http://www.parliament.bm/uploadedFiles/Content/House_Business/Presentation_of_Papers_and_of_Reports/2014berdin%20report.pdf; *Annual Report of the Bermuda Drug Information Network 2013* (Bermuda: Government of Bermuda, October 2013), 42, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.592.8903&rep=rep1&type=pdf>.

TABLE 16: REASONS FOR NON-ADMISSION TO DTC PROGRAM, AS INDICATED IN THE BERDIN REPORTS

REPORT YEAR	REASONS REPORTED FOR NON-ADMISSION FOLLOWING REFERRAL
2013	<ul style="list-style-type: none"> Some offenders were found to be ineligible as a result of previous offenses. Some offenders' index offenses were insufficient to warrant the rigorous nature of the program. Some offenders were deemed eligible but not suitable, as their criminality superseded their substance abuse, as determined during the assessment phase. Some offenders opted to be incarcerated rather than participate in the DTC program.
2014	<ul style="list-style-type: none"> Some offenders were found to be ineligible as a result of previous offenses. Some offenders' index offenses were insufficient to warrant the rigorous nature of the program. Some offenders were deemed eligible but not suitable, as their criminality superseded their substance abuse, as determined during the assessment phase. Some offenders opted to receive other sentences rather than participate in the DTC program.
2015	N/A
2016	<ul style="list-style-type: none"> Four offenders were referred to the Mental Health Treatment Court program. Three offenders were sentenced to probation and released. Three offenders were sentenced to probation and reviewed in DTC. Two persons were deemed eligible but not suitable, as their criminality superseded their substance abuse, as determined during the assessment phase. Three persons opted to receive other sentences rather than participate in the DTC program. Two persons remained in observation at the end of 2015.
2017	<ul style="list-style-type: none"> Seven clients declined to participate in the DTC. Two clients refused residential treatment. One client had significant medical issues that inhibited participation in treatment. Seven clients were found to be unsuitable. Two clients had specific issues for which no local treatment was available. Three clients were refused due to non-compliance during observation. One client was sentenced to probation and was reviewed in DTC. One client received suspended prison sentence with a fine and was reviewed in DTC. In one instance, an individual was referred twice.

Source: Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2017* (Bermuda: Government of Bermuda, October 2017), 48, <https://www.gov.bm/sites/default/files/BerDIN-Report-2017.pdf>; *Annual Report of the Bermuda Drug Information Network 2016* (Bermuda: Government of Bermuda, October 2016), 47, <https://www.gov.bm/sites/default/files/2016-BerDIN-Report-Final.pdf>; *Annual Report of the Bermuda Drug Information Network 2015* (Bermuda: Government of Bermuda, October 2015), 48, https://www.gov.bm/sites/default/files/2015_berdin_report_final_draft_.pdf; *Annual Report of the Bermuda Drug Information Network 2014* (Bermuda: Government of Bermuda, October 2014), 45, http://www.parliament.bm/uploadedFiles/Content/House_Business/Presentation_of_Papers_and_of_Reports/2014berdin%20report.pdf; *Annual Report of the Bermuda Drug Information Network 2013*, (Bermuda: Government of Bermuda, October 2013), 42, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.592.8903&rep=rep1&type=pdf>.

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Each BerDIN annual report also offers a general summary of reasons candidates referred to the program were not admitted, which varied. Table 16 compiles this information as presented in each report available online.

Although they provide data on referrals, program admissions, and completions, the annual BerDIN reports do not disclose demographic information specific to the DTC program. They do, however, offer a detailed breakdown of this information for new referrals, which include people who participate in the program. Table 17 compiles the information from all BerDIN reports available.

As we can see from the information in table 17, around 80 percent of all new referrals for drug treatment in Bermuda are men. Although blacks represent approximately 54 percent of the population,⁴⁹¹ they make up an average of 70% of DTC participants. The substances with the highest prevalence among new referrals are alcohol, cannabis, cocaine, and opiates.

Treatment

According to Bermuda's Department of Court Services' website,⁴⁹² the DTC program consists of the following five phases of treatment:

1. *Assessment(Phase I)*: In the first phase, the Bermuda Assessment and Referral Centre (BARC) conducts a comprehensive assessment of the participant over a period of thirty days. The center also prepares the participant for the intensive treatment (second) phase of the program, including detoxification, if necessary.
2. *Intensive Treatment (Phase II)*: The intensive

treatment phase lasts for ninety days and is the core of the program. During it, participants are required to attend and participate in case planning sessions, make court appearances twice a month, and attend and participate in treatment sessions led by the trained counselors.

3. *Education and Employment (Phase III)*: This 120-day phase focuses on ensuring participants are equipped to provide themselves with sustainable livelihoods and become fully integrated into society. During this phase participants are given opportunities to acquire skills or advance their educations, and they are required to attend court monthly.

4. *Transition (Phase IV)*: The transition phase is also 120 days. Monthly court appearances and team monitoring continue, and participants are helped to develop networks outside of the program, which can help them maintain the gains they have made. Prior to 2014, completion of this phase signaled program completion.

5. *Transition and Aftercare (Phase V)*: A year of monitoring and support constitutes the last phase of the program. At this point, a participant who has engaged in no further drug use or conflict with the law is eligible to make a transition from the intensive monitoring of the DTC. The participant is given a care plan that will serve as a guide to remaining drug free and leading a productive life. This phase was added and made mandatory in 2014.

⁴⁹¹ US Central Intelligence Agency, "North America: Bermuda," *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/bd.html> (accessed February 24, 2018).

⁴⁹² Ministry of Culture and Social Rehabilitation, Department of Court Services, *The Bermuda Drug Treatment Court Programme*, http://www.nadcp.org/sites/default/files/nadcp/THE_BERMUDA_DRUG_TREATMENT_COURT_PROGRAMME_0.pdf.

TABLE 17: BERMUDA ASSESSMENT AND REFERRAL CENTRE PROGRAM (BARC) STATISTICS FOR NEW REFERRALS, 2011–2016

NEW REFERRALS	2011	2012	2013	2014	2015	2016
Total new referrals	169	141	124	77	97	84
Annual percentage change	14.2	-16.6	-12.1	-37.9	26	-13.4
SEX						
Males	135	111	102	58	77	69
Females	23	21	19	19	20	15
Not available	11	9	3	–	–	–
AGE (YEARS)						
16 and under	1	–	1	–	–	–
17–30	68	50	39	26	26	24
31–45	33	55	34	25	27	33
46–60	46	23	36	21	17	14
61–75	9	2	11	4	7	11
76+	1	1	–	1	–	–
Not stated	–	1	–	–	20	–
Not available*	11	9	3	–	–	2
RACE						
Black	120	85	89	65	82	47
White	20	26	22	8	10	17
Portuguese	4	4	5	4	–	1
Mixed	1	1	3	–	–	1
Other	–	–	–	–	1	–
Not stated	13	16	2	–	4	–
Not available*	11	9	3	–	–	18
DRUG OF CHOICE (DEPENDENCE OR ABUSE): TYPE						
Alcohol	55	58	46	46	27	28
Cannabis	50	41	38	44	34	12
Opiates	28	11	14	6	9	6
Cocaine	17	19	19	9	10	4
Other	5	–	–	–	1	–
None	59	49*	23	1	1	2
Not stated / not shown	–	–	17	9	17*	–
Not available	11	9	3	–	–	20
Deferred	–	–	–	–	–	12
DRUG OF CHOICE (DEPENDENCE OR ABUSE): COMBINATION*						
One drug	57	45	53	34	57	42
Two drugs	30	32*	20	28	15	19
Three drugs	11	6	8	5	4	1
More than three drugs	1	–	3	–	–	–
Not stated	–	–	–	10*	21	–
Not available*	11	9	9	–	–	22

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NEW REFERRALS	2011	2012	2013	2014	2015	2016
LEVEL OF CARE						
Level I—outpatient	41	49	33	27	30	13
Level II—intensive outpatient program (IOP)	31	40	45	32	28	26
Levels III and IV—residential (medically monitored / managed intensive inpatient treatment)	15	12	13	1	3	10
None	29	23	13	16	7	5
Not stated/Not shown	42	8	17	1	29	–
Not available*	11	9	3	–	–	21
Deferred*	–	–	–	–	–	7
Other	–	–	–	–	–	2
REFERRED FROM						
Self-referral	39	23	25	14	11	12
Magistrate's Court	42	30	28	21	30	19
Supreme Court	–	3	1	2	2	1
Family Court	1	3	–	2	–	–
Court Services (including DTC, probation team, parole officer)	24	20	16	9	10	8
Family Services	8	8	8	7	4	–
Bermuda Youth Counselling Services (BYCS)	–	1	–	–	–	–
Corrections	5	6	6	1	–	–
Parole Board	–	–	1	–	–	–
Other/Other community	12	15*	6	1	3	2
Employee Assistance Program (EAP)	6	4	5	6	4	12
Turning Point	14	12	17	6	6	10
Mid-Atlantic Wellness Institute (MWI)	2	1	2	1	1	1
Focus Counselling Services	1	1	2	–	–	–
Pathways Bermuda (formerly CARON Bermuda)	3	2	–	–	–	–
Private practice	–	–	1	4	2	–
Financial assistance	–	1	1	3	–	–
Not stated/Not shown	1	2	2	–	24	–
Not available	11	9	3	–	–	19

Source: Adapted and combined from Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2017* (Bermuda: Government of Bermuda, October 2017), 42–43, <https://www.gov.bm/sites/default/files/BerDIN-Report-2017.pdf>; *Annual Report of the Bermuda Drug Information Network 2016* (Bermuda: Government of Bermuda, October 2016), 40–41, <https://www.gov.bm/sites/default/files/2016-BerDIN-Report-Final.pdf>; *Annual Report of the Bermuda Drug Information Network 2015* (Bermuda: Government of Bermuda, October 2015), 42–43, https://www.gov.bm/sites/default/files/2015_berdin_report_final_draft_.pdf; *Annual Report of the Bermuda Drug Information Network 2014* (Bermuda: Government of Bermuda, October 2014), 40–41, http://www.parliament.bm/uploadedFiles/Content/House_Business/Presentation_of_Papers_and_of_Reports/2014berdin%20report.pdf; *Annual Report of the Bermuda Drug Information Network 2013* (Bermuda: Government of Bermuda, October 2013), 36–37, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.592.8903&rep=rep1&type=pdf>.

* Some numbers reported for these categories diverged in different annual reports; the numbers included in the table are the latest reported.

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Although the framework provides a timeline for the five phases, the length of each may vary, depending on the participants' individual needs. Some participants may require a longer time to move from detoxification⁴⁹³ to the intensive treatment, for example, and from there to transition. Determination of readiness to move on from each phase is made by the treatment team, based on the progress of the participant. Drug testing is utilized in all treatment phases, and abstinence is required.⁴⁹⁴

In 2016, the Department for National Drug Control conducted a survey of substance abuse treatment services in Bermuda with the purpose of collecting "benchmark data on the characteristics and use of alcohol and drug abuse treatment facilities and services (both public and private) on the Island, and number of clients in treatment at these facilities, in an effort to obtain a more holistic view of substance abuse treatment services being provided or available in Bermuda."⁴⁹⁵ This survey offers a closer look at treatment services that also attend to DTC participants (among other clients), thus providing a better idea of the type of facilities available. Table 18 offers a brief description of all agencies and organizations providing drug abuse treatment in Bermuda.

The survey explains that not all these facilities are solo practices, and that they interact during different treatment phases. Most important, it points out that the drug treatment court does not provide treatment but, rather, offers support for offenders to engage and remain engaged with treatment.⁴⁹⁶

An important component is whether or not participants have

to pay for the treatment they are seeking. The survey covers this topic, indicating that

facilities were asked to indicate whether or not they accepted specific types of payment or insurance for substance abuse treatment. They were also asked about the use of a sliding fee scale and if they offered treatment at no charge to clients who could not pay. Half of the facilities do not require payment for the substance abuse treatment services provided, and these are mainly operated or funded by the government; while four accept cash or self-payment or private health insurance; these facilities are mainly private nonprofit. At the same time, most of the facilities will provide substance abuse treatment at no charge for clients who cannot pay. Only three of the facilities use a sliding fee scale. A few facilities indicated that they accept other forms of payment, which include donations, payment from the client's employer, or treatment scholarships for those clients who are unable to pay.⁴⁹⁷

Notwithstanding this assertion that those unable to pay are able to get access to treatment, the 2013 BerDIN report mentions a DTC participant who, in 2011, was deemed eligible and suitable for the DTC program but was not able to enter treatment "due to a lack of funds and an immigration status that precluded the individual from receiving Financial Assistance."⁴⁹⁸ This seems to indicate participating in the DTC program may be financially burdensome.

⁴⁹³ Although detoxification is not considered a drug treatment, we have kept this term as it is used in the available documents.

⁴⁹⁴ Ministry of Culture and Social Rehabilitation, Department of Court Services, *The Bermuda Drug Treatment Court Programme*, http://www.nadcp.org/sites/default/files/nadcp/THE_BERMUDA_DRUG_TREATMENT_COURT_PROGRAMME_0.pdf.

⁴⁹⁵ Department for National Drug Control, *Survey of Substance Abuse Treatment Services in Bermuda 2016* (Bermuda: Government of Bermuda, July 2016), 1, <https://www.gov.bm/sites/default/files/SSATS%20in%20Bermuda%202016%20-%20Final%20rev%20with%20Qnaire.pdf>.

⁴⁹⁶ *Ibid.*, 5.

⁴⁹⁷ *Ibid.*, 18.

⁴⁹⁸ Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2013* (Bermuda: Government of Bermuda, October 2013), 42, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.592.8903&rep=rep1&type=pdf>.

TABLE 18: AGENCIES AND ORGANIZATIONS PROVIDING DRUG ABUSE TREATMENT IN BERMUDA, 2016

BERMUDA ASSESSMENT AND REFERRAL CENTRE,

under the Court Services, provides assessment, referral and case management services to addicted clients, referring to both treatment centres and the Drug Treatment court.

FOCUS COUNSELLING SERVICES,

a charity, provides drop-in services, a safe haven for clients in need, along with motivational counseling and transitional housing, representing both the initial entry into services and the exit from services into independent living.

TURNING POINT,

under the direction of the Bermuda Hospitals Board (BHB), provides multiple services including Inpatient / outpatient Detox, outpatient counseling services, day treatment services, methadone maintenance and after-care services.

HARBOUR LIGHT,

under the Salvation Army, provides residential treatment for males along with a community life skills programme to enhance clients' readiness to re-enter positively into the community.

WOMEN'S TREATMENT CENTRE,

under the DNDC and located at the Nelson Bascome Substance Abuse Treatment Facility, provides much needed specialised treatment for women in a long-term residential treatment setting coupled with Community Housing following residential treatment. Aftercare, respite services and family support are also provided. It is the only treatment programme specifically for women.

MEN'S TREATMENT PROGRAMME,

under the direction of the DNDC and also located at the Nelson Bascome Substance Abuse Treatment Facility provides residential treatment for males along with aftercare, respite services and family support.

COUNSELLING AND LIFESKILLS SERVICES,

under the Department of Child and Family Services, provides some outpatient substance abuse treatment services for youth and adolescents.

DRUG TREATMENT COURT,

a part of Magistrates Court, provides a multidisciplinary team approach to support offenders in need of treatment to receive treatment as an alternative to incarceration.

THE RIGHT LIVING HOUSE,

under the Department of Corrections, provides inpatient residential treatment for inmates suffering with substance abuse disorders in a Therapeutic Community setting separate from the general Prison population.

PRIVATE ADDICTION COUNSELLING,

is offered by organisations such as "Transitions" and "Pathways". Brief counseling can be obtained through EAP Bermuda and Benedicts Associates.

Source: Reproduced from Department for National Drug Control, *Survey of Substance Abuse Treatment Services in Bermuda 2016*, (Bermuda: Government of Bermuda, July 2016), 3, <https://www.gov.bm/sites/default/files/SSATS%20in%20Bermuda%202016%20-%20Final%20rev%20with%20Qnaire.pdf>.

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While the 2016 survey provides important information about drug treatment facilities in Bermuda, it is not within the scope of this report to assess independently the quality and availability of treatment provided to drug court participants there. It is relevant, however, to mention that the 2017 BerDIN report acknowledged the existence of waiting lists for residential treatment services, and that “continued austerity measures put in place by the Government have resulted in significant staffing reductions and a decrease in service provision by agencies in the treatment network.”⁴⁹⁹

Incentives and Sanctions

The judge in charge of the DTC has the power to impose sanctions on participants, including imprisonment for up to twenty days,⁵⁰⁰ but a detailed list of the sanctions and incentives utilized in the course of participation is not publicly available.

Juvenile Drug Courts

Bermuda does not have drug treatment courts targeting adolescent offenders.

Monitoring and Evaluation

A March 2014 news report asserted that in the ten years the court had been in operation, only 7 percent of participants had reoffended while in the program.⁵⁰¹ It also claimed that in 2013, just 4 percent of then current DTC participants were rearrested, in comparison to an average recidivism rate of 34 percent within a year of release for inmates at the Westgate

Correctional Facility (the largest among the four prisons managed by the Department of Corrections).⁵⁰² The same news report went on to mention that “the drug court’s high rate of success—estimated between 75 and 80 percent—underscores what prosecutors and defense attorneys alike have long suspected: therapeutic jurisprudence rather than jail time is far more potent and cost-effective in preventing future criminal behavior.”⁵⁰³ It is important to note that the news report did not provide the source for the statistics it cited, and these numbers cannot be independently verified; however, even if correct, the data do not provide a basis for direct comparison, as several factors distinguish the general prison population from DTC participants, including the severity of the crimes involved.

Proponents of the program in Bermuda, including members of the judiciary and mental health professions, point to this reported high rate of success as evidence that therapeutic jurisprudence is more effectual, and more cost-effective,⁵⁰⁴ than incarceration in preventing future criminal behavior, including future drug use. Those involved with the drug treatment court seem to believe its effectiveness can be attributed in part to the screening process.⁵⁰⁵ Both prosecution and defense consider this a positive aspect of the program, as it puts responsibility in the clients’ hands while providing them with structure and tools to overcome their drug dependence. Nevertheless, the lack of proper independent evaluations does not allow us to verify these claims.

⁴⁹⁹ Department for National Drug Control, *Annual Report of the Bermuda Drug Information Network 2017* (Bermuda: Government of Bermuda, October 2017), 2, <https://www.gov.bm/sites/default/files/BerDIN-Report-2017.pdf>.

⁵⁰⁰ Criminal Code, Section 38(6).

⁵⁰¹ Cooper Stevenson, “Exclusive: Inside Bermuda’s Drug Treatment Court,” *The Royal Gazette*, March 28, 2014, <http://www.royalgazette.com/article/20140328/NEWS/140329735> (accessed February 19, 2018).

⁵⁰² *Ibid.*

⁵⁰³ *Ibid.*

⁵⁰⁴ It is not possible to verify this assertion independently, since the DTC per capita cost has not been established, and there are no studies supporting the claim.

⁵⁰⁵ Cooper Stevenson, “Exclusive: Inside Bermuda’s Drug Treatment Court,” *The Royal Gazette*, March 28, 2014, <http://www.royalgazette.com/article/20140328/NEWS/140329735> (accessed February 19, 2018).

JAMAICA

Much like Bermuda, Jamaica also adapted its legislation to allow for the establishment of drug courts. The country's DTC program is based on the Drug Court (Treatment and Rehabilitation of Offenders) Act⁵⁰⁶ enacted in 1999 (the "Act"), which provided the main framework for the establishment of drug courts, and the Drug Court (Treatment and Rehabilitation of Offenders) Regulations⁵⁰⁷ enacted in 2000 (the "Regulations"), which worked as subsidiary legislation supporting the Act; both came into force in 2001. The main purpose of the Act is to "(a) reduce the incidence of drug use and dependence by persons whose criminal activities are found to be linked to such dependence; (b) reduce the level of criminal activity that results from drug abuse; (c) provide such assistance to those persons as will enable them to function as law abiding citizens."⁵⁰⁸ Also in 2001, the Ministry of National Security and Justice and the Ministry of Health signed a memorandum of understanding⁵⁰⁹ to define the roles and responsibilities of each ministry with regard to the treatment and rehabilitation of offenders.⁵¹⁰

Although the legislation allowed for the establishment of drug courts in Resident Magistrate's Courts⁵¹¹ in all of Jamaica's parishes,⁵¹² the DTC program began as a pilot project in 2001 in two locations: in the Corporate Area (the combined area of the Kingston and St. Andrew parishes)⁵¹³ in May and in the Montego Bay area (St. James parish) in July.⁵¹⁴ Although they were established as a pilot project, these drug courts continue to function under the respective Resident Magistrate's Courts in these locations today (in other words, no transition from pilot project to permanent operation has ever taken place). Despite the lack of any independent evaluation of the pilot project, the Jamaican government has expanded the DTC system from its original two locations to Resident Magistrate's Courts in three other parishes (St. Catherine, St. Thomas, and Manchester).⁵¹⁵ Only offenders under the jurisdiction of these parishes may be referred to a drug court; the resident magistrate presiding in each parish must formally declare that Parish Court to be a sitting of a drug court for the purposes of the Act.⁵¹⁶

The drug courts have been operated under the management of the chief justice of Jamaica through the Court Management

⁵⁰⁶ Drug Court (Treatment and Rehabilitation of Offenders) Act, <http://moj.gov.jm/sites/default/files/laws/The%20Drug%20Court%20%28Treatment%20and%20Rehabilitation%2C%20etc.%29%20Act.pdf>.

⁵⁰⁷ Drug Court (Treatment and Rehabilitation of Offenders) Regulations, <http://moj.gov.jm/sites/default/files/laws/DCTOA%20Treatment%20LN%20B%20of%202001.pdf>.

⁵⁰⁸ Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 3.

⁵⁰⁹ This document was not publicly available as of writing.

⁵¹⁰ Stephane Jackson Haisley, "The Drug Treatment Court Concept: The Jamaican Drug Courts," *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 11, <https://openknowledge.worldbank.org/handle/10986/16609>.

⁵¹¹ Resident Magistrate's (or Magistrates') Courts and Parish Courts are the same (courts at the local level with jurisdiction over civil and criminal matters), with the former term being the formal designation used in the legislation cited in this report. These terms have been used interchangeably in this section, but we note that Parish Courts seems now to be the preferred official term. For more information, see Government of Jamaica, "The Parish Court," <http://parishcourt.gov.jm/> (accessed February 26, 2018).

⁵¹² Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 4.

⁵¹³ Jamaica is divided into fourteen parishes. Although Kingston and St. Andrew are separate parishes, for judicial purposes they are considered as one "corporate area." Government of Jamaica, the Parish Court, <http://parishcourt.gov.jm/content/corporate-area-pc-criminal-division> (accessed February 26, 2018).

⁵¹⁴ Stephane Jackson Haisley, "The Drug Treatment Court Concept: The Jamaican Drug Courts," *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 12, <https://openknowledge.worldbank.org/handle/10986/16609>.

⁵¹⁵ Paul Clarke, "Chuck: Drug Treatment Court is Alternative to Incarceration," *The Gleaner*, September 8, 2017, <http://jamaica-gleaner.com/article/lead-stories/20170908/chuck-drug-treatment-court-alternative-incarceration> (accessed February 26, 2018).

⁵¹⁶ Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 4.

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Services, and funding, initially provided by international agencies,⁵¹⁷ is now provided by the government of Jamaica from Ministry of Justice and the Ministry of Health budgets. In 2015, the National Council on Drug Abuse (NCDA) assumed a major role in delivering, coordinating, and monitoring the provision of treatment services in Jamaica's drug courts.

Also in 2015, the government of Jamaica made significant changes to its Dangerous Drugs Act⁵¹⁸ regarding the possession and use of *ganja* (cannabis) in the country. The enactment of the Dangerous Drugs (Amendment) Act (the "DDA") effectively decriminalized the possession of two ounces or less of cannabis for recreational use, as well as the use of cannabis for medical, therapeutic, scientific, or religious purposes.⁵¹⁹ While specific regulation is still needed for many aspects of the DDA (such as the organization of a legal medical cannabis market in Jamaica), the threshold for decriminalization for personal use is already in effect and is expected to have an impact on the country's criminal justice system—including drug courts—since "possession of 2 ounces or less of ganja is no longer an offence for which one can be arrested, charged and tried in court, and

it will not result in a criminal record."⁵²⁰ In fact, according to the Ministry of Justice, a 72 percent reduction took place in the number of cannabis-related cases before all parish courts in 2015, from 8,284 to 2,285.⁵²¹

Criminal Process

Under the Act and the Regulations, people charged with any offense that can be tried before the Parish Court⁵²² can be diverted to the DTC if they are assessed as having a drug dependence, are at least seventeen years of age, and do not suffer from any mental health condition that could prevent or restrict their participation in a treatment program.⁵²³ Importantly, not all participants are referred to a drug court for drug-related offenses (that is, offenders charged with non-drug-related offenses may also participate, if eligible),⁵²⁴ but a subset of drug-related offenses under the Act (such as possession of no more than eight ounces of cannabis,⁵²⁵ one ounce of prepared opium, or one-tenth of an ounce of cocaine, heroin, or morphine, among others) will result in a referral to a drug court if one has been established in that jurisdiction.⁵²⁶

⁵¹⁷ According to the Ministry of Justice, "During the period 2003 to 2007, the European Union, under its Support to Economic Reform Program (SERP) provided, *inter alia*, support to the Drug Court Treatment and Rehabilitation Programme from its funding envelope of €3.0 M. The areas of support to the Drug Court consisted of the supply of approximately 10,000 urine test kits, the procurement and delivery of computers and furniture, as well as training of court staff. That project ended in 2007 with the expected activities achieved. Since then, no further support using financing from International Donor sources have been provided to the Drug Court Programme." Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, "Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014," November 2014, 4, (draft report provided to the authors in 2017).

⁵¹⁸ The Dangerous Drugs Act, which originally came into force in 1948, is the law in Jamaica that regulates the importation, exportation, manufacture, sale and use of drugs. The version of this act in force prior to the 2015 amendment can be found at <http://moj.gov.jm/laws/dangerous-drugs-act>.

⁵¹⁹ Dangerous Drugs (Amendment) Act was approved in March 20 and came into force in April 15, 2015, <http://moj.gov.jm/sites/default/files/The%20Dangerous%20Drugs%20%28Amendment%29%20Act%202015%20%28Gazette%20%26%20Fact%20Sheet%20Included%29.pdf>.

⁵²⁰ For a summary of the terms of the DDA, see Government of Jamaica, Ministry of Justice, "Dangerous Drugs (Amendment) Act 2015 Facts," April 2015, <http://moj.gov.jm/sites/default/files/pdf/Dangerous%20Drugs%20Act%20Fact%20Sheet%20Booklet.pdf> (accessed February 26, 2018).

⁵²¹ Ministry of Justice, "Sectoral Presentation to Parliament," June 15, 2016, <http://jis.gov.jm/media/Moj-Sectoral-Presentation.pdf> (accessed February 26, 2018).

⁵²² Parish Courts have jurisdiction over civil and criminal matters, as well as specialized courts (such as Family Court and the DTC). While there is a financial cap to the civil claims that can be heard by a Parish Court, criminal jurisdiction is restricted to offenses where the relevant statute allows the matter to be heard by a Parish Court. Therefore, while DTCs in Jamaica may have candidates charged with more serious offenses than in other countries, those charged with grave offenses (such as crimes against life) and all offenses under the jurisdiction of the Supreme Court will not be considered eligible for a DTC. For more information, see Government of Jamaica, "The Court Structure and Hierarchy," <http://www.supremecourt.gov.jm/content/court-structure-and-hierarchy> (accessed February 26, 2018).

⁵²³ Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 5; Drug Court (Treatment and Rehabilitation of Offenders) Regulations, Section 3.

⁵²⁴ Stephane Jackson Haisley, "The Drug Treatment Court Concept: The Jamaican Drug Courts," *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 13, <https://openknowledge.worldbank.org/handle/10986/16609>.

⁵²⁵ With the decriminalization of low amounts of cannabis under the Act, drug courts can now only adjudicate cannabis possession offenses above two ounces and up to eight ounces.

⁵²⁶ Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 7.

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In Jamaica, referral to a drug court may occur at any stage of the criminal process and does not require a candidate to plead guilty.⁵²⁷ Upon referral, the candidate is evaluated by a treatment provider who then makes a recommendation regarding the candidate's suitability for participation.⁵²⁸ If the DTC team deems the candidate eligible and the prescribed treatment appropriate for him or her, and the candidate accepts the conditions to be imposed by the DTC (including regular drug testing), he or she will be accepted into the treatment program.⁵²⁹ Candidates who are refused participation and/or do not accept the conditions associated with the DTC program have their cases returned to the regular criminal procedure under the parish court.⁵³⁰

Throughout treatment, the participant appears before the DTC for regular check-ins. Before each court session, the progress of all the participants is discussed by the treatment team, which comprises a psychiatrist, a counselor, and the judge. These pre-court sessions, in which the progress of the participants is discussed in detail, are closed to the public with the stated intent of protecting the participants' privacy; nonetheless, a discussion is still carried out during the open court session about each participant's progress or lapses, and incentives or sanctions will then be imposed.⁵³¹

The DTC has great latitude in determining the treatment course and conditions with which the participant must comply. In some instances, if progress made during treatment seems

TABLE 19: DRUG COURT TREATMENT AND REHABILITATION PROGRAM STATUS FROM START OF PROGRAM TO DECEMBER 2010

LOCATION	REFERRED BY COURT	ATTENDED SCREENING	DID NOT ATTEND	INELIGIBLE FOR THE PROGRAM	ELIGIBLE	DROPPED OUT	GRADUATED
Corporate Area	318	219	98	60	147	93	60
Saint James	326	299	27	53	319	88	122
Grand Total	644	518	125	113	466	181	182
% dropped out	28.1% 38.8% ^a						
% ineligible	17.5%						
% graduating	39.1% ^a						

Source: Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, "Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014," November 2014, 7 (Draft report provided to the authors in 2017).

^a Percentage of eligible participants.

Note: This table presents the most detailed information made available. It is reproduced from the source's table 1, the information for which was extracted from a data analysis conducted by the Ministry of Justice's Strategic Planning, Policy, Research and Evaluation Division in March 2011.

⁵²⁷ Stephane Jackson Haisley, "The Drug Treatment Court Concept: The Jamaican Drug Courts," *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 13. <https://openknowledge.worldbank.org/handle/10986/16609>.

⁵²⁸ Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 8.

⁵²⁹ *Ibid.*, Section 9.

⁵³⁰ *Ibid.*, Section 8.

⁵³¹ Stephane Jackson Haisley, "The Drug Treatment Court Concept: The Jamaican Drug Courts," *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 14. <https://openknowledge.worldbank.org/handle/10986/16609>.

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to be in jeopardy or if participants are considered a threat to themselves or the public, the DTC may impose detention as sanction. This is allowed under the Act, which gives the court the power to impose “such conditions as the Court deems fit . . . in relation to the offender’s participation in the prescribed treatment programme.”⁵³² This process is under constant review by the treatment team. Participants who object to the measures suggested by the team can ask to be released from the program and have their matters heard before the parish court.

Upon graduation, the DTC will discharge the participant in connection with the relevant offense, which may either be an absolute or conditional discharge.⁵³³ Although a recorded guilty plea is not a requirement for participation, there seems to be a general understanding that if there has been an “acknowledgement of guilt,”⁵³⁴ the court will impose a twelve-month probation period as a follow-up measure; even in the absence of such an acknowledgement, the DTC will still follow up with the graduate a few months after completion of the program before finally closing the matter.⁵³⁵ If the participant fails to complete the prescribed treatment, his or her case will be returned to the regular criminal procedure at the stage where it was suspended.⁵³⁶

Finally, it is important to note that in 2014, before amending its criminal law on cannabis possession and use, the government

of Jamaica enacted the Criminal Records (Rehabilitation of Offenders) (Amendment) Act⁵³⁷ to permit the expungement of convictions for possession of small quantities or the use of *ganja* and possession of *ganja* paraphernalia. Pursuant to this act, a person’s criminal record will be expunged once he or she applies to obtain a copy of his or her criminal record or his or her fingerprints are taken at any parish divisional headquarters of the Jamaica Constabulary Force.⁵³⁸

Participants

Data provided by the Ministry of Justice to the authors show that for the period 2001–2010,⁵³⁹ 644 candidates were referred by the DTCs in the Corporate Area (Kingston and St. Andrew parishes) and St. James parish locations, of whom 466 were admitted. Of those admitted, 182 were graduated.

Inconsistencies in the numbers observed in table 19⁵⁴⁰ seem to arise from the fact that the treatment course usually runs for a minimum of six months; thus, annual data involve different cohorts of participants. In any case, table 19 offers information about participation in Jamaica’s DTC program that is not otherwise available.

Monthly data compiled from the Corporate Area and St. James drug court locations show that, as of March 2011, fewer than 40 percent of eligible participants had actually graduated from the program since their inception; another 40 percent had

⁵³² Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 9(2).

⁵³³ *Ibid.*, Section 13(2).

⁵³⁴ It is not clear what an acknowledgement, but not a plea, of guilt entails, and this is not specifically mentioned in the legislation; however, the DTC does have great latitude in establishing conditions for participation.

⁵³⁵ Stephane Jackson Haisley, “The Drug Treatment Court Concept: The Jamaican Drug Courts,” *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 14, <https://openknowledge.worldbank.org/handle/10986/16609>.

⁵³⁶ Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 13(3).

⁵³⁷ Criminal Records (Rehabilitation of Offenders) (Amendment) Act, [http://www.japarliament.gov.jm/attachments/341_The%20Criminal%20Records%20\(%20Rehabilitation%20of%20Offenders\)%20\(Amendment\)%20Act,%202014.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Criminal%20Records%20(%20Rehabilitation%20of%20Offenders)%20(Amendment)%20Act,%202014.pdf).

⁵³⁸ Criminal Records (Rehabilitation of Offenders) (Amendment) Act and Order 2015.

⁵³⁹ Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, “Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014,” November 2014, 7, (draft report provided to the authors in 2017).

⁵⁴⁰ The “Eligible” column is interpreted in the source document as equal to admitted candidates, but the numbers under the “Dropped Out” and “Graduated” columns do not add up to the numbers under “Eligible.”

TABLE 20: DRUG COURT PARTICIPATION AS OF OCTOBER 31, 2014

LOCATION	CLIENTS REFERRED BY THE COURT	INELIGIBLE FOR PROGRAM	ELIGIBLE	DROPPED OUT	EXPELLED	GRADUATED	ACTIVE CLIENTS
Corporate Area	16	4	12	1	0	0	11
Saint Thomas ^a	28	4	12	3	4	0	17
Saint Catherine ^b	5	0	5	0	0	0	5
Saint James ^c	38	5	No Data	7 ^c	0	2	24
Total	87	13	29	11	4	2	57

Source: Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, “Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014,” November 2014, 13 (draft report provided to the authors in 2017).

^a In operation since January 2014.

^b In operation since June 2014.

^c Data were not provided for all variables due to resource constraints with regard to data entry activities.

dropped out. Graduation rates differed between the locations, with 38 percent of participants completing the program in the Corporate Area and 22 percent in St. James.⁵⁴¹

In 2014, the DTC program was expanded to two additional locations, in the parishes of St. Thomas (in operation since January 2014) and St. Catherine (in operation since June 2014), an expansion reflected by the numbers in table 20.

As of October 31, 2014, eighty-seven people had been referred to the four DTCs for that year. Some of those referred would have continued in the program into 2015, but the graduation rate is not specific to this group; those who graduated may have been in the program previously. No data are available for the DTC established in the Manchester parish.

Despite the lack of consistency in the data reported, it is important to point out the low graduation rates—the data from table 20 demonstrate graduation and dropout rates at similar levels. The Ministry of Justice’s draft report does not expand on reasons for these rates, although it does comment on issues such as lack of proper monitoring and evaluation mechanisms.

A treatment provider interviewed for this report noted additional reasons people might drop out of the program. In some instances, participants might enter the program to avoid a criminal record but are not personally convinced they have a drug problem.⁵⁴² Experience with drug courts in the United States suggests they may, indeed, not have a drug dependence issue.⁵⁴³ In such cases, the participant may find the rigorous requirements an imposition and be unable or unwilling to comply. The treatment provider also noted particular concern

⁵⁴¹ Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, “Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014,” November 2014, (draft report provided to the authors in 2017).

⁵⁴² It is important to consider, however, that some offenders may actually not be habitual drug users and/or drug dependent, despite being diverted to the drug court

⁵⁴³ For more information, please refer to the United States chapter of this report.

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about people who believe they need the program but are unable to dedicate themselves to “getting well” because of inability to meet some of their own basic needs, such as food and housing. In some cases, people leave the program because the schedule may interfere with their ability to keep their jobs, and they would rather leave than risk their employers’ knowing about their drug use.⁵⁴⁴

In 2015, the ratio of males to females seen in the adult DTC was 18 to 1. The drugs of choice were marijuana (65 percent), crack/cocaine (27 percent), and alcohol (8 percent). The data do not include details on the offenses for which these participants were brought before the court. As previously mentioned, Jamaica’s DDA decriminalized the possession and personal use of small amounts (up to two ounces) of cannabis and legalized its cultivation and consumption for religious, medicinal, and research purposes. A few days before the law came into effect, the Justice Ministry said it expected the legislation to have positive implications for Jamaica, including “reducing the heavy burden of cases on the Resident Magistrates’ Courts.”⁵⁴⁵ The lack of disaggregated data about offenses for which participants were brought to court is of concern, as it makes it difficult to monitor how the changes in the law affect DTC numbers. Moreover, it raises the question of whether people are in the DTC for actions that are no longer criminal offenses.

Treatment

In Jamaica’s DTC program, treatment is offered over a minimum six-month period in three phases, of approximately two months

each. The primary emphasis of phase one is detoxification and assessment, while phase two involves intensive treatment, and phase three focuses on the participant’s transition out of the program.⁵⁴⁶ The Regulations’ second schedule has prescribed a treatment program in which educational and individual and group counseling sessions feature prominently, but it is not possible to verify whether or not these sessions are implemented in practice, since very few details are publicly available about the treatment course in Jamaica’s DTCs.

Treatment does seem to be designed as an outpatient program relying heavily on drug testing.⁵⁴⁷ Even though the applicable legislation expressly indicates positive results should not necessarily result in expulsion from the program,⁵⁴⁸ abstinence remains a key requirement for progression through the treatment phases.⁵⁴⁹

According to the Counseling Team at the Maxfield Park Health Centre in Kingston, the treatment team is sensitive to changes in the home or at work that may affect the resilience of the participant, and it takes all these factors into consideration in the design and implementation of a treatment plan. Counselors also try to meet some of the most basic needs of participants who are without family or community support through the provision of care packages with toiletries and foodstuffs.⁵⁵⁰

The treatment provider will act as a representative of the Ministry of Health and is usually a consultant psychiatrist; the other members of the treatment team are a counselor

⁵⁴⁴ Information obtained from an interview with the counseling team at the Maxfield Park Health Centre in Kingston, Jamaica, conducted on December 21, 2016.

⁵⁴⁵ Damian Wilson, “Dangerous Drugs (Amendment) Act 2015 to Come into Effect April 2015,” Government of Jamaica, Jamaica Information Service, April 13, 2015, <http://jis.gov.jm/dangerous-drugs-amendment-act-2015-come-effect-april-15/> (accessed February 27, 2018).

⁵⁴⁶ Stephane Jackson Haisley, “The Drug Treatment Court Concept: The Jamaican Drug Courts,” *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 20–22; Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, “Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014,” November 2014, 14–15, (draft report provided to the authors in 2017).

⁵⁴⁷ Ibid.

⁵⁴⁸ The Drug Court (Treatment and Rehabilitation of Offenders) Regulations, Second Schedule.

⁵⁴⁹ Stephane Jackson Haisley, “The Drug Treatment Court Concept: The Jamaican Drug Courts,” *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 20–22; Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, “Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014,” November 2014, 14–15, (draft report provided to the authors in 2017).

⁵⁵⁰ Information obtained from an interview with the counseling team at the Maxfield Park Health Centre in Kingston, Jamaica, conducted on December 21, 2016.

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and an administrative secretary tasked with keeping records. Treatment centers include the University Hospital of the West Indies' Addiction Treatment Services Unit (formerly known as the Detoxification Unit),⁵⁵¹ the Richmond Fellowship Jamaica Ltd. (also known as Patricia House),⁵⁵² and Teen Challenge Jamaica.⁵⁵³

The treatment provider must inform the DTC about the participant's progress, and the participant is required to authorize the treatment provider to disclose private medical information as a condition for participation.⁵⁵⁴ The Act expressly determines that the provision of this information by the treatment provider should not constitute a breach of professional conduct/ethics, adding that the information should also not be admissible in any proceedings before a court, tribunal, or committee.⁵⁵⁵

Incentives and Sanctions

As in other jurisdictions, the DTC program in Jamaica places significant emphasis on the use of incentives, including "judicial praise and encouragement," to motivate participants to complete the program. When participants make their regular appearance in court, the treatment team, led by the judge, will offer words of congratulations and encouragement.⁵⁵⁶

While the Act allows great latitude in the resident magistrate's discretionary power to determine conditions for DTC participation, the Regulations establish a range of incentives and sanctions that may be applied. Incentives for those who maintain a satisfactory level of compliance may include specified privileges; change in the frequency of counseling or other treatment; decreased supervision; decreased frequency of drug testing; and/or change in the nature of vocational and social services the participant attends.⁵⁵⁷ For participants perceived to be failing the program, sanctions may include withdrawal of any privileges previously granted; change in the frequency of counseling or other treatment; increased supervision; increased frequency of drug testing; and/or change in the nature of vocational and social services the participant attends.⁵⁵⁸

Juvenile Drug Courts

The Kingston and St. Andrew parishes, which cover the Corporate Area, have started a pilot court for adolescents under the jurisdiction of the Family Court.⁵⁵⁹ Eligibility requirements are similar to those of the adult court, but with greater involvement of families in the rehabilitation of participants. The Children's Drug Treatment Court became operational in September 2014, and it sits every Friday. Six

⁵⁵¹ According to its website, "The programme combines psychoeducational and psychotherapeutic group activities with individual and family counseling. As part of their support system, clients are introduced to Narcotics Anonymous twice weekly." For more information, see <http://uhwi.gov.jm/services/addiction-treatment> (accessed January 31, 2018).

⁵⁵² The organization's website states that "this is a Street Based Intervention Programme, which meet [sic] the needs of drug users and other socially displaced persons living on the street. This is offered through the collaborated efforts of Richmond Fellowship Jamaica and the St. Stephen's United Church. Persons who use the service living on the streets are welcome to a hot meal, clothing, basic medical care and an opportunity to socialize." For more information, see <http://richmondfellowshipja.org/> (accessed January 31, 2018).

⁵⁵³ According to information on its website, Teen Challenge Jamaica is "a one-year residential, faith-based (Christian) rehabilitation program." For more information, see <http://www.teenchallengejamaica.com/> (accessed January 31, 2018).

⁵⁵⁴ Stephane Jackson Haisley, "The Drug Treatment Court Concept: The Jamaican Drug Courts," *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 20–22; Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, "Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014," November 2014, 20–21. (draft report provided to the authors in 2017).

⁵⁵⁵ The Drug Court (Treatment and Rehabilitation of Offenders) Act, Section 17(2).

⁵⁵⁶ Stephane Jackson Haisley, "The Drug Treatment Court Concept: The Jamaican Drug Courts," *Justice and Development Working Paper Series*, no. 20 (Washington, DC: World Bank, 2013), 14–15.

⁵⁵⁷ The Drug Court (Treatment and Rehabilitation of Offenders) Regulations, Section 6(2).

⁵⁵⁸ *Ibid.*, Section 6(3).

⁵⁵⁹ Court Management Services, "The Kingston & St. Andrew Family Court," <http://cms.gov.jm/wp-content/uploads/2017/11/Family-Court-Brochure.pdf> (accessed February 27, 2018).

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participants successfully completed the program in July 2016, and, as of December 2016, thirty-seven were in the Children's Drug Treatment Court.⁵⁶⁰

According to a June 2017 news report, the Jamaican government had plans to expand its juvenile drug court to other parishes,⁵⁶¹ although no official steps had been taken as of this writing.

Monitoring and Evaluation

Other than a draft report provided to the authors by the Ministry of Justice, no official independent evaluation of the DTC program in Jamaica is publicly available. The draft report does, however, offer important insight into what that ministry sees as serious shortcomings of the program, pointing to the low graduation rates, severe financial and human resources constraints, and lack of proper data collection as the most important issues needing to be addressed. The Ministry of Justice's draft report goes on to conclude that,

since 2001, approximately 871 persons were referred by the Courts to the Drug Court Treatment and Rehabilitation Programme. Of note, 207 (24%) of the persons have since dropped-out of the Programme while 217 (25%) are graduates. There is a further 17% who did not attend screening or counseling sessions.

From a quantitative or positivist perspective, these results will be viewed as dismal, since the aim of the Programme is to divert drug offenders to a more therapeutic intervention geared towards reduction of recidivism, abstinence from substance abuse and the a *[sic]* transformed holistic individual leading productive lives. However, the quantitative or measurable success rate of the programme is the graduation rate, which is only 25% over a 13 year period.

Nonetheless, proponents of a qualitative or interpretive perspective will argue that a graduation rate of 25% should not be taken lightly, but must be understood within the context of scarce resources juxtaposed against a myriad of psychosocial issues that cannot be solved singlehandedly by the Drug Court Treatment and Rehabilitation Programme, but requires an holistic approach.

Therefore, given the existing financial and human resource constraints, from a qualitative perspective, a 25% graduation rate should be seen as the baseline going forward for the Drug Treatment Court, after its 13 years existence as a pilot programme. Additionally, without the benefit of a robust Monitoring and Evaluation Framework to assess the qualitative benefits of the programme, these results should be viewed with the aim of improving them in the near future.

The implications of these results from a health and social justice point of view is that, the Jamaican populace benefited from diverting 25% of drug offenders from custodial sentencing to therapeutic intervention, thereby reducing the incidence of recidivism and expenses due to penal care. More importantly, these graduates (25%) were channeled into a more positive and alternative lifestyle. Consequently, these former drug offenders/substance abusers, their families and community networks benefited in the form of employment potentials, reduction of substance related offenses and incidents of criminal activities being committed in their immediate environment.

Forward looking, will require, coordination, data

⁵⁶⁰ National Council on Drug Abuse, *Drug Court Treatment Case Management Report*, 2016, provided to the authors.

⁵⁶¹ Nadine Wilson-Harris, "Juvenile Drug Treatment Programme to Go Islandwide," *The Gleaner*, June 21, 2017, <http://jamaica-gleaner.com/article/news/20170621/juvenile-drug-treatment-programme-go-islandwide> (accessed February 27, 2018).

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standardisation and the use of Process and Outcome Evaluations to assess the real benefit of the programme to participants with regard to Programme delivery and receipt of benefits by clients to ensure the Drug Court Treatment and Rehabilitation Programme is indeed achieving its objective of reducing substance abuse and associated criminal behaviours in Jamaica. Through the use of a Tracer Study, it would be instructive to conduct follow-up assessments with these graduates in subsequent intervals (for example one year, then three to five years later) to confirm their commitment to abstinence.

Finally, the data has demonstrated the need for tighter control mechanisms as it relates to follow-ups and monitoring of referrals during interventions and Court visits to assess the participants' status in order for due diligence to take effect. The data has also revealed that the Drug Treatment Courts require significant resources for follow-through with regard to drop-outs, expulsions, and non-attendance. The effects of these intervening variables are not captured by a quantitative/statistical analysis as provided by this Briefing Paper.⁵⁶²

Little information is available on the budgetary allocation to the DTC,⁵⁶³ as the court is treated as part of the parish court system and uses the resources of existing parish courts, being

held in their facilities one day a week. International partners have included the Canadian government, OAS, EU and USAID. Local partners include the Association of Family and Friends of Substance Abusers (AFAFOSA)⁵⁶⁴ and RISE Life Management.

Although many of those involved in the DTCs in Jamaica consider them a success, this opinion seems to be based on anecdotal evidence rather than actual data. It is important to highlight that the lack of consistent and comparable data on which an objective assessment can be based renders such assertions unverifiable. No data are available, for instance, on the actual rates of recidivism or on the cost of the program. More important, as already mentioned, all the information that is available comes from government sources, and no independent evaluation has been conducted.

CAYMAN ISLANDS

Similar to the governments of other countries in the region, that of the Cayman Islands had been interested in establishing a drug court program since the early 2000s. A 2002 report by the judicial administration of that country indicated drug courts were a priority and that efforts to establish them—including new legislation—were underway.⁵⁶⁵ The Cayman Islands' drug court program, named Drug Rehabilitation Court, was established in October 2007 following the passage in 2006 of the Drug Rehabilitation Court Law (the "Law")⁵⁶⁶ and later regulated by the Drug Rehabilitation Court Regulations enacted in 2008.⁵⁶⁷

⁵⁶² Ministry of Justice, Strategic Planning, Policy, Research and Evaluation Division, "Assessment of Drug Court Treatment and Rehabilitation Program as of October 31, 2014," November 2014, 18–19, (draft report provided to the authors in 2017).

⁵⁶³ The budget of the Ministry of Justice does not include a line item for the DTC.

⁵⁶⁴ AFAFOSA is a nongovernmental networking organization that complements the DTC program by involving families and friends, by providing additional support to participants, both during and after the program, and by making donations to and finding suitable employment for graduates. For more information, see <http://afafosa.synthasite.com/afafosa-in-jamaica.php> (accessed February 27, 2018).

⁵⁶⁵ Government of the Cayman Islands Judicial Administration, *Annual Report 2002*, July 31, 2002, 7, 32, 72, <https://www.judicial.ky/wp-content/uploads/publications/reports/CourtAnnualReport2002.pdf> (accessed February 28, 2018).

⁵⁶⁶ Drug Rehabilitation Court Law (2015 Revision), <http://www.gov.ky/portal/pls/portal/docs/1/12018121.PDF>. This law was originally enacted in 2006 and last consolidated and revised on July 2, 2015, and it is remarkably similar to Jamaica's Drug Court (Treatment and Rehabilitation of Offenders) Act.

⁵⁶⁷ Drug Rehabilitation Court Regulations, <http://www.gov.ky/portal/pls/portal/docs/1/11525965.PDF>.

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In the Cayman Islands, the Law allows for a DTC to be established in the sitting of a Summary Court and/or the Grand Court.⁵⁶⁸ This differs from the model adopted, for instance, in Jamaica, where the jurisdiction of the drug court is only at the lower level of the Parish Court; this could give the DTC in the Cayman Islands jurisdiction over a wider range of cases than the DTCs in Jamaica and other countries of the English-speaking Caribbean. In practice, the DTC as is established now is under the jurisdiction of the Summary Court.⁵⁶⁹ The Cayman legislation also makes provision for the appointment of a duty (defense) counsel⁵⁷⁰ to provide legal advocacy and representation for a participant who is without a lawyer, a provision not found in the other Caribbean islands. Like Bermuda, the Cayman Islands require the defendant to plead guilty before being diverted to the DTC.⁵⁷¹ People who enter a plea of not guilty will have their charges heard in a regular sitting of the applicable court.

The chief justice of the Cayman Islands provides oversight for the court, while a judge or magistrate runs the court's day-to-day operations. The drug court team consists of counselors, probation officers, police, crown counsel, prosecution counsel, and approved treatment providers. Under the Law, an approved treatment provider refers to either the department of government responsible for drug counseling services or an individual or organization approved by the cabinet to carry out prescribed treatment programs for the purposes of the act.

Although publicly available information about the operation of the drug court program in the Cayman Islands is sparse, a May 2016 news report indicated conditions for participation may be extremely burdensome, although the report presented this as a positive aspect. Quoting a magistrate presiding over a graduation ceremony, the report went on to mention that, "as well as 25 court appearances, 24 probation meetings and 200 days of wearing an electronic monitor, the individual had to make three phone calls per week for nine months to see if he had been selected to come in for a drug test. He also had to undergo 30 tests outside of drug court, 12 tests in drug court, and 76 counselling sessions, including 63 group and 13 individual."⁵⁷²

The Canadian government has provided active support in the establishment of the Cayman Islands' DTC program, sponsoring local and international training. In 2007, for instance, Canada assisted with training through a preparatory workshop involving the judiciary, law enforcement, counselors, and government ministers.⁵⁷³ Canada also funded study tours, including visits of high-level members of the judiciary to the Toronto Drug Treatment Court, and has provided ongoing program support. Local partners include the NGOs Hope for Today and the Bridge Foundation. Major funding is provided in the Caymanian government's recurrent budget.

⁵⁶⁸ Drug Rehabilitation Court Law, Section 4. According to the Cayman Island Judicial Administration, the Summary Court "hears civil and criminal matters including Family, Youth and Coroner's Courts," and the Grand Court "hears applications for judicial review, cases on criminal, civil, family and estate matters and appeals from the Summary Courts. In addition to the general Civil and Criminal Divisions, it has three specialist Divisions: the Admiralty Division, the Family Division and the Financial Services Division." Cayman Island Judicial Administration, "Organisation of the Judicature," <https://www.judicial.ky/organisation-of-the-judicature> (accessed February 28, 2018).

⁵⁶⁹ Cayman Islands Judicial Administration, "Summary Court," <https://www.judicial.ky/courts/summary-court> (accessed February 28, 2018).

⁵⁷⁰ Drug Rehabilitation Court Law, Section 7(3) and (4).

⁵⁷¹ *Ibid.*, Section 12(1).

⁵⁷² Carol Winker, "Drug Court Numbers Surprise Magistrate," *Cayman Compass*, May 4, 2016, <https://www.caymancompass.com/2016/05/04/drug-court-numbers-surprise-magistrate/> (accessed February 28, 2018).

⁵⁷³ Government of the Cayman Islands, "Drug Court Workshop," press release, February 2007, <http://www.gov.ky/portal/page/portal/cighome/pressroom/archive/200702> (accessed February 28, 2018).

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Criminal Process

To be considered eligible for the DTC program in the Cayman Islands, a potential participant must be over the age of seventeen, dependent on the use of drugs, charged with a relevant offense, and must meet as well any other criteria that might be prescribed by the court.⁵⁷⁴ Relevant offenses exclude violent conduct and sexual assault. They include theft and burglary and offenses under the Misuse of Drugs Law (2014 revision), including possession of a controlled drug⁵⁷⁵ and drug paraphernalia, and minor traffic offenses when committed by a person with a drug dependence.⁵⁷⁶

People charged with the relevant offenses may be referred to the drug court before sentencing, after pleading guilty.⁵⁷⁷ The magistrate decides if the applicant is eligible following assessment.⁵⁷⁸ Once admitted, the drug court team reviews the participant's progress weekly, biweekly, or at longer intervals, depending on the phase of the program. Intake and assessment are completed by the Department of Counselling Services, which mandates the frequency of court appearances and conducts regular and random drug screens. Monitoring is carried out by probation services, with oversight of treatment provided through DTCs.⁵⁷⁹

TABLE 21: DRUG REHABILITATION COURT PARTICIPATION, 2007–2010

DRUG REHABILITATION COURT	2007	2008	2009	2010	TOTAL
Number of applications received	64	76	94	74	308
Number of applicants placed on Prescribed Treatment Program Orders	37	35	57	40	169
Number of applicants screened out as ineligible or unsuitable	23	38	36	32	129
Number of withdrawals	4	1	1	2	8
Deceased	0	2	0	0	2
Total	64	76	94	74	308
March graduates	–	–	9	16	25
September graduates	–	–	8	7	15
Total	–	–	17	23	40

Source: The Cayman Islands Judiciary, "Judicial and Court Overview—January to December 2010," January 2011, 8, <https://www.judicial.ky/wp-content/uploads/publications/annual-statistics/Annual-Court-Statistics-revised-2010-3.pdf>.

⁵⁷⁴ Drug Rehabilitation Court Law, Section 8.

⁵⁷⁵ All the substances listed in Schedule I of Misuse of Drugs Law (2014 revision), <http://www.gov.ky/portal/pls/portal/docs/1/11527975.PDF>.

⁵⁷⁶ Drug Rehabilitation Court Law, Section 2.

⁵⁷⁷ Drug Rehabilitation Court Law, Section 10.

⁵⁷⁸ *Ibid.*, sections 10–11.

⁵⁷⁹ Alexandra Bodden and Colleen Brown, "The Many Faces of Mental Health in the Cayman Islands: Past, Present and Future," remarks presented at the UCCI Caribbean Anti-Corruption and Ethics Conference, Grand Cayman, March 19–21, 2014, <http://www.ucciconference.ky/papers/Bodden%20-%20Brown%20-%20The%20Many%20Faces%20of%20Mental%20Health%20in%20the%20Cayman%20Islands%20-%20Past%20Present%20and%20Future.pdf>.

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After completion of a twelve-month, four-stage program, participants' sentences are reduced or waived.⁵⁸⁰ Even after successful completion of the prescribed treatment, however, the drug court may discharge participants only on a conditional basis. The conditional period can last for up to two years, during which the drug court may require the graduated participant to fulfill additional steps it deems necessary for continued rehabilitation.⁵⁸¹

Participants

In-depth information about participants in the Cayman Islands' DTC program is lacking, but a few statistics provided by the country's judiciary administration offer a brief overview of candidates and graduation rates. Table 21 provides a more detailed breakdown of the candidacy-participation-graduation continuum for 2007–2010.

As we can see, in the four-year period covered by table 21, only forty people graduated, representing 13 percent of the offenders who were referred and approximately 24 percent of those who were accepted into the program. No explanation is given for the low graduation rate. Table 22 shows the numbers for applications and graduations provided most recently by the judiciary administration for 2007–2016, but it does not offer any details to contextualize these numbers. It is also not possible to calculate a graduation rate because the number of applicants ultimately accepted in the drug court program is not

clear.

No information is publicly available regarding the profiles of participants, recidivism rates, or any other benchmarks that would allow for a more detailed analysis and contextualization of the Cayman Islands' DTC program.

Treatment

No information about the actual treatment offered and standards of care is available as of writing, but the Drug Rehabilitation Court Regulations establish the following requirements for treatment plans:

- An individual written treatment and recovery plan for the drug offender, based on the information obtained in the process of intake and assessment
- Provision for educational sessions, group counseling sessions, sessions between the drug offender and the approved treatment provider, and a treatment and recovery plan
- Each plan oriented toward and centered on the drug offender for whom the treatment program is prescribed
- A statement of the problems to be addressed, goals that address the problem, steps to be taken

TABLE 22: DRUG REHABILITATION COURT PARTICIPATION, 2007–2016

DRUG REHABILITATION COURT	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL
Applications	64	78	94	74	60	54	45	41	54	44	608
Graduates	–	0	17	23	15	13	6	10	8	13	105

Source: Adapted from The Cayman Islands Judiciary, "Judicial and Court Statistics 2007–2017," January 2017, [https://www.judicial.ky/wp-content/uploads/publications/annual-statistics/JudicialandCourtStatistics2016-Finaljan5\(3\).docx](https://www.judicial.ky/wp-content/uploads/publications/annual-statistics/JudicialandCourtStatistics2016-Finaljan5(3).docx).

⁵⁸⁰ Ibid.

⁵⁸¹ Drug Rehabilitation Court Regulations, Section 6.

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by the approved treatment provider and the drug offender to achieve the goals, target dates for the achievement of steps and goals, and any other steps, treatment, or conditions as deemed appropriate by the drug court

- Provision for periodic review
- Provision for contingency management and motivation
- Provision for residential treatment where necessary.⁵⁸²

As with other countries discussed in this chapter, drug testing is widely used, and abstinence is a key component of drug court participation.

Interestingly, the Law determines that any house or building can be declared by the Cabinet to be, and can cease to be, an approved drug treatment center for the purposes of supervising and controlling an offender's participation in a prescribed treatment program under the Law.⁵⁸³ As of this writing, three treatment providers were approved by the applicable legislation:⁵⁸⁴ both the Caribbean Haven Residential Treatment Facilities and the Counselling Center of the Department of Counselling Services, and the Mental Health Clinic of the Health Services Authority at the George Town Hospital.

The Drug Rehabilitation Court and the Mental Health Court seem to overlap somewhat, although how the cross-referral occurs between these specialty courts is not clear:

Defendants attending the monthly informal Mental Health Court are there because of

criminal charges such as possession and or consumption of illegal drugs or burglary, theft, damage to property or threatening violence; often a combination. The Cayman Islands do not have a mental hospital or, apart from Northward Prison, a secure facility for offenders with mental health problems. The prison has two forensic psychologists on staff. Caribbean Haven takes individuals with drug problems but not offenders with dual diagnoses such as drug and mental health issues. Often probation officers work with family members of the offender.⁵⁸⁵

The drug court may order a participant to make a financial contribution toward the cost of the treatment, but this charge may be waived by the approved treatment provider if the latter believes the participant is unable to pay.⁵⁸⁶

Incentives and Sanctions

The incentives and sanctions established in the legislation supporting the Cayman Islands' DTC are very similar to those adopted in Jamaica. The DTC has flexibility in determining how and when incentives and sanctions are to be employed (and what conditions may be linked to them), and the list provided in the Drug Rehabilitation Court Law is not exhaustive. Some of the rewards a DTC in the Cayman Islands may grant its participants include specified privileges; change in the frequency of counseling or other treatment; decreased supervision; decreased frequency of drug testing; decrease in any monetary penalty payable to the drug court; and change in the nature or frequency of the vocational and social services the offender is required to attend.⁵⁸⁷

⁵⁸² Drug Rehabilitation Court Regulations, Section 8.

⁵⁸³ Drug Rehabilitation Court Law, Section 9.

⁵⁸⁴ Drug Rehabilitation Court Regulations, Schedule.

⁵⁸⁵ Government of the Cayman Islands, Ministry of Home Affairs, "Department of Community Rehabilitation," <http://www.mha.gov.ky/agencies/department-of-community-rehabilitation/> (accessed February 28, 2018).

⁵⁸⁶ Drug Rehabilitation Court Law, Section 20.

⁵⁸⁷ Ibid., Section 14(1).

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In the event the drug court finds the participant out of compliance with the treatment program (based on an assessment by the treatment provider after consultation with a probation officer), sanctions may be imposed that include withdrawal of any privileges; change in the frequency of counseling or other treatment; increased supervision; increased frequency of drug testing; requirement to pay a monetary penalty to the drug court; imprisonment for up to fourteen days; and change in the nature or frequency of the vocational and social services the offender is required to attend.⁵⁸⁸

Juvenile Drug Courts

No information is available about the establishment of a DTC program targeting adolescents in the Cayman Islands. While the country's judicial system does have a Juvenile Court with jurisdiction over offenses committed by those younger than seventeen years of age,⁵⁸⁹ a specialized drug court for this population does not seem to be currently in operation.

Monitoring and Evaluation

No formal evaluation or cost-benefit analysis of the DTC has been conducted.

TRINIDAD AND TOBAGO

The first step taken by the government of Trinidad and Tobago toward adopting drug courts dates back to December 2010, when it joined CICAD's DTC program for the Americas.⁵⁹⁰ A DTC Steering Committee⁵⁹¹ was established in 2011 to plan the implementation of a program for nonviolent offenders with substance abuse problems,⁵⁹² and many training opportunities for representatives from different entities involved with the DTC process in the country were made available between January 2011 and December 2012 through CICAD and the Caribbean Community (CARICOM), with the training provided by Canada, the United States, and Jamaica.⁵⁹³

A pilot adult drug treatment court was launched in the city of San Fernando after the signing of a memorandum of understanding (MOU) by the government of Trinidad and Tobago and CICAD in September 2012,⁵⁹⁴ with plans for two additional DTCs in the cities of Tunapuna and Port of Spain.⁵⁹⁵ One of the goals of the pilot project was to inform future legislation on this topic; since no specific legislation has been enacted so far, the DTC program operates under the MOU,⁵⁹⁶ following procedures outlined in the Drug Treatment Court Steering Committee's "A Policy to Establish Drug Treatment Courts in Trinidad and Tobago" (the "Policy").⁵⁹⁷ The information provided in this

⁵⁸⁸ *Ibid.*, Section 14(2).

⁵⁸⁹ Government of the Cayman Islands, "The Judicial Branch," <http://www.gov.ky/portal/page/portal/cighome/government/judicialbranch> (accessed February 28, 2018).

⁵⁹⁰ Organization of American States, "Drug Treatment Courts, Countries: Trinidad and Tobago," http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/trinidad_and_tobago_eng.asp (accessed February 28, 2018).

⁵⁹¹ The Drug Treatment Court Steering Committee was convened by the chief justice of Trinidad and Tobago and had representatives of "the Judiciary, the Magistracy, the Office of the Director of Public Prosecutions, the Ministry of National Security including the Police and the National Drug Council (NDC), the Ministry of Justice—the Prisons Service, the Legal Unit and the Forensic Sciences Centre, the Probation Department, and the Ministry of Health." CICAD, "Trinidad and Tobago Comes Full Circle with OAS Support, Welcoming First Graduates of Pilot Drug Treatment Court," July 10, 2014, http://www.cicad.oas.org/Main/Template.asp?File=/news/2014/fi_0710_eng.asp (accessed February 28, 2018).

⁵⁹² Judiciary of the Republic of Trinidad and Tobago, press release, July 9, 2012, <http://www.ttlawcourts.org/index.php/newsroom/news/3157-chief-justice-hosts-discussion-on-facility.html> (accessed February 28, 2018).

⁵⁹³ CICAD, "Trinidad and Tobago Comes Full Circle with a Pilot Project After a Year of Preparation," September 11, 2012, http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/activities/trinidad/mou2012_eng.asp (accessed February 28, 2018).

⁵⁹⁴ *Ibid.*

⁵⁹⁵ Judiciary of the Republic of Trinidad and Tobago, "Chief Justice Address on Drug Treatment Courts Pilot Programme," press release, September 11, 2012, <http://www.ttlawcourts.org/index.php/newsroom-69/speeches/3308-chief-justice-address-on-> (accessed February 28, 2018).

⁵⁹⁶ This document was not publicly available as of this writing.

⁵⁹⁷ Government of Trinidad and Tobago, Drug Treatment Court Steering Committee, "A Policy to Establish Drug Treatment Courts in Trinidad and Tobago," http://www.cicad.oas.org/fortalecimiento_institucional/dtca/activities/Trinidad/FINAL%20DTC.%20TRINIDAD%20AND%20TOBAGO.%20ENGLISH%20PDF.pdf.

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section regarding the general structure of the drug court in Trinidad and Tobago relies on the framework provided by the Policy, unless otherwise noted.

As in Jamaica and Bermuda, the DTC is a lower court in Trinidad and Tobago,⁵⁹⁸ operating within the Magistrate's Court.⁵⁹⁹ In Trinidad and Tobago, duty (defense) counsel is included on the treatment team, along with the judge (or magistrate), the prosecutors, the treatment provider, a police officer, and a probation officer. The court uses a post-adjudicatory model, whereby the participant has to plead guilty before being deemed eligible for the program.⁶⁰⁰

Following up on the original plans, a second DTC was established in the city of Tunapuna in 2014,⁶⁰¹ and there are plans for a juvenile DTC to be established in Port of Spain.⁶⁰²

International partners have included OAS/CICAD and the Canadian Association of Drug Treatment Court Professionals (CADTCP). These organizations, along with the government, provide funding for the drug court. Local partnerships reflect a close working relationship with the Bail Boys Project,⁶⁰³ which was operational before the launch of the drug court. NGOs

offering drug treatment services, such as Rebirth House,⁶⁰⁴ supplement the activities of the court.

Criminal Process

Oversight for the court is provided by the chief justice of Trinidad and Tobago and managed by the Drug Treatment Court Steering Committee, with the director of public prosecutions recommending admission. Diversion occurs after the person appears before a judge and enters a guilty plea.

Only those charged with nonviolent criminal offenses "where there is demonstrable drug dependence and where the DPP recommends admission"⁶⁰⁵ are eligible for the program. Offenses include minor traffic offenses, offenses under the Dangerous Drug Act involving simple possession of drugs, and larceny.⁶⁰⁶

No specific legislation has yet been passed covering the operation of the DTC. The Policy requires treatment to be "conducted by an approved substance abuse treatment provider in accordance with the standards, procedures, and diagnostic criteria designed to provide effective and cost-beneficial use of available resources."⁶⁰⁷

⁵⁹⁸ Ibid., 13

⁵⁹⁹ Geoffrey Henderson, "The Drug Treatment Court Pilot Project in Trinidad and Tobago," presentation at Seminar on the OAS Report: The Drug Problem in the Americas, UWI, St. Augustine, July 22, 2013, <https://sta.uwi.edu/iir/documents/OASWorkshopDTCPIlotProject.pdf> (accessed February 28, 2018).

⁶⁰⁰ Government of Trinidad and Tobago, Drug Treatment Court Steering Committee, "A Policy to Establish Drug Treatment Courts in Trinidad and Tobago," 13, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/activities/Trinidad/FINAL%20DTC.%20TRINIDAD%20AND%20TOBAGO.%20ENGLISH%20PDF.pdf.

⁶⁰¹ "Drug Treatment Court for Tunapuna," *Newsday*, July 11, 2014, <http://archives.newsday.co.tt/2014/07/11/drug-treatment-court-for-tunapuna/> (accessed February 28, 2018).

⁶⁰² Geoffrey Henderson, "The Drug Treatment Court Pilot Project in Trinidad and Tobago," presentation at Seminar on the OAS Report: The Drug Problem in the Americas, UWI, St. Augustine, July 22, 2013, <https://sta.uwi.edu/iir/documents/OASWorkshopDTCPIlotProject.pdf> (accessed February 28, 2018).

⁶⁰³ For more information, see Catherine Ali, "The Bail Boys Court: Conflict Transformation and Restorative Justice in Trinidad," *Caribbean Journal of International Relations & Diplomacy* 1, no. 4 (December 2013), 3–22, <https://journals.sta.uwi.edu/ojs/index.php/iir/article/view/413>.

⁶⁰⁴ For more information, see Jimmy Peters, "Rebirth House—An Overview of the Organization," <http://www.cicad.oas.org/apps/Document.aspx?id=3349> (accessed February 28, 2018).

⁶⁰⁵ Government of Trinidad and Tobago, Drug Treatment Court Steering Committee, "A Policy to Establish Drug Treatment Courts in Trinidad and Tobago," 15, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/activities/Trinidad/FINAL%20DTC.%20TRINIDAD%20AND%20TOBAGO.%20ENGLISH%20PDF.pdf.

⁶⁰⁶ Ibid.

⁶⁰⁷ Ibid., 17.

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Participants

The only information currently available dates back to 2013.⁶⁰⁸ It indicates that, at the time, fourteen people had been referred to the program, all of them men.⁶⁰⁹ Of those, four were admitted for treatment, and two had their applications refused, although no information is available on the reasons for refusal. The first participants were admitted in January 2013, and by July 2014 five participants had graduated in the first cohort.⁶¹⁰ A second cohort graduated in June 2015, but is not clear how many participants graduated in that occasion.⁶¹¹ No further information is available as of writing of this report.

Treatment

Treatment includes drug rehabilitation, training in life skills, and academic support focused on literacy. The variation in skills among providers requires the use of inpatient and outpatient drug treatment facilities. The program uses counselors, though no psychiatrist is assigned to the court. People with mental health issues are not admitted to undergo treatment in the DTCs but are supposed to be referred to the Ministry of Health.⁶¹²

The Policy notes that upon graduation a person shall not be liable to prosecution for any offense comprising the unlawful possession or use of drugs as a result of any admission made for the purpose of seeking a referral to the DTC; for

the purpose of satisfying the DTC that he should participate in a prescribed treatment program; or in connection with the supervision of the prescribed treatment program. Further, any such admission shall not be admissible in evidence against the person making it, in any proceedings brought as a result of the admission.⁶¹³ Persons who fail the DTC program reenter the criminal justice system to the court of original jurisdiction.⁶¹⁴

Incentives and Sanctions

The Policy mentions the use of incentives and sanctions as part of the DTC program, but it does not detail what specific measures are to be used.

Juvenile Drug Courts

The Policy provides the general framework for the establishment of juvenile drug treatment courts, which follow a structure similar to that of the adult DTC. Although there were plans to establish a juvenile drug court in Port of Spain, as of the writing of this report no such court had been established.⁶¹⁵

Monitoring and Evaluation

Although the Policy briefly mentions ongoing evaluation as a component of a successful DTC, it does not detail any monitoring and evaluation mechanism to be followed by the program in Trinidad and Tobago.

⁶⁰⁸ Geoffrey Henderson, "The Drug Treatment Court Pilot Project in Trinidad and Tobago," presentation at Seminar on the OAS Report: The Drug Problem in the Americas, UWI, St. Augustine, July 22, 2013, <https://sta.uwi.edu/iir/documents/OASWorkshopDTCPIlotProject.pdf> (accessed February 28, 2018).

⁶⁰⁹ The referrals were from three areas: eleven from San Fernando (the location of the pilot DTC); two from Mayaro; and one from Point Fortin, thus indicating that offenders from different jurisdictions may be referred to a DTC even if no DTC has been established at the local Magistrate's Court.

⁶¹⁰ "Trinidad and Tobago Welcomes First Group of Graduates from Pilot Drug Treatment Court," *South Florida Caribbean News*, July 10, 2014, <https://sflcn.com/trinidad-and-tobago-welcomes-first-group-of-graduates-from-pilot-drug-treatment-court/> (accessed February 28, 2018).

⁶¹¹ Judiciary of Trinidad and Tobago, "Address by the Honourable the Chief Justice of the Republic of Trinidad and Tobago, Mr. Justice Ivor Archie, ORTT to the 2nd Graduation of the Drug Treatment Court Programme," Media Release, July 17, 2015, <http://www.ttlawcourts.org/index.php/newsroom-69/news/5628-address-by-the-honourable-the-chief-justice-of-the-republic-of-trinidad-and-tobago-mr-justice-ivor-archie-ortt-to-the-2nd-graduation-of-the-drug-treatment-court-programme> (accessed February 28, 2018).

⁶¹² Government of Trinidad and Tobago, Drug Treatment Court Steering Committee, "A Policy to Establish Drug Treatment Courts in Trinidad and Tobago," 15, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/activities/Trinidad/FINAL%20DTC.%20TRINIDAD%20AND%20TOBAGO.%20ENGLISH%20PDF.pdf.

⁶¹³ *Ibid.*, 16.

⁶¹⁴ *Ibid.*

⁶¹⁵ Rhondor Dowlal, "Chief Justice: Two Juvenile Courts by Year's End," *Guardian*, April 30, 2016, <http://www.guardian.co.tt/news/2016-04-30/chief-justice-two-juvenile-courts-year%E2%80%99s-end> (accessed February 28, 2018). For more information about the Juvenile Court Project, please see http://www.jcp.tt/about/project_overview (accessed July 23, 2018).

BARBADOS

Barbados was one of the first countries to join CICAD's DTC Program for the Americas in December 2010.⁶¹⁶ Representatives from that country participated in CICAD-sponsored training throughout 2012–2013, with the government officially signing an MOU for the establishment of a DTC with CICAD in March 2013.⁶¹⁷ The MOU formalized the participation of Barbados in CICAD's hemispheric project focusing on the expansion of DTCs and detailed the technical assistance that would be provided by CICAD to support the initiative. Training was provided by the OAS and the Canadian government and included study tours to Toronto and Vancouver by high-level members of the judiciary. Attendance at an OAS sensitization workshop held for CARICOM members was followed by a training workshop facilitated by practitioners from Jamaica and Trinidad, Caribbean countries with active DTCs.⁶¹⁸ After signing the MOU, the Barbados Drug Treatment Court Steering Committee was formed and tasked with putting the DTC infrastructure in place and establishing a court team.⁶¹⁹

A pilot project at the Supreme Court in the city of Bridgetown was inaugurated on February 11, 2014.⁶²⁰ The first sitting of the Barbados DTC was held in January 14, 2015.⁶²¹ To date, Barbados has one DTC in Bridgetown, with a Steering

Committee that oversees its functions. Committee members include treatment providers at the Counselling Centre for Addiction Support Alternative (CASA) and Verdun House and representatives from the Barbados Bar Association, the Royal Barbados Police Force, the Probation Department, the Ministry of Health, the Forensic Science Centre, the Office of the Attorney General, and the National Council on Substance Abuse.⁶²²

The establishment of a DTC pilot project in Barbados relied heavily on international support from CICAD, Canada, the United States, Jamaica, and Trinidad and Tobago.⁶²³

What follows is a very simple overview of the few sources available on the subject, for information purposes only; no official data have been disclosed by the government.

Criminal Process and Participants

Initially, sixteen people were assessed and referred to the court, with twelve (eleven males and one female, ranging in age between nineteen and thirty-seven years) ultimately enrolling in the program. All had been arrested for marijuana possession. In January 2016, the first cohort of participants (eleven) graduated.⁶²⁴ A new cohort of twenty people started

⁶¹⁶ Organization of American States, "Drug Treatment Courts, Countries: Barbados," http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/barbados_eng.asp (accessed February 28, 2018).

⁶¹⁷ Ibid.

⁶¹⁸ CICAD, "Overview of the Drug Treatment Court in Barbados," March 2015, http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/barbados_eng.asp (accessed February 28, 2018).

⁶¹⁹ Marston C. D. Gibson, "The Drug Treatment Court in Barbados—An Overview," remarks presented at the High Level Dialogue on Alternatives to Incarceration for Drug-Related Offenses, Washington, DC, December 1–3, 2015, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/03_Gibson_Overview-DrugTreatmentCourt_Barbados.ppt.

⁶²⁰ CICAD, "Overview of the Drug Treatment Court in Barbados," March 2015, http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/countries/barbados_eng.asp (accessed February 28, 2018).

⁶²¹ Marston C. D. Gibson, "The Drug Treatment Court in Barbados—An Overview," remarks presented at the High Level Dialogue on Alternatives to Incarceration for Drug-Related Offenses, Washington, DC, December 1–3, 2015, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/03_Gibson_Overview-DrugTreatmentCourt_Barbados.ppt.

⁶²² Ibid.

⁶²³ Ibid.

⁶²⁴ CICAD, "Barbados Drug Treatment Court Graduates First Cohort of Participants," January 27, 2016, http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/activities/barbados/dtc_graduation_jan2016_eng.asp (accessed February 28, 2018).

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the program in December 2016; cocaine as well as marijuana were associated with those arrests.⁶²⁵

Only people charged with nonviolent offenses whose drug dependence was a factor in the commission of their crimes are eligible for the program. The details of the Barbados drug court procedures and requirements are unclear, as neither legislation nor a policy document yet provides this information. Among other points that could not be clarified in this report is whether offenders diverted to the DTC are required to plead guilty before participation. The overall post-admission process, however, is the same as in other Caribbean countries. Participants are required to undergo a treatment program, and each case is individually assessed at pre-court sessions. Participants are also monitored through urine testing and regular judicial oversight. CASA is currently the sole provider of counseling services.⁶²⁶

Treatment

The only information available on treatment is that

the Barbados Drug Treatment Court has received counseling support from a registered charity, the Centre for Counseling Addiction Support Alternatives (CASA), with clients visiting the Centre at least once per week. The reports are distributed to the Court Team and discussed in the pre-court meetings. CASA has also held sessions for the

family of some of the clients to integrate them into the treatment and rehabilitation process.⁶²⁷

As with all countries in the region, drug testing is used copiously throughout treatment, with testing conducted by the government's Forensic Science Center.⁶²⁸ The US Embassy in Barbados has provided support in the form of urine test kits.⁶²⁹

Incentives and Sanctions

No information is publicly available on incentives and sanctions used in the DTC program in Barbados.

Juvenile Drug Courts

There are no juvenile drug courts in Barbados as of writing.

Monitoring and Evaluation

The Office of the Attorney General's Criminal Justice Research Planning Unit was tasked with monitoring and evaluating the pilot DTC in Barbados and expected to deliver a report in 2016.⁶³⁰ No evaluation report, however, has been made public. A cost-benefit analysis has also not been conducted, but the chief justice said in 2016 that the annual cost of incarceration at a Barbadian prison is approximately Bds\$30,000 per inmate.⁶³¹

Although the program is relatively recent and an evaluation has yet to be conducted, a few challenges have already been identified, with the most pressing being a lack of dedicated funds and dependence on one counseling service.⁶³² Barbados

⁶²⁵ "Efforts of Drug Treatment Court Lauded," *The Barbados Advocate*, September 12, 2016, <https://www.barbadosadvocate.com/news/efforts-drug-treatment-court-lauded> (accessed February 28, 2018).

⁶²⁶ Marston C. D. Gibson, "The Drug Treatment Court in Barbados—An Overview," remarks presented at the High Level Dialogue on Alternatives to Incarceration for Drug-Related Offenses, Washington, DC, December 1–3, 2015, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/03_Gibson_Overview-DrugTreatmentCourt_Barbados.ppt.

⁶²⁷ Ibid.

⁶²⁸ Ibid.

⁶²⁹ Ibid.

⁶³⁰ Ibid.

⁶³¹ "Efforts of Drug Treatment Court Lauded," *The Barbados Advocate*, September 12, 2016, <https://www.barbadosadvocate.com/news/efforts-drug-treatment-court-lauded> (accessed February 28, 2018).

⁶³² Marston C. D. Gibson, "The Drug Treatment Court in Barbados—An Overview," remarks presented at the High Level Dialogue on Alternatives to Incarceration for Drug-Related Offenses, Washington, DC, December 1–3, 2015, http://www.cicad.oas.org/fortalecimiento_institucional/dtca/ai_dialog/documents/Day2/03_Gibson_Overview-DrugTreatmentCourt_Barbados.ppt.

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seems to be turning to the private sector in search of support, but it is not yet clear how the government–private sector relationship will work in this area.⁶³³

BELIZE

Belize has been taking steps to establish drug courts in the country for several years. In 2014, members of Belize's judicial branch (judges, prosecutors, and attorneys) received training at an event organized by CICAD and the Canadian Association of Drug Treatment Court Professionals in Vancouver.⁶³⁴ That same year, the government of Belize and members of CICAD worked on an MOU for the establishment of a drug treatment court; that document seems to have been signed, although no information about the date of signing or a copy of the MOU was publicly available at the time of writing.⁶³⁵

At the time of writing, the chief justice of Belize, Kenneth Benjamin, was leading the preparation of legislation and regulations for the installation of the program during 2017.⁶³⁶ A September 2017 news report seemed to indicate a pilot project had been established, but no official information is available.⁶³⁷

It is relevant to note that the government of Belize was also investigating the possibility of decriminalizing the recreational use of cannabis in the country. In March 2012, the government tasked a small group of public and private Belizean citizens with conducting research and making recommendations

to help Belize's policymakers consider the amendment of that country's legislation to decriminalize possession of up to ten grams of marijuana. This group, which became the Decriminalization of Marijuana Committee (DOMC), presented a final report in February 2015.⁶³⁸ The main recommendation supported decriminalization of possession of up to ten grams of marijuana.⁶³⁹ Of particular relevance was a specific mention of drug courts in the context of the DOMC's recommendations:

Consultations are underway and proposals being formulated for the establishment of a Drug Court. The Drug court will be geared towards rehabilitation rather than retribution. An offender at the first appearance will be given the opportunity to elect whether he wishes to be dealt with through the process of the drug court or through the Magistrates' Court. In effect, if he elects the Drug Court a plea will not be taken from him, he will be medically assessed and assigned to some form of rehabilitative treatment. If he is not receptive to the treatment or fails or withdraws his consent to complete the treatment, his case will be reverted back to the Magistrate's Court where it would be dealt with criminally. If, however, he has completed the rehabilitation program, the matter will not be recorded and he will be released without having pled to a charge or been tried for one. The overriding objective is to rehabilitate an offender who has been identified as a drug abuser. It means therefore that not every offender will be

⁶³³ Ibid.

⁶³⁴ CICAD, "OAS Trains Judges and Prosecutors in the Caribbean on Alternatives to Incarceration," February, 2012, http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/activities/trainjudges_caribbean_2012_eng.asp (accessed February 24, 2018).

⁶³⁵ US Department of State, Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report*, Vol. 1, March 2016, 107, <https://www.state.gov/documents/organization/253655.pdf> (accessed February 24, 2018).

⁶³⁶ Declarations of Belize's Chief Justice in a court session. "Drug Treatment Court," *PlusTV Belize*, <https://www.youtube.com/watch?v=D6EmwvclUE0> (accessed February 24, 2018).

⁶³⁷ William Ysaguirre, "Belize's Drug Treatment Court Still in Pilot Phase?" *The Reporter*, September 29, 2017, <http://www.reporter.bz/general/belizes-drug-treatment-court-still-in-pilot-phase/> (accessed February 24, 2018).

⁶³⁸ Decriminalization of Marijuana Committee, "Final Report," February 2015, <http://amandala.com.bz/news/wp-content/uploads/2015/02/DOMC-Report-Feb-20-2015.pdf>.

⁶³⁹ Ibid., 38–39

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channeled to the Drug Court, only those who have a problem with drug abuse.

The DOMC believes that this initiative is laudable but is substantially different from the decriminalization of marijuana since the drug court entertains matters involving illegal action perpetuated [*sic*] by someone under the influence of any substance, legal or illegal, in possession or otherwise. Decriminalization specifically affects only those persons found in possession of up to 10 grams or [*sic*] marijuana and such possession would not subject the person to the drug court.⁶⁴⁰

Two years after DOMC's proposals, a bill to decriminalize possession and use of small amounts of cannabis was introduced to parliament in August 2017 and signed into law in November of that year.⁶⁴¹ The new law amended the Misuse of Drugs Act "to decriminalize the possession of cannabis in amounts not exceeding ten grammes to provide for the imposition of monetary and non-recordable penalties for the possession of cannabis in such amounts occurring on school premises, in specified circumstances, to decriminalize the smoking of cannabis on private premises; and to provide for matters connected therewith or incidental thereto."⁶⁴²

The support for decriminalization of possession of marijuana is particularly relevant in the context of drug courts, since many of the participants in the Latin American and Caribbean region have been referred to drug courts for possession-

related offenses. Considering Belize's movement toward decriminalization, it remains to be seen how this might impact their potential establishment of a drug court program.

OTHER COUNTRIES

According to the information available, the Bahamas is also considering implementation of a drug court program. In November 2016, in his speech during the 60th Regular Session of the CICAD's opening ceremony, the Bahamas's Minister of National Security stated that his country "also anticipates the establishment of Drug Treatment Courts to provide an alternative to incarceration for drug dependent offenders through treatment and rehabilitation."⁶⁴³

The country's National Anti-Drug Strategy for 2017–2021 provides more background about the years-long effort to establish a DTC program in the Bahamas.⁶⁴⁴ A delegation from the country first participated in CICAD-sponsored training in 2011. Since then, there has been a concerted effort to establish drug courts in the country, with the latest steps being the granting of authorization by the government for a pilot project in 2013 and the completion of a draft Drug Treatment Court Bill and applicable regulation in 2015.⁶⁴⁵ It is not clear why the pilot project has not been launched yet and how the proposed bill is advancing in the legislative process, but the National Anti-Drug Strategy mentions that the Bahamas is now in the critical stages of the establishment process, and that this remains a priority for the country.⁶⁴⁶

⁶⁴⁰ Ibid., 37.

⁶⁴¹ "Marijuana bill signed into law," *Breaking Belize News*, November 2, 2017, <https://www.breakingbelizenews.com/2017/11/02/marijuana-bill-signed-law/> (accessed September 25, 2018); "It is Now Legal to Have and Use Marijuana in Belize – But with Restrictions," *Caribbean360*, November 6, 2017, <http://www.caribbean360.com/news/now-officially-legal-use-marijuana-belize-restrictions> (accessed September 25, 2018).

⁶⁴² Misuse of Drugs (Amendment) Act, <https://nationalassembly.gov.bz/wp-content/uploads/2017/04/Act-no.-47-of-2017-Misuse-of-Drugs-Amendment-1.pdf>.

⁶⁴³ Bernard J. Nottage, "Statement by Hon. Dr. Bernard J. Nottage, M.P., Minister of National Security of The Commonwealth of The Bahamas at the CICAD 60th Regular Session Inauguration Ceremony," presented at the 60th Regular Session of the CICAD, November 2, 2016, 4, <http://www.cicad.oas.org/apps/Document.aspx?id=4048> (accessed February 24, 2018).

⁶⁴⁴ The Commonwealth of the Bahamas, Ministry of National Security, National Anti-Drug Secretariat, *National Anti-Drug Strategy 2017–2021*, https://www.bahamas.gov.bs/wps/wcm/connect/b1197f59-5900-4226-94a9-af511351b1bf/National+anti-Drug+Strategy+2017-2021.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=b1197f59-5900-4226-94a9-af511351b1bf (accessed February 24, 2018).

⁶⁴⁵ Ibid., 26.

⁶⁴⁶ Ibid., 26–27.

GENERAL COMMENTS

There is a serious deficiency in the quantity and quality of information publicly available about drug courts in the English-speaking Caribbean, with few exceptions. The information that is available is, for the most part, provided by government sources either as official reports or during presentations at international events. In addition, there has been no independent evaluation of the drug court programs in the Caribbean region. In light of this, all information reviewed in this chapter was provided herein as a brief mapping and overview and should not be construed as an independent assessment.

The governments of the countries in which drug courts have been established in the Caribbean consistently state that the main purpose of their DTC programs is to provide an alternative to incarceration for those charged with drug possession or nonviolent drug-related offenses. The legal basis for their operation varies, with DTCs being governed by specific legislation or amendments to existing legislation in some countries, or guided by policy statements or MOUs signed with the OAS/CICAD in others.⁶⁴⁷

The jurisdiction of DTCs is not uniform across the region, with countries establishing DTCs at different judicial levels and participants being diverted at distinct stages of the criminal procedure. This impacts what happens to participants in case they fail to complete the DTC program, as they can either be redirected to the traditional courts for the continuation of the criminal procedure (as is the case in Jamaica, which does not require a guilty plea prior to participation) or to be sentenced (as it happens in all Caribbean countries included in this overview that require participants to enter a guilty plea prior to participation in the drug court).

DTCs are headed by the judiciary, with health services having

a clear role in Jamaica, Bermuda, and the Cayman Islands. The available information seems to indicate that all Caribbean DTCs (i) have been based on the principle of therapeutic jurisprudence, (ii) use a team approach to its work, and (iii) adopt a phased approach to treatment. A few countries appear to have recently added a final phase that focuses on transition and aftercare support for one year, under the purview of probation services. The stated aim appears to be to enhance the long-term success of the graduates, but the lack of independent verification – or even the publication of information by the government – does not allow verification of whether or not these goals are being met.

The information that is available does not clarify whether or not DTCs are offering what is considered acceptable standard treatment by medical professionals, based on scientifically proven methods of treating drug dependence. Evidence of the quality of the treatment offered to participants while in the DTC program is insufficient. In many cases, treatment protocols are not clearly documented, making it difficult to assess whether or not the treatment provided in these systems is appropriate for people with substance abuse issues. The countries' apparent over-reliance on drug testing and abstinence requirements may be an indication that these programs fall short of internationally accepted treatment standards, although more information is needed for a complete assessment.

Some DTCs in the region have embedded in their supporting legislation an express protection for treatment providers who disclose participants' medical information in open settings. This is of grave concern due to the clear infringement of an intrinsic component of the right to health – the confidentiality of personal health data.⁶⁴⁸ The discussion of participants' drug use and treatment plans in open court is considered part of the DTC operation, but it clearly compromises their basic rights.⁶⁴⁹

⁶⁴⁷ Trinidad and Tobago, in its Policy, has indicated an intention to introduce legislation establishing the DTC as part of its judicial system.

⁶⁴⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the Right to Health, paras. 12(b). This right is also protected by Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR).

⁶⁴⁹ See, e.g., Physicians for Human Rights, *Neither Justice nor Treatment*, 16.

Drug Courts in the English-Speaking Caribbean: A Brief Overview

In terms of participation, the data that are available point to low participation numbers. Only about half of those referred into drug courts in the Caribbean will go on to take part in the program, pointing to a need to understand the factors that prevent people from entering the programs. Not all jurisdictions provide consistent information on participation and graduation rates, as well as information on the reasons why people may opt not to participate or do not complete the program. Counselors report some people are concerned about the possible loss of their jobs due to frequent absence to attend treatment and court. As research in the United States has shown, this and other costs of participation in the program are underestimated and not sufficiently considered in the design of treatment. While a few countries in the Caribbean do expect participants to contribute financially to their treatment under the drug court, this does not seem to be a consistent feature of the DTC program in the region and it is not clear if it provides a barrier to participation in those countries.

Although enthusiastically supported by the officials involved with their implementation across the Caribbean, it is important to underscore the lack of independent data sources from which to assess objectively the effectiveness of the DTC approach. The absence of consistent data collected over time, as well as of independent external evaluations of drug treatment courts, makes drawing conclusions about them extremely difficult. Lack of a standardized data collection system limits the ability to assess many aspects of drug courts' operations, such as participation rates, their costs and benefits, and whether they have an impact on recidivism rates. Among other assessment indicators, monitoring and evaluation is needed to determine whether the DTC programs in the Caribbean are, in fact, addressing the issues that are pointed as main drivers for their creation: offering an effective alternative to incarceration, reducing recidivism rates, promoting a health-focused approach rather than a criminal justice-based approach, and doing it all in a cost-effective manner when compared to traditional incarceration costs.

DRUG COURTS IN THE ENGLISH-SPEAKING CARIBBEAN – MAIN FINDINGS

- Much as in Latin America, detailed and current data are lacking in almost all the Caribbean countries studied, and no independent evaluations of drug courts have been done in those countries. The information available is mostly from government sources.
- The earliest drug court programs in the Caribbean were established in 2001 in Bermuda and Jamaica (making these the oldest programs in the Latin America and Caribbean region), with other countries (the Cayman Islands, Trinidad and Tobago, Barbados, and Belize) establishing drug courts in 2012 or later.
- The drug court model is more advanced in three countries (Bermuda, Jamaica, and the Cayman Islands), and in an initial phase in three others (Trinidad and Tobago, Barbados, and Belize). The Bahamas seems to be interested in establishing drug courts.
- Drug courts in the Caribbean are not specialized courts as in the United States but, rather, operate as specific programs under local lower (parish/magistrate's) courts, as in Latin America. The drug treatment courts in Caribbean countries operate under different legal structures. Bermuda, the Cayman Islands, and Jamaica have enacted specific legislation, while Barbados, Belize, and Trinidad and Tobago have signed memoranda of understanding with CICAD. The Canadian government has directly supported the implementation of drug courts in a few Caribbean countries.
- The basic requirements for admission to drug court are to be charged with an eligible offense and receive a diagnosis of problematic drug use related to the commission of the crime.
- Only people charged with what the local jurisdictions consider to be minor and/or nonviolent crimes are accepted in the programs, with the exception of Jamaica, where people charged with certain more serious crimes may be eligible. Participants must be first-time offenders.
- Jamaica is the only country in the English-speaking Caribbean where a guilty plea is not a requirement for admission.
- The information available suggests that few participants graduate from Caribbean drug courts.
- The drug courts in the region most commonly address crimes against property and drug possession.
- Based on available information, simple possession is one of the most frequent crimes in drug court programs that include drug offenses.
- Most participants in drug court programs are male.
- Juvenile courts have been established in Jamaica, and reports indicate the Cayman Islands and Trinidad and Tobago are exploring the possibility of establishing such programs.
- Many programs carry harsh penalties as sanctions during the course of treatment.
- Participation in Caribbean drug courts typically requires that participants remain drug free, and they rely on drug testing to assess compliance, with sanctions imposed for positive drug tests.
- Information about treatment standards and options available is scarce, but our research suggests most countries in the region lack the capacity to provide appropriate treatment to all program participants.

CONCLUSIONS AND RECOMMENDATIONS

Consensus is growing across the Americas on the need for drug law reform and alternatives to criminal sanctions for certain categories of drug offenses. These alternatives include measures that enable people to stay out of the criminal justice system in the first place, such as decriminalization of drug use and possession and other minor drug crimes and law enforcement diversion toward services outside the criminal justice system. Drug courts have been promoted as an effective alternative to incarceration in response to drug use, possession of small amounts of drugs, and other minor, drug-related crimes.

In addition to providing treatment to those who may need it, drug courts are intended to reduce prison overcrowding and the human and financial costs associated with incarceration. They are thus seen as part of a larger move toward a more health-oriented, humane approach to drug users in which they are treated as patients, not criminals. Yet there is an inherent tension between treatment as a health intervention and treatment in drug courts, which remain squarely within the criminal justice system and whose measures of success may be at odds with the measures of success in treatment. This is the frame of reference for the analysis presented in this report.

Proponents of drug courts assert that they are cost-effective; they reduce recidivism as well as time spent in detention (prison or jail); and they offer drug treatment as an alternative to incarceration to people whose drug use fuels their criminal activity. The substantial diversity among drug court models complicates efforts to evaluate their impact on the problems they aim to address, but our review of the existing evidence shows the claim that drug courts provide an alternative to incarceration is debatable. We found that drug courts, as implemented in the United States, are a costly, cumbersome

intervention that has limited, if any, impact on reducing incarceration. Indeed, for many participants, they may have the opposite effect by increasing criminal justice supervision and subjecting those who fail to graduate to harsher penalties than they might otherwise have received, thus becoming an *adjunct* and rather than an *alternative* to incarceration. Moreover, evidence about their effectiveness in reducing cost, recidivism, and time spent in prison is mixed. The financial and human costs to drug court participants are also steep and disproportionately burdensome to the poor and racial minorities.

The evidence also does not support drug courts as an appropriate public health intervention. Drug court judges are empowered to make treatment decisions that should be the domain of health care professionals, choosing from limited or counterproductive options that may threaten the health and lives of participants as well as expose confidential information about their health and drug use.

Some could argue that mixed evidence points to the existence of “good” and “bad” drug courts, thus implying the evidence should not be construed as establishing drug courts as a problematic model but simply as having localized implementation issues. A general overview of best practices designed to improve implementation (such as the NADCP’s Key Components), however, indicates that even if drug courts adhered to these standards they would still fall short of providing the necessary medical care and health and human rights protections to participants. Furthermore, an analysis of the drug court model must be contextualized within the larger issue of dichotomizing the response to drug-related crimes in terms of either treatment or punishment, particularly when considering that most people who use drugs do not need treatment and that the problem for many who do is their interaction with the criminal justice system in the first place.

Other than the inherent problem with mandating treatment

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when voluntary treatment options are not widely available and easily accessible, a basic flaw of the model is that it presupposes a link between the commission of a crime and the consumption of a substance, even though no causal nexus has been proved between criminal behavior and drug use. Additionally, a paradox underlies the model: on the one hand, the person is seen as irrational, ill, and under the control of drugs; on the other, he or she must act as a rational actor who is able to abandon drug consumption abruptly.

One of the main stated objectives of drug courts is to ensure access to comprehensive substance abuse treatment for those who need it. Our review of the available evidence shows, however, that, in practice, many drug court participants do not need treatment; at the same time, treatment may be unavailable to or inappropriate for those who do. Evidence we have found indicates the resort to drug courts may be an appropriate measure for certain offenders—that is, people charged with serious crimes linked to their drug dependence who would otherwise serve prison terms. What is often not considered is that most drug courts do not meet this definition.

More important, we must remember that drug dependence treatment is a type of medical care. People who are dependent on drugs have a right, under international human rights law, to relevant health care services that are available, physically and economically accessible without discrimination, gender appropriate, culturally and ethically acceptable, designed to respect confidentiality, scientifically and medically appropriate, and of good quality.⁶⁵⁰ By mediating treatment through the criminal justice system, drug courts aggressively insert the penal system into people's private and family lives and into their decisions about their health and medical care, reproducing and perpetuating the criminalization of people who use drugs and those involved in low-level drug-related crimes.

As an overall framework through which to think about drug courts, we should not lose sight of the fact that no individuals, regardless of their criminal records, should be punished for their medical conditions, nor should they have to allow courts to make their medical decisions for them or rely on the criminal justice system for access to treatment that could perhaps have prevented their incarceration in the first place.

Further complicating this scenario is the concerted effort to export drug courts as a model that should be adopted by other countries. Despite the evidence from the United States experience cited above, countries in Latin America and the Caribbean have embraced drug courts as a promising solution to the over-incarceration problem that plagues the region. This development is problematic not only because governments in the region apparently are not conducting proper investigations before adopting drug courts as a public policy model, but also because the very specific social, economic, and political context of Latin American and Caribbean countries immediately complicates the adoption of public policies designed by other, more developed countries with different legal systems. The lack, for example, of scientifically and medically appropriate treatment options and the reliance on private providers is a serious issue in the Latin America and Caribbean region, where numerous cases of abuse and human rights violations by treatment providers have been documented.⁶⁵¹ Furthermore, health systems do not have enough capacity to provide health and social services to all the people who need them; in these cases, private and religious institutions with scarce knowledge about drug dependence, treatment, and medical standards are used. A reliance on abstinence-based treatment programs and drug testing is also of concern.

On the criminal justice side of the issue, many drug courts in the region still focus on simple drug possession as a crime,

⁶⁵⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, adopted August 11, 2000, para. 12.

⁶⁵¹ See, for example, Débora Upegui-Hernández and Rafael A. Torruella, *Humiliation and Abuses in Drug "Treatment" Centers in Puerto Rico* (Puerto Rico: Intercambios Puerto Rico, 2015), <http://intercambiospr.org/wp-content/uploads/2015/11/Humiliation-Abuse-in-Drug-Treatment-in-Puerto-Rico-Intercambios-PR-2015.pdf>; Roxane Saucier, "No Health No Help: Abuse as Drug Rehabilitation in Latin America & The Caribbean" (New York: Open Society Foundations, 2016), <https://www.opensocietyfoundations.org/sites/default/files/no-health-no-help-en-21060403.pdf>.

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contributing to the criminalization and stigmatization of people who use drugs. Research about drug courts in Latin America and the Caribbean also underscores the need for a more rigorous data management system that can provide sufficient information for a comprehensive assessment of their effectiveness in the region. Currently, research is too dependent on anecdotal evidence and not focused on evidence-based analysis.

Drug courts have become an entrenched part of the US criminal justice response to a broad range of drug-related crimes—many, if not most, of which are minor crimes related to drug possession and use. Given their presence in all US states and territories and substantial government and institutional financial and technical support, a major overhaul of the system in the United States is unlikely, at least in the near future. Equally unlikely is any significant reduction in incarceration for drug-related crimes in the absence of serious criminal justice reform and changes to drug laws, which are among the main contributors to mass incarceration for low-level drug offenses. Current trends also point to a disproportionate enthusiasm for the model by governments of Latin America and Caribbean countries, with drug courts deeply embedded in the legal systems of a few but still in their early stages in others.

Undoubtedly, the creation of alternatives to the criminal justice system for drug-related offenses is urgently needed, and countries should focus on moving away from an excessive reliance on incarceration as a panacea. Nonetheless, a close examination of the United States as a case study does not support the drug court model as the most appropriate solution for governments genuinely focused on addressing this issue, since in some respects it continues to criminalize drug consumption and prioritize a criminal approach to drug dependence over a health approach.

Hence, this report presents a series of recommendations that should be seriously considered by countries concerned

with mass incarceration and intent on moving away from overreliance on criminal justice responses to drug use. We developed the recommendations with two groups in mind: countries that have not established drug courts or in which they are in early stages, and countries in which drug courts are more established and their continuation is overwhelming supported, thus making it difficult (but not impossible) to address the issues raised here.

RECOMMENDATIONS

Any serious attempt to provide an effective alternative to incarceration should start with the decriminalization of drug use and possession for personal use. This will facilitate access to voluntary treatment by removing the fear of arrest. In the interim, governments should take measures to ensure drug dependence is treated as a public health rather than a criminal issue and to minimize the impact of criminal justice involvement and discrimination faced by people with drug arrests or convictions.

Implementing the following recommendations may help move countries toward these goals.

Health-Oriented Approaches to Drug Use and Dependence

- Governments should take legislative and other measures to ensure treatment is available, physically and economically accessible, gender appropriate, culturally and ethically acceptable, designed to respect confidentiality, scientifically and medically appropriate, and of good quality to people dependent on drugs. To this end, governments should do the following:
 - Provide financial and technical resources to expand and improve comprehensive harm-reduction services in communities, including

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evidence-based drug treatment programs that are not linked to the criminal justice system.

– Provide greater oversight to private sector treatment and rehabilitation services to ensure they are of adequate quality; that evidence-based practices are used; and that serious abuses, such as solitary confinement, torture, sexual abuse, and forced or unpaid labor, do not take place.

– Distinguish between drug use and drug dependence and recognize that not all drug use is problematic or requires treatment to address it.

Alternative Approaches to Criminal Justice Involvement

- Governments should take necessary legislative and other measures to ensure people who commit minor or nonviolent drug offenses and are in need of treatment are directed, prior to arrest or the opening of a criminal proceeding, to community-based services tailored to their specific needs. Law enforcement–assisted diversion programs in the United States, which have been shown to reduce recidivism, time spent in prison or jail, and related costs significantly, can be useful models for such initiatives.

- Law enforcement and judicial personnel should be provided with information and training about drug use and dependence, harm-reduction measures, and available health and social services so they can direct people with drug dependence to appropriate services outside of and unlinked to the criminal justice system.

- Governments should ensure women and men have equal access to diversion programs, regardless of race or ethnic backgrounds.

- Drug use and minor drug crimes among juveniles should be treated outside of the criminal justice system. Treatment interventions and any sanctions must take into account the best interests of the child and ensure information about treatment and prevention is provided, and that criminal justice interventions are a last resort.

While the main conclusion of this report is that drug courts are not an appropriate solution for the issues they were ostensibly designed to address, measures could be put in place to minimize the negative impacts of their implementation. Such measures include prioritizing the eligibility of those charged with serious criminal offenses who would benefit from drug treatment, ensuring access to evidence-based drug treatment, and taking advantage of other forms of alternatives to incarceration, such as community service or job training, among others.

In countries in which drug courts are already in place and embedded in the legal system, the following recommendations should be taken into account to mitigate unintended negative consequences of their operation.

Legal Framework

- Drug courts should target people who have been charged with serious offenses, including violent crimes, that otherwise would result in incarceration, and who would benefit from drug dependence treatment.

- The existence of a criminal record and the nature of the offense should not render a potential participant ineligible, as is often the case.

- A person should not have to plead guilty to a

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criminal offense as a condition for entering a drug court program.

- A person who does not have a drug dependence problem should not be channeled into drug court and should, instead, benefit from other alternatives to incarceration for drug-related offenses.
- No individual should be diverted to a drug court for drug use or possession for personal use. In countries where drug use or possession remains illegal, alternatives to the criminal justice system, such as education, fines, or community service, should replace other forms of punishment or incarceration.

Treatment Provision

- Evidence-based and good-quality treatment programs must be available and easily accessible to all. Treatment should follow internationally accepted norms and standards, including the recognition that drug dependence is a chronic and recurring disease.
- Returning to drug use is a normal part of the recovery process and should not be the basis for dismissal from a program or the imposition of sanctions, such as detention or more frequent court appearances or drug testing.
- An individual should only be accepted into a drug court if rights- and evidence-based treatment is immediately available. People should not be diverted to drug courts if they will be placed on waiting lists for treatment.
- Drug courts should take into account the specific needs of women and tailor treatment

programs to their needs. For pregnant women or mothers, treatment facilities should provide child care, transportation, prenatal care, and other special programs, as needed.

- Drug testing can discourage participation in treatment programs, and its use should be discouraged. If it is used, no punitive actions should be taken for failing a drug test.
- Opioid-dependent drug court participants should have access to medication-assisted treatment with methadone or buprenorphine. Methadone or buprenorphine patients should not be forced to stop treatment as a condition for entering a drug court program.
- To ensure better long-term results, drug court programs should be coordinated with programs that provide support services, such as skills training, education, and assistance in obtaining housing and employment.

Mitigation of Potential Harms

- Participation in drug court should not be dependent on paying fines, fees, or any other costs, nor should failure to do so be criminally sanctioned. The length of the program and treatment schedule should accommodate participants' needs and should not unnecessarily interfere with employment.
- If home visits are mandated by the drug court, they should be carried out by social workers (not law enforcement personnel) and be conducted discreetly, so as to protect the privacy of participants and their families and not expose them to social stigma and discrimination.

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- The shaming of drug court participants during public hearings is demeaning and further stigmatizes those who use drugs. It should be avoided at all costs.
- Measures must be taken to ensure drug courts do not lead to expanding the number of people being detained and prosecuted for low-level drug offenses, as has been documented in some US jurisdictions.
- Measures must be taken to ensure a person who “fails” or chooses to leave drug court does not end up with a harsher punishment than would have been received had the person not opted to participate in the first place.

Guarantee of Fundamental Rights

- Potential participants in drug court programs should be provided with complete and accurate information on possible sanctions for the crime allegedly committed, the duration and requirements of the programs, and sufficient time to make an informed decision about whether to participate.
- The requirement to plead guilty as a condition for participation should be eliminated.
- All defendants should be guaranteed the opportunity to have adequate and effective defense, including access to legal aid. As many defendants do not have the financial resources to pay their defense costs, governments should ensure public defenders are adequately funded, at a rate at least comparable to prosecutors, and have the skills, resources, and time necessary to defend their clients properly.

- Participants in drug court programs should not be required to waive doctor–patient confidentiality or attorney–client privilege as a condition of their participation.

Monitoring and Evaluation

- Sound monitoring and evaluation mechanisms should be incorporated into existing drug court programs.
- Mechanisms should be established to ensure accurate recordkeeping and the consistent collection of comparable data over time. Such records should include the types of or reasons for sanctions imposed, net reductions (or increases) in time spent in custody, completion rates, recidivism rates, and the quality of the treatment services provided.
- Recorded data should be publicly available and used to analyze the reasons candidates are accepted or rejected for participation in drug courts, dropout rates, low levels of participation, and potential race- or gender-based biases.
- All such studies should be conducted through an intersectional lens, taking into consideration the gender, age, race, and other characteristics of the participants in their analyses.
- In addition to the conduct by governments of rigorous official evaluations, independent experts with no vested interests in the programs should also be tasked with evaluating and assessing the impact of drug courts.

