

Courting Drug-Policy Reform

A bipartisan drug policy 20 years in the making?

By **Dina Fine Maron** | Newsweek Web Exclusive
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Before January, Judge Wendell P. Gardner Jr. had never been hugged by a defendant. But he had to get into a different mindset when he took over as the District of Columbia's adult-drug-court judge at the beginning of the year. Now, each month when nonviolent drug offenders "graduate" from the five to 18 months of judge-supervised treatment, he steps off the bench and interacts with the users he helps keep out of jail. For the George H.W. Bush appointee, drug courts are not about politics, they are about treatment and results. "You get a sense you're really helping someone," he says.

But the approximately 2,100 U.S. courtrooms like his that divert nonviolent drug offenders from prison and into treatment aren't warm and fuzzy. Gardner himself has been known to administer stern lectures from the bench. Still, it's not uncommon for drug-court graduates—who are avoiding jail with completion of the program—to get a little choked up. Drug courts, which were first tried 20 years ago in Florida to address the high rate of recidivism among felony drug offenders, have slowly gained public acceptance, and lately, public recognition. President Obama's drug czar, **Gil Kerlikowske**, sees them as one of the crucial ways to "break the cycle of addiction and crime." Obama has sought to double the funding for these courts in 2010.

Although Democrats seem unable to agree with each other on much these days, from health care to climate change—and they do not agree with Republicans on much of anything—drug courts seem to be that vanishingly rare thing in Washington: an issue with near consensus.

Though the specifics of the drug courts differ at the local level (and are typically organized by those who run their day-to-day affairs: the judge, probation officers, prosecutors, lawyers, and treatment facility), they are all founded on the same premise: incarcerating nonviolent drug offenders doesn't make for good crime reduction or fiscal policy. When nonviolent drug offenders opt into these programs, they are signing up for multiple drug tests per week, treatment-counseling requirements, and weekly appearances in front of the drug-court judge.

For drug offenders, there are two ways in. In most cases, someone arrested for drug possession or a



nonviolent drug-motivated crime (say, stealing car parts to be able to afford drugs) must plead "guilty" for the crime, and then they can be routed to drug court—typically as a requirement for probation. In some communities someone could be sent to drug court without having to enter a plea at all. In those cases completion of drug court means they do not have a conviction and they will not need to check off "yes" under conviction questions on an employment application. No matter how you get in, a slip-up or missed court dates means the judge will mete out escalated sanctions ranging from washing police cars to going to jail for a few days, and the incentive to graduate is clear: failure to stay clean means you go to prison. There are also often more immediate carrots for good behavior, such as bus tokens and fewer court dates.

As a whole, the drug courts work. Meta-studies by the **Government Accountability Office** and the **National Drug Court Institute** show that when addicts stick to the judge-supervised drug-treatment program, it lowers prison costs and overcrowding, helps get addicts clean, and makes a dent in the revolving door of recidivism. The **Urban Institute estimates** that when the U.S. spent about half a billion dollars on supervision and treatment for the approximately 55,000 adult nonviolent drug offenders that went through the drug courts in 2005, the courts saved more than \$1 billion in reduced prison and law-enforcement costs. West Huddleston, CEO of the National Association of Drug Court Professionals (NADCP), notes that there are more participants in drug courts today than when the study was done and adds that the savings are even greater when avoided emergency-room care and improved workplace productivity are included.

The common critiques? There are not enough of the courts and they should be open to more drug offenders. The National Association of Criminal Defense Lawyers also recently issued a report calling for more standardization of drug-court practices and **arguing** that drug offenders should be able to access treatment and rehabilitation services in all drug courts without having to plead guilty. "We are very much in favor of drug courts, but we're not sure that a criminal conviction should be part of it. Addiction is a public health problem," says Cynthia Hujar Orr, president of the NACDL. "This administration's Department of Justice is very interested in getting [drug courts] right. The question that remains is, Do they see this as a public-health problem like we do?"

So politically, they are a gold mine. They are well aligned with the evidence-based treatment heralded by the White House, and both the **Republican** and **Democratic parties** praise them by name in their respective party platforms. "In Alaska, the drug courts have been models in reducing recidivism—13 percent for those who have graduated from the programs as compared with 32 percent for offenders who didn't participate," said Sen. Lisa Murkowski.

"[Drug courts] recognize that local problems need local solutions," concurs Sen. Barbara A. Mikulski of Maryland, chairwoman of the Commerce, Justice and Science Appropriations Subcommittee that funds the U.S. Department of Justice. "That's why I've fought to increase funds in the federal checkbook for drug courts."

The president's 2010 budget proposes to **allocate \$118 million** toward these and other diversionary courts. That's a substantial increase from 2007 when the \$20.2 million drug-court budget (which provides funds for new drug courts and assists with treatment costs in others) had to be stretched across all 50 states, the District of Columbia, tribal courts, and U.S. territories.

Though the latest drug-court funds have yet to be voted on by the full Senate, the figures passed in the two relevant Senate appropriations committees (total \$83.8 million) aren't that far from the sum passed in the House version (\$103.8 million)—or Obama's initial asking price (\$118 million).

Rep. John Boozman of Arkansas, a staunch drug-court supporter, attributes the growing congressional support to better education about the benefits of drug courts and to concern about drug-related crime. "I'm a guy who watches the dollars, but in the long run I could argue that if we spend in this regard, it will save a lot more money down the line. That's a good deal for the taxpayers, society, and the families [of these offenders]," he says.

Experts say the current economy is a factor as well. The new funds, if passed, could be particularly appealing to states that are dealing with substantial prison overcrowding and those looking to close treatment funding gaps.

And, bit by bit, the public is becoming more aware of drug courts, too. An anti-meth campaign launched by the Office of National Drug Control Policy last month featured a Missouri **drug-court graduate named Josh. Even Texas**, a state traditionally associated with being harsh on crime, has 78 drug courts, according to the NADCP.

But the system isn't perfect. Orr says the lack of standard entry requirements promotes "skimming" of defendants—admitting low-risk offenders that will most likely succeed in the program instead of many higher-risk offenders (those with longer criminal records or those who commit violent acts because of their drug use). The problem stems from the fact that prosecutors are the ones who control admission in many jurisdictions, and they have to be concerned about the program's success rate, according to her organization's recent report. "Skimming costs the taxpayers more money since it excludes those who need services the most," she says. And the NACDL says the excluded groups tend to be those with less money and those who are minorities or immigrants. "There's a fear that since those groups might have worse support systems there is a higher likelihood something might go wrong," she says. Ideally, low-level offenders could be dealt with entirely in a closely supervised public-health structure, but that system does not exist right now, she adds. Caroline Cooper, the head of the DOJ-sponsored Drug Court Clearinghouse at American University, says another flaw in the process is that drug offenders who drop out of the drug-court programs sometimes end up serving a longer prison sentence than they would have otherwise because they did not plea it down before it was decided they would enroll in drug court.

Drug courts are helpful, according to Mark A.R. Kleiman, director of the Drug Policy Analysis Program at the University of California, Los Angeles, but he thinks that not everyone enrolled in drug courts really needs all the mandated counseling and treatment. He favors creating more basic models requiring users to be placed on probation and told to quit using drugs (without expensive treatment). Then, if they fail one of the frequent drug tests, they would be sent to jail for a few days and perhaps referred on to drug courts and treatment. This could reach far more people and be cheaper, he says.

If passed, the increased federal funds would give about 100 grants to help fund new drug courts, and assist with treatment costs in others. But, after grant monies dry up, it would be up to states to continue to fund them. Currently, "There are 1.2 million adult drug-dependent offenders who are eligible for drug

courts and we're only serving about 10 percent," Huddleston says.

"The state of our economy and the increasing rate of prison overcrowding have placed a heavy burden on our state and local prison systems," said Sen. Richard Shelby, the ranking minority member of Mikulski's committee. "Funding the drug court program offers these entities an effective alternative."

In the courtroom though, just as it is with addiction, it's more about taking one day at a time. "You're off from your job on Mondays and Thursdays?" Gardner asks an addict who tested positive for drugs multiple times. "OK, you will serve your nights in jail over the next Monday, Thursday, and Monday." If the addict lost his job, he would be more likely to turn to drugs, the judge tells NEWSWEEK. After 20 years of trial and error, being flexible with the punishment is what may best fit the crime.

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