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## Texas Needs More Drug Courts.

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## TEXAS NEEDS MORE DRUG COURTS

BRYAN S. OATHOUT†

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*“Drug Court was an eye opening experience and probably the best thing to ever happen to me.”<sup>1</sup>*

-Citrus County, Florida Drug Court Graduate.

*Drugs and drinking just left me full of myself. Drug Court is a solution to get people off the streets and give them hope. The people who run it make you feel like you can stand up and do something about*

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† St. Mary’s University School of Law, Candidate for J. D., May 2006. Coastal Carolina University, B.A. Sociology, May 2004. I wish to thank my wife, Siobhan, for putting up with me while I spent two years in seclusion writing this comment. Also, I want to thank everyone at *The Scholar* for their help and suggestions during the editing process. And I thank my parents for their support through good times and bad, as well as my sister for her inspiration in helping me work hard to strive for what the less fortunate cannot achieve because of things beyond their control. Finally, I thank my in-laws for making me move back to New York soon, and the ensuing cold, bitter weather that will surround me all year long.

1. Fifth Judicial Circuit Homepage, Citrus County Drug Court, <http://jud5.flcourts.org/courts/citrusdc.htm> (last visited Sept. 13, 2005).

*your life. I'm proud today and I sure wasn't proud a year and a half ago.*<sup>2</sup>

-Hawaii drug court graduate.

Proud stories of success over the evils of drugs are common among participants in America's newest legal development in the nation's war on drugs. They are stories about the possible change for the better, for hope in this war, and a potential solution after years of fighting a dead-end battle. They are stories of America's most recent effort to stop drug abuse: the drug court.

The drug court is a treatment-based, alternative court that focuses on an offender's addiction while helping eliminate court congestion.<sup>3</sup> Drug courts are similar to therapeutic jurisprudence, in that the main goal is rehabilitation,<sup>4</sup> not punishment. Drug courts are being implemented across court systems in America today because of our nation's huge problem with drug-abusing offenders and the costs associated with placing these offenders into our criminal justice system.<sup>5</sup>

It is impossible to overlook the impact of drugs and drug abuse on our nation's criminal justice system.<sup>6</sup> The "war on drugs" has wreaked havoc on our prison and jail population, as well as America's court system.<sup>7</sup> "Mass incarceration of convicted drug offenders" is a substantial contributor to America's prison and jail overcrowding.<sup>8</sup>

Fighting drug abuse is also draining our economic resources. The United States spent thirty-eight billion dollars on corrections nationwide in 1996, thirty billion dollars of which was spent only on those "who had a history of drug and/or alcohol abuse, were convicted of drug and/or alco-

2. Susan Gochros, *Hawaii Drug Court: Ho'ola Hou [Renewed Life]*, HAW. B.J. 32, 33, (1998).

3. See Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 452 (1999).

4. Bruce J. Winick & David B. Wexler, *Drug Treatment Court: Therapeutic Jurisprudence Applied*, 18 TOURO L. REV. 479, 481 (2002).

5. NAT'L ASS'N OF DRUG COURT PROF'LS, 2004 "NATIONAL DRUG COURT MONTH" FIELD KIT 12 (2004), <http://www.nadcp.org/events/fieldkit.pdf>.

6. John Feinblatt et al., *Institutionalizing Innovation: The New York Drug Court Story*, 28 FORDHAM URB. L.J. 277, 277 (2000).

7. James R. Brown, *Drug Diversion Courts: Are They Needed and Will They Succeed in Breaking the Cycle of Drug-Related Crime?*, 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 63, 64 (1997).

8. Timothy Christie, *Drug Treatment Courts Are Popular but Do They Work and Are They Ethical and Appropriate for Canada?*, 23 HEALTH L. CANADA 70, 70 (2003).

hol violations, were using drugs and/or alcohol at the time of their crimes, or had committed their crimes to get money to buy drugs.”<sup>9</sup>

Drug courts can be implemented to solve these problems. Since the inception of drug court programs in 1989, over seventy percent of drug-abusing offenders have either successfully completed the drug court program, or are still participating in a program.<sup>10</sup> No other single solution to drug abuse has proven to be as effective. President George W. Bush has stated:

Drug courts are an effective and cost efficient way to help non-violent offenders commit to a rigorous drug treatment program in lieu of prison. By leveraging the coercive power of the criminal justice system, drug courts can alter the behavior of non-violent, low-level drug offenders through a combination of judicial supervision, case management, mandatory drug testing, and treatment to ensure abstinence from drugs, and escalating sanctions.<sup>11</sup>

The State of Texas, however, has not been quick to develop drug courts to curtail drug abuse. Currently, there are over 1500 drug court programs in the United States.<sup>12</sup> As of May 2004, Texas had established or planned to implement twenty-one drug courts across the state.<sup>13</sup> This number is severely disproportionate to both its population in general, and its incarcerated population of drug offenders. California alone has established over 240 of these treatment courts.<sup>14</sup> Texas has fewer problem-solving courts than over twenty other states in America.<sup>15</sup>

Minority drug offenders are those most affected by the lack of drug courts in Texas. Minorities account for almost seventy percent of Texas’s prison population.<sup>16</sup> “Ninety percent of the prison admissions for drug

9. GUY SCHMIDT, OFFICE OF NAT’L DRUG CONTROL POL’Y, DRUG TREATMENT IN THE CRIMINAL JUSTICE SYSTEM 2 (2001), <http://www.whitehousedrugpolicy.gov/publications/pdf194406.pdf>.

10. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 5, at 15.

11. *Id.* at 9.

12. *Id.* at 8.

13. DRUG POL’Y INFO. CLEARINGHOUSE, OFFICE OF NAT’L DRUG CONTROL POL’Y, STATE OF TEXAS: PROFILE OF DRUG INDICATORS 10 (2004), <http://www.whitehousedrugpolicy.gov/statelocal/tx/tx.pdf>.

14. C. West Huddleston, III et al., *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*, 1 NAT’L DRUG COURT INST. 1, 9 (2004), <http://www.ndci.org/publications/paintingcurrentpicture.pdf>.

15. *See id.* (showing the number of each state’s problem solving court programs as of December 2003).

16. *See* DANA KAPLAN ET AL., CTR. ON JUVENILE & CRIMINAL JUSTICE, TEXAS TOUGH?: AN ANALYSIS OF INCARCERATION AND CRIME TRENDS IN THE LONE STAR

offenses” consist of African-Americans or Hispanics.<sup>17</sup> These minority offenders need help through rehabilitation, not incarceration. Drug courts can be the solution to this problem, but only if Texas implements them into its existing criminal justice system.

This comment addresses the need for Texas to develop more drug courts in the state. Part I of this comment is an overview of what drug courts are and how they work. Part II looks at the positive benefits of drug courts and answers the critiques of drug courts in the United States. Part III provides reasons why Texas needs more drug courts and how they can help in Texas.

### I. OVERVIEW OF DRUG COURTS

The drug court is a grass-roots approach developed by a few innovators<sup>18</sup> aiming to correct drug abuse, and tired of seeing the same drug offenders being cycled through the criminal justice system again and again, without getting the help they really need. “Drug courts approach the law from a new perspective.”<sup>19</sup> Traditionally, our criminal courts have worked under a system in which “the correct law is ascertained and then applied.”<sup>20</sup> However, in the drug court system, “justice” and “the consequences of the law” are meaningless.<sup>21</sup> Legal members involved in the drug court system emphasize the addict’s recovery,<sup>22</sup> not the offender’s guilt or innocence.

When a drug offender is arrested and sent to jail or prison, he has no constitutional right to rehabilitation for his drug addiction.<sup>23</sup> Additionally, courts have declared that the failure to provide drug addiction treatment to inmates does not violate the Eighth Amendment.<sup>24</sup> Thus, in

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STATE (2002), <http://www.cjcb.org/pubs/texas/texas.html> (stating that whites represent only thirty percent of the prison and jail population in Texas).

17. Sarkaris Avakian, *Racial Disparity Among the Incarcerated*, L. SOC. JUST. & GLOBAL DEV. J., Nov. 8, 2002, <http://elj.warwick.ac.uk/global/issue/2002-1/avakian.htm>.

18. Candace McCoy, *Community Courts and Community Justice: Commentary: The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1521 (2003).

19. Pamela L. Simmons, *Solving the Nation’s Drug Problem: Drug Courts Signal a Move Toward Therapeutic Jurisprudence*, 35 GONZ. L. REV. 237, 258 (2000).

20. *Id.*

21. *Id.*

22. *Id.* at 259.

23. See *Marshall v. United States*, 414 U.S. 417, 421-22 (1974) (stating that the Court of Appeals is correct in concluding “that there is no ‘fundamental right’ to rehabilitation from narcotics addiction at public expense after conviction of a crime.”).

24. See *Pace v. Fauver*, 479 F. Supp. 456, 459 (D.N.J. 1979) (“Refusal to provide alcohol rehabilitation facilities in prison does not constitute cruel and unusual punishment.”); see also *Smith v. Schneekloth*, 414 F.2d 680, 682 (9th Cir. 1969).

those states without drug courts, an offender may not have access to rehabilitation for the chemical dependency that landed them in jail in the first place.

When a drug offender is arrested in a jurisdiction with a drug treatment alternative court, the prosecutor may decide to offer this offender the opportunity to enter the treatment court instead of being sentenced through the traditional criminal justice system.<sup>25</sup> Drug courts will then utilize a “team method” approach to be as effective as possible for the offender.<sup>26</sup> This “team method” approach is established by implementing several sectors of the community, including criminal justice interveners, substance abuse treatment specialists, and other educational and community anti-drug organizations.<sup>27</sup> Their goal: working as one unit to “forc[e] offenders to deal with their substance abuse problems.”<sup>28</sup>

To be eligible as a possible enrollee in drug court, the prosecutor, judge, and defense attorney usually target nonviolent offenders, those “charged with simple drug possession or under the influence charges.”<sup>29</sup>

There are two types of drug court programs that can be implemented: deferred adjudication, or post-adjudication programs.<sup>30</sup> Deferred adjudication programs allow the offender to enter the treatment court without pleading guilty to the crime they would be charged with under the traditional criminal justice system.<sup>31</sup> If the offender successfully completes drug court, most courts will dismiss the charges against the offender.<sup>32</sup>

Post-adjudication for drug courts allow a guilty offender to enter drug court before being sentenced.<sup>33</sup> The offender will have their sentence reduced, and likely receive probation upon successful completion of the program.<sup>34</sup> Drug courts use this power of coercion to make the program as effective as possible. Most addicts will not enter a program volunta-

25. See Carson Fox & West Huddleston, *Drug Courts in the U.S.* (2003), <http://israel.usembassy.gov/publish/law/fox.htm>.

26. See Robert E. Gaston, *You Want to Change Behavior? Use the Drug Court Format*, 9 NEVADA LAWYER 10, 11 (2001); see also Fox & Huddleston, *supra* note 25 (articulating the term “team members” that oversees the drug court process).

27. See NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 5, at 12.

28. *Id.*

29. National Association of Drug Court Professionals, *What is a Drug Court-Facts on Drug Courts*, <http://www.nadcp.org/whatis/facts.html> (last visited Oct. 17, 2005).

30. Lisa Rosenblum, Note, *Mandating Effective Treatment for Drug Offenders*, 53 HASTINGS L.J. 1217, 1233 (2002).

31. *See id.*

32. *See id.*

33. *See id.* at 1233-34.

34. *See id.* at 1234.

rily.<sup>35</sup> However, in the drug court program, addicts have the extra incentive of a reduced or eliminated sentence if they quit their substance abuse habits.

Once an offender is identified and found eligible to participate in drug court, the defense attorney should consult with his client about participating in the alternative program. Participation in drug court by an offender is voluntary.<sup>36</sup> If an offender elects to participate in drug court, he will immediately begin the program.<sup>37</sup> This allows the offender to get the immediate help he or she needs, instead of waiting for his or her day in court under the traditional justice system, whereby the offender may have fallen back into using drugs again or been charged with a new crime.

The offender goes immediately before the drug court judge who lays out the guidelines for participation. Ordinarily, an offender will be subjected to weekly drug tests, required to make weekly to bi-weekly personal appearances before the drug court judge, and receive “personal supervision and treatment contacts” several times a week.<sup>38</sup>

Drug court programs last between twelve and eighteen months for the average offender,<sup>39</sup> but longer if the offender relapses. This is perhaps the biggest difference between the drug court system and the traditional criminal justice system. In drug court, relapse is expected, but not condoned.<sup>40</sup> Most drug abusers in the program have a long history of drug abuse.<sup>41</sup> Because the goal is rehabilitation, not punishment, those who test positive are usually given strict, but fair, punishment, such as increased supervision, increased drug testing, or a few days in jail.<sup>42</sup> In most drug courts, no new charges are filed if the offender acknowledges that he or she failed a drug test.<sup>43</sup> This approach fosters honesty and culpability by the offender, who will receive more intensive rehabilitation for noncompliance with the drug court guidelines rather than being im-

35. National Drug Court Institute, *DWI/Drug Courts, DWI Courts: A Promising Sentencing Innovation*, [http://www.ndci.org/dwi\\_drug\\_court.htm](http://www.ndci.org/dwi_drug_court.htm) (last visited Sept. 20, 2005).

36. See Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 *YALE L. & POL'Y REV.* 125, 136 (2004) (discussing the process of participation in drug courts).

37. See Huddleston, III et al., *supra* note 14, at 5 (discussing the third key component in defining drug courts, in figure 1).

38. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 5, at 14.

39. See Claire McCaskill, *Combat Drug Court: An Innovative Approach to Dealing with Drug Abusing First Time Offenders*, 66 *UMKC L. REV.* 493, 497 (1998) (describing certain stages of the drug court program).

40. NAT'L ASS'N OF DRUG COURT PROF'LS, U.S. DEP'T OF JUSTICE, *DEFINING DRUG COURTS: THE KEY COMPONENTS* (1997), <http://www.nadcp.org/docs/dkeyp.pdf>.

41. See *id.*

42. *Id.* (outlining responses for noncompliance in drug court).

43. See Hora et al., *supra* note 3, at 478.

mediately sentenced to long prison terms where the offender cannot get the help he so desperately needs.

When a participant of drug court completes the program, he is said to have graduated and gets to participate in a ceremonial celebration.<sup>44</sup> The graduate gets to walk on stage and receive his graduation certificate, just as if he had graduated from high school or college. He is allowed to speak and thank anyone he wishes, and is congratulated by the judge, attorneys, and treatment providers.<sup>45</sup> This gives the offender a new sense of confidence based on the completion of a goal he wanted to attain: a drug-free lifestyle.

Because of the rapid success of drug courts, other alternative courts, which follow the drug court model, have been implemented in our nation.<sup>46</sup> These include felony and misdemeanor drug courts, DWI/DUI courts, juvenile drug courts, domestic violence courts, and mental health courts.<sup>47</sup> They all share a common goal: rehabilitation of the offender, and a resulting smooth integration back into society.

## II. EFFECT OF DRUG COURTS

There are several positive outcomes due to the implementation of drug courts. However, some people also believe drug courts contain negative consequences that must be dealt with before more programs are implemented.

### A. *Positive Impacts of Drug Courts*

#### 1. Reduction in Recidivism/Crime Rates Among Offenders

*“I had spent every day stealing for the money to buy drugs, and every free minute getting high. I got caught numerous times, but still I couldn’t stop. I had no support system, and no incentive to stop. Drug court finally provided me with both.”<sup>48</sup>*

It has been documented that “individuals who drink alcohol or use drugs are substantially more likely to commit crimes, to commit a wider variance of crimes, to commit more violent crimes, and to commit more serious crimes than those who neither drink nor use illegal drugs.”<sup>49</sup> A substance abuser with a severe addiction commits, on average, sixty-three

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44. See generally Gochros, *supra* note 2, at 32.

45. See *id.* at 33.

46. Huddleston, III et al., *supra* note 14, at 4-5.

47. *Id.*

48. Rosenblum, *supra* note 30, at 1232-33 (quoting a drug court graduate from Rochester, New York).

49. NAT’L CRIMINAL JUSTICE REFERENCE SERV., CORRECTIONAL TREATMENT: AN EFFECTIVE MODEL FOR CHANGE 4, <http://www.ncjrs.org/ondcppubs/treat/consensus/early>.



crimes a year.<sup>50</sup> It is clear that drug offenders do not respond positively to incarceration, probation, or voluntary treatment centers.<sup>51</sup> As soon as they are on their own again, they continue to use drugs and commit crimes, as they had done before.<sup>52</sup>

Drug courts can help change this behavior. There are several reasons for the reduction in recidivism rates by drug court participants. They include: “[i]ntensive, face-to-face interaction with a judicial authority[.] [i]mmediate treatment, a continuum of swift reaction and sanctions to relapse [and]; [an][e]nvironment focused intensively on marshalling community resources toward success.”<sup>53</sup>

The impact of drug courts on recidivism rates among drug offenders is felt on a national scale. “[M]ore than 50% of defendants convicted of drug possession” in the regular court system “recidivate within 2 or 3 years” in the United States.<sup>54</sup> In general, recidivism rates among drug court participants range “from 5 to 28% and less than 4% for drug court graduates.”<sup>55</sup> Most drug court participants have “at least a fifteen year history of drug usage.”<sup>56</sup> Yet, between 50 and 65 percent of drug court graduates maintain a drug-free lifestyle after completing the drug court program.<sup>57</sup> No other system of drug addiction treatment has shown to be as effective.

The positive results of drug court can be seen at the state and local level as well. The establishment of the first drug court in the United States was in Dade County, Florida by former State Attorney General Janet Reno, in 1989.<sup>58</sup> Reno stated: “Drug usage of offenders participating in drug court programs is substantially reduced when they are in the programs, and [for] most participants who complete the program, drug

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pdf (last visited Sept. 15, 2004) (quoting ERICH GOODE, *DRUGS IN AMERICAN SOCIETY* (4th ed. 1993)).

50. National Association of Drug Court Professionals, Talking Points/Statistics on Drug Courts, <http://www.nadcp.org/whatis/generalTalkingPoints.html> (last visited Oct. 17, 2005).

51. See Douglas B. Marlowe et al., *A Sober Assessment of Drug Courts*, 16 *FED. SENT. R.* 153, 154-55 (2003) (discussing drug abusers and their indifference to imprisonment, probation, and traditional drug treatment settings).

52. See *id.* (stating that individuals either relapse and return to prison, fail to comply with probation, or fail to remain in treatment programs long enough to be effective).

53. E. ANNE BROCKETT, CMTY. JUSTICE ASSISTANCE DIV., TEX. DEP'T OF CRIMINAL JUSTICE, *DRUG COURTS IN TEXAS* 3 (2004), <http://spa.american.edu/justice/publications/texasdrugcourts.pdf>.

54. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 5, at 16.

55. *Id.*

56. Facts on Drug Courts, *supra* note 29.

57. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 5, at 13.

58. *Developments in Law: Alternatives to Incarceration for Drug-Abusing Offenders*, 111 *HARV. L. REV.* 1898, 1916 (1998).

use is eliminated altogether-let us get that message out to Congress, to state legislatures, to cities, county commissioners-treatment does work.”<sup>59</sup> The results of the Dade County drug court program were dramatic. The success rates in reducing recidivism in the program were between 11% and 23%, “compared to the recidivism rate of 60% following a first-time offender’s traditional incarceration.”<sup>60</sup>

In New York, re-arrest rates were, on average, 29% lower after three years of completing the drug court program than those offenders who opted for prison time without treatment.<sup>61</sup> Similarly, successful results were seen in Santa Barbara, California, where drug court graduates average about .69 arrests per year, down considerably compared to 2.49 arrests prior to entering the drug court.<sup>62</sup>

Public safety is also strengthened by the addition of drug courts, through monitoring and accountability of a participating offender’s actions,<sup>63</sup> and by the offender’s change in behavior upon completion of the program. Drug courts increase retention rates in treatment, curing the individuals and reducing crime. Nationwide, between sixty-seven and seventy-one percent who begin treatment in drug court complete it.<sup>64</sup> Under traditional treatment services, between forty and eight percent drop out of treatment within three months.<sup>65</sup> Drug abusers respond more effectively the longer they are in treatment, and when they complete treatment, the offenders are less likely to commit crimes.

Drug court works on a national, state, and local level. The revolving door of cycling the same drug offenders in-and-out of the criminal justice system is disappearing as more drug courts are implemented in America.

## 2. Reduction in Criminal Justice Costs

Drug courts help to unburden America of the economic strains caused by prison and jail overpopulation produced through mandatory minimum sentencing and tough on crime laws.<sup>66</sup>

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59. NAT’L ASS’N OF DRUG COURT PROF’LS., 2004 “NATIONAL DRUG COURT MONTH” FIELD KIT 9 (2004), <http://www.nadcp.org/events/fieldkit.pdf>.

60. Simmons, *supra* note 19, at 257.

61. See Huddleston, III et al., *supra* note 14, at 2.

62. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 18.

63. Facts on Drug Courts, *supra* note 29.

64. Huddleston, III et al., *supra* note 14, at 4.

65. See *id.* (“[B]etween 40-80% of drug abusers drop out of treatment prior to the 90 day threshold of effective treatment length.”).

66. See McCoy, *supra* note 18, at 1518 (discussing the themes of drug court).

The annual cost per defendant in drug court ranges nationally between \$900 and \$3500,<sup>67</sup> while the average annual cost per incarcerated defendant equates to about \$20,000.<sup>68</sup> This difference equates to millions of dollars in savings that can be used elsewhere.

Successful programs in various states illustrate such results. In Washington, D.C., the cost per drug court participant is \$1800-\$4400 per year.<sup>69</sup> The average cost of incarcerating these same offenders is \$20,000 per year.<sup>70</sup> Multnomah County, Oregon saves about \$2328.89 per year for each drug court participant instead of putting him or her through the traditional criminal justice system.<sup>71</sup> In the state of Washington, “the average drug court participant produces \$6779 in benefits” from the reduction in recidivism: “\$3759 in avoided criminal justice system costs paid by taxpayers and \$3020 in avoided costs to victims.”<sup>72</sup> New York has saved \$254 million in incarceration costs by “diverting 18,000 non-violent drug offenders into treatment.”<sup>73</sup> California saves \$18 million a year by using drug courts.<sup>74</sup>

### 3. Reduction in Socioeconomic Problems

Besides lowering costs, drug courts are highly effective in reducing socioeconomic problems such as unhealthy births, domestic disputes, and inadequate job marketability.

Drug courts can bring about healthy mothers, and healthy babies. For instance, a 1992/1993 nationwide study conducted by the National Institute on Drug Abuse (NIDA) “found that of the 4 million women who gave birth during the study period. . . . 221,000 women used illegal drugs during their pregnancies.”<sup>75</sup> However, further NIDA research found that women in treatment discontinue their drug use, and the primary motivator is the healthy birth of their child.<sup>76</sup> Because of drug court, there were a total of “2,100 drug-free babies born to drug court participants,” as of June 2001.<sup>77</sup>

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67. NAT'L ASS'N OF DRUG COURT PROF'LS, THE COST OF TREATMENT IN DRUG COURT, <http://www.nadcp.org/whatis/costoftreatment.html> (last visited Oct. 15, 2005).

68. *Id.*

69. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 16.

70. *Id.*

71. Huddleston, III et al., *supra* note 14, at 3.

72. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 23.

73. Huddleston, III et al., *supra* note 14, at 2.

74. *Id.*

75. National Institute on Drug Abuse, NIDA InfoFacts: Pregnancy and Drug Use Trends, <http://www.nida.nih.gov/infobox/pregnancytrends.html> (last visited Oct. 4, 2004).

76. *Id.*

77. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 13.

Family is an untapped resource for “helping drug users succeed in treatment.”<sup>78</sup> The relationships between a drug abuser and his or her family are often strained because of the offender’s drug addiction. Drug courts can assist in bringing a family back together by ridding the offender of his or her substance abuse problems. A strong family bond will have many benefits, such as encouraging compliance with treatment, and offering support for the long haul after treatment ceases.<sup>79</sup> A recent Rochester, New York drug court graduate stated:

I don’t know if I’d be around today if not for the court, which motivated me to stay clean and take responsibility for my life. I had a healthy baby, obtained joint custody of the middle son, resumed my relationship with my eldest child and became reacquainted with my mom.<sup>80</sup>

Drug court can change lives. It is not just the offender who gets a second chance at life. The treatment court brings families back together, positively influencing the lives of all involved in the program.

Drug courts can also provide job skill training and other life enhancement skills,<sup>81</sup> such as getting offenders to return to school. Eighty percent of juvenile participants have returned, or remained in school, as a result of participation, which is significantly higher than those who stayed in the traditional system.<sup>82</sup>

In sum, the effects of drug court, as reflected in the valid research and statistics noted previously, substantiate the claim that drug courts are successful in terms of treatment and socioeconomic progress. Drug court will save the United States Government money that can be more wisely spent elsewhere. The treatment court is the first idea to show substantial progress in cleaning up our nation of illicit drug use.

### B. *Possible Negative Impacts of Drug Courts*

Despite the proven success of drug courts in the United States, some concerns remain among skeptics regarding the continued implementation of drug courts, including: 1. drug court is soft on crime; 2. drug court

78. Family Justice, Drug Courts-Families Join the Team, Training and Technical Assistance-Drug Courts, <http://www.familyjusticeinc.org/tta/projectcourts.html> (last visited Oct. 20, 2004).

79. *Id.*

80. Kaye, *supra* note 36, at 138.

81. See C. West Huddleston, III et al., *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*, 1 NAT’L DRUG COURT INST. 1, 9 (2004), <http://www.ndci.org/publications/paintingcurrentpicture.pdf> (stating drug courts can provide additional help with substance abuse).

82. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 13.

changes the roles of judges and lawyers; 3. drug court calls into question issues of constitutionality; and 4. drug court actually promotes drug use. However, a close examination of the program's results prove that such concerns are not substantiated.

### 1. Drug Courts May Be Soft On Crime

Many people believe that drug courts are soft on crime. In Texas, a state known to be one of the toughest on crime in the nation,<sup>83</sup> this perception may be the biggest contributing factor to why more drug courts are not being established within the state. In reality, the converse is true; "drug courts are tough on crime."<sup>84</sup> Offenders do not receive a free pass; they get a second chance. The threat of incarceration alone has failed to be an effective deterrent to drug abusers.<sup>85</sup> "In fact, drug court participants find drug court more challenging than jail or prison."<sup>86</sup> Drug courts involve frequent drug testing, intensive supervision, and judicial monitoring, in addition to periods of incarceration for program violations.<sup>87</sup>

Drug courts enable the criminal justice system to be tougher on criminals convicted of more serious crimes by providing more jail space.<sup>88</sup> The steady number of drug offenders flowing through the criminal justice system means allowing violent offenders to serve less and less of their time.<sup>89</sup> "With Three-Strikes-You're-Out statutes proliferating and long-term incarceration for serious offenders increasing, drug court programs are needed to free up limited jail space for serious criminals."<sup>90</sup> Moving drug offenders to drug courts allows violent offenders to be placed where they belong: prison.

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83. See Erick Fajardo, Op-Ed, *Drug Policy Still Needs Work*, DAILY TEXAN, Sept. 5, 2003, <http://www.dailytexanonline.com/media/paper410/news/2003/09/05/opinion/drug-policy.still.needs.work-458465.shtml> (noting Texas' primary reliance upon the traditional prison system).

84. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 13.

85. Facts on Drug Courts, *supra* note 29.

86. *Id.*

87. DEFINING DRUG COURTS, *supra* note 40.

88. Facts on Drug Courts, *supra* note 29.

89. See Brown, *supra* note 7, at 92-93 ("[S]taff and services, previously required to adjudicate drug offenders, are now directed to more serious offenders including those who present 'greater risks to society.'").

90. Facts on Drug Courts, *supra* note 29.

## 2. Changing Roles for Attorneys and Judges

Another concern detractors of the drug court system have is the changing roles placed on the major players in the criminal justice system: judges, prosecutors, and defense attorneys.<sup>91</sup>

Judges in the drug court system must change from being an objective arbitrator of the law to a father-like figure to the offender.<sup>92</sup> Judges adopt a mentorship-like role to the offender, allowing the judge and offender to establish trust and honesty through “an ongoing, working relationship.”<sup>93</sup> Those involved with the legal system may resist changing the judge’s role from their traditional duties in the criminal justice system.

However, both the participant and the judge seem to enjoy the change. Drug court participants say that “close supervision and encouragement by judges” are the leading factors in their successful completion and resulting drug-free lifestyle.<sup>94</sup> Likewise, judges also seem to enjoy this alternative approach to fighting drug abuse. Judges can be extremely discouraged by the large, never-ending caseloads of drug offenders before their court,<sup>95</sup> forcing judges to move through them at a rapid pace.<sup>96</sup> One judge stated, “I feel like I work for McJustice: we sure aren’t good for you, but we are fast.”<sup>97</sup> Drug court allows judges to focus on the individual offender, to help them establish a working relationship with the offender.

The prosecutor’s role under the drug court system also varies from his normal job as a “detached, objective enforcer of the law.”<sup>98</sup> Many may not feel a prosecutor can do his job as punisher and administrator of public safety if he is also “nurturing” offenders into getting clean.

In actuality, the prosecutor is affected the least by the change in roles.<sup>99</sup> He still enforces public safety by deciding who is eligible for participation.<sup>100</sup> Likewise, because drug courts reduce the rate of recidivism, he is still doing his job to promote the safety and well-being of the public.<sup>101</sup>

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91. See Simmons, *supra* note 19, at 259-60 (discussing the altering roles of attorneys and judges).

92. See Hora et al., *supra* note 3, at 476-77.

93. *Id.*

94. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 14.

95. See Kaye, *supra* note 36, at 135 (discussing a Rochester, New York Judge who was frustrated by the “daily flow of drug addicts before him”).

96. See *id.* at 147 (describing the frustrations endured by judges in busy courts).

97. See *id.* at 148.

98. Hora et al., *supra* note 3, at 477.

99. Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL’Y 63, 79 (2002).

100. Hora et al., *supra* note 3, at 477.

101. See *id.* at 478.

The defense lawyer must shift from looking out for a client's best legal tactics to his best life tactics: getting help to kick his client's habit. He foregoes motions to suppress and other constitutional issues that may be helpful in getting the state to drop the charges.<sup>102</sup> "The master skill becomes collaborative problem-solving rather than argument."<sup>103</sup> In other words, the defense attorney is faced with a complete change of strategy. Attorneys unfamiliar with their new role as a collaborator may have problems with this position. The response to this concern is simple: the treatment program is voluntary.<sup>104</sup> No offender is forced to participate in the program. The defense lawyer should advise his client of the rights he will surrender and any "alternative courses of action, including legal and treatment alternatives available outside of the drug court program" to fully understand the consequences of his decision.<sup>105</sup> In fact, some defense lawyers prefer the role change. One defense lawyer stated, "You realize that doing the best thing for your client means getting the best life outcome, not simply the best legal result."<sup>106</sup>

In sum, the roles of judges, prosecutors, and attorneys all change. Nevertheless, they have adjusted to their new roles without substantial problems. Those involved in the criminal justice system know that changes like these are commonplace in our legal system, keeping what works, and discarding that which does not work. The law is constantly evolving. Therefore, those involved in arguing for and against the law, as well as implementing and upholding the law, should evolve as well. The new roles assigned to judges, prosecutors, and defense attorneys are positively changing the way legal principles are, and will be, practiced in the coming years, focusing not only on the legal aspects of a clients case, but also on the clients social problems, the root of all legal problems.

### 3. Constitutional Issues

Another potential concern involves several constitutional issues that may arise in the drug court setting. They include the right against unrea-

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102. *See id.* at 479.

103. Michael C. Dorf, *Drug Treatment Courts and Other Problem-Solving Institutions: An Idea Whose Time is Coming*, WRIT NEWS, Dec. 24, 2001, <http://writ.news.findlaw.com/dorf/20011224.html>.

104. Kaye, *supra* note 36, at 136.

105. DEFINING DRUG COURTS, *supra* note 40.

106. Hora et al., *supra* note 3, at 469.

sonable search and seizure,<sup>107</sup> the right against self-incrimination,<sup>108</sup> the right to procedural due process,<sup>109</sup> and equal protection under the law.<sup>110</sup>

The right against an unreasonable search and seizure may be relevant because drug testing can be an “intrusive form of a search and seizure.”<sup>111</sup> However, these tests are usually conducted by administrative agencies that work within the drug court program, and not by law enforcement, where the courts more closely monitor search and seizures.<sup>112</sup> Also, the drug testing results obtained in drug courts are used in administrative proceedings, and not for criminal proceedings to determine an offender’s guilt or innocence.<sup>113</sup> It is part of the process for entrance into drug court. Most importantly, the offender participates in the program voluntarily. Therefore, the participant freely relinquishes certain rights in exchange for a reduced punishment.<sup>114</sup>

The right against self-incrimination may also be invoked as a result of drug testing.<sup>115</sup> A positive drug screen obviously invokes proof of drug use by the offender. Taking a test the defendant knows he will fail if he has fallen back into using drugs again may be harmful. “The introduction of the results of” this test in court may be alleged to be self-incriminating.<sup>116</sup> However, the constitution “prohibits testimonial incrimination, not physical self-incrimination.”<sup>117</sup> Because drug testing is a form of physical incrimination, “the constitutional right against self-incrimination does not protect the offender.”<sup>118</sup> Therefore, the distinction is clear that

107. See U.S. CONST. amend. IV (ensuring freedom from unreasonable searches and seizures); see also Rolando V. del Carmen & Maldine Beth Barnhill, *Legal Issues in Juvenile Drug Testing*, 63 DEC. FED. PROBATION 72, 73 (1999). It should be noted that this article discusses issues involved in juvenile drug testing. However, these issues may also pertain to drug testing in the drug court setting.

108. See U.S. CONST. amend. V (guaranteeing the freedom from self incrimination); see also del Carmen & Barnhill, *supra* note 108, at 73.

109. See U.S. CONST. amend. V (ensuring due process of the law; also applicable to state actions via the 14th Amendment to the U.S. Constitution); see also del Carmen & Barnhill, *supra* note 108, at 73.

110. See U.S. CONST. amend. XIV (ensuring equal protection of the law); see also del Carmen & Barnhill, *supra* note 108, at 73.

111. del Carmen & Barnhill, *supra* note 108, at 73.

112. See *id.*

113. See *id.*

114. See Rosenblum, *supra* note 30, at 1233 (discussing that in deciding to enter into drug court, the offender “effectively waives his presumption of innocence as well as his constitutional trial rights.”).

115. del Carmen & Barnhill, *supra* note 108, at 73.

116. *Id.*

117. *Id.*

118. *Id.*



by providing a drug test, there is no oral evidence conveyed to call into question testimonial self-incrimination.

Still another constitutional concern is that test accuracy can be challenged on grounds that it is a violation of procedural due process.<sup>119</sup> An offender may deny a positive drug test, blaming faulty testing. However, this challenge is quickly rebuffed because of the technological advances testing agencies use in the United States today.<sup>120</sup> Two cases, *Peranzo v. Coughlin*,<sup>121</sup> and *Jenson v. Lick*,<sup>122</sup> discussed the accuracy of drug testing and determined that they produce nearly flawless results. The *Peranzo* case found a ninety-six percent accuracy for drug tests,<sup>123</sup> and the *Lick* case found between a “ninety-seven to ninety-nine percent accuracy.”<sup>124</sup> These results basically guarantee an error free result, and rebuff the due process claim based on test accuracy.<sup>125</sup>

A last argument is raised when an indigent offender has to pay for confirmation of a drug test, whereby the right to equal protection under the law takes effect.<sup>126</sup> However, that concern is quickly set aside because the costs associated with testing are normally covered by the drug court. The drug court itself will often pay for the expenses of confirming drug test results.<sup>127</sup> Hence, this constitutional issue is likewise defeated.

These constitutional issues can arise with the implementation of drug courts. They are genuine concerns, but again, the offender knows that by electing to participate in drug court, he will have to waive certain rights he would have under the traditional justice system. The rights given up by the offender in exchange for entrance into the treatment court and the resulting lighter sentence is no more than a form of modern day plea-bargaining. Moreover, one United States Supreme Court case, *Moore v. Michigan*,<sup>128</sup> stands for the principle that a defendant may voluntarily waive his rights.<sup>129</sup> Furthermore, another Supreme Court case,

119. Rolando V. del Carmen & Maldine Beth Barnhill, *Legal Issues in Juvenile Drug Testing*, 63 DEC. FED. PROBATION 72, 73 (1999).

120. *Id.*

121. *Id.* (citing *Peranzo v. Coughlin*, 608 F. Supp. 1504 (D.C.N.Y. 1985)).

122. *Id.* (citing *Jenson v. Lick*, 589 F. Supp. 35 (D.C.N.D. 1984)).

123. *Id.* (citing *Peranzo v. Coughlin*, 608 F. Supp. 1504 (D.C.N.Y. 1985)).

124. del Carmen & Barnhill, *supra* note 119, at 73 (citing *Jenson v. Lick*, 589 F. Supp. 35 (D.C.N.D. 1984)).

125. *See id.*

126. *Id.* at 74.

127. *See* THE COST OF TREATMENT IN DRUG COURT, *supra* note 67 (stating that “the costs of treatment services for drug court participants” differs based on different factors, including ancillary services such as drug testing).

128. *Moore v. Michigan*, 355 U.S. 155 (1957).

129. *See id.* at 161-62 (“petitioner had the burden of showing, by a preponderance of the evidence, that he did not intelligently and understandingly waive his right to counsel.”).

*Santobello v. New York*,<sup>130</sup> states that “the disposition of criminal charges between the prosecutor and accused is an essential component of the administration of justice.”<sup>131</sup> A defendant can and should fight the case if he has a good chance of defeating the charge, or otherwise feels it is in his best interest to avoid the drug court program.

Actually, the drug court may save the criminal justice system from its own constitutional issues. The Eighth Amendment to the United States Constitution protects an individual’s right to be free from cruel and unusual punishment.<sup>132</sup> The Supreme Court, in *Robinson v. California*,<sup>133</sup> declared that it is contrary to the Eighth Amendment to punish a person simply because of a disease.<sup>134</sup> Drug addiction has become increasingly discussed as a disease.<sup>135</sup> Lower courts have begun applying this classification to those with mental health needs.<sup>136</sup> Applying it to drug addicts could be next. Courts may soon find that when sentencing drug addicts to jail or prison, the punishment itself is a violation of the constitution. Drug court is the alternative to this possible constitutional violation.

#### 4. Promotes Drug Use

Drug court allows for relapse without bringing new charges against the participant each time they fail a test or admit to using drugs.<sup>137</sup> Therefore, many believe drug court promotes drug use. This is simply not true. Drug abuse is an addiction,<sup>138</sup> and like most other addictions, quitting takes time and relapse can occur. The purpose of drug court is to help these offenders, not punish them. An offender is sanctioned when he or she fails a test, and thereafter, quickly brought back into the treatment system to receive more, intensive help.<sup>139</sup> They are not discarded into the

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130. *Santobello v. New York*, 404 U.S. 257 (1971).

131. *Id.* at 260.

132. U.S. CONST. amend. VIII.

133. *Robinson v. California*, 370 U.S. 660 (1962).

134. *See id.* at 666 (“A law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”).

135. *See* Hora et al., *supra* note 3, at 450-51 (discussing the definition of addiction and its application as a disease); *see also* Rosenblum, *supra* note 30, at 1228.

136. Rosenblum, *supra* note 30, at 1228 (citing *Casey v. Lewis*, 834 F. Supp. 1477, 1544 (D. Ariz. 1993)).

137. Andrew Armstrong, Comment, *Drug Courts and the De Facto Legalization of Drug Use for Participants in Residential Treatment Facilities*, 94 J. CRIM. L. & CRIMINOLOGY 133, 134-35 (2003).

138. *See* Lynne M. Brennan, Comment, *Drug Courts: A New Beginning for Non-Violent Drug Addicted Offenders-An End to Cruel and Unusual Punishment*, 22 HAMLINE L. REV. 355, 392 (1998) (discussing drug addiction and the Eighth Amendment).

139. *See* DEFINING DRUG COURTS, *supra* note 40 (discussing the sanctions involved for non-compliance in drug court).

traditional criminal justice system and sent to jail. They are given a second chance, and in some cases a third chance. This is what makes the drug court system so effective and innovative; having the ability to work with someone, helping them overcome relapses and get on with their life as a clean, healthy, productive member of society.

### III. MORE DRUG COURTS ARE NEEDED IN TEXAS

Texas first implemented drug courts in 1993 in Jefferson and Travis counties.<sup>140</sup> Preliminary results of the few drug courts implemented in Texas suggest that drug courts can be successful in this state.<sup>141</sup> In Dallas, Jefferson, and Travis counties, offenders completing the program had a 28.5% re-arrest rate, after three years, compared to 65.1% of those not completing the program, and only a 3.4% incarceration rate compared to 21.4% of non-completers.<sup>142</sup> Only 11 to 15% of those in the treatment program, statewide, tested positive for drugs.<sup>143</sup> That fact is in stark contrast to those not in the program, who when arrested, test positive for drugs between 50 to 61% of the time.<sup>144</sup>

In Tarrant County, 13% of drug court participants were re-arrested within one year, as opposed to 17% of non-participants.<sup>145</sup> “[C]ompared to 39.5% of those who dropped out of the program, and 48.7% of those in the traditional court system,” only approximately 15% of drug court graduates were re-arrested after over a two year period in Dallas County.<sup>146</sup>

Despite the success of drug courts implemented in these jurisdictions, Texas has been slow in implementing more courts in other counties. As of February 2004, only twelve<sup>147</sup> out of two hundred fifty-four counties in Texas have drug courts. Moreover, the existing drug courts have relatively small enrollments. The drug court in Travis County has the largest

140. ALMA I. MARTINEZ & MICHAEL EISENBERG, CRIMINAL JUSTICE POL’Y COUNCIL, OVERVIEW OF DRUG COURTS IN TEXAS i (2002), <http://www.cjpc.state.tx.us/reports/parprob/drugcourt.pdf>.

141. See ALMA I. MARTINEZ & MICHAEL EISENBERG, CRIMINAL JUSTICE POL’Y COUNCIL, INITIAL PROCESS AND OUTCOME EVALUATION OF DRUG COURTS IN TEXAS 22 (2002), <http://www.cjpc.state.tx.us/reports/parprob/03drugcrts.pdf> (“Offenders completing drug court programs have significantly lower arrest and incarceration rates than non-completers and comparison group offenders.”).

142. *Id.*

143. *Id.* at 23.

144. *Id.*

145. See MARTINEZ & EISENBERG, *supra* note 140, at 8 (showing the Bavon study of Tarrant County, Texas).

146. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 21.

147. BROCKETT, *supra* note 53, at 7.

enrollment capacity of three hundred participants,<sup>148</sup> while Tarrant County can enroll only fifty-five participants.<sup>149</sup> Providing treatment to such a small percentage of the drug abusing population has limited the substantial impact drug courts could have if set up and used properly.

Recently, the Texas Legislature has taken notice of drug courts' success nationwide and has begun developing plans to implement more programs in the state. The State Legislature passed House Bill 1287 in 2001,<sup>150</sup> which requires that all counties in the state, "with a population over 550,000 establish drug courts."<sup>151</sup> Unfortunately, House Bill 1287 is limited in its impact. According to U.S. Census reports for the year 2000, only seven counties in Texas have over 550,000 residents.<sup>152</sup> Moreover, those that do fall within mandatory population slots are not fully complying with the bill.<sup>153</sup> Having so few counties with drug courts will make almost no societal impact.<sup>154</sup> House Bill 1287 should be amended to require compliance by more counties in Texas. Such a change will result in more drug courts, facilitating more help to Texas' drug addicts.

The 78th Texas Legislature has made some strides in drug policy reform in Texas.<sup>155</sup>

Lawmakers were given the results of a study that showed that participants in drug treatment programs were 33-percent less likely to be arrested, 45-percent less likely to be convicted again, and 87-percent less likely to return to prison than those merely sent to prison.<sup>156</sup> In addition to the study, legislators saw that House Bill 2668, which required that all first-time offenders caught with less than a gram of a controlled substance receive drug treatment, would save Texas \$115 million over the next five years.<sup>157</sup>

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148. MARTINEZ & EISENBERG, *supra* note 140, at 11.

149. *Id.*

150. Tex. H.B. 1287, 77th Leg., R.S. (2001).

151. BROCKETT, *supra* note 53, at 6.

152. U.S. CENSUS BUREAU, TOTAL POPULATION REPORT: TEXAS COUNTIES (2000), [http://factfinder.census.gov/img/cb\\_head.gif](http://factfinder.census.gov/img/cb_head.gif) (last visited Oct. 17, 2004).

153. MARTINEZ & EISENBERG, *supra* note 141, at 7 (stating, however, that the counties in question are in various stages of implementation).

154. *See* BROCKETT, *supra* note 53, at 6 (indicating that twelve counties in Texas have implemented the drug court program. Though only seven counties in Texas are required to implement drug courts due to their population, it is important to note that five more have established drug courts of their own accord.).

155. *See* Fajardo, *supra* note 83.

156. *See id.*

157. *See id.*

The bill also allows judges “to utilize community supervision and treatment on the second and subsequent offenses.”<sup>158</sup> The bill passed and took effect September 1, 2003.<sup>159</sup>

Despite the recent developments, Texas is still behind most other states in realizing the numerous benefits drug courts can effectuate by countering the war on drugs and reducing the prison population. Texas appears to have both a lack of interest in establishing drug courts, as well as a lack of state and federal funding to implement them. Supporters of drug courts wish to see federal funding proposals appropriate sixty-eight million dollars for drug courts nationwide in 2005.<sup>160</sup> Although this amount is an increase from previous years, it is still not enough when compared to the rapid increase in the number of drug courts across the nation.

Texas received \$1.5 million from state funding “for drug courts over the 2002-2003 biennium.”<sup>161</sup> The same allocation for the 2004-2005 year will not be sufficient to be effective. As more drug courts are implemented in a state, their funding must also increase to accommodate the increased budgets.

If Texas does not wish to allocate more of its budget for the implementation of drug courts, one possible alternative to state and federal funding is using funding provided by the direct transfer of funds from the Department of Corrections budget, similar to California’s drug court system.<sup>162</sup> California drug courts receive fifty-eight percent of their funding from the money saved by placing the same offenders in drug court instead of prison.<sup>163</sup> Texas, with the nation’s largest incarcerated population,<sup>164</sup> could certainly get a substantial portion of its funding from the savings it would have in reducing the number of convicted drug abusers in its prison population.

The State of Texas needs more drug courts. Drug courts have proven effective at combating drug abuse and save money throughout the nation,<sup>165</sup> and it can alleviate the drug problems in Texas as well. Texas is missing the benefits that drug court could offer. Drug Courts will provide substantial relief to a multitude of problems in Texas.

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158. ACLU OF TEXAS ET AL., HELP STOP DRUG ABUSE IN OUR COMMUNITY: TELL GOVERNOR PERRY TO SIGN HB 2668, BECAUSE TREATMENT WORKS! (2004).

159. Fajardo, *supra* note 83.

160. NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59, at 2.

161. MARTINEZ & EISENBERG, *supra* note 140, at 4.

162. Huddleston, III et al., *supra* note 81, at 3.

163. *Id.*

164. KAPLAN ET AL., *supra* note 16.

165. See generally NATIONAL DRUG COURT MONTH FIELD KIT, *supra* note 59.

### A. *Crime*

America's prison population, the percentage of prisoners relative to the entire population, is the highest in the world.<sup>166</sup> Unfortunately, Texas has the largest incarcerated population in the United States.<sup>167</sup>

It is obvious that Texas overly-relies on its prison system to put away drug offenders.<sup>168</sup> "The number of offenders incarcerated in Texas prisons and state jails rose by 272%. . . between 1990 and 2000."<sup>169</sup> In 2001, "47% of federally sentenced defendants in Texas had committed a drug offense."<sup>170</sup> Today, 60% of its total prison population consists solely of drug offenders.<sup>171</sup> In 1999, the percentage of adult males arrested who tested positive for drug use was 60.5% in Dallas, 59.5% in Houston, 58.3% in Laredo, and 49.5% in San Antonio.<sup>172</sup> Texas had 99,721 drug possession arrests in 2003 alone.<sup>173</sup> Texas has more offenders incarcerated than some states entire population, including Vermont, Wyoming, Alaska, and even Washington D.C.<sup>174</sup> "Texas and California alone have more prison beds than Russia."<sup>175</sup>

Minorities make up a substantial proportion of the drug offenders arrested in America.<sup>176</sup> "In comparison to the rest of the United States, Texas has a much larger proportion of Latinos, an equal proportion of African Americans, and a lower proportion of whites."<sup>177</sup> In 1999, minorities comprised forty-two percent of Texas's residential population.<sup>178</sup> Yet minorities accounted for almost 70% of Texas's prison population.<sup>179</sup> By themselves, "[African-Americans] represent 35 percent of those ar-

166. Avakian, *supra* note 17.

167. KAPLAN ET AL., *supra* note 16.

168. See Fajardo, *supra* note 83 (stating that Texas "has an over-reliance on the prison system" and "that 60% of the prison population consists of drug offenders.").

169. MARTINEZ & EISENBERG, *supra* note 140, at 7.

170. DRUG POL'Y INFO. CLEARINGHOUSE, *supra* note 13, at 10.

171: See Fajardo, *supra* note 83.

172. U.S. GEN. ACCOUNTING OFFICE, REPORT #GAO-01-1051R, CRIMINAL JUSTICE STATISTICS FOR MAJOR CITIES 5 (2001), <http://www.gao.gov/new.items/d011051r.pdf>.

173. TEX. DEP'T OF PUB. SAFETY, ANNUAL REPORT OF 2003 UCR DATA COLLECTION: CRIME IN TEXAS 2003 OVERVIEW 2 (2003), [http://www.txdps.state.tx.us/director\\_staff/public\\_information/2003CIT.pdf](http://www.txdps.state.tx.us/director_staff/public_information/2003CIT.pdf).

174. See KAPLAN ET AL., *supra* note 16.

175. Avakian, *supra* note 17.

176. See *id.*

177. Robert H. Wilson, University of Texas Student Webserver, Racial and Ethnic Composition in Texas, <http://uts.cc.utexas.edu/~bobprp/group2.html> (last visited Sept. 15, 2005).

178. See KAPLAN ET AL., *supra* note 16 (stating that whites comprise fifty-eight percent of Texas' population).

179. See *id.* (stating that whites represent only thirty percent of the Texas prison and jail population).

rested for drug possession, 55 percent of those convicted of drug possession, and 74 percent of those sent to prison for drug possession.”<sup>180</sup>

These statistics suggest that there is an astronomical number of minorities rotting in the Texas criminal justice system instead of getting the help they need to deal with their drug addiction. With racism still rampant in the United States, minority drug offenders are further pushed to the back of the line, hoping for a second chance at redeeming their lives. Instead, they are receiving long prison terms and no help for their drug problem.

It appears as though prisons and jails have become products of “de facto segregation” because of the large proportion of minority drug offenders caught in the system. The “war on drugs” in America has become a war on its Latino and African-American citizens and communities.<sup>181</sup> The same holds true in Texas. Minorities are the ones disproportionately affected by the state’s tough drug laws.<sup>182</sup> They are presented with only “one remedy to drug related crimes: prison.”<sup>183</sup> By the year 2020, it is estimated that thirty-three percent of “African-Americans between the ages of 18-34 will be in prison,” while twenty-five percent of “Hispanic men of the same age” group will also be in prison.<sup>184</sup> That equates to “4.5 million African-American men and 2.4 million Hispanic men” rotting in jail or prison in 2020.<sup>185</sup> “At this rate, the criminal justice system will accomplish, by the year 2020, what the segregation laws failed to do because of the Civil Rights Act of 1965.”<sup>186</sup>

Drug courts can provide hope as a substitute for the despair experienced upon recognition that our nation is losing the “war on drugs.” Drug courts can help restore these lost lives and help push the minority voice to the forefront alongside Anglo-Americans. With the help of this treatment program, minorities will be able to position themselves from a point of strength, and not fall further behind because of a disease such as drug abuse.

Minority drug offenders need help, and drug courts can give them that specific assistance. Unlike the traditional justice system, where it has been alleged that minorities receive harsher sentences for similar drug-

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180. Avakian, *supra* note 17.

181. Luther Brown, *War on Drugs or War on Minorities?*, AFRICANA: GATEWAY TO THE BLACK WORLD (2001), [http://www.africana.com/articles/daily/index\\_20010815.asp](http://www.africana.com/articles/daily/index_20010815.asp).

182. See Avakian, *supra* note 17 (articulating that a disproportionate amount of minorities are adversely affected by the states drug policy).

183. See Fajardo, *supra* note 83.

184. Avakian, *supra* note 17.

185. *Id.*

186. *Id.*

related crimes than Anglo-Americans,<sup>187</sup> drug courts in Texas can, and should, look at the offenders' drug treatment needs, not skin color, as the basis for its decision to help. Instead of wasting lives in the criminal justice system, society can save drug offenders, return them to civilization, and incorporate them into productive members of society.

### B. *Educational and Economic Status*

In addition to reducing the criminal problems in Texas, drug courts can provide benefits to the educational and economic status of the state and drug offenders as well.

Texas ranks among the lowest states in high school graduates, at a sixty-five percent graduation rate, below the national average.<sup>188</sup> Hispanics, at thirteen percent, and African Americans, at eleven percent, make up the highest proportion of high school dropouts.<sup>189</sup> That number is significant because it directly relates to the prison population. Sixty-six percent of Texas's prisoners are high school dropouts.<sup>190</sup>

Drug courts, through collaboration with employment agencies, can encourage these offenders to get a high school diploma, GED, and even a college education. Those most successful in completing drug court in Texas were high school graduates or those who earned a GED,<sup>191</sup> proving that drug courts that implement educational programs for the offenders help significantly, as offenders are more likely to respond when they have a goal ahead of them. Texas needs to develop more drug courts to help give minority offenders educational and job opportunities that were not made previously available.

Statistics of unemployment rates in Texas also show poor results. In 2004, Texas ranked forty-first nationally for unemployment rates, at

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187. See generally *id.* (arguing that a five year sentence is received for rock cocaine, a drug commonly found in predominately black areas, when it would take one hundred grams of powdered cocaine, a suburban recreational drug, to receive a comparable sentence).

188. John Kerry for President, The Kerry-Edwards Plan for One Million More Americans to Graduate High School, <http://johnkerry.com/issues/education/graduation.html> (last visited Nov. 11, 2004) (stating the true rate of graduation levels in Texas is sixty-five percent, not eighty percent as is often announced).

189. Olga Vives, *Latino Girls' High School Drop-out Rate Highest in U.S.*, National Organization for Women (2001), [http://www.NOW.org/nnt/fall-2001/l\\_atinos.html](http://www.NOW.org/nnt/fall-2001/l_atinos.html).

190. Maria "Cuca" Robledo Montecel, Intercultural Development Research Association, *From "Dropping Out" to "Holding On": Six Lessons from Texas*, <http://www.idra.org/media/sixlessons.htm> (last visited Oct. 20, 2004).

191. See MARTINEZ & EISENBERG, *supra* note 141, at 14 (giving the characteristics associated with high completion rates in drug court).



6.1%.<sup>192</sup> African-Americans, at 11.7%, and Hispanics, at 6.5%, have the highest unemployment rates, more than any other racial or ethnic group in the state.<sup>193</sup> One possible reason for this disparity is that very few employers are looking to offer employment opportunities to convicted drug offenders. Incarcerating drug offenders leaves fifty million Americans with criminal records,<sup>194</sup> and little chance of employment. The effects of a drug conviction prevent many offenders from obtaining jobs, housing or loans, making it impossible to support a family or make a living. Without the help of drug court, these offenders will be back to using drugs, and subsequently, back in prison.

Drug court can offer offenders help at obtaining employment and career skills,<sup>195</sup> making them not only sober, but also productive members of society. In addition to cleaning up these offenders, drug court can reduce or eliminate the criminal act of the offender so that they do not have a felony offense, or in some occasions, any offense, on their record.<sup>196</sup>

### C. *Health and Poverty*

“Substance abuse is the number one health problem in America.”<sup>197</sup> “More deaths, illnesses, and disability derive directly from substance abuse than any other preventable health condition.”<sup>198</sup> Texas is ranked thirty-fifth nationally in total health statistics.<sup>199</sup> The major concerns are the high rates of poverty, as they rank forty-sixth for children living in poverty.<sup>200</sup> According to 2001 data, 59.8% of the total population living in poverty is Hispanic, and 13.8% is African American.<sup>201</sup>

192. U.S. DEP'T OF LABOR: BUREAU OF LABOR STATISTICS, UNEMPLOYMENT RATES FOR STATES (2004), <http://stats.bls.gov/eag/eagtx.htm>.

193. U.S. DEP'T OF LABOR: BUREAU OF LABOR STATISTICS, GEOGRAPHIC PROFILE OF EMPLOYMENT AND UNEMPLOYMENT: 2004 ANNUAL AVERAGES, <http://www.stats.bls.gov/lau/table14full04.pdf> (last visited Oct. 18, 2005).

194. Brown, *supra* note 181.

195. See Huddleston, III et al., *supra* note 81, at 1.

196. See Rosenblum, *supra* note 30, at 1233-34 (stating that graduates of drug court often have their sentences reduced or dismissed).

197. Drug Watch International, Drug Watch International Position Statement: Drug and Alcohol Treatment, <http://www.drugwatch.org/Treatment%20Position.htm> (last visited Nov. 11, 2004).

198. *Id.*

199. United Health Foundation, America's Health: State Health Rankings 2004 (2005), <http://www.unitedhealthfoundation.org/shr2004/Findings.html>.

200. United Health Foundation, America's Health: State Health Rankings 2004: Children in Poverty, <http://www.unitedhealthfoundation.org/shr2004/components/childpoverty.html>

201. Texas Health and Human Services Commission, Poverty Statistics: Demographic Profile of the Texas Population Living in Poverty in 2001, <http://www.hhsc.state.tx.us/research/dssi.htm> (last visited Oct. 19, 2005).

Children whose parents are incarcerated in Texas, which often results in the child leading an impoverished lifestyle and includes about fifty percent of Texas's male incarcerated population and sixty-six percent of women's population, are five times more likely to serve prison time when they grow up.<sup>202</sup> This continues the pattern of children growing up to be just like their parents; unfortunately, this type of pattern is not one we wish to continue. Providing drug court treatment to these children's parents can help end this cycle before it's too late, and before more lives are ruined.

Drug courts will reduce health problems and poverty problems in Texas. Graduates of drug courts come out of them leading a healthy lifestyle, reducing their chances of contracting or spreading disease, such as HIV and AIDS. Drug courts can save lives; not just the offender's, but the lives of those the offender comes into contact with. The program has a rippling effect on that offender's household, community, state, and nation. Drug courts will clean up drug offenders, and subsequently reduce poverty, increase health, and reduce the number of children growing up as orphans.

#### IV. CONCLUDING REMARKS

*"Just because we cannot see clearly the end of the road, that is no reason for not setting out on the essential journey. On the contrary, great change dominates the world and unless we move with change we will become its victims."*<sup>203</sup>

-Senator Robert F. Kennedy

Drug Courts are the great change to our efforts on the war on drugs in America. Drug courts help engage and retain felony and misdemeanor drug offenders into treatment services.<sup>204</sup> They provide a closer and more intensive supervision of the offender than other solutions our nation has tried.<sup>205</sup> They substantially reduce drug use and criminal behavior for offenders while participating in drug court, and lower criminal behavior by offenders after participation in the court.<sup>206</sup> Drug courts also produce extraordinary savings in criminal justice related costs.<sup>207</sup>

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202. See ACLU OF TEXAS ET AL., *supra* note 158.

203. *Quote of the Month*, CADCP NEWSLETTER (Cal. Ass'n of Drug Ct. Prof'ls), Aug. 1999, at 3, <http://www.cadcp.org/august1999.pdf>.

204. William G. Meyer & A. William Ritter, *Drug Courts Work*, 14 FED. SENT. R. 179, 179 (2002).

205. *Id.*

206. *Id.*

207. *Id.*

Drug courts work; the research proves it. The United States spends over one hundred billion dollars fighting drug abuse annually.<sup>208</sup> Wouldn't the State of Texas, and our nation as a whole, be better off spending that money elsewhere? Drug court provides for this opportunity. Drug court not only saves lives, it is cost-efficient. Our nation is finally establishing a productive way to fight drug abuse in an effective manner. It is time for Texas to do the same.

The effects of drug courts can impact all facets of life, not just crime reduction. Drug courts can impact a state's health, educational, and economic status. Drug courts can bring about change for these socioeconomic factors. It can bring about change in Texas.

More drug courts need to be implemented in the State of Texas. More judges need to be appointed so that drug court can keep the intimate atmosphere and working relationship that participants find so effective in dealing with their substance abuse problems. More attorneys need to lend their services to the drug court program to ensure justice and ensure their clients get the help they need. Community support is needed to spread the word that drug courts work. Most importantly, the Texas legislature must continue to appreciate the results the drug courts have made around the nation. Drug courts must secure state and federal funding needed to implement more drug courts in their own state. The result, saving lives and money, will be worth it.

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208. Simmons, *supra* note 19, at 237.