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- [Who We Are](#)
- [Press Room](#)
- [News & Issues](#)
- [CLE & Events](#)
- [Committees](#)
- [Members Only](#)
- [Champion Magazine](#)
- [Indigent Defense](#)
- [Federal Legislation](#)
- [White Collar](#)
- [State Legislation](#)
- [Affiliate Organizations](#)
- [Lawyer Resources](#)
- [Foundation](#)

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Rethink how we fight drugs

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The Miami Herald
By Cynthia Hujar Orr

Twenty years ago, South Florida's jails and courts were bursting at the seams with low-level drug suspects, mostly users who sold small amounts of cocaine to feed their habits. Pretrial urine screenings revealed that 73 percent of all arrestees tested positive for drugs, with cocaine and marijuana leading the list.

The jails became so overcrowded that most people arrested for drug felonies were released back to the streets pending trial, where they would be arrested again, usually on another drug felony. Plea bargains resulted in mandatory minimum prison sentences for many offenders. Violent felons were gaining early release because the Florida prison system was holding so many nonviolent drug offenders with mandatory sentences.

In 1989, then-Miami-Dade State Attorney Janet Reno instituted a novel plan -- "drug court." Defendants charged with low-level drug felonies would be diverted into treatment programs instead of prison. The idea caught on, and today there are some 2,100 similar "problem solving" courts around the country, dealing with drug defendants and other problems such as drunken drivers and domestic-violence offenders.

But state courts and prisons are still overflowing with people charged with use or street-level sale of drugs. The FBI Uniform Crime Report for 2008 issued this month listed 1.7 million drug arrests -- 12.2 percent of all reported crimes: 4,658 arrests every day, roughly one arrest every 18 seconds.

Diversity of courts

There is no single model for drug courts. Some work fairly well; many do not. The National Association of Criminal Defense Lawyers recently completed a two-year study of these specialized courts, to be released today. Hearings were held in seven cities around the country, including Miami, to try to find out what succeeds, and what doesn't.

One problem is that many courts force people to enter a guilty plea in order to get into court-supervised treatment programs. Even if an addict achieves lasting sobriety or learns to control antisocial behavior and is unlikely to recommit a crime, the consequences of a criminal conviction -- felony or misdemeanor -- can be lifelong and devastating.

In many programs, the individuals most able to help themselves, or those with more resources, find their way through drug courts into treatment, while defendants most in need of treatment, the hard cases, are set up for failure -- a one-way ticket to jail. This sort of "skimming" may give drug courts impressive success statistics, but doesn't make efficient use of the limited resources available. Programs that help people conquer addiction save tax dollars; programs that put addicts into prison for long sentences cost the taxpayers money.

Most drug courts were created by prosecutors and judges faced with overloaded court dockets, and there often has been little opportunity built into the process for defense lawyers to protect

But there are positive exceptions. In Philadelphia, for example, before an accused person is pressured to enter treatment, he is given a reasonable opportunity to defend himself against the cause of his arrest. That way, innocent people are not pushed to plead guilty and drain program resources to make the case go away. Not everyone arrested for a drug crime is guilty, and treatment slots should be reserved for those who want and need it.

Push to dismiss charges

Spurgeon Kennedy, of the District of Columbia Pretrial Services Agency, said "under the radar" programs exist where judges lean on prosecutors to dismiss charges and enable defendants to get treatment. In Tennessee, state law allows a charged person with no recent felony offense to have his case set aside to make treatment possible.

Drug courts give tough-on-crime politicians cover to support spending money for treatment programs in the criminal-justice system. But treatment usually can occur more efficiently in the public-health system. "What we're doing is back-loading the treatment, enabling our legislators and leaders to fail to properly fund treatment, education and health services," the late Robert Hooker, a Pima County, Ariz., public defender, testified at a hearing. It's a misallocation of scarce resources.

The country needs to take a new look at the way we deal with drugs and drug users. About 500,000 men and women are incarcerated for a drug offense, and they are disproportionately poor, minorities or immigrants. Substance abuse really is a medical, not a criminal-justice, issue. Moving away from a "war on drugs" to a strategy for controlling drugs and treating drug abusers is the next step.

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