U.S. DRUG COURT: A BUILDING BLOCK FOR CANADA

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I. INTRODUCTION

Since the establishment of the first drug treatment court in Dade County, Florida, United States in 1989, these specialized courts have become a rapidly expanding alternative to traditional law enforcement. Alternately called drug courts, drug treatment courts, or treatment courts, these courts have spurred many debates as critics and proponents alike seek to conduct studies evaluating the drug courts' impact on recidivism rates as well as their effectiveness in rehabilitating drug addicts. While some studies point to the greatly reduced recidivism rates of drug court graduates and the economic advantages of this system, critics point to flaws in the studies. However, the rapid growth in the number of drug courts to almost 700 in operation in the United States today, combined with the federal government's fiscal support, leads to a conclusion that these specialized courts are here to stay. While drug courts in the United States have both proponents and critics, Canadian officials view the United States experiment with drug courts as a huge success. In 1998, the first Canadian drug court was set up in Toronto and based on the United States format. Further, Canada's Department of Justice Minister and Attorney General, Anne McLellan, recently announced that Canada's federal government plans to set up drug courts in all major Canadian cities by 2004.

II. DRUG CONTROL IN THE UNITED STATES

A. A Legislative Overview of United States Drug Control

In the early 1900s, the United States federal government marked its entrance into the world of drug control first with the passage of the Federal Food and Drugs Act of 1906, which mandated truth in labeling, and then with the passage of the Harrison Narcotics Act of 1914. The Harrison

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Narcotics Act of 1914 restricted distribution by requiring doctors to keep records of their disbursements of medication and imposing fines upon those who failed to comply.\textsuperscript{4} From this point forward, drug use was no longer solely a medical concern but was now part of a concerted effort by the federal government to control the use and abuse of narcotic substances through the imposition of control and punishment.\textsuperscript{5} Since then, varying tactics have been tried to curb the spread of drugs, including the use of harsher sentences for drug offenders. These laws, while having little impact on the supply and demand of drugs, have had an enormous impact on the criminal justice system and on the United States' Federal budget.\textsuperscript{6}\textsuperscript{7}

When the 1960s brought widespread protest, rebellion and drug use, issues of drug sales, use and addiction began demanding heightened attention.\textsuperscript{11} In response, President Nixon declared a "war on crime," promising to expand federal drug control laws.\textsuperscript{12} By the 1980s, Presidents Reagan and Bush were spending billions of dollars on drug control efforts and narcotics enforcement within and outside United States borders.\textsuperscript{13} Rather than reducing the number of cases involving narcotics, these "war on drugs" tactics resulted in a larger-than-ever number of defendants passing through the criminal justice system, overloading an already overcrowded system.\textsuperscript{14}

In 1970, Congress passed the Controlled Substances Act (CSA) which outlawed virtually all non-alcohol recreational drugs and required mandatory minimum sentencing for drug offenders.\textsuperscript{15} Between 1968 and 1988, drug prosecutions quadrupled, and by 1990 they accounted for one-third of all state felony prosecutions.\textsuperscript{16} This increase in prosecutions, coupled with the stiffer sentencing laws, resulted in an explosion of incarceration rates.\textsuperscript{17} As of November 1999, 60% of all federal prisoners were being incarcerated for drug offenses as compared to only 6.3% in 1970.\textsuperscript{18} Because of these drug laws, more people are incarcerated \textit{per capita} in the United States than in any other industrialized country except

\footnotesize
\begin{itemize}
    \item \textsuperscript{8} \textit{Id.} at 1455.
    \item \textsuperscript{9} Quinn, \textit{supra} note 1, at 40.
    \item \textsuperscript{10} Hoffman, \textit{supra} note 3, at 1459.
    \item \textsuperscript{11} Quinn, \textit{supra} note 1, at 40.
    \item \textsuperscript{12} \textit{Id.} at 41.
    \item \textsuperscript{13} \textit{Id.} at 42.
    \item \textsuperscript{14} \textit{Id.}
    \item \textsuperscript{15} Hoffman, \textit{supra} note 3, at 1458.
    \item \textsuperscript{16} \textit{Id.} at 1459.
    \item \textsuperscript{17} \textit{Id.}
    \item \textsuperscript{18} \textit{Id.}
\end{itemize}
Russia. With the widespread use of crack cocaine in the 1980s, there was increased state and federal legislation mandating serious penalties for drug traffickers and users. As the application of these laws threatened to overwhelm the criminal justice system, the courts by necessity sought effective alternatives to incarceration. This necessity, combined with the availability of credible research regarding the effectiveness of treatment in reducing both drug addiction and drug related crime, led many to believe that alternatives to incarceration could help the addict control addiction and therefore eradicate the crime committed by addicts in furtherance of their addiction.

Some supporters of the drug court programs believe the “war on drugs” should be viewed as a public health issue in addition to being a criminal justice issue. The premise behind this belief is that drug addiction should be treated as a disease because it has been so classified by the American Medical Association. The American Bar Association and the Centers for Disease Control have defined drug addiction as a disease as well, and supporters of this theory believe it is time to “medicalize” the war on drugs. In light of this viewpoint, some United States supporters believe an addict should be considered a patient to be treated rather than a criminal to be incarcerated.

Some localities focused on the need to expedite the movement of narcotics matters through the court system while others focused on creating specialized courts to handle drug offenses only. However, neither case expedition nor specialized courts relieved the problem of overcrowding in prisons and jail.

B. The First United States Drug Courts

The movement toward a specialized drug court system began in the late 1980s in response to rising rates of drug-related court cases and the inability of traditional law enforcement and justice policies to reduce the

19. Id. at 458.
20. Dorf & Sabel, supra note 2, at 841.
21. Id.
22. Id.
24. Id. at 49.
25. Id. at 52.
26. Id at 65.
27. Quinn, supra note 1, at 42.
supply and demand for illegal drugs. According to statistics from the United States Bureau of Justice, an increase in drug offenders accounted for nearly three-quarters of the growth in prison populations in the ten years between 1985 and 1995. In 1997, 33% of state and 22% of federal inmates had committed their crimes while under the influence of drugs; approximately 60% were incarcerated for drug-related offenses; and more than 75% of the correctional population had substance abuse problems.

Traditionally, defendants convicted of drug offenses are either sentenced to a period of incarceration or referred for probation supervision. While some jurisdictions require drug testing to monitor use after conviction, they lack the capacity to respond quickly when a defendant has tested positive. Additionally, while a few jails and prisons provide comprehensive treatment services for inmates, they do not provide long-term rehabilitation support following a defendant's release. Those jurisdictions that require drug treatment as a condition of probation usually do not monitor defendants after completion of the program to see if the drug treatment was successful. This situation, combined with the fact that at least 45% of defendants will recidivate with a similar offense within two to three years, has led many justice system officials to conclude that the traditional case disposition process is not effective in reducing drug usage by persons convicted of drug offenses.

As participants in the criminal justice system began to abandon the view that punishment was the only effective treatment for addicts, treatment providers were softening their convictions that voluntary entry into a program was required for recovery. Coerced treatment became a possible solution to breaking the chain of addiction.

Finally, a specialized drug treatment court in Miami, Florida was developed to integrate drug treatment with traditional case processing.

28. James & Sawka, supra note 5.
29. Id.
30. Id.
32. Id.
33. Id.
34. Id.
35. Id.
36. Dorf & Sabel, supra note 2, at 842.
37. Id.
38. Goldkamp, supra note 4, at 943.
The innovators of this drug court were confronted with an overwhelmed criminal justice system because police arrests of drug offenders underwent a 93% increase in possession cases from 1985 to 1989.39 Established in Dade County, Florida, in 1989 the court required defendants in the program to appear in court regularly, accompanied by a treatment provider's report on the client's performance in its program.40 These reports were used to gauge the success or failure of the client as well as to monitor the effectiveness of the treatment provider.41 While the clients were rewarded for good behavior through encouragement, or penalized for infractions with sanctions such as short periods of incarceration for repeated violations, the treatment providers were evaluated for their programs.42

The drug court strategy was an attempt to do something about the "root cause" of criminal activity associated with drug use by providing drug treatment with close judicial supervision in a drug court setting.43 The drug treatment courts operated outside the conventional adversarial relationship usually seen in the courtroom and replaced it with a "team work" atmosphere in where all the players, including the judge, prosecutor, and defendant, worked together in the best interest of the defendant.44 As this team-based approach took root, other localities began setting up similar systems. By 1994, forty-two drug courts had been set up in the United States.45

C. Expansion of the United States Drug Court System

The first drug courts were developed and launched largely without aid from the federal government.46 They were the result of the work of a small network of committed court officials and treatment providers searching for a solution for an overburdened criminal justice system.47 In December 1993, the first national meeting of drug courts was convened in Miami, Florida and included representatives from over twenty drug courts already in operation.48 The Honorable Janet Reno, the former Miami prosecutor

39. Id.
40. Quinn, supra note 1, at 44.
41. Id.
42. Id.
43. Goldkamp, supra note 4, at 943.
44. Dorf & Sabel, supra note 2, at 844.
45. Id. at 843.
46. Goldkamp, supra note 4, at 947.
47. Id. at 948.
48. Id.
instrumental in the development of the first drug court and later the Attorney General of the United States, addressed over 400 officials from across the United States, helping to garner support for a drug court approach. Recommendations of this national meeting resulted in the creation of the National Association of Drug Court Professionals (NADCP) and spurred the Department of Justice to become involved in the development of drug courts.

As a result of the combined efforts of drug court supporters, interest in drug treatment courts grew throughout the nation. Interest in providing court-sponsored treatment to drug offenders, as opposed to imposing punitive alternatives, began to spread. The federal government began to play a large role in spreading the word about drug treatment courts. In 1995, the United States Department of Justice (DOJ) established a Drug Courts Program Office under the Violent Crime Control and Law Enforcement Act of 1994. Simultaneously, personnel affiliated with the twelve drug courts then in operation formed the National Association of Drug Court Professionals. The Office of Justice Program (OJP) established the Drug Court Clearinghouse and Technical Assistance Project (DCCTAP) to assist state and local justice system officials and treatment professionals in establishing drug court programs in their jurisdictions. This office, in cooperation with the National Association of Drug Court Professionals, published a 1997 report entitled Defining Drug Courts: The Key Components. Relying on the experiences of previous local drug court experiments, this report set forth guidelines outlining successful features of the drug courts to be utilized in setting up additional ones. Some of the main requirements included the integration of drug treatment with case processing; prompt placement of eligible individuals into treatment; and close monitoring of defendants' drug use by the judge. Thereafter, the DOJ conditioned the funding and grants for new drug courts on their establishment in accordance with the ten key components

49. Id.
50. Id. at 949.
51. Quinn, supra note 1, at 45.
52. Id.
53. Goldkamp, supra note 4, at 949.
54. Dorf & Sabel, supra note 2, at 844.
55. Id.
56. Id. at 845.
57. Id.
58. Goldkamp, supra note 4, at 936.
set forth. At the national level, the federal government pooled information on the activities of the drug courts and extracted data to help create guidelines for successful treatment court structures.  
  
Congress appropriated $12 million in the OJP's first year to support the planning and implementation of drug courts in the United States. In fiscal year 1999, the OJP provided nearly $20 million to approximately seventy jurisdictions that had applied for drug court grants in 1998. Since then, federal funding has grown each year, and on July 6, 2001, Attorney General John Ashcroft announced that $30.9 million would be allocated to assist in the planning, establishment and improvement of drug courts. Since 1995, the Justice Department's Drug Courts Program Office (DCPO) has made approximately 650 grants for a total of more than $125 million. There are currently 700 drug courts in operation in the United States with plans for the establishment of another 430. Drug courts are currently in operation in all fifty states, and thirty-two states have already passed legislation supporting drug courts.  

D. Focus and Operation of United States Drug Courts  
Although drug treatment courts vary in operational detail throughout the nation, they share the same basic pattern. People charged with low-level, non-violent criminal misconduct related to drug use may choose, with the consent of the prosecutor, to have the charges filed in the treatment court. In this court, the defendant pleads guilty or accepts responsibility for a charged offense and accepts placement in a court-mandated treatment program. The treatments offered these offenders vary, depending on the assessment of needs by the court personnel.  

59. Id.  
60. Dorf & Sabel, supra note 2, at 834.  
61. Goldkamp, supra note 4, at 949.  
64. Id.  
65. Id.  
66. Id.  
67. Dorf & Sabel, supra note 2, at 831.  
68. Id. at 832.  
69. Id.  
70. Id.
performance of the offender in the program is closely monitored by the judge and the court to determine if the treatment program is adequate or if a lesser or more intensive treatment plan is appropriate. Once the defendant successfully completes the program, the conviction is usually expunged.

Drug courts focus on facilitating treatment for non-violent drug offenders by offering them an opportunity to complete a drug treatment program in return for a dismissal of charges or a reduction in custody or probation time. The goal of the court is abstinence and law-abiding behavior through intense judicial supervision, comprehensive substance abuse treatment, frequent drug testing, incentives and sanctions, and clinical case management. For drug treatment courts to be successful, court personnel must work closely with the treatment service providers to ensure that a high quality of care is being provided. Because frequent contact with the court is part of the drug court program, the courts are in a position to detect and correct problems and provide oversight for treatment providers.

Today, more than half of all prison inmates are illegal drug users, and as each year brings new legislation mandating longer minimum sentences for drug crimes and harsher punishments for those who violate drug laws, court dockets are further overburdened and prisons continue to be overcrowded. Drug treatment courts offer a viable alternative. While treatment courts provide an alternative to incarceration, they do not decriminalize drug use.

Until the creation of drug courts, the likelihood of offenders identified as having a serious drug problem being placed in treatment was poor. While those sentenced to probation might find themselves placed in some sort of treatment program, those sentenced to incarceration were not likely to receive comprehensive drug treatment. Prior to the creation of the drug treatment courts, the court’s involvement in treatment was to refer offenders to treatment programs upon the recommendation of the probation

71. Id.
72. Dorf & Sabel, supra note 2, at 832.
73. James & Sawka, supra note 5.
74. Id.
75. Dorf & Sabel, supra note 2, at 869.
76. Id.
77. Id. at 831.
78. Id.
79. Goldkamp, supra note 4, at 931.
80. Id.
staff. While this approach may have worked years ago, the huge volume of cases that overwhelmed the justice system in the 1980s and 1990s has made it almost impossible for probation officers to monitor offenders' compliance with treatment. Under traditional practices, there was little communication between the court system and the treatment providers. Drug courts now play a role similar to that of the probation officers in the past but wield the power of the criminal court, enabling them to more effectively see a drug offender through a treatment program.

Drug treatment courts operate on the premise that because they address drug problems, recidivism to the criminal justice system will decline. However, various studies of this issue, depending on the underlying goals of those conducting the studies, offer varying statistics as to the success of drug courts achieving this goal.

E. Effectiveness of United States Drug Courts

According to the National Association of Drug Court Professionals (NADCP), drug courts have shown promising results, particularly in terms of reduced recidivism. According to the Drug Court Clearinghouse and Technical Assistance Project (DCCTAP), a program of the Drug Courts Program Office of the United States Department of Justice (DOJ), "reductions in recidivism and drug usage are being achieved, with recidivism rates substantially reduced for graduates, and to a lesser but significant degree, for participants who do not graduate as well."

Although no formal cost-effectiveness studies have been conducted, evidence suggests that drug treatment costs are a lower-cost alternative to incarceration. By diverting low-level drug-related defendants to drug treatment courts rather than keeping them in the traditional court and corrections system, courts have significantly reduced jail and prosecution expenditures. In 1998, the drug courts program cost the DOJ $30 million and with additional funding for fiscal year 2000, it will cost the DOJ $50

81. Id.
82. Id. at 933.
83. Id. at 934.
84. Goldkamp, supra note 4, at 934.
85. Id. at 937.
86. See, e.g., Hoffman, supra note 3.
87. James & Sawka, supra note 5.
88. Id.
89. Id.
90. Id.
million.\textsuperscript{91} Per person, drug courts cost about $2000 annually, while the cost of incarceration is somewhere between $20,000 to $50,000 per person.\textsuperscript{92}

According to critics, while current evaluations of drug courts appear positive, they must be viewed with caution because no clear scientific studies have been conducted.\textsuperscript{93} Additionally, rates of recidivism are often misleading due to the different sentencing models and treatment regimes prescribed by the different drug courts.\textsuperscript{94} Also, because the drug court strategy is relatively new (beginning in the late 1980s) its long-term effectiveness in treating addiction and furthering an individual's successful functioning in society cannot be adequately gauged.\textsuperscript{95}

The DCCTAP at American University is sponsored by the DCPO and OJP. DCCTAP is responsible for evaluative information on drug courts throughout the United States.\textsuperscript{96} While the DCCTAP points to reduced rates of recidivism among drug court graduates, it acknowledges that a number of issues give rise to difficulties in compiling data: difficulty in obtaining relevant data on the behavior of comparison group members; the changing nature of drug courts; lack of experienced researchers; inadequate management information systems in various localities; and a lack of long-term impact.\textsuperscript{97} However, DCCTAP has published reports stating that drug courts have been successful in achieving their goals of reduction in recidivism and drug usage in the United States, and Canada has chosen to implement such courts based on the United States experiment.\textsuperscript{98}

While drug courts receive criticism for their "problem-solving" approach from critics who view them as inappropriate, or from critics who view drug court studies as flawed, the rapidly growing volume of drug courts operating in the United States suggests that they are here to stay.\textsuperscript{99} As a result, the question that receives most focus is not whether they should be established but rather how they can best be implemented.\textsuperscript{100}

\begin{itemize}
  \item[91.] Id.
  \item[92.] James & Sawka, supra note 5.
  \item[93.] Id.
  \item[94.] Id.
  \item[95.] Id.
  \item[96.] Looking at a Decade of Drug Courts, supra note 31.
  \item[97.] Id.
  \item[98.] Id.
  \item[99.] Goldkamp, supra note 4, at 928.
  \item[100.] Id.
\end{itemize}
III. DRUG CONTROL IN CANADA

The legal framework for drug control in Canada began in 1908 with the passage of the Opium Act, which created the first drug prohibition. In 1911, the Act was expanded to include opiates and cocaine, and in 1923 cannabis was added to the list of prohibited substances. "The Opium and Narcotics Act of 1929 became Canada’s main instrument of Drug Policy."103

In 1969, the Canadian Government’s LeDain Commission, conducting a four-year study of substance abuse policy in Canada, revealed that hundreds of thousands of Canadians were being convicted for possession of illegal substances. The Commission recommended that the Canadian Government begin to look for alternatives to criminal sanctions against these offenders. In 1987, “Canada’s Drug Strategy” was implemented, and the government committed funds to support both supply and demand reduction programs and programs in enforcement, treatment and prevention programs.

In 1997, Canada consolidated previous drug acts and modernized Canada’s drug control policy with the passage of a new Controlled Drugs and Substances Act (CDSA). Like previous Acts, this Act did not include alternatives to conviction or punishment for drug possession.

The Canadian Centre on Substance Abuse (CCSA) was created by an Act of Parliament in 1988 to provide a national focus for substance abuse issues. The CCSA, receiving support from the Canadian justice and law enforcement communities, serves as a bridge between the private and public sectors, programmers and policy-makers, theorists and practitioners, and prevention specialists and police. The CCSA has gained importance in Canada since independent territorial drug and alcohol

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102. Id.
103. Id.
105. Riley, supra note 101.
106. Id.
107. Id.
108. Id.
109. Id.
110. Substance Abuse Policy in Canada, supra note 104.
111. Id.
agencies began dismantling years ago. The CCSA promotes awareness among Canadians of issues related to drug and alcohol abuse, promotes participation by Canadians in efforts to reduce the harm associated with alcohol and drug abuse, and measures the effectiveness of programs designed to eradicate this abuse. The Centre operates the National Clearinghouse on Substance Abuse which collects and disseminates information via its maintenance of databases. It provides free access to substance abuse information, along with “hot links” to other information providers around the world, via its site on the World Wide Web. The Centre also publishes directories, statistical profiles, pamphlets, research and policy papers, and special reports. The CCSA initiates and coordinates joint projects with law enforcement and health enforcement officials to set up public education campaigns, gather information on drug use, and study alternative approaches to drug enforcement.

In Canada, while health care, prevention services, and educational programs fall under provincial jurisdiction, activists in the substance abuse field have suggested an active role for the federal government to provide coordination and leadership. In 1987, the government of Canada announced a “National Drug Strategy,” later to be known as “Canada’s Drug Strategy,” in which the government committed funds amounting to Canadian $210 million to combat drug abuse. This was a new addition to the government’s spending of approximately Canadian $168 million a year on both supply and demand reduction programs.

Canada, like the United States, has found a link between crime and drug dependency. Since the early 1970s, drug offenses have accounted for more than a third of the prison population growth in Canada, and since 1980 the incarceration rate for drug-related arrests has increased 1000%. As part of its effort to find an effective solution to drug-related crime,

112. Id.
113. Id.
114. Id.
115. Substance Abuse Policy in Canada, supra note 104.
116. Id.
117. Id.
118. Id.
119. Id.
120. Substance Abuse Policy in Canada, supra note 104.
122. Riley, supra note 101.
Canada began setting up its first drug treatment court in Toronto in December of 1998.\textsuperscript{123}

IV. ALTERNATIVE TREATMENT PROGRAMS IN THE CANADIAN COURT SYSTEM

In Canada, approximately 10\% of the federal inmates are incarcerated for drug offenses while more than 50\% of the inmates have a substance abuse problem.\textsuperscript{124} However, there are few Canadian substance abuse treatment programs designed for inmates.\textsuperscript{125} In the early 1990s, the Offender Substance Abuse Pre-release Program (OSAP) was implemented to bring treatment to inmates.\textsuperscript{126} In an evaluation of this program, it was found that rates of readmission to custody of these inmates were much higher among drug offenders with severe substance abuse problems.\textsuperscript{127}

In 1996, the Solicitor General of Canada introduced alternative sanctions and conditional sentencing as part of a reform package.\textsuperscript{128} Included in the reforms was Bill C-41, which provided a legal mechanism for diverting offenders away from the criminal justice system and toward substance abuse treatment.\textsuperscript{129} Also, changes in federal sentencing enabled the provinces and territories in Canada to administer their own alternative programs for first-time, non-violent offenders.\textsuperscript{130} These sentencing reforms to the Statutes of Canada became law in September 1996.\textsuperscript{131} The legislation gave the courts an option to distinguish between crimes that should carry a jail sentence and those that would be more effectively dealt with through alternative sentencing.\textsuperscript{132} The legislation included principles to guide judges in determining fair sentences.\textsuperscript{133} Included in these principles are statements that “an offender should not be imprisoned if less restrictive

\begin{flushright}
\textsuperscript{123} Innovative Drug Treatment Court in Toronto Celebrates Official Opening, supra note 121.
\textsuperscript{124} James & Sawka, supra note 5.
\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{129} James & Sawka, supra note 5.
\textsuperscript{130} Id.
\textsuperscript{132} Id.
\textsuperscript{133} Id.
\end{flushright}
punishment is appropriate, and that judges must take any mitigating or aggravating circumstances into consideration."^{134}

Included in the major reforms to Canada's criminal code was the addition of conditional sentences for those offenders guilty of less serious crimes.^{135} Judges can impose conditional sentences on an offender that allow the offender to serve the sentence in the community rather than in jail.^{136} As part of the conditional sentence, judges may require that the offender obtain treatment for a substance abuse problem or do community service.^{137} If the offender fails to comply with the conditions of the sentence, he or she can be brought back to court to serve out a sentence, have new conditions imposed, or have the suspension reinstated after a specified amount of time spent in custody.^{138}

This legislation for alternative sanctions also enables the provinces and territories to set up and administer their own versions of alternative measures programs.^{139} Through these types of programs, society can avoid expensive and unnecessary court proceedings while at the same time providing a forum in which these less serious crimes can be dealt with in the community.^{140}

A. The First Canadian Drug Courts

In December of 1998, in response to the growing drug court movement in the United States, as well as the United Kingdom and Australia, Canada opened its first drug treatment court in Toronto.^{141} With federal funding of more than Canadian $1.6 million over four years, this program reflects a collaborative effort between the Centre for Addiction and Mental Health (CAMH), the criminal justice system, the Toronto Police Service, the City of Toronto Public Health Department, the Health City Office and various community-based agencies.^{142} The CAMH has established a drug court program, similar to drug court programs in the United States, in which court participants will undergo assessment, stabilization, treatment, maintenance and aftercare.^{143}

134. Id.
135. Id.
136. Module 3—Sentencing reforms, supra note 131.
137. Id.
138. Id.
139. Id.
140. Id.
141. James & Sawka, supra note 5.
142. Id.
143. Id.
In efforts to evaluate the overall success of the program, the Toronto drug treatment court experiment includes a comprehensive evaluation plan to assess cost-benefit and cost-effectiveness. While the estimated cost per year for incarceration of a drug offender is $47,000, the estimated cost per offender in the Toronto drug court program is approximately $4,500.

The Toronto drug court plan includes an experimental design that compares a treatment group of those offenders who opt to go through drug court to a comparison group comprised of offenders who undergo the initial screening and are deemed eligible for the program but do not participate beyond assessment. The plan will include following up on 200 participants for 24 months. As of December 31, 1999, interim results of the study show a 56% retention rate for the experimental group, a rate lower than those found in many jurisdictions. This may be a reflection of different sentencing practices for drug users in the United States and Canada. In the United States system, sentencing may be more severe, thus providing incentive for program participants to remain in the program longer.

B. Expansion of the Canadian Drug Court System

Overall, the Toronto experiment has been viewed as a success, and Canada’s Department of Justice Minister and Attorney General, Anne McLellan, has announced that the federal government plans to set up drug courts in all major Canadian cities by 2004. While the Toronto drug court only handled offenders charged with federal drug offences, other provinces, including Vancouver, are considering including offenders charged with property crimes to pay for their drug habits as drug court candidates.

A plan for the Vancouver drug treatment court has been proposed but funds have not yet been specifically allocated for the project. The Vancouver drug treatment court is to be developed in conjunction with the development of a comprehensive drug policy framework for the province.

144. Id.
145. Id.
146. James & Sawka, supra note 5.
147. Id.
148. Id.
149. Id.
151. Id.
152. Id.
of British Columbia. It is currently expected that the substance abuse component of the Vancouver drug treatment program would last anywhere from twelve to eighteen months and would include assessment, treatment and aftercare.

IV. ANALYZING THE SUCCESS OF UNITED STATES AND CANADIAN DRUG COURTS

A. The Influence of Sentencing Guidelines

1. Sentencing Guidelines in the United States

One of the main criticisms of current drug courts in the United States is that because of sentencing guidelines and minimums, many offenders enroll in drug courts as a way to avoid harsher sentencing. During the 1970s and 1980s, Congress and many state legislatures passed mandatory minimum sentences that resulted in mandatory prison sentences for drug offenders, including non-violent, low level offenders.

In 1984, after extensive studies of rehabilitation theories of punishment and indiscriminate sentencing, Congress passed the Sentencing Reform Act of 1984 and created the United States Sentencing Commission (Commission). In rejecting the sentencing flexibility included in the rehabilitative theory of punishment, Congress focused on the goal of deterrence and incapacitation. The Commission established compulsory sentencing guidelines ("Guidelines") which were intended to limit judicial discretion so that similar sentences would be prescribed for defendants convicted of similar crimes under similar circumstances. While the actual sentence was left to the discretion of a judge, the Guidelines established an acceptable range of punishment for any given crime. While proponents argue that the Guidelines have effectively resulted in uniformity and certainty in sentencing, critics argue that the Guidelines have created more problems then they have resolved.

153 James & Sawka, supra note 5.
154. Id.
155. See, e.g., Fish, supra note 23, at 65.
158. Id. at 348.
159. Id. at 349.
160. Id.
161. Id.
Critics of the Guidelines as they relate to drug offenses focus their criticism on the mandatory minimum sentences. Prior to the passage of the Anti-Drug Abuse Act of 1986, federal judges were able to tailor sentences of drug offenders based on the differing circumstances of each case. However, with the passage of this the Anti-Drug Abuse Act of 1986, Congress imposed mandatory minimum sentencing provisions for drug offenders. The 1986 Act mandated a five-to-forty year sentence for first-time offenders convicted with possession with intent to distribute small quantities of specified drugs.

The 1988 Amendments to the 1986 Act increased the mandatory minimums and imposed these minimums for simple possession of smaller quantities of drugs. The Violent Crime Control and Law Enforcement Act of 1994 (1994 Crime Bill) increased the use of mandatory minimums for drug-related offenses while at the same time emphasizing alternative types of punishment. The 1994 Crime Bill also included grants for drug court programs.

Because of the strict sentencing guidelines found throughout the United States, it appears that the difficulty in gathering reliable statistics from drug court programs shall continue. Today, the drug court programs include those drug offenders who may choose drug court not because of a desire to undergo treatment for substance abuse but rather as an alternative to a more punitive jail sentence for a different crime. As long as these types of offenders are processed through the drug court system, the effectiveness of these courts in treating addiction will be difficult to determine. However, society should benefit as a whole from the rehabilitation, rather than the incarceration of addicts.

2. The Absence of Sentencing Guidelines in Canada

In Canada, because of the absence of sentencing guidelines for drug offenders, the effectiveness of drug courts may prove clearer to ascertain. By the time Canada's first drug treatment court was established in Toronto in 1998, Canada's laws already allowed for offenders found guilty of less

162. Spencer, supra note 157, at 350.
163. Id. at 343.
164. Id.
165. Id.
166. Id.
167. Spencer, supra note 157, at 351.
168. Id. at 355.
169. See, e.g., Fish, supra note 23, at 65.
serious crimes to serve their sentence in the community rather than in jail. Because the alternative to drug treatment court is likely to be a light sentence, first time, non-violent drug offenders who enter Toronto's drug treatment court program are likely to be those who genuinely desire to receive substance abuse treatment, as opposed to those who may be opting for it in order to evade a harsher sentence.

B. The Need for Ongoing Study in both the United States and Canada

Three different types of studies have been utilized in determining the effectiveness of drug treatment courts in the United States. The first type evaluates operational processes and analyzes data such as filings and drop-out rates of offenders to get an overall view of the drug court process. A second type of study uses a cost-savings analysis to compare the operational and sentencing costs of drug treatment courts to these costs in traditional courts. The third type of study is the "impact evaluation" study which attempts to assess the impact of drug courts by comparing recidivism rates between offenders who are processed through the drug courts to offenders processed through the traditional courts.

The main purpose of the drug court strategy is to reduce criminal activity associated with drug use by providing offenders with drug treatment along with close judicial supervision in a drug court setting. With reduced crime as a goal, it would appear that the best way to measure the effectiveness of drug courts is to compare recidivism rates of drug offenders processed through the drug courts to those of drug offenders processed through traditional courts. However, the value of recidivism studies depends a great deal on the length of the follow-up of an offender, and because drug court programs are still relatively new, follow-up of drug court attendees has been short-term. Because drug courts treat the drug addict's addiction as the "root cause" of drug related crime, if the drug

171. See, e.g., Module 3—Sentencing reforms, supra note 131.
172. James & Sawka, supra note 5.
173. Hoffman, supra note 3, at 1480.
174. Id.
175. Id.
176. Id.
177. Goldkamp, supra note 4, at 943.
178. Hoffman, supra note 3, at 1480.
179. Id. at 1486.
180. Goldkamp, supra note 4, at 943.
offender’s addiction is successfully treated, the offender should not recidivate. To successfully evaluate the impact of drug court programs on recidivism rates, future studies will have to focus on the long-term follow-up of all drug court defendants.  

V. CONCLUSION

The United States drug control efforts of the 1980s and 1990s resulted in a larger-than-ever number of defendants passing through the criminal justice system, resulting in overloaded criminal court dockets and overcrowded prisons. In response to these rising rates of drug-related court cases, and to the inability of traditional law enforcement and justice policies to reduce the supply and demand for illegal drugs, a movement towards a specialized drug treatment court began in the United States in the late 1980s. Since the creation of the first drug court in Miami, Florida, the movement has spread throughout the nation and there are currently over 700 drug courts in operation in the United States. The United States has made firm commitments to support the growth of drug courts through the issuing of federal grants to those jurisdictions seeking to set up drug courts.

Canada began its first drug court experiment in Toronto in 1998. While firm financial commitments have not yet been made regarding future expansion of drug courts in Canada, Canada’s Justice Minister and Attorney General, Anne McLellan, has announced that the federal government plans to set up drug courts in all major Canadian cities by 2004. These drug courts will be modeled on the Toronto experiment and United States drug courts.

Complicating the impact evaluation studies of drug courts in the United States are the strict mandatory minimum sentences imposed on low-level drug offenders. Drug offenders who have no desire to receive drug treatment may opt for drug court simply to evade a prison sentence. Some of these offenders may not suffer from a substance abuse problem. If a substance abuse problem is not the “root cause” for a drug offender’s

181 See, e.g., Hoffman, supra note 3, at 1486.
182 Quinn, supra note 1, at 42.
183 James & Sawka, supra note 5.
184 Communities Nationwide Receive Justice Department Funds for Drug Courts, supra note 63.
185 Id.
186 B.C. Hails Ottawa’s Plan for Drug Courts, supra note 6.
187 Id.
criminal behavior, the drug court experience may be ineffective in reducing this offender’s likelihood to recidivate.

Impact evaluations of Canada’s drug courts should prove to be more accurate evaluations of the effectiveness of drug courts because those drug offenders who opt for the drug court program are likely to only be those with substance abuse problems. By the time Canada’s first drug treatment court was established in Toronto in 1998, Canada’s laws already allowed for offenders found guilty of less serious crimes to serve their sentence in the community. Because first time, non-violent drug offenders have the option of lighter sentencing as opposed to mandatory prison time, they are less likely to opt for the drug court program unless they really desire treatment.

The rapid expansion of drug courts throughout the United States, and the recent establishment and proposed expansion of Canadian drug courts leads to the conclusion that drug courts are here to stay. Because of the short history of drug courts in the United States and Canada, impact studies that evaluate the effect of drug courts on the recidivism rates of drug offenders have all been short-term. Long-term impact studies over time will be the truest indicator of the drug court movement’s success. However, given their short history, and the significant impact they have had in reducing the recidivism rates of drug offenders in the United States, the future looks bright for the drug court movement.

188. See, e.g., Module 3—Sentencing reforms, supra note 131.
189. See, e.g., Goldkamp, supra note 4, at 928; B.C. Hails Ottawa’s Plan for Drug Courts, supra note 6.
190. Hoffman, supra note 3, at 1486.
191. See, e.g., Goldkamp, supra note 4, at 943.