

Can Drug Courts Help to Reduce Prison and Jail Populations?

By
ERIC L. SEVIGNY,
HAROLD A. POLLACK,
and
PETER REUTER

Drug courts have been widely praised as an important tool for reducing prison and jail populations by diverting drug-involved offenders into treatment rather than incarceration. Yet only a small share of offenders presenting with drug abuse or dependence are processed in drug courts. This study uses inmate self-report surveys from 2002 and 2004 to examine characteristics of the prison and jail populations in the United States and assess why so many drug-involved offenders are incarcerated. Our analysis shows that four factors have prevented drug courts from substantially lowering the flow into prisons and jails. In descending order of importance, these are: drug courts' tight eligibility requirements, specific sentencing requirements, legal consequences of program noncompliance, and constraints in drug court capacity and funding. Drug courts will only be able to help lower prison and jail populations if substantial changes are made in eligibility and sentencing rules.

Keywords: drug courts; eligibility criteria; prison and jail populations; alternatives to incarceration

The U.S. “war on drugs” has markedly increased incarceration rates since the 1980s, as a greater number of drug-using offenders were sent to prison and jail for increasingly long periods of time (Blumstein and Beck 1999; Caulkins and Chandler 2006). The repercussions of this buildup remain with us today in the form of historically large incarcerated populations. What is more, a majority of offenders incarcerated for both drug and nondrug crimes either abused or were addicted to illegal drugs (Karberg and James 2005; Mumola and Karberg 2006), and there is reasonable evidence that substance use—especially frequent and heavy use—is associated with greater criminality (Bennett, Holloway, and Farrington 2008).

Against this backdrop, interest has grown in programs that combine community-based drug treatment with justice system oversight as an alternative to incarceration. Drug courts, in

DOI: 10.1177/0002716213476258

particular, have emerged as the dominant national model of therapeutic jurisprudence. What began as a single drug court in Miami, Florida, in 1989 now encompasses (as of 2009) 2,459 programs that operate in every state and almost half of all U.S. counties (Franco 2010; Huddleston and Marlowe 2011). Although other diversion programs exist—including Treatment Alternatives to Street Crime (TASC), Drug Treatment Alternatives to Prison (DTAP), and Breaking the Cycle (Belenko 1999; Bull 2003)—no other model has been implemented to the national scale of drug courts, and in many cases these other programs have been incorporated into the growing drug court system (Anglin, Longshore, and Turner 1999; Bull 2003). Drug courts now operate in a wide cross-section of U.S. communities, and the model has successfully expanded into other domains, including juvenile, drunk driving, reentry, mental health, domestic violence, and veterans courts (Huddleston and Marlowe 2011).

As locally initiated interventions, drug courts vary greatly in their specific strategies, focus, and populations served. In general, drug courts couple community-based drug treatment with judicial supervision as an alternative to either prosecution (for pre-adjudication programs) or sentencing (for post-adjudication programs) (General Accounting Office 1997). The typical drug court operates by initially screening recent arrestees for program eligibility. Eligible arrestees are then offered entry into the drug court with the incentive of reduced or dismissed charges upon successful program completion. Drug courts generally consist of drug treatment, judicial monitoring of program progress, regular drug testing, and the use of graduated sanctions for program noncompliance.

Drug courts emerged and proliferated because they had broad appeal across the range of stakeholders concerned with drug policy. Originated during the crack epidemic when the population of drug-involved offenders was expanding rapidly, these programs offered some promise to judges and policymakers as a

Eric L. Sevigny is an assistant professor in the Department of Criminology and Criminal Justice at the University of South Carolina. His research focuses on drug policy, particularly around issues of sentencing and incarceration; the measurement of drug use consequences; and the collateral consequences of mass incarceration.

Harold A. Pollack is the Helen Ross Professor at the School of Social Service Administration at the University of Chicago. He is also codirector of The University of Chicago Crime Lab. He has published widely at the interface between poverty policy and public health. His recent research concerns HIV and hepatitis prevention efforts for injection drug users, drug abuse and dependence among welfare recipients and pregnant women, infant mortality prevention, and child health.

Peter Reuter is a professor in the School of Public Policy and in the Department of Criminology at the University of Maryland and is a senior economist at RAND. His research focuses primarily on drug policy, both domestic and international; money laundering controls; and illegal markets generally. His recent books include Cannabis Policy: Moving beyond Stalemate (Oxford University Press 2010) (with R. Room, B. Fischer, W. Hall, and S. Lenton) and The World Heroin Market: Can Supply Be Cut? (Oxford University Press 2009) (with L. Paoli and V. Greenfield).

strategy to conserve prison and jail bed space while retaining close community monitoring of criminal offenders (Fluellen and Trone 2000). Drug courts also held considerable appeal to treatment and public health communities, offering the possibility of closer coordination between criminal justice agencies and treatment providers that served the same offending populations. Finally, drug courts held considerable appeal to public defenders and to advocates of less punitive drug policies who wished to support credible alternatives to incarceration.

Buoyed by such collective support, drug courts have also fostered more expansive aspirations for correctional system reform. However, drug courts, like many other social service innovations, face familiar challenges associated with serving (or monitoring) severely disadvantaged or criminally active populations. For one, these aspirations are seldom fully matched by expanded organizational capacities or by suitable infusions of external resources. As with Aid to Families with Dependent Children (AFDC) and later Temporary Assistance to Needy Families (TANF), drug courts face especially complex challenges in serving a highly varied population of new (and returning) entrants into the criminal justice system. Moreover, as with job training and substance abuse treatment, drug courts face incentives to cream-skim clients, thereby avoiding individuals who pose the greatest risks. This presents a complex challenge for high-level policymakers who seek to sponsor and regulate drug courts in addressing broader crime and correctional problems.

Finally, although coercion exists in other social service contexts (e.g., drug testing welfare recipients), drug courts uniquely straddle boundaries between coercive criminal justice and social service interventions. This combination makes it especially pertinent that drug courts avoid the pitfalls inherent in each of these service areas. Drug courts offer greater opportunities for therapeutic interventions than are found among purely coercive criminal justice interventions. Drug courts also elicit greater compliance from clients and may provide greater public safety benefits than is possible in wholly voluntary interventions for criminally active populations. At the same time, drug courts raise broader normative concerns in that they may actually increase intrusive monitoring and confinement relative to conventional probation or parole, especially when applied to low-level offenders. In such cases, therapeutic jurisprudence may provide rhetorical cover for coercive policies. Mark Kleiman's (2009) evocative term, "outpatient incarceration," encapsulates well both the hopes and the fears of the contending parties.

Empirical research conducted over the past two decades indicates that, on balance, drug courts are more effective than conventional correctional options at reducing the drug use and criminal activity of drug-involved offenders (Belenko 2001; Brown 2010; Drake, Aos, and Miller 2009; Government Accountability Office 2005; Lowenkamp, Holsinger, and Latessa 2005; Rossman et al. 2011; Shaffer 2006; Wilson, Mitchell, and MacKenzie 2006; Mitchell et al. 2012; Shaffer 2011). The National Institute of Justice (NIJ)-sponsored Multi-Site Adult Drug Court Evaluation (MADCE), for example, found that drug court participants relapsed significantly less often and, among those that did, reported significantly fewer days of drug consumption than a comparison group of offenders at an 18-month follow-up (Rossman et al. 2011). Likewise, meta-analyses

confirm that drug courts reduce recidivism rates by 8 to 14 percent over other criminal justice interventions (Drake, Aos, and Miller 2009; Shaffer 2006; Wilson, Mitchell, and MacKenzie 2006).

While drug courts may effectively reduce drug use and recidivism among individual offenders, there has been considerable debate about the ability of drug courts to reduce aggregate prison and jail populations, that is, to effectively serve as an alternative to incarceration at the population level (Drug Policy Alliance 2011; Fluellen and Trone 2000; Huddleston and Marlowe 2011; Justice Policy Institute 2011; Miller 2004). Some observers credit drug courts with helping to “bend the curve” of incarceration downward (Huddleston and Marlowe 2011, 16); others suggest drug courts and similar programs have a “low ceiling of possible impact on correctional populations” (Clear and Schrantz 2011, 151S). Still others claim that drug courts “may ultimately serve not as an alternative but as an *adjunct* to incarceration” (Drug Policy Alliance 2011, 14).

There are four components to this critique. First, resource constraints limit the ability of drug courts to reach all drug-involved offenders; the demand for services simply outstrips available court resources and treatment slots. Second, most drug courts have restrictive eligibility criteria that routinely exclude high-risk offenders, many of whom are likely to end up behind bars. Third, for those fortunate enough to gain access to drug courts, the legal consequences of program failure can be severe, and the criminal justice system often loses any initial savings in custodial resources due to high rates of program failure. Finally, many drug-involved offenders are precluded from drug courts because of overriding sentencing laws, including sentencing guidelines, mandatory minimums, habitual offender laws, and other sentence enhancements.

In light of the racial disparities inherent in the criminal justice system, the articulated concerns have particular salience for minority populations. Arrests for drug offenses remain highly concentrated in urban African American and Hispanic communities beset with high poverty rates and other forms of concentrated disadvantage. With incarceration rates for drug offenses even more disparate than those for other crimes, the success or failure of drug courts has important implications for these populations and neighborhoods.

To date, relatively little empirical research has investigated these various concerns. In an earlier article that focused on several broader questions (Pollack, Reuter, and Sevigny 2011), we examined why drug courts might not serve as an effective alternative to incarceration from the single perspective of restrictive eligibility criteria. In expanding upon this earlier work, the present study estimates the size of the drug-involved incarcerated population likely to have been excluded from drug courts because of several factors: capacity constraints, restrictive eligibility criteria, client failure in program, and overriding sentencing laws. Specifically, we use data from the 2002 Survey of Inmates in Local Jails (SILJ) and the 2004 Survey of Inmates in State Correctional Facilities (SISCF) to examine why recently incarcerated offenders at risk of drug abuse or dependence might have ended up behind bars rather than being diverted into community-based drug treatment courts.

We begin by reviewing the available evidence on the diversionary impact of drug courts. Then, we present our empirical analysis of the inmate survey data, which reveals that, even if they were brought to scale, drug courts are unlikely to substantially affect incarceration levels under current drug court eligibility rules and existing sentencing laws. This finding is consistent with our earlier work; the present expanded analysis provides more robust support for this conclusion. We end by discussing the policy implications of these findings.

Drug Courts and Diversion

In this section, we review the available empirical evidence on the four factors identified above—capacity constraints, eligibility criteria, legal consequences, and sentencing laws—that limit the potential for drug courts to conserve aggregate prison and jail space by serving as a true alternative to incarceration.

Drug court capacity constraints

The most proximate factor impeding the diversionary impact of drug courts is their limited capacity to fully serve the population of drug-abusing offenders who enter the criminal justice system. More than half (52 percent) of adult drug courts surveyed in 2004, for instance, could not accept eligible clients due to resource constraints (Zweig et al. 2011), and four in five (80 percent) state drug court coordinators reported in 2008 that inadequate funding was the primary obstacle to further expansion (Huddleston and Marlowe 2011). Importantly, nearly every state coordinator acknowledged that drug court capacity could be “appreciably expanded.”

Although the national daily population of drug court enrollees more than quadrupled (from 26,465 to 116,300) between 1996 and 2008 (General Accounting Office 1997; Huddleston and Marlowe 2011), overall capacity is still only a small fraction of the overall number of drug-abusing offenders entering the criminal justice system. Nationally, Bhati, Roman, and Chalfin (2008) estimated that there were 55,365 adult drug court participants in 2005 relative to the 1.47 million arrestees who were at risk of drug abuse or dependence, or about 27 at-risk arrestees per drug court slot. In short, the apparent demand for drug court services greatly outpaces the available supply, resulting in a smaller diversionary impact—hence, the calls for “taking drug courts to scale” (Huddleston and Marlowe 2011; National Association of Drug Court Professionals 2009).

Restrictive eligibility criteria

Drug courts screen defendants and limit participation based on specific legal and clinical criteria (Government Accountability Office 2005; Knight, Flynn, and Simpson 2008; Zweig et al. 2011). These criteria stem from two primary sources: federal funding requirements, and local needs and political realities. Federal law

requires courts receiving funds from the Drug Court Discretionary Grant Program to exclude offenders with a current or prior violent offense (Franco 2010; Government Accountability Office 2005; Saum and Hiller 2008). The scope of this statutory restriction is potentially quite large, as one study found that 78 percent of active drug courts in 1996 had received federal funding (General Accounting Office 1997).¹

National surveys of drug court operations confirm that the vast majority of programs exclude offenders with a current or prior violent offense (General Accounting Office 1997; Zweig et al. 2011). These surveys also reveal that drug courts commonly restrict access based on the type of charge, criminal history, the severity of the drug problem, prior treatment history, lack of motivation for treatment, severe medical conditions or mental disorders, gang membership, and citizenship status. For example, the Hamilton County (Ohio) Drug Court maintains the following set of eligibility criteria: criminal behavior that is drug-driven, no history of violent behavior, no active mental illness, no acute health conditions, and demonstrated readiness for treatment (Listwan et al. 2003).

A consequence of these restrictive eligibility criteria is that many offenders are denied access to drug court programming (Rossman et al. 2011; Saum and Hiller 2008). Bhati, Roman, and Chalfin (2008) estimate that of the 1.47 million U.S. arrestees at risk of drug abuse or dependence in 2005, just 109,921 (7.5 percent) were drug court–eligible. Moreover, in Florida, 74 percent of the 1,653 nonviolent probationers who tested positive for drugs in FY2010 were ineligible for the state’s expansion drug courts because they had additional technical violations, contributing to the programs running under expected capacity (Office of Program Policy Analysis and Government Accountability 2010). Findings such as these have spurred recent state efforts to expand drug court eligibility—especially to a higher-risk population of otherwise prison- and jail-bound offenders (New Jersey Administrative Office of the Courts 2010).

Legal consequences of program failure

The diversionary impact of drug courts also rests on their ability to successfully retain and graduate enrolled offenders. Unfortunately, research on drug courts reveals that a large share of program participants end up being terminated unsuccessfully (General Accounting Office 1997; Government Accountability Office 2005; Hepburn and Harvey 2007; Rempel et al. 2003). Rempel et al.’s (2003) evaluation of eleven drug courts in New York State, for example, revealed a three-year failure rate of 50 percent across all programs.²

High rates of program failure, in turn, tend to offset any initial savings in custodial resources, because the noncompliant offenders are saddled with lengthy terms of confinement that equal, and sometimes exceed, the incarceration times of conventionally sentenced defendants (Gottfredson, Najaka, and Kearley 2003; Gottfredson et al. 2006; Rempel et al. 2003; Rossman et al. 2011). Gottfredson, Najaka, and Kearley (2003) examined two-year outcomes for the Baltimore City Drug Treatment Court and found that program participants served significantly

fewer incarceration days on average than the controls on both the predisposition commitment and original sentence, but significantly more days due to noncompliance. As a consequence, there was no significant difference between the two groups in overall time served.

Rossman et al. (2011) also examined two-year outcomes from the MADCE and found that drug court graduates were incarcerated for significantly fewer days on average than drug court failures (25 vs. 273). Consequently, Rossman et al. (2011, 80) concluded that “drug courts nearly eliminate custodial time among those who graduate, but those benefits are counterbalanced by the high sentences imposed on those who fail the program.” Whether the overall number of individual-level failures across drug court programs is sizable enough to affect aggregate prison and jail populations remains an open question.

Overriding impact of sentencing laws

Drug laws, mandatory sentencing, habitual offender statutes, and other laws often put drug courts out of reach of many drug-abusing offenders. Simply put, drug courts are often “barred from enrolling prison-bound people because the laws forbid it” (Weissman 2009, 247). This has led some observers to conclude that sentencing reform is the only sure way of reducing prison and jail populations (Clear and Austin 2009). However, few empirical studies have directly investigated the role of mandatory sentencing laws on drug court operations. One study analyzed 8,443 Florida prison admissions in 2007; it found that 1,972 (or about 23 percent) were nonviolent offenders with recognized drug treatment needs but who were nevertheless excluded from drug courts because their sentencing guideline scores required a mandatory prison term (Office of Program Policy Analysis and Government Accountability 2009). Another study found that many recently incarcerated heavy drug users had extensive criminal records that not only excluded them from drug courts, but also exposed them to punitive habitual offender laws (Pollack, Reuter, and Sevigny 2011).

The Current Study

We reviewed four key factors that potentially limit the ability of drug courts to conserve custodial resources—capacity constraints, restrictive eligibility criteria, consequences of program failure, and overriding sentencing laws. The current study uses data from the 2002 SILJ and the 2004 SISCF³ to estimate the number of recently incarcerated at-risk inmates who might have been excluded from drug courts for one or more of these reasons. With these estimates in hand, we provide an assessment of the annual flow of drug-abusing arrestees into other parts of the correctional system, including prisons, jails, drug courts, and probation. In performing these analyses, we aim to provide a systemic, national-level assessment of drug court outcomes.

Methods

Data and analytic sample

The 2002 SILJ (Bureau of Justice Statistics 2006) and 2004 SISCF (Bureau of Justice Statistics 2007) are nationally representative surveys that collected inmate self-report data on a wide array of topics, including conviction and sentencing information, offense characteristics, criminal history, and socioeconomic status. The 2002 SILJ completed 6,982 interviews for an 84 percent response rate, and the 2004 SISCF completed 14,499 interviews for an 89 percent response rate. Both surveys employed a stratified two-stage sampling design, first selecting facilities and then inmates within the selected facilities. All analyses accounted for these design features and were performed using Stata 12.0 (Stata Corporation 2011). In the presentation of our results and the discussion that follows, we report the weighted point estimates. For presentation purposes, we do not report the associated confidence intervals.

Table 1 shows the sample sizes and weighted estimates for the stock population of inmates and select subpopulations. The main analytic subsample of interest for the present study is the cohort of convicted and recently incarcerated inmates who were at risk of drug abuse or dependence. We focused on convicted inmates because unconvicted jail detainees were not asked many of the pertinent crime and drug use questions.⁴ We also focused on the cohort of recently incarcerated inmates—defined as those inmates who were admitted to prison or jail in the 12 months preceding the date of their interview—so that our analysis reflects contemporaneous sentencing practices and mitigates the potential bias toward more serious offenders inherent in cross-sectional samples. We further restricted our analysis to the subpopulation of offenders likely to be targeted for drug court interventions, that is, offenders who abused or were dependent on illegal drugs.⁵ We refer to this group as the population at risk of drug abuse or dependence, or simply the at-risk population.

As shown in Table 1, after applying these delimitations, we obtained analytic subsamples of 2,897 jail inmates and 3,333 prison inmates. All told, these numbers reflect a population estimate of more than a half million ($N = 517,741$) convicted and recently incarcerated inmates who were at-risk of drug abuse or dependence.

Measures

As described in Table 2, we operationalized key measures of drug court eligibility, program failure, and mandatory sentencing laws.⁶ To identify common drug court eligibility criteria, we relied on the results reported from the MADCE project (Zweig et al. 2011). The MADCE project, which sought to provide a national picture of drug court operations, identified and surveyed all 593 adult drug courts that had been in operation for at least one year as of February 2004,⁷ receiving responses from 380 (for a 64 percent response rate). Using the

TABLE 1
Study Sample Sizes and Population Counts

	2002 Jail Inmates	2004 Prison Inmates	Total
Stock population of inmates			
Sample <i>n</i>	6,982	14,499	21,481
Population <i>N</i>	631,241	1,226,171	1,857,412
Cohort of convicted and recently incarcerated inmates			
Sample <i>n</i>	4,582	5,052	9,634
Population <i>N</i>	415,354	397,188	812,542
Cohort of convicted and recently incarcerated inmates at-risk of drug abuse or dependence			
Sample <i>n</i>	2,897	3,333	6,230
Population <i>N</i>	258,192	259,549	517,741

SOURCE: SILJ (2002) and SISCF (2004).

MADCE results as a guide, we operationalized a core set of twelve drug court eligibility criteria that could be measured using the inmate survey data.

Drug courts typically base eligibility on a clinical assessment of the nature and extent of the offender's drug problem. Accordingly, we measured *drug problem intensity* to differentiate drug dependence from drug abuse in the population of at-risk offenders. Some drug courts also exclude lower-risk offenders; thus, we also measured whether offenders reported *marijuana-only abuse*. Virtually all drug courts also base eligibility on the offender's current charges and prior record. We operationalized five such measures: *controlling offense*, *major drug trafficking*, *active criminal justice status*, *prior violent conviction*, and *number of prior convictions*. Drug courts also commonly refuse entry to offenders who previously failed or are not currently invested in treatment. Accordingly, we operationalized measures of *prior offender-based treatment* and *lack of treatment motivation*. Finally, drug courts commonly exclude offenders for other specified criteria. We measured three common factors: *noncitizenship* and the presence of a *severe mental disorder* or *severe medical condition*.

We measured program failure in two ways. First, *failed drug diversion program* indicates whether offenders were in alcohol or drug diversion counseling prior to incarceration. Since this item was asked only of jail inmates, we also created a measure of *failed probation drug treatment*, which indicates whether offenders were incarcerated for a technical violation (but not a new arrest or conviction) while serving a probation term that included alcohol or drug treatment as part of the sentence.

We measured the impact of overriding sentencing laws with four variables. First, *mandatory/presumptive sentence* indicates whether the judge was required by law or sentencing guidelines to impose the offender's sentence. This item was

TABLE 2
Description of Study Measures

Measure	Description
Drug court eligibility criteria	
Drug problem intensity	<i>Drug dependence</i> if experienced at least three of seven risk factors in the year before admission as outlined in the <i>Diagnostic and Statistical Manual of Mental Disorders</i> , 4th edition (DSM-IV). <i>Drug abuse</i> if not dependent and (1) experienced at least one of four DSM-IV risk factors for drug abuse in the year prior to admission, (2) committed the precipitating offense for money to buy drugs, (3) used illegal drugs daily or near-daily in the month prior to arrest, or (4) under the influence of illegal drugs at the time of the offense.
Marijuana-only abuse	Used marijuana, but no other illegal drugs, in the month before the arrest or at the time of the offense.
Controlling offense	Primary conviction offense (i.e., violent, property, drug, other).
Major drug trafficking	Engaged in importing or growing/producing drugs, or money laundering when arrested, or was a leader or middle man in a drug organization in the year prior to arrest.
Active criminal justice status	On escape or under community supervision (e.g., probation, parole, electronic monitoring) when arrested.
Prior violent conviction	Prior sentence to probation or incarceration for a violent offense.
Number of prior convictions	Number of prior sentences to probation or incarceration (maximum of three).
Prior offender-based treatment	Previously admitted to a substance abuse detoxification, inpatient, outpatient, or maintenance program while incarcerated or on probation or parole.
Lack of treatment motivation	Parole or probation revoked for failing to report for substance abuse treatment.
Severe mental disorder	Admitted to a mental hospital in year before arrest, or had a diagnosis within past year of depression, bipolar disorder, schizophrenia, post-traumatic stress disorder, or anxiety disorder.
Severe medical condition	Currently suffers from cancer, stroke or brain injury, diabetes, heart disease, kidney disease, or liver disease.
Noncitizen	Not a legal U.S. resident.
Program failure	
Failed drug diversion program ^a	In alcohol or drug diversion counseling when arrested.
Failed probation drug treatment	Probation revoked for technical violation while in mandated alcohol or drug treatment program.
Sentencing laws	
Mandatory/presumptive sentence ^b	Judge required by law or sentencing guidelines to give imposed sentence.
Firearm sentence enhancement	Received sentence increase because of a firearms violation.
Habitual offender enhancement	Received sentence increase as habitual offender, or because of a second or third strike.
Drug law enhancement	Received sentence increase because of the type of drug offense.

a. This item is only measured in the jail survey.

b. This item is only measured in the prison survey.

asked only in the prison survey. The other three variables capture the effect of various sentence enhancements: *firearm sentence enhancement*, *habitual offender enhancement*, and *drug law enhancement*. For this last measure, the survey does not indicate the specific type of drug law violation, but we suspect drug-free school zone ordinances, laws against selling to minors, and the like are captured by this category.

Findings

We report three sets of findings. First, we calculate the probability of drug court eligibility for each inmate based on the specified eligibility criteria. Second, we estimate how many recently incarcerated at-risk inmates were likely to have been excluded from drug courts due to eligibility restrictions, program noncompliance, sentencing laws, and capacity constraints. Finally, we rely on both our estimates and other estimates in the literature to describe the flow of drug-abusing arrestees into the criminal justice system.

Estimating the drug court eligibility of recently incarcerated at-risk inmates

In this section, we estimate the probability of drug court eligibility for recently incarcerated at-risk inmates. As the basis for these calculations, Table 3 shows the number and percentage of inmates with respect to key drug court eligibility criteria, as well as the expected likelihood of eligibility for offenders with these indicated characteristics. Specifically, the first through fourth columns present the distributions of the jail and prison cohorts across these eligibility criteria (based on the SILJ and SISCF), and the fifth shows the corresponding eligibility probabilities (based on the MADCE), reflecting the percentage of U.S. drug courts that accept these types of offenders (Bhati, Roman, and Chalfin 2008, 28–30; Zweig et al. 2011, 25–32). According to the MADCE, for instance, drug courts universally accept offenders with a drug dependence diagnosis ($P = 1.00$) and less than two-thirds enroll those experiencing less severe drug abuse ($P = .62$), whereas most drug courts also admit offenders who only abuse marijuana ($P = .88$).

To account for differing assumptions regarding the independence of these eligibility criteria, we derive inmate-specific estimates of eligibility using two approaches. First, assuming independence, we calculated the joint probability of eligibility for each inmate, using the marginal probabilities reported in column 5 (for an analogous approach, see Bhati and Roman 2010). For example, we derive an estimated eligibility probability of .45 for individuals with the following characteristics: dependence (1.00) on heroin (1.00), a controlling property offense (.94), no trafficking involvement (1.00), not on active criminal justice status (1.00), no prior violent convictions (1.00), three or more prior convictions (.93), prior offender-based treatment (.51), motivated for treatment (1.00), no severe mental (1.00) or physical (1.00) disorders, and U.S. citizenship (1.00).⁸ Second, because the assumption of independence is strong (e.g., the likely correlation

TABLE 3
Drug Court Eligibility of Recently Incarcerated Inmates At-Risk of Drug Abuse or Dependence

Eligibility Criteria	2002 Jail Cohort		2004 Prison Cohort		Eligibility Probability ^a
	N	%	N	%	
Total at-risk population	258,192	100	259,549	100	
Drug problem intensity					
Drug dependence	153,311	59.4	159,966	61.6	1.00
Drug abuse	104,880	40.6	99,583	38.4	0.62
Marijuana-only abuse	21,834	8.5	22,056	8.5	0.88
Controlling offense					
Violent	44,376	17.2	53,718	20.7	0.37
Property	72,256	28.0	67,836	26.1	0.94
Drug	82,278	31.9	93,934	36.2	0.99
Other	59,282	23.0	44,061	17.0	0.93
Major drug trafficking	5,696	2.2	13,188	5.1	0.22
Active criminal justice status	192,289	74.5	141,259	54.4	0.50
Prior violent conviction	80,067	31.0	70,728	27.3	0.12
Number of prior convictions					
None	46,268	17.9	71,533	27.6	1.00
One	41,776	16.2	55,901	22.5	0.98
Two	47,573	18.4	40,151	15.5	0.96
Three or More	122,575	47.5	91,963	35.4	0.93
Prior offender-based treatment	90,921	35.2	98,365	37.9	0.51
Lack of treatment motivation	7,331	2.8	5,702	2.2	0.61
Severe mental disorder	38,370	14.9	38,970	15.0	0.30
Severe medical condition	40,985	15.9	40,358	15.5	0.51
Noncitizen	7,134	2.8	7,144	2.8	0.65

a. MADCE (Bhati, Roman, and Chalfin [2008]; Zweig et al. [2011]).

between a drug court's acceptance of offenders with a current and prior violent behavior), we took the minimum reported eligibility probability as a sensitivity check. Continuing with the preceding example, we would obtain an eligibility probability of .51.⁹ Thus, we would expect an inmate with this profile to have had a probability of drug court eligibility between .45 and .51 prior to entering prison or jail.¹⁰ Overall, the median joint and minimum eligibility probabilities ranged, respectively, between .15 and .50 for the jail cohort and .17 and .37 for the prison

cohort, suggesting that the typical recently incarcerated at-risk offender faces considerable obstacles to drug court entry.

Estimating the size of the at-risk population excluded from drug courts

In this section, we attempt to parse out in greater detail the likely reasons why recently incarcerated at-risk inmates were excluded from drug courts. The results are presented in Table 4, both separately and combined for the jail and prison cohorts.

Panels A through C present our initial set of findings regarding the exclusionary impact of restrictive eligibility criteria, prior treatment program failure, and overriding sentencing laws, respectively. Panel D focuses on those offenders not restricted by program failure or sentencing laws to assess the unique contribution of eligibility rules on drug court accessibility.

Panel A shows our first set of results, which suggests that overall 83 to 89 percent of the roughly half million ($N = 517,741$) recently incarcerated at-risk inmates were excluded from drug courts due to restrictive eligibility criteria. As discussed above, this bounded estimate is based on differing assumptions regarding the independence of drug court eligibility criteria. In addition, in generating these estimates, we adopted an eligibility probability threshold of .50, where we defined inmates with a calculated eligibility of $P \leq .50$ as being excluded from drug courts due to strict entry criteria.¹¹ Thus, based on these assumptions, our results suggest that restrictive drug court eligibility criteria barred program access for upwards of eight in ten drug-abusing offenders who ultimately ended up being sentenced to prison or jail.

The legal consequences of program failure are examined in panel B. These data show that about 7 percent of the combined cohort was incarcerated consequent to failing drug diversion counseling or some other probation treatment program. Given our focus on drug courts, there are two caveats regarding this figure. On one hand, it is probably an underestimate of drug court failure because the question about drug diversion programming was not asked in the prison survey. On the other hand, it is probably an overestimate because the offenders on probation treatment were not necessarily enrolled in drug courts. Either way, it appears that drug court failures contribute relatively little to aggregate prison and jail populations. Indeed, just 3 percent of inmates in the jail cohort were admitted to incarceration directly from a drug diversion program. That said, those 8,244 jail inmates represent 15 percent of the estimated 55,365 drug court entrants nationally (Bhati, Roman, and Chalfin 2008). Thus, due to differences in scale, these findings suggest at once that drug court failures contribute sizably to incarceration from the level of the individual program but only minimally from the level of the aggregate incarcerated population.

The effect of overriding sentencing laws on drug court diversion is examined in panel C. Overall, these laws affected nearly one in three (31 percent) at-risk offenders. More than one in six (18 percent) received a mandatory or guideline

TABLE 4
 Estimating the Size of the At-Risk Population Excluded from Drug
 Courts for Various Reasons

	2002		2004		Combined	
	Jail Cohort		Prison Cohort		Cohort	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
Total at-risk population	258,192	100	259,549	100	517,741	100
Panel A						
Ineligible due to restrictive entry criteria						
Joint probability ^a	233,654	90.5	229,002	88.2	462,656	89.4
Minimum probability ^a	222,027	86.0	205,718	79.3	427,745	82.6
Panel B						
Revoked for program failure	28,695	11.1	8,351	3.2	37,046	7.2
Failed drug diversion program	8,244	3.2	—	—	8,244	1.6
Failed probation drug treatment	22,504	8.7	8,351	3.2	30,855	6.0
Panel C						
Subject to overriding sentencing laws	26,128	10.1	133,644	51.5	159,772	30.9
Mandatory/presumptive sentence	—	—	94,447	36.4	94,447	18.2
Firearm sentence enhancement	4,231	1.6	13,139	5.1	17,370	3.4
Habitual offender enhancement	15,141	5.9	37,984	14.6	53,125	10.3
Drug law enhancement	9,535	3.7	28,672	11.0	38,207	7.4
Panel D						
Drug court–eligibles <i>not</i> restricted by program failure or sentencing laws						
Joint probability ^a	22,671	8.8	14,384	5.5	37,055	7.2
Minimum probability ^a	32,424	12.6	26,151	10.1	58,575	11.3
Drug court–ineligibles <i>not</i> restricted by program failure or sentencing laws						
Joint probability ^a	182,751	70.8	106,592	41.1	289,343	55.9
Minimum probability ^a	172,997	67.0	94,825	36.5	267,822	51.7

a. Estimates are based on a threshold of $p \leq .50$ defining ineligibility.

sentence (despite this question not being asked of the jail inmates), and one in ten were incarcerated as a result of a habitual offender law involving a second or third strike. Smaller percentages were subject to drug law (7 percent) or firearm (3 percent) sentence enhancements. The collective effect of these various sentencing laws was to keep drug courts beyond the reach of almost one-third of recently incarcerated at-risk offenders—most of whom ($N = 133,644$, or 84 percent) were sentenced to state prison.

The last part of this analysis, presented in panel D, estimates the number of at-risk inmates, stratified by drug court eligibility, whose drug court access was not restricted by program failure or sentencing laws. By focusing on this latter subgroup of at-risk offenders, we can better assess the unique contribution of eligibility rules on drug court accessibility. As shown in the first part of panel D, between 7 and 11 percent of the combined cohort consisted of drug court-eligible inmates who were not recent program failures or mandatorily sentenced to a period of custody. This represents an incarcerated population that appears uniquely suitable for drug court diversion. That they were not diverted suggests that these inmates might have been incarcerated because of drug court capacity constraints. That is, we suspect they were incarcerated not because they failed to fit the drug court profile but because no drug court alternative was available to them. Diverting this group of offenders might require nothing more than a corresponding expansion of drug court capacity and utilization. The last part of panel D presents information on the group of drug court–ineligible offenders who were not also restricted by program failure or sentencing laws. Within the constraints of program capacity, this group represents a large subset of at-risk offenders (52–56 percent) who could readily be targeted for drug courts simply by expanding current eligibility rules.

To summarize, we examined several reasons why recently incarcerated at-risk offenders might have ended up behind bars rather than being diverted to a drug court. Our findings suggest that the majority (52–56 percent) of these offenders were likely excluded from drug courts due to restrictive eligibility criteria, and that a smaller subset (7–11 percent) possibly ended up behind bars because of insufficient drug court capacity. Our findings also indicate that drug court access was blocked for many recently incarcerated at-risk inmates because they recently failed similar offender-based treatment programs (7 percent) and/or were subject to overriding sentencing laws that precluded drug court entry (31 percent).

Estimating the flow of at-risk arrestees through the criminal justice system

As a final analysis, we provide a simple accounting of how at-risk offenders flow through the criminal justice system. As shown in Table 5, we begin with Bhati, Roman, and Chalfin's (2008) estimate of 1.47 million arrestees who were "probably guilty" and at risk of drug abuse or dependence. Drawing on our previous analyses, we estimate that 17.5 percent of these at-risk arrestees were admitted to local jails, with another 17.6 percent admitted to state prisons. Then, drawing on annual enrollment figures reported in the MADCE (Zweig et al. 2011, 24), we estimate a flow of 52,777 annual new drug court entrants¹²—equal to about 3.6 percent of at-risk arrestees.

Most of the remaining 900,820 (61.2 percent) at-risk offenders likely ended up on probation.¹³ These at-risk probationers represent about 40 percent of the 2.2 million state probation entries in 2003. One implication of this analysis is that there is a serious possibility of net-widening in "taking drug courts to scale" if the expansion courts target these lower-risk probationers rather than the otherwise prison- and jail-bound offenders.

TABLE 5
 Estimating the Flow of At-Risk Arrestees through the Criminal Justice System

	N	Percentage	Reference Year
Total at-risk population of guilty arrestees ^a	1,471,338	100.0	2005
Number admitted to local jails ^b	258,192	17.5	2002
Number admitted to state prisons ^c	259,549	17.6	2004
Number admitted to drug courts ^d	52,777	3.6	2003
Number admitted to probation	900,820	61.2	—

NOTE: Percentages do not sum to 100 due to rounding.

a. Bhati, Roman, and Chalfin (2008).

b. Authors' estimate based on 2002 SILJ.

c. Authors' estimate based on 2004 SISCF.

d. Authors' estimate based on Zweig et al. (2011).

Net-widening refers to the unintended consequence of criminal justice reforms that are aimed at reducing levels of punishment to instead expand the number who receives some punishment. This has, for example, been noted as a subversive influence of marijuana decriminalization. If marijuana possession becomes a civil infraction rather than a criminal misdemeanor, the burden on the individual police officer of making an arrest is reduced. Studies have repeatedly found that police respond to this alleviation by making more arrests (e.g., Christie and Ali 2000). Our concern here is that if drug courts permit the criminal justice system to cheaply impose more severe punishments on those who currently receive only probation, a large-scale expansion of drug courts will increase rather than reduce the extent of punishment handed out.

Discussion and Conclusions

Diverting drug-involved offenders into treatment instead of jail or prison has long been a major goal of the criminal justice system. The drug court movement has been a prominent and important innovation in this regard, almost universally praised by policymakers and practitioners alike. As a result, the number of drug courts has increased exponentially over the past two decades to become the standard model of therapeutic jurisprudence in the United States.

Attitudes toward drug courts, which have also been adopted in other countries such as Australia and Britain, have been strongly positive. Hence, it is surprising that these efforts still reach a very small share of the potentially eligible population. We can only speculate as to why there has not been more growth.

Many factors may be important, ranging from the mundane (a limited number of judges want to take on the task of hands-on offender supervision that is so

different from normal judicial duties) to the complex systemic (drug courts require the challenging coordination of social service and criminal justice agencies). Drug court advocates may also seek to keep the eligibility requirements tight because these increase the likelihood of successful evaluations. Moreover, drug courts, whatever the long-term gains from reduced offending, require upfront budgetary outlays that are relatively more costly than are the status quo supervision strategies. Many of these outlays are required for administrative infrastructure that yields no obvious or immediate benefits for public safety. All this means that expanding drug courts substantially to include higher-risk offenders will be a difficult challenge, and one that poses political and organizational challenges throughout the criminal justice system.

Our study shows that drug courts, as currently designed and operated, have only modest potential to reduce incarcerated populations, primarily because so few offenders entering jail or prison clearly meet existing eligibility requirements. Just 11 to 17 percent of recently incarcerated offenders at risk of drug abuse or dependence had better than a 50/50 chance of being eligible for drug court. On top of this, strict sentencing laws—mandatory minimums, sentencing guidelines, three-strikes laws, zero-tolerance drug zones, firearm sentence enhancements, and the like—precluded upwards of three in ten at-risk offenders from drug courts regardless of their eligibility. Drug court failures and limited drug court capacity (in the absence of other restrictions) also impeded diversion from prison and jail, albeit to a much lesser extent.

A key policy-relevant insight to follow from our analysis is that expanding access to drug courts could markedly increase their reach and, in turn, help to reduce incarcerated populations. This could, of course, be achieved in various ways and to different degrees. Straightaway, guaranteeing drug court access to the pool of eligible offenders who are incarcerated because of insufficient capacity is attractive, not because it would drastically cut prison and jail admissions but because its implementation would not require a great policy shift. We estimated there were roughly 37,000 to 59,000 such offenders in prison and jail, which represents an additional two-thirds increase to a doubling of adult drug court capacity (circa 2004). Given that resource limitations have been the main obstacle to drug court expansion (Huddleston and Marlowe 2011; Zweig et al. 2011), a concerted influx of federal and state dollars could viably begin to fill this treatment gap.

Increasing access to drug courts by expanding eligibility criteria has a much greater potential to reduce incarceration levels. We estimated that more than half the recently incarcerated offenders who were at risk of drug abuse or dependence—upwards of one-quarter million individuals—were excluded from drug courts solely because of restrictive eligibility criteria. Given the size of this population, a pragmatic first question for drug court planners pursuing expansion is which eligibility criteria can be relaxed. A number of observers, for instance, have argued that drug courts can safely enroll many drug-involved violent offenders without undue public safety risks (National Center on Addiction and

Substance Abuse 1998; Rossman et al. 2011; Saum and Hiller 2008; Saum, Scarpitti, and Robbins 2001). In particular, there are many aging drug-involved offenders whose violent crimes are long past and who are at little risk of such offenses in the foreseeable future (Pollack, Reuter, and Sevigny 2011). In this instance, the key to drug court expansion is for Congress to amend the authorizing legislation of the Drug Court Discretionary Grant Program to allow funded programs to accept violent offenders (Franco 2010; Saum and Hiller 2008).

Whatever specific criteria are targeted, expanding drug court eligibility would have a relatively greater effect on jail than prison populations because nearly two-thirds of drug court–ineligibles were housed in local jails. To obtain more meaningful reductions in state prison populations, any restructuring of drug court eligibility criteria would have to be accompanied by sentencing reform, as 84 percent of at-risk offenders subject to strict sentencing laws were incarcerated in state prisons. Florida adopted this strategy in 2009 when it raised the maximum allowable sentencing guidelines score for drug court admittance from 44 to 52 as part of the state's effort to enroll more prison-bound offenders (Office of Program Policy Analysis and Government Accountability 2010).

We have to this point avoided one critical issue: Diverting even a portion of the half million recently incarcerated at-risk offenders into drug courts by lessening restrictions on eligibility or by mitigating the exclusionary effects of strict sentencing laws would require a massive increase in current drug court capacity. Our analyses suggest that annual drug court enrollments stand at about one-tenth the annual number of at-risk offenders admitted to prison and jail. Bhati, Roman, and Chalfin (2008) estimated that it would cost \$13.7 billion to expand drug courts to fully meet this demand, and the National Association of Drug Court Professionals (NADCP) suggested it would take an investment of \$1.5 billion over six years to make drug courts available to every nonviolent, drug-addicted offender (NADCP 2009).

One potentially viable approach to increase the reach of drug courts in tight fiscal times is to merge drug courts with other more scalable and less costly alternative-to-incarceration programs (Fluellen and Trone 2000). California's Substance Abuse and Crime Prevention Act, otherwise known as "Prop 36," provides one possible example. Prop 36 mandates treatment referral rather than a standard criminal justice disposition for all those arrested for the first or second time for a drug possession offense, providing the arrestee does not have a conviction for another serious crime. With Prop 36 annually enrolling seventeen times as many offenders as California's drug courts, one recent study concluded that the two programs might function on a continuum whereby "Prop 36 is tried first, as a kind of 'drug court-lite' experience for offenders with a lower severity level, and only the more severe drug offenders, identified by program noncompliance, are moved into drug court" (Evans et al. 2010, 21).

A similar triaged approach would merge drug courts and coerced abstinence programs, such as in the case of the Hawaii Opportunity Probation with Enforcement (HOPE) initiative (Hawken and Kleiman 2009; Kleiman 2009; Kleiman and Hawken 2008). Although the HOPE model does not uniformly

require drug treatment for all offenders, it promises a swift and certain response toward those who use drugs or otherwise violate the conditions of their probation. In this scenario, only the high-risk, chronically addicted offenders who cannot remain abstinent would be referred to drug court.

A necessary caution that needs to be part of this discussion is that “taking drug courts to scale” greatly increases the risk of net-widening. We estimated that 61 percent of at-risk arrestees were sentenced to probation. As noted above, if expansion drug courts draw from this sizable noncustodial population rather than the population of at-risk offenders likely to end up in prison or jail, drug courts will have little impact on incarcerated populations while increasing the overall number of offenders supervised by the criminal justice system. Avoiding this pitfall will likely require careful program oversight and review alongside any expansion (Miller 2004; Roberts and Indermaur 2006).

Our findings should be interpreted in light of several limitations. First, our results are based on the self-reports of criminal offenders serving time in prison or jail. Offender self-reports are not only subject to the universal biases of recall and social desirability, but also to the sensitive nature of the questions typically asked of offenders. Nevertheless, the self-report methodology in criminological research has proven to be a valuable data collection approach that provides acceptable levels of reliability and validity (Junger-Tas and Marshall 1999).

Second, because relatively more serious offenders are captured in “one-day” samples of inmates, our reported estimates are likely to be undercounts of the total number of offenders who could be diverted into drug courts from prisons and, especially, jails.¹⁴ That is, the stock population of inmates is “sentence-length biased” relative to the annual admission population. Our focus on recently incarcerated cohorts should mitigate this effect.

Third, although we based our analyses on the most recently available inmate surveys, these data are now 8 to 10 years old. The number of drug courts has increased considerably in this time, and the populations served and eligibility rules employed are likely to have changed in cross-cutting ways. Replication of these results is therefore warranted with more recent data sources, including the next release of the Bureau of Justice Statistics inmate survey data.

Despite these limitations, our results provide the first systematic account of the various reasons recently incarcerated at-risk offenders were likely to have been excluded from drug courts. Recognizing that there are both humanitarian and policy reasons for reducing the number of drug-involved offenders held behind bars, we highlighted various courses of action policymakers could consider to increase the diversionary impact of drug courts.

We conclude by noting that, even without our analysis, it was obvious that drug courts were capable of serving only a tiny fraction of all drug-involved offenders. Proponents have been understandably concerned with ensuring that drug court clients have a high probability of success, and tight eligibility requirements help in that respect. Relaxing those requirements to admit populations that are at higher risk of recidivism will surely lead to higher failure rates. However, if drug courts are to achieve their full potential, and in particular help to deal with the nation’s

massive incarceration problem, there must be a willingness to experiment with broader eligibility requirements for certain currently excluded client groups.

Notes

1. Although other federal grant programs do not carry this violent offender restriction (e.g., the Center for Substance Abuse Treatment's [CSAT's] Drug Treatment Court Initiative), the majority of congressional appropriations continue to pass through the Drug Court Discretionary Grant Program (Franco 2010; Huddleston and Marlowe 2011).

2. Authors' calculation based on the reported number of program enrollees (range: 107 to 1,837) and failure rates (range: 18 to 69 percent) across the eleven programs.

3. These are the most recent state prison and local jail inmate surveys in a series periodically fielded by the Bureau of Justice Statistics (BJS). We do not focus on federal inmates because drug courts are primarily state- and local-led initiatives.

4. Perhaps the survey designers did not think these questions would be answered truthfully by offenders still awaiting the disposition of their cases.

5. Our operationalization of drug abuse and dependence is discussed in the section on drug court eligibility criteria.

6. It was not possible to create direct measures of drug court capacity using the inmate survey data. However, in our analyses, we attempt to indirectly estimate the contribution of limited drug court capacity to prison and jail populations.

7. Note that the 593 drug courts reported here differs from the earlier cited number of 2,459 for several reasons, including a different reference year (2004 vs. 2009); the latter figure's inclusion of juvenile, family, and other types of drug courts; and the former's focus on mature drug courts (i.e., operational for at least one year).

8. $1.00 \times 1.00 \times .94 \times 1.00 \times 1.00 \times 1.00 \times .93 \times .51 \times 1.00 \times 1.00 \times 1.00 \times 1.00 = .45$.

9. $\text{Min}(1.00, 1.00, .94, 1.00, 1.00, 1.00, .93, .51, 1.00, 1.00, 1.00, 1.00) = .51$.

10. Our use of the MADCE survey assumes the data are representative of the universe of adult drug courts circa 2004. According to Rossman et al. (2011), the MADCE survey obtained a representative sample based on the region of the country; however, slight variation occurred by the size of the metropolitan area, with urban areas somewhat more represented than suburban and rural areas. We suspect, however, that the MADCE's overweighting of urban settings is consistent with the inmate populations.

11. Although we believe the point at which offenders are more likely than not to be excluded from drug court is a reasonable threshold, our results are sensitive to this choice. For example, using an eligibility cut point of $P \leq .40$ lowers our estimates of drug court ineligibility to 49 to 78 percent (based respectively on the minimum and joint probabilities). Conversely, using a cut point of $P \leq .60$ raises our estimates of drug court ineligibility to 89 to 93 percent.

12. Specifically, courts responding to the MADCE survey reported a mean of eighty-nine new entrants in 2003. We multiplied this figure by the overall number of adult drug courts ($N = 593$) to obtain our estimate of 52,777.

13. There were 52,982 federal prison admissions in 2004. Even if all these offenders abused illegal drugs (which is certainly not the case), probation would still be the outcome for 57.6 percent of at-risk arrestees.

14. With about 9 million unique annual admissions, local jails admit about thirteen times as many inmates as state prisons every year (Beck 2006).

References

- Anglin, M. Douglas, Douglas Longshore, and Susan Turner. 1999. Treatment alternatives to street crime: An evaluation of five programs. *Criminal Justice and Behavior* 26 (2): 168–95.
- Beck, Allen J. 2006. What do we know about jails at the national level? Paper read at Jail Reentry Roundtable Initiative, Urban Institute, June 27–28, Washington, DC.

- Belenko, Steven. 1999. The challenges of integrating drug treatment into the criminal justice process. *Albany Law Review* 63:833–76.
- Belenko, Steven. 2001. *Research on drug courts: A critical review, 2001 update*. New York, NY: The National Center on Addiction and Substance Abuse at Columbia University.
- Bennett, Trevor, Katy Holloway, and David Farrington. 2008. The statistical association between drug misuse and crime: A meta-analysis. *Aggression and Violent Behavior* 13 (2): 107–18.
- Bhati, Avinash Singh, and John K. Roman. 2010. Simulated evidence on the prospects of treating more drug-involved offenders. *Journal of Experimental Criminology* 6 (1): 1–33.
- Bhati, Avinash Singh, John K. Roman, and Aaron Chalfin. 2008. *To treat or not to treat: Evidence on the prospects of expanding treatment to drug-involved offenders*. Washington, DC: Urban Institute.
- Blumstein, Alfred, and Allen J. Beck. 1999. Population growth in U.S. prisons, 1980–1996. *Crime and Justice* 26:17–61.
- Brown, Randall T. 2010. Systematic review of the impact of adult drug-treatment courts. *Translational Research* 155 (6): 263–74.
- Bull, Melissa. 2003. *Just treatment: A review of international programs for the diversion of drug related offenders from the criminal justice system*. Brisbane, Australia: Queensland University of Technology.
- Bureau of Justice Statistics. 2006. *Survey of inmates in local jails, 2002*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research.
- Bureau of Justice Statistics. 2007. *Survey of inmates in state and federal correctional facilities, 2004*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research.
- Caulkins, Jonathan P., and Sara Chandler. 2006. Long-run trends in incarceration of drug offenders in the United States. *Crime & Delinquency* 52 (4): 619–41.
- Christie, Paul, and Robert Ali. 2000. Offences under the cannabis expiation notice scheme in south Australia. *Drug and Alcohol Review* 19 (3): 251–56.
- Clear, Todd R., and James Austin. 2009. Reducing mass incarceration: Implications of the iron law of prison populations. *Harvard Law & Policy Review* 3:307–24.
- Clear, Todd R., and Dennis Schrantz. 2011. Strategies for reducing prison populations. *The Prison Journal* 91 (3 suppl): 138S–59S.
- Drake, Elizabeth K., Steve Aos, and Marna G. Miller. 2009. Evidence-based public policy options to reduce crime and criminal justice costs: implications in Washington State. *Victims and Offenders* 4:170–96.
- Drug Policy Alliance. 2011. *Drug courts are not the answer: Toward a health-centered approach to drug use*. New York, NY: Drug Policy Alliance.
- Evans, Elizabeth, Libo Li, Darren Urada, and M. Douglas Anglin. 2010. Comparative effectiveness of California's Proposition 36 and drug court programs before and after propensity score matching. *Crime & Delinquency* (Online prepublication).
- Fluellen, Reginald, and Jennifer Trone. 2000. *Do drug courts save jail and prison beds?* New York, NY: Vera Institute of Justice.
- Franco, Celinda. 2010. *Drug courts: Background, effectiveness, and policy issues for Congress*. Washington, DC: Congressional Research Service.
- General Accounting Office. 1997. *Drug courts: Overview of growth, characteristics and results*. Washington, DC: General Accounting Office.
- Gottfredson, Denise, Stacy Najaka, and Brook Kearley. 2003. Effectiveness of drug treatment courts: Evidence from a randomized trial. *Criminology & Public Policy* 2 (2): 171–96.
- Gottfredson, Denise, Stacy Najaka, Brook Kearley, and Carlos Rocha. 2006. Long-term effects of participation in the Baltimore City drug treatment court: Results from an experimental study. *Journal of Experimental Criminology* 2 (1): 67–98.
- Government Accountability Office. 2005. *Adult drug courts: Evidence indicates recidivism reductions and mixed results for other outcomes*. Washington, DC: Government Accountability Office.
- Hawken, Angela, and Mark A. R. Kleiman. 2009. *Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE*. Washington, DC: National Institute of Justice.
- Hepburn, John R., and Angela N. Harvey. 2007. The effect of the threat of legal sanction on program retention and completion: Is that why they stay in drug court? *Crime & Delinquency* 53 (2): 255–80.

- Huddleston, West, and Douglas B. Marlowe. 2011. *Painting the current picture: A national report on drug courts and other problem-solving court programs in the United States*. Alexandria, VA: National Drug Court Institute.
- Junger-Tas, Josine, and Ineke Haen Marshall. 1999. The self-report methodology in crime research. *Crime and Justice* 25:291–367.
- Justice Policy Institute. 2011. *Addicted to courts: How a growing dependence on drug courts impacts people and communities*. Washington, DC: Justice Policy Institute.
- Karberg, Jennifer C., and Doris J. James. 2005. *Substance dependence, abuse, and treatment of jail inmates, 2002*. Washington, DC: Bureau of Justice Statistics.
- Kleiman, Mark A. R. 2009. *When brute force fails: How to have less crime and less punishment*. Princeton, NJ: Princeton University Press.
- Kleiman, Mark A. R., and Angela Hawken. 2008. Fixing the parole system. *Issues in Science and Technology* 24:45–52.
- Knight, Kevin, Patrick M. Flynn, and D. Dwayne Simpson. 2008. Drug court screening. In *Quality improvement for drug courts: Evidence-based practices*, ed. C. Hardin and J. N. Kushner. Alexandria, VA: National Drug Court Institute.
- Listwan, S. J., J. L. Sundt, A. M. Holsinger, and E. J. Latessa. 2003. The effect of drug court programming on recidivism: The Cincinnati experience. *Crime & Delinquency* 49 (3): 389–411.
- Lowenkamp, C. T., A. M. Holsinger, and E. J. Latessa. 2005. Are drug courts effective: A meta-analytic review. *Journal of Community Corrections* 28:5–10.
- Miller, Eric J. 2004. Embracing addiction: Drug courts and the false promise of judicial interventionism. *Ohio State Law Journal* 65:1479–1576.
- Mitchell, Ojmarrh, David B. Wilson, Aamy Eggers, and Doris L. MacKenzie. 2012. Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts. *Journal of Criminal Justice* 40 (1): 60–71.
- Mumola, Christopher J., and Jennifer C. Karberg. 2006. *Drug use and dependence, state and federal prisoners, 2004*. Washington, DC: Bureau of Justice Statistics.
- National Association of Drug Court Professionals. 2009. *A drug court within reach of every American in need: Recommendations for expanding the most effective criminal justice strategy for non-violent, drug-addicted offenders*. Washington, DC: National Association of Drug Court Professionals.
- National Center on Addiction and Substance Abuse. 1998. *Behind bars: Substance abuse and America's prison population*. New York, NY: National Center on Addiction and Substance Abuse at Columbia University.
- New Jersey Administrative Office of the Courts. 2010. *A model for success: A report on New Jersey's adult drug courts*. Trenton, NJ: New Jersey Administrative Office of the Courts.
- Office of Program Policy Analysis and Government Accountability. 2009. *State's drug courts could expand to target prison-bound adult offenders*. Tallahassee, FL: Florida Legislature.
- Office of Program Policy Analysis and Government Accountability. 2010. *Without changes, expansion drug courts unlikely to realize expected cost savings*. Tallahassee, FL: Florida Legislature.
- Pollack, Harold A., Peter Reuter, and Eric L. Sevigny. 2011. If drug treatment works so well, why are so many drug users in prison? In *Controlling crime: Strategies and tradeoffs*, ed. P. J. Cook, J. Ludwig, and J. McCrary. Chicago, IL: University of Chicago Press.
- Rempel, Michael, Dana Fox-Kralstein, Aamanda Cissner, Robyn Cohen, Melissa Labriola, Donald Farole, Ann Bader, and Michael Magnani. 2003. *The New York State adult drug court evaluation*. New York, NY: Center for Court Innovation.
- Roberts, Lynne, and David Indermaur. 2006. Timely intervention or trapping minnows: The potential for a range of net-widening effects in Australian drug diversion initiatives. *Psychiatry, Psychology and Law* 13:220–31.
- Rossman, Shelli B., John K. Roman, Janine M. Zweig, Michael Rempel, Christine H. Lindquist, Mia Green, P. Mitchell Downey, Jennifer Yahner, Avinash S. Bhati, and Donald J. Farole Jr. 2011. *The multi-site adult drug court evaluation: The impact of drug courts*. Washington, DC: Urban Institute, Justice Policy Center.

- Saum, Christine A., and Matthew L. Hiller. 2008. Should violent offenders be excluded from drug court participation? *Criminal Justice Review* 33 (3): 291–307.
- Saum, Christine A., Frank R. Scarpitti, and Cynthia A. Robbins. 2001. Violent offenders in drug court. *Journal of Drug Issues* 31 (1): 107–28.
- Shaffer, Deborah Koetzle. 2006. *Reconsidering drug court effectiveness: A meta-analytic review*. Cincinnati, OH: University of Cincinnati.
- Shaffer, Deborah Koetzle. 2011. Looking inside the black box of drug courts: A meta-analytic review. *Justice Quarterly* 28 (3): 493–521.
- Stata Corporation. 2011. *Stata survey data reference manual: Release 12*. College Station, TX: Stata Press.
- Weissman, M. 2009. Aspiring to the impracticable: Alternatives to incarceration in the era of mass incarceration. *N.Y.U. Review of Law & Social Change* 33:235–61.
- Wilson, David B., Ojmarrh Mitchell, and Doris L. MacKenzie. 2006. A systematic review of drug court effects on recidivism. *Journal of Experimental Criminology* 2 (4): 459–87.
- Zweig, Janine M., Shelli B. Rossman, John K. Roman, Joshua A. Markman, Erica Lagerson, and Courtney Schafer. 2011. *The multi-site adult drug court evaluation: What's happening with drug courts? A portrait of adult drug courts in 2004*. Washington, DC: Urban Institute, Justice Policy Center.