How to make drug courts work

By Harold Pollack, Eric Sevigny and Peter Reuter., Published: April 26 at 11:14 am

Everyone would like to see our criminal justice system operate more effectively and humanely to incapacitate, monitor and rehabilitate criminal offenders who have serious drug problems. Earlier this week, Dylan Matthews discussed some innovative strategies to accomplish this goal, including some of our own work at the University of Chicago Crime Lab.

Another prominent intervention, drug courts, was left unmentioned, but deserves attention. These are interventions for drug-using criminal offenders in which a judge acts like a parole officer and ensures that the offender stays in treatment, gets a job and stays out of trouble.

They have attracted much enthusiasm from both the Bush and Obama administrations. The Obama administration has requested more than $80 million for problem-solving courts, with states and localities spending considerably more to fund more than 2,500 of these courts around the country. Half of U.S. counties include at least one operating drug court. Given that the first drug court began in 1989, this is an impressive trajectory of growth. Unfortunately, these courts will do little to reduce America's shocking imprisonment rate unless they are fundamentally redesigned to deal with more serious offenders. Drug courts have made a surprisingly small contribution to the crime reduction that has occurred over the past twenty years. They process only a small fraction of drug-involved offenders within the criminal justice system, and an even smaller fraction of offenders who commit serious crimes. Most chronic cocaine, heroin and methamphetamine users who reach court will end up in jail or prison, often for minor crimes.

Drug courts could be more helpful in reducing crime and incarceration, but only if they become more ambitious and less risk-averse by taking in populations likely to serve real time.

The problem starts with numbers. Most of the nation's 2,500 drug courts are small operations. On average, they handle about 50 clients each year. These courts thus handle only a small fraction of the roughly 1.5 million people arrested each year who meet criteria for drug use disorders.

The problems go beyond mere capacity. Drug courts take only offenders who meet strict eligibility criteria. Most of these courts will reject any defendant with a conviction for a violent offense. Others exclude any defendant who is classified a "habitual offender."

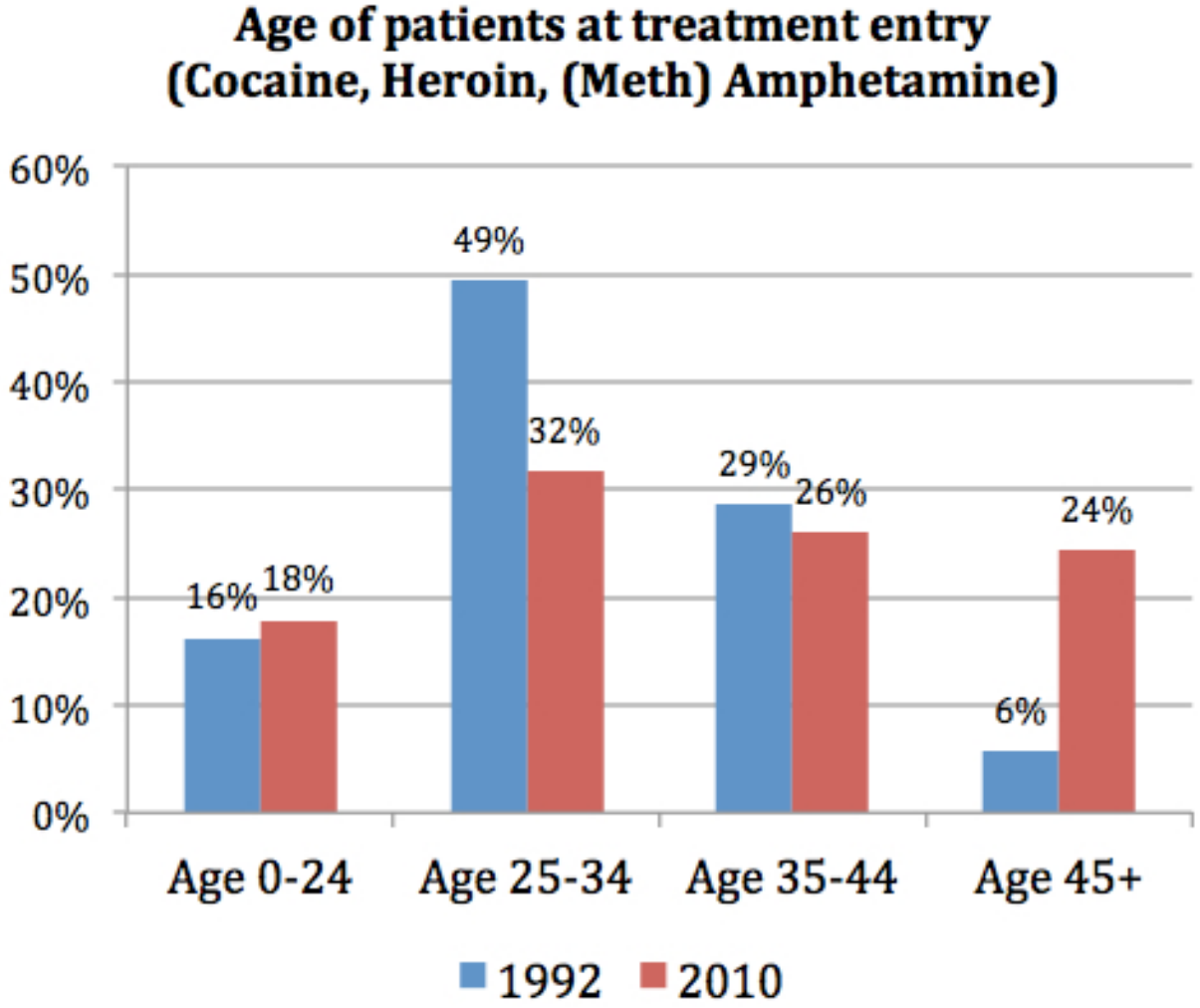
As a result of such screening, clients of existing drug courts tend to be minor offenders. And indeed, drug courts work well with this group. Evaluations repeatedly demonstrate that drug court clients are less likely to be arrested again and more likely to be employed than if they had been through the regular criminal justice system. Supporters can thus rightly note that *drug courts work* within this population.

These supporters cannot say that drug courts appreciably reduce America's over- incarceration problem. Current drug courts service many people who would otherwise have been unlikely to go to prison. Even if these drug court participants had been incarcerated, many would likely have received short terms, often in county jails, for less than a year.

In this way, drug courts widen the net of formal social control. Moreover, participants who fail to follow drug court rules are sometimes saddled with lengthy terms of confinement that exceed the sentences of conventionally supervised offenders. We need drug courts that will accept long-term offenders with chronic cocaine, heroin or methamphetamine dependence, a group that commits a disproportionate share of serious crime.

These difficulties are compounded by another issue: Drug-involved criminal offenders are an aging group. This pattern is most pronounced among cocaine users, though less dramatic versions of the same pattern emerge with other drugs, too. This demographic reality exposes a basic limitation of current drug courts, and it provides a valuable opportunity, too.

Figure 1 below shows an age breakdown of patients admitted to treatment programs with primary diagnoses of cocaine, heroin or (meth)amphetamine disorders in 1992 and 2010. These data come from the Treatment Episodes Data System (TEDS), which captures a wide range of information on thousands of drug treatment facilities.



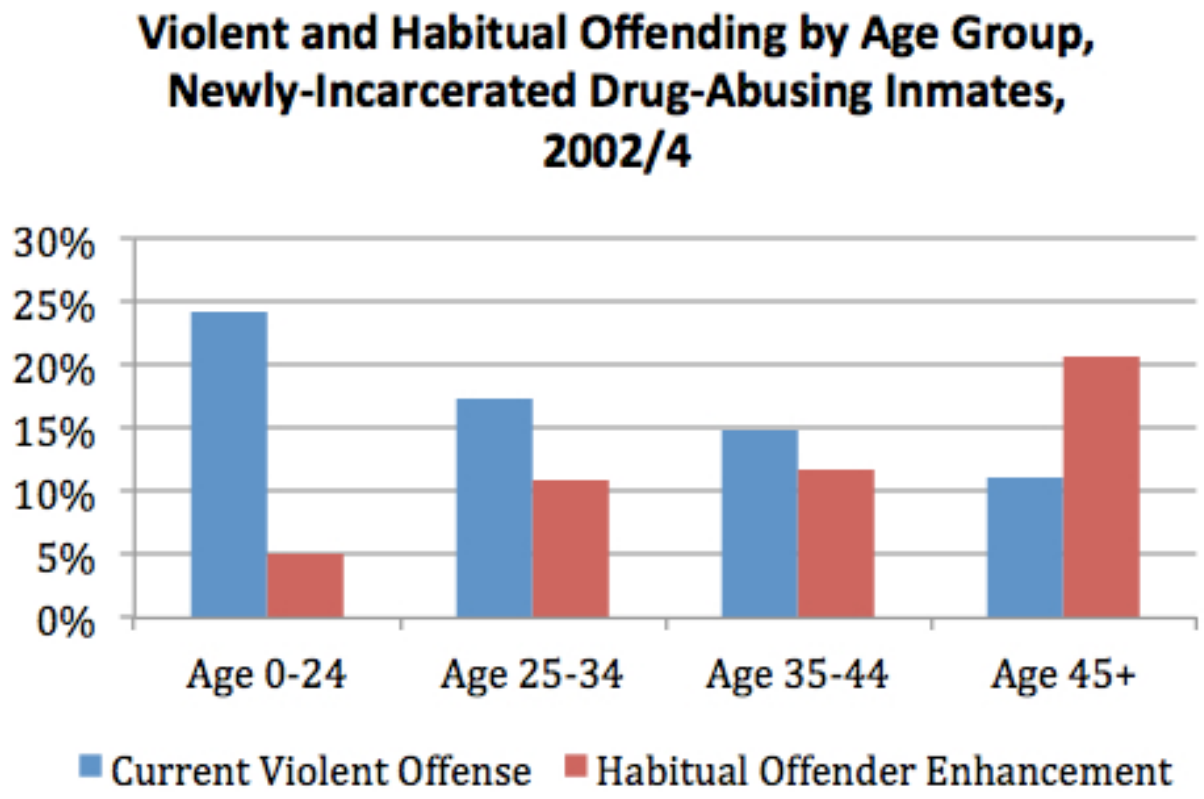
The percentage of older patients markedly increased. By 2010, 38 percent of admitted patients to participating TEDS facilities were 40 or older. This isn't so surprising when you consider that the 2010 group includes some of the same heavy users who comprised the 1992 group.

The same broad aging pattern is visible among drug users behind bars. Many have already experienced long careers of both offending and drug treatment failure, and would thus be rejected from most drug court programs.

We examined jail and prison data as of 10 years ago (unfortunately the most recent period for which data are available) corresponding to 500,000 individuals who were newly incarcerated over the previous year. More than half of these offenders had serious drug abuse or dependence problems. Under current drug court eligibility rules, only about 10 percent of them might have avoided incarceration if drug courts' current capacity were expanded. The long-run impact on our prison population would be smaller than this figure suggests, since this 10 percent receive lighter sentences than other drug-involved offenders.

Would drug courts work for older offenders with drug problems? They probably would. Unfortunately, they would almost certainly look worse as they seek to serve a tougher case mix. The 40-year-old crack user convicted of stealing yet another automobile, with five prior convictions (two for violent crimes) and three prior drug treatment failures is a challenging client.

Figure 2, drawn from our prior published work, illustrates the mismatch between common sentencing policies and the actual dangers posed by drug-involved offenders over their criminal careers.



This figure is drawn from 2002/04 data among newly incarcerated inmates with serious drug problems.

Older drug-involved offenders are less violent than their younger peers. They are less violent than they themselves used to be. Yet these older offenders are sentenced more harshly (in the extreme through measures such as “three strikes”) than their younger peers because of their prior records of serious offending.

Drug courts can help reduce the human toll of mass incarceration. But to do so, they must embrace a broader mission to take on the tougher cases, stick longer with offenders who have a hard time complying with program requirements, and impose shorter sentences on those who ultimately fail drug court programs. Older offenders provide one sensible starting point. Many are ready, this time or next, to make more of an effort in drug treatment. They deserve more of a chance.

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