DRUG COURT SUCCESS: AN EXPLORATORY, QUALITATIVE REVIEW OF HOW DRUG COURT STAKEHOLDERS DEFINE OUTCOMES

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Abstract

Drug courts have entered their second decade of existence and bring an impressive literature base with them. However, there is a noticeable lack of qualitative research within this base, and what has been published primarily focuses on recidivism. This study is an exploratory analysis of positive drug court outcomes other than recidivism reduction. The author conducted interviews with drug court professionals in the state of Ohio in order to field open, candid responses. Findings suggest that drug court stakeholders are more dedicated to treating each participant’s individual needs rather than just focusing on reducing their future offenses. In addition, findings lend support for the application of the therapeutic jurisprudence and restorative justice theoretical frameworks.
Introduction

Drug courts have been heralded as, “the most significant penal innovation in the last twenty years” (Miller, 2004, p. 1481). They represent a merger between treatment and punishment that intends to help those offenders who have identifiable drug problems underlying their unlawful behavior. The first modern drug court was started in Dade County, Florida, in 1989. Now, over twenty years later, the rapid proliferation of support for drug courts has led to 2,232 fully operational courts in the United States and hundreds more in development (American University, 2011).

There have been several crucial debates brought up as a result of the very existence of drug courts, namely: the extent to which a judge’s role should be tampered with, the appropriateness of a non-adversarial approach to justice, and whether the justice system should aim to be therapeutic (Stinchcomb 2010). The outcomes of these discussions will likely have serious implications. Moreover, this dramatic shift in the structure and ideology of punishment has led to extensive evaluation and research on drug court programs. In the early years of their existence, drug court evaluations had significant shortcomings based on methodological flaws (United States Government Accountability Office, 2005; Boldt, 2010). More recent evaluations have rectified some of these inaccuracies via the use of sounder methodologies (Marlowe, Festinger, Foltz, Lee & Patapis, 2005; United States Government Accountability Office, 2005).
Something that almost all of these reports, evaluations, and research papers have in common is their focus on the central marker of success for drug courts: recidivism. Bozza, a staunch critic of problem-solving courts, acknowledges this focus on recidivism in his work, “Benevolent Behavior Modification.” Bozza notes that it is common in the literature for evaluations to focus on recidivism rates rather than the specific treatment methods utilized by various courts (2007, p.108).

Something that the existing literature does not take into account is the potential for a multi-varied approach to defining success. Reduced recidivism likely will remain the quintessential marker of success for drug courts, but what about other outcomes like reduced substance abuse, cost savings, drug free babies, and employed and tax paying clients? These secondary benefits of the drug court movement are beginning to be taken into consideration (Carey & Finigan, 2004; Wolfer, 2006; United States Government Accountability Office, 2005; Huddleston, Marlowe & Casebolt, 2010).

Additionally, there is a noticeable lack of qualitative research in the literature base (Sanford & Arrigo, 2005). Wolfer attempted to fill this void in 2006 with a focus group methodology involving drug court graduates. In many ways, the present study can be seen as following in Wolfer’s footsteps. Her report was able to shed light on the concerns and frustrations of drug court clients, the individuals who may know the programs the best. Her findings suggest that graduates interpret the programs to be helpful for rehabilitative purposes. Also, her research brought to light the vulnerability that drug court clients feel, both while taking part in the program and after graduation. Wolfer argues that much can be learned through the qualitative study
of drug court stakeholders. Namely, that “further examination of defendant views may help researchers identify aspects of drug courts that are and are not working to promote program success” (Wolfer, 2006, p. 319).

These two concerns highlight an extensive gap in the literature base; previous drug court research is hyper-focused on recidivism rates and quantitative methodologies. And why should it not be? Drug courts were created to deal with a “revolving-door” sense of justice and the belief that nothing seems to work in corrections (Nolan, 2001; Lurigio, 2008; Barrett, 2011). Therefore, if drug courts are not reducing recidivism, then are they not failing on a fundamental level? This is perhaps the wrong question to be asking. Drug court success need not be solely measured in a dichotomous ‘yay’ or ‘nay’, recidivism-based structure. There is another way.

It is in this context that I aim to shed light on some of the lesser known, secondary benefits of drug court programs. A report by the United States Government Accountability Office (GAO) in 2005 pointed out that treatment in the drug court setting may be having a sizeable effect on drug use, program graduation rates, and cost-benefit evaluations (United States Government Accountability Office, 2005). These outcomes are just a taste of what effects drug courts may be having, but researchers remain unaware of such outcomes because the right questions have yet to be asked. I aim to conduct a similar study to Wolfer’s qualitative assessment of program strengths and weaknesses. Except, rather than interviewing drug court graduates I will interview the personnel responsible for the practical implementation
of drug court programs. This research will lead to a more cohesive and robust understanding of drug courts that will aid researchers and practitioners alike in their attempt to understand the overall effectiveness of drug court programs. The existing literature on drug courts will provide a useful illustration of the impetus for the present study.
Literature Review

The History of the Drug Court Movement

In order to present a comprehensive discussion of drug court success, it is necessary to first provide an explanation of what a drug court really is. For the purposes of this study, a drug court can be viewed as any specialized docket that deals primarily with low-level, non-violent drug offenders. However, this is too simplistic of a definition and provides no insight into the structure or purpose of the courts themselves. In his 2003 book, *Reinventing Justice: The American Drug Court Movement*, Nolan puts it concisely: “the drug court offers drug offenders the option of court monitored treatment as an alternative to the normal adjudication process” (p. 39, 2003). He goes on to identify other common structural characteristics of the courts, such as a one year minimum duration, frequent drug screening, and the dismissal of charges upon completion.

In 1997, the National Association of Drug Court Professionals (NADCP), through the Bureau of Justice Assistance, published the Ten Key Components of drug courts (United States Department of Justice, 2004). Over a decade later, these components still serve as the organizational framework for drug courts in their planning stages (Carey, Finigan & Pukstas, 2008). The director of the NADCP, West Huddleston, has said that the key components are what make a drug court a drug court in the first place (Wolf, 2009). As laid out in a reprint of the original publication, the ten key components recommend that drug courts should:

1) Integrate treatment services with justice system procedure
2) Utilize a non-adversarial approach to simultaneously promote public safety and due process  
3) Identify eligible participants early  
4) Provide access to a continuum of treatment and rehabilitation services  
5) Monitor abstinence via frequent drug testing  
6) Utilize a coordinated strategy to respond to participant compliance  
7) Maintain consistent judicial interaction with each participant  
8) Monitor and evaluate the achievement of program goals and effectiveness  
9) Promote interdisciplinary education for staff  
10) Forge partnerships with other courts, public agencies, and community-based organizations

Moreover, courts can either be structured as a pre- or post-adjudication model. In the pre-adjudication setup, offenders do not have to plead guilty to the crimes that are held against them. Instead, they enter the program and the charges are dropped upon completion. In contrast, the post-adjudication model has offenders plead to their crimes, and then admittance into the drug court is their sentence. Additionally, they often have a suspended sentence that is held in advance, which will be dropped upon their successful completion of the drug court program. If they fail, then the sentence is imposed. In either model, the offenders have a pretty heavy stick held above their heads to ensure that they follow the drug court program (Bowers, 2008).

In their article, “Problem-Solving Courts: From Innovation to Institutionalization”, Dorf and Fagan trace the fascinating history of the drug court movement. They identify three main impetuses for the initial creation of drug courts: docket pressure, public perception of the courts, and judges’ distaste for mandatory minimum sentencing in drug cases (2003, pp.1501-1502). At the turn of the millennium, dockets were becoming increasingly stressed and overloaded due to an increase in the number of low-level drug offenses pouring into the system (Lurigio,
Crowded courts are the norm presently, and the constant backlog of cases has led to a form of “hallway justice” where the prosecutor and defense attorney often discuss each case for just a minute or two before deciding on the appropriate plea for the defendant (Feeley, 1992). In drug cases this type of adjudication is even more pervasive.

The Honorable Peggy Hora discusses the development of a theoretical foundation for the drug court model in her 2002 article, “A Dozen Years of Drug Treatment Courts.” In this article she also discusses the history and probable causes of the movement in general. Like Dorf and Fagan, Hora argues that the “creation of the first drug treatment courts was in response to the “revolving door” of drug use, incarceration, failures of probation or parole, and recidivism” (2002, p. 1470). This “revolving door” that Hora illustrates refers to the constant recycling of the same offenders through the criminal justice system (Goldkamp, 2001; Turner, Longshore, Wenzel, Deschenes, Greenwood, Fain & McBride, 2002). In effect, the image painted is of offenders that are picked up on a Monday, released by Tuesday and back in jail by week’s end.

In Dorf and Fagan’s article, the authors go on to discuss key actors in the proliferation of drug courts, like then Attorney General Janet Reno, and they also explore the progress of the institution from framework to institutionalization (2003, p. 1503). One measure that the authors highlight as an indicator of institutionalization is the creation and maintenance of a professional association, the National Association of Drug Court Professionals (NADCP). In short the NADCP describes itself as “an
association of determined professionals and citizens committed to a justice system that works” (National Association of Drug Court Professionals, 2012). Some of the organization’s activities include providing money and research to operating courts and lobbying Congress on issues related to drug courts. As will be discussed, many of the participants in the present study directly referenced the impact, positive and negative, of the NADCP. To either end, the resolve of the organization is conveyed well via their Mission Statement: “We will not rest until there are Drug Courts within reach of every American in need” (National Association of Drug Court Professionals, 2012).

The drug court model was and remains a compromise of sorts for individuals who stem from a more conservative, punitive approach to justice and those in the more rehabilitative, liberal camp. In his critical work on drug courts, Josh Bowers discusses the development of the courts as a “third-way” between viewing addiction and substance abuse as a health problem or a criminal justice problem. He noted that drug courts were a:

politically-feasible middle ground that promised a little bit of something for everyone…for the therapeutic community, drug courts provided a much-needed alternative to incarceration…for drug warriors, drug courts promoted expeditious case processing, required rigorous treatment, and ensured traditional incapacitation for failing participants, and also deflated calls for more radical legislative change. (Bowers, 2008, p. 796).

Bowers was here referring to the inception of drug court programs at the end of the 1980’s. Since they have become widespread institutions, this “middle-ground” persona has apparently waned in the views of practitioners. However, the existence of such a political bias is not within the scope of this study. It does seem reasonable to
expect an organization like the NADCP, responsible for a number of grants that are
given out to drug courts annually, to align itself with the political party that it is most
likely to receive support from. This concept wasn’t picked up by other study
respondents, but the political nature of drug courts is a topic that is worth exploring by
other researchers.

The problem solving court model has extended its reach beyond drug courts into
the realms of mental health, domestic violence, drunk driving, and even bankruptcy
and tax courts (Dorf & Fagan, 2003, p. 1507). Meanwhile drug courts themselves
continue to expand, with a current estimate of 2,232 operating courts (American
University, 2011). Drug courts have, in effect, rocked the justice system and “spread
like wildfire” (Stinchcomb, 2010, p. 149). Moreover, the drug court model has spread
internationally with Canada opening the first such court outside of the U.S
(Stinchcomb, 2010, p. 149). Presently, there over a dozen countries with operational
drug courts. This widespread national and international popularity of drug courts
seems to stem from their demonstrated effectiveness via extensive evaluation.

Focus on the Recidivism Statistic

Generally, evaluations of drug courts have primarily focused on recidivism
reduction (Nolan, 2001; Gottfredson & Exum, 2002; Center for Court Innovation,
2003; Gottfredson, Kearley, Najaka & Carlos, 2005, 2006; Sanford & Arrigio, 2005;
United States Government Accountability Office, 2005; MacKenzie, 2006; Whiteacre,
Drug court evaluations and research have, also, generally yielded positive results. One of the purposes of the present study is to compare the focus of existing evaluations with the focus of drug court professionals. Therefore, the current discussion of existing literature will help guide a larger discussion of drug court success.

Gottfredson and Exum’s study of the Baltimore City Drug Treatment Court yielded a significant recidivism gap between the court’s clients and the controls, 32% for the court participants and 57% for the control (2002). Ultimately, the authors conclude that the recidivism numbers they produced are actually conservative because the drug court clients were out of jail for longer periods during the study and thus had more of an opportunity to reoffend. A follow up study at the three-year mark produced comparable results (Gottfredson, Kearley, Najaka & Carlos, 2005).

Rempel and colleagues conducted an extensive evaluation of six drug courts in the state of New York in 2003. They determined that those drug courts did indeed reduce recidivism rates as compared with traditional case processing. Even better, Rempel’s study was one of the first to have a long-term follow up with participants, three years rather than one or two. The authors concluded that even after three years, drug court clients demonstrated the positive outcomes of reduced drug use and recidivism (Center for Court Innovation, 2003, p. 287). This study also highlighted some of the key concerns that drug courts face. Namely, that clients not only suffer from drug addiction, but also from a host of other social ailments: homelessness,
unemployment, and low levels of educational attainment for example (Center for Court Innovation, 2003, p. 285).

A systematic review of available evaluations, conducted by Steven Belenko, reviewed thirty-seven published and unpublished evaluations of drug courts (Belenko, 2001). The study concludes that in-program recidivism is reduced, but points out that post-program recidivism numbers are not easily available. Also, Belenko discusses how little is known about other outcomes related to drug court participation. A second systematic review conducted by Jensen and Mosher in 2006 similarly concludes that the general theme is recidivism reduction. The authors go on to say that evaluations of drug courts are getting better as time goes on but recognize the relative dearth of cost/benefit evaluations (Jensen & Mosher, 2006).

In 2005, the Government Accountability Office (GAO) analyzed 27 evaluations of 23 different drug courts in order to determine the extent to which they reduce recidivism. The study found that, “in most of the evaluations that [were] reviewed, adult drug court programs led to statistically significant recidivism reductions” (United States Government Accountability Office, 2005, p. 44). Moreover, program participants had fewer re-arrests and longer periods of time before re-arrest than comparison groups. These observations were steady for all felony and drug related offenses (United States Government Accountability Office, 2005, p. 44).

The GAO study was one of the first to attempt to delineate which components of the drug court model have an impact on recidivism. In other words, is the role of the role of the judge as important to the success of participants as say the interaction with
treatment personnel? The new direction of drug court research appears to be to put together a set of best practices or “evidence-based” practices, which is something that several participants of the present study spoke about. However, at the time of the GAO study, they were unable to determine which, if any, of the specific program components had an effect on recidivism.

The GAO study concluded that drug court program components were too infrequently evaluated to make such a determination. Only two studies that the GAO analyzed attempted to isolate treatment effects and their results varied. An evaluation of the Baltimore City Drug Treatment Court had a stronger design to test for treatment effects (United States Government Accountability Office, 2005, p. 50). The design measured recidivism differences for participants who attended many treatment sessions versus those that attended few. Ultimately the Baltimore City study concluded that treatment does have a positive impact on recidivism rates (United States Government Accountability Office, 2005, p. 51). However, the other study that the GAO analysis took into account saw no difference between the treatment docket and the control group (a standard docket) (United States Government Accountability Office, 2005, p. 51).

The GAO study also concluded, with limited evidence, that the positive recidivism reductions brought on by drug courts tend to endure. This means that even after drug court participants graduate from their programs, they tend to stay out of trouble for at least a limited period of time. Another interesting conclusion from the GAO study was that there is a noticeable dearth of data on the secondary benefits of
participation in a drug court. The report cites that, “none of the evaluations included indirect, or secondary, benefits to society derived from a reduction in participants’ substance abuse” (United States Government Accountability Office, 2005, p. 74). This point ties in with the present study and will be discussed more completely later on. For now it is useful to mention that these indirect benefits may include the taxes that are now being paid by the participant, the participant earning higher wages, and/or the avoided costs to taxpayers associated with offender re-offense (United States Government Accountability Office, 2005, p. 74).

Researchers Finigan and Carey are at the forefront of studying and conducting cost/benefit analyses on drug courts. This topic will also be developed more fully later on. The two researchers teamed up with Cox to publish a paper in 2007 entitled “The Impact of a Mature Drug Court Over 10 Years of Operation” in which they recount several important findings that relate to recidivism. The structure of the study itself is interesting and useful for two reasons. Firstly, their study was longitudinal and allowed for the tracing of participant outcomes ranging from five to more than ten years. Also, the study was massive; about 11,000 total cases were examined during its completion (National Institute of Justice, 2007, p. 6). This represented the entire population of participants in the Multnomah County Drug Court in Portland, Oregon.

The precursor to the Finigan and Carey study was a study conducted by Goldkamp, White, and Robinson entitled, “Do Drug Courts Work? Getting Inside the Drug Court Black Box (2001).” The Goldkamp et al. study is widely cited and relied upon in the drug court literature. It was one of the first to attempt to demarcate
variation in the drug court model via a longitudinal methodology. The Finigan and Carey study strengthened the power of this research design by increasing the sample size; however, the Goldkamp et al. study still had a powerful sample of several hundred participants. The Goldkamp et al. study found “plausible support for the hypothesis that drug court impact is influenced over time by outside factors” (Goldkamp, White & Robinson, 2001, p. 65). These factors may include laws, administrative policies, and the resources that are available to the court (Goldkamp, 2001, p. 67). This finding is important because the researchers point out that not all of the variability in drug court outcomes is attributable to outside factors. Therefore, as the authors of Goldkamp et al. conclude, “variation in the remainder of the drug court effect must, then, be explained by factors internal to the drug court” (Goldkamp, White & Robinson, 2001, p. 66). This indicates a justification for further research into how program structure affects outcomes so that productive adjustments can be made.

A final study to discuss also tackles the “black box” concept of drug court structure. Entitled, “Looking Inside the Black Box of Drug Courts: A Meta-Analytic Review,” and published in 2010, Shaffer provides a study with research questions similar to the present study’s. She utilizes the theory of therapeutic jurisprudence and the principles of effective intervention to analyze the “extent to which programmatic and non-programmatic characteristics of drug courts affect effectiveness” (Shaffer, 2010, p. 1). Similar to previous research, the “study provides support for the drug court model. In general, drug courts reduce recidivism, but only moderately so” (Shaffer, 2010, p. 21). Shaffer’s study collected data across 11 factors that are
assumed to relate to effectiveness: target population, assessment, leverage, philosophy, treatment characteristics, predictability, intensity, service delivery, staff characteristics, funding, and quality assurance (Shaffer, 2010, p. 8). Of these, Shaffer concludes that the dimensions that are best linked with drug court success are the targeted population, leverage, expectations placed on participants and the quality of staff (Shaffer, 2010, p. 21). Outside of the plethora of research on drug court outcomes, there has also been a separate camp of researchers who focus on constructing a theoretical understanding of drug courts.
Theory

The first drug treatment courts were created out of practical concern by judges and other courtroom actors that the justice system was too frequently picking up and spitting out the same people over and over again (Hora, 2002, p. 1470). Drug courts were created on an atheoretical basis; there was no overarching theoretical foundation for their operation (Hora, 2002, p. 1469). However, attempts have been made to apply theoretical concepts with the drug court model. By understanding which concepts provide the best explanatory power over drug court outcomes, better questions can be asked and better studies can be constructed.

Therapeutic Jurisprudence

Therapeutic jurisprudence seems to be the theoretical framework that is most often referenced in discussions of drug courts. Simply put, it is the “study of the law as a therapeutic agent” (Wexler, 2000, p. 125). It is undeniable that the law has a profound effect on our society. Lurigio argues that because of this effect, the law should attempt to better the well-being of the people that interact with the justice system and also the people in our society in general (Lurigio, 2008). The term “therapeutic jurisprudence” was first used and developed by Wexler (1992). Its initial subject was the state of mental health law in the United States, but it has since received much international attention and has extended into many facets of the U.S legal system (King, 2008, p. 1112). Broadly speaking, therapeutic jurisprudence is a
theoretical framework for evaluating, “law, substantive rules, legal procedures, the
actions of legal professionals, and governmental policies by the extent to which they
courage therapeutic or anti-therapeutic outcomes” (Whiteacre, 2008, p. 9).

Recently, Wexler published a review of therapeutic jurisprudence in which he
highlighted five main historical developments: the movement of therapeutic
jurisprudence into legal education, the growing international dimension, the
development of a truly interdisciplinary conception, the transition of therapeutic
jurisprudence from mental health law to the entire legal spectrum, and its evolution
from theory to practice (Wexler, 2008, p. 17). These last two developments are
particularly relevant to a discussion of drug courts. Throughout his work, Wexler
provides anecdotal justifications for a serious study of law as therapy. He argues that
the law has the capacity to help situations by acting therapeutically, and that it can
cause unintentional harm through being anti-therapeutic.

In 1999, roughly ten years after the first drug court was started, an article
published by Hora, Schma and Rosenthal traced the development of therapeutic
jurisprudence and the history of the drug court movement:

whether one accepts or rejects the answer, the therapeutic jurisprudence
question must be asked because lawyers, judges, and the law itself all function
therapeutically or antitherapeutically irrespective of whether the laws and legal
actors take these consequences into account (Hora, Schma & Rosenthal, 1999,
p. 4).

They go on to argue that the results of looking at law through the “therapeutic lens”
should shape public policies and procedures (Hora, Schma & Rosenthal, 1999, p. 4).
The authors see drug courts as being an unintentional, but effective example of what therapeutic jurisprudence-in-action looks like. By applying drug treatment principles to addicted criminal defendants, drug courts are providing a therapeutic response to a serious, societal problem. Ultimately, the authors identify therapeutic jurisprudence as the theoretical foundation for the drug courts:

once DTCs realize [that they unknowingly apply the concepts of therapeutic jurisprudence every day], they can use therapeutic jurisprudence principles to enhance existing procedures, to make a greater impact on the lives of drug-addicted and alcoholic criminal defendants, and to increase the safety of communities across America (Hora, Schma, & Rosenthal, 1999, p. 5-6).

Several years later Hora published another paper that further called for the acceptance of therapeutic jurisprudence as the theoretical foundation of the drug court model (Hora, 2002). Hora acknowledges that the acceptance and use of therapeutic jurisprudence as such is not just an issue of passive labeling. Rather, she contends that applying the theoretical paradigm to drug courts, “requires a transformation of the court system and a willingness on the part of the legal actors to rethink their traditional roles” (Hora, 2002, p. 1481). In a drug treatment court the role of the judge, the prosecutor, and the defense attorney are all massively transformed. These role shifts have often been cited as a critique of drug courts; that the impartial role of the judge should not be tampered with (Bozza, 2007). Hora argues that even though drug courts developed independently of the theory, they:

can be seen as taking a therapeutic jurisprudence approach to the processing of drug cases inasmuch as [their] goal is the rehabilitation of the offender and
[they] use the legal process, and the role of the judge in particular, to accomplish this goal. (Hora, 2002, p. 6).

Miller comments that therapeutic jurisprudence, “recharacterizes the relationship between judge and offender as itself therapeutic—indeed the primary therapeutic relationship available to the offender” (Miller, 2004, p. 1514).

In their 2008 qualitative study of drug court graduates, Wolfer and Roberts discuss what they see as the role of therapeutic jurisprudence in a discussion of drug court outcomes. They argue that, “its usefulness as a ‘theory’ for explaining the outcomes of such programs remains questionable” (Wolfer & Roberts, 2008, p. 485). Rather, they see the therapeutic jurisprudence framework as potentially being useful in the “formation, rationalization, and study of drug courts” (Wolfer & Roberts, 2008, p. 485). The researchers instead offer Braithwaite’s (1989) theory of reintegrative shaming and Reckless’ (1961) containment theory as potentially having explanatory power over the outcomes of drug courts. These will be examined more fully after a discussion of a second principle theoretical framework: restorative justice.

Restorative Justice

Another theoretical framework that has been proposed as the theoretical foundation of drug courts is restorative justice. Restorative justice is based on the belief that the justice system should place “equal concern…for the victim, the offender, and the community” (Fulkerson, 2009, p. 258). In other words restorative justice
focuses on the needs of each stakeholder involved in a criminal act; even less obvious ones like community members. In the case of drug courts though, can the “victimless” crime of substance abuse be considered restorative if there is no victim to include? Well, the term “victim” can often be imprecise (Fulkerson, 2009). In cases of substance abuse, the line between victim and offender is often an ambiguous one. Fulkerson contends that too rigid a conceptualization of what is restorative and what is not, “limits the opportunities to utilize the principles of restorative justice to provide more effective sanctions in ‘victimless crimes’ such as drug law violations” (2009, p. 258).

Simply put, restorative justice can be thought of as aiming “to restore the one harmed to as good a position or better as before the harm was done” (Blom, Galbo-Moyes & Jacobs, 2010, p. 42). Contrast this concept with the state of our current justice system. Under a traditional jurisprudential model, the concern is not on the victim. Rather, the “state owns the harm” and the emphasis is on punishing the perpetrator of a wrong rather than attempting to ease or right the wrong that was done in the first place (Blom, Galbo-Moyes & Jacobs, 2010, p. 42). In a drug court setting, the “experimentalist” nature of their proceedings provides the court with the ability to address the evolving needs of offender and the community (Dorf & Sabel, 2000, p. 837).

In his book, Restorative Justice and Responsive Regulation, John Braithwaite (2002) traces the long history of restorative justice. According to Braithwaite, restorative justice was a staple in the ancient Arab, Greek, and Roman civilizations
Moreover, the traditional justice structure present in our society is a relatively new phenomenon. It wasn’t until the end of the Dark Ages that crime was depersonalized; the modern day “John Smith vs. The State of Ohio” has supplanted “John Smith vs. The Victim.” Historically, the transforming of crime into a felony against the king “was a central part of the monarch’s program of domination of his people” (Braithwaite, 2002, p. 5). As far as the criminality of drugs are concerned, the “use of prohibited drugs violates the normative values of the society and its government” (Fulkerson, 2009, p. 258).

Thus when looking at the three prongs of stakeholders under a restorative justice framework, the victim of drug violations can be equally conceptualized as the community and the offender. Additionally, there are a host of other victims associated with drug addicted offenders; property owners that are victimized due to addicts who thieve in order to maintain their habit, persons that are injured due to addicts driving or commit an assault while under the influence, and taxpayers who bear the brunt of the “social costs of addiction” (Fulkerson, 2009, p. 264). Indirect victims may include the family and neighbors who have to witness the degeneration of a loved one.

In a 2006 process evaluation of a drug court in Utah, researchers Egbert, Church II, and Byrnes determined the demographic, criminal, mental health, and substance abuse characteristics of drug court participants. By comparing self-reported substance abuse information provided by participants with data on lifetime stimulant and polysubstance abuse, the authors determined that the Utah drug court was in fact reaching serious users. Moreover, according to their responses on employment related
questions they determined that employment level; or rather the lack of employment, of drug court participants indicates a critical need in that area. Based on this finding, the authors conclude that:

A career development and employment-counseling component within the drug court program, or a strong collaborative relationship with an employment service program, would strengthen the ability of the court to successfully restore drug court participants as working members of their communities. (Egbert, Church II, & Byrnes, 2006, p. 88).

In effect, the implementation of a stronger jobs component would further align the drug court model with restorative justice values.

In an analysis of the role that drug courts play in addressing the racial disparity present in the criminal justice system, O’Hear discusses the sometimes restorative nature of drug courts. His argument is not so much that drug courts now represent an instantiation of a restorative justice program, but rather that they could become one if certain steps are taken. For instance, O’Hear argues that, “if the focus shifts from raw numbers to the broader impact on communities, then specialized drug courts may do some good.” (O’Hear, 2009, p. 487). The long-standing emphasis on recidivism numbers demonstrates the drug court model’s commitment to getting large amounts of people through the program, not unlike the mainstream model of expeditiously processing cases through traditional court. This emphasis can be negative if it comes at the cost of attending to other issues faced by drug court participants. If, like O’Hear
suggests, drug courts were to be “reconceived, not as places for the administration of coerced treatment, but as meeting places for members of the community to engage in constructive dialogue about the effects of drug-related crime on the community,” then they will undoubtedly take on a more strict alignment with the restorative justice ideal. Moreover, the current drug court model’s heavy reliance on government coercion and the general absence of input from community members seems to indicate a non-restorative system (Fulkerson, 2009, p. 264).

Wolfer and Roberts’ qualitative study has already been discussed for its contribution towards the application of therapeutic jurisprudence as an explanatory model of drug court structure. However, the researchers’ analysis also led them to conclude that therapeutic jurisprudence may not be the best fit after all for discussing outcomes (Wolfer and Roberts, 2008). The two researchers discuss Braithwaite’s (1989) theory of reintegrative shaming and Reckless’ (1961) containment theory as possible explanatory frameworks for understanding drug courts. Both of these theories have the potential to be utilized as an explanatory tool in reference to the outcomes of drug courts rather than their structure or aim.

Braithwaite (1989) describes two types of shaming mechanisms; either the shaming of an individual can be stigmatizing or reintegrative. Stigmatizing shaming provides the offending individual with, “little means of delabeling, destigmatizing or welcoming the offending individual back into the community (Wolfer & Roberts, 2008, p. 485). In other words, the shaming is fixed or set in such a way that rebuilding oneself after the initial deviance is hard to do. On the other hand, shaming can also be
reintegrative (Braithwaite, 1989). Reintegrative shaming is possible when, “community members publicly show disapproval for deviant acts, but then accept reformed deviant individuals back into the community” (Wolfer & Roberts, 2008, p. 485). It is this ultimate acceptance of the individual as being separate from their offense that sets reintegrative shaming apart from the stigmatizing sort.

Wolfer and Roberts applied Braithwaite’s (1989) theory of reintegrative shaming to the drug court model in their 2008 study. However, they weren’t the first to do so. In 2000, Miethe, Lu, and Reese compared cases processed within and outside of a Las Vegas drug court. They argued that because non-drug court participants receive more stigmatizing punishments, traditional punishment is inherently more stigmatizing than drug court (2000, p. 529). Moreover, the authors hypothesized that, “given that drug court participants are subject to social control efforts that are more consistent with reintegrative shaming…drug court participants should have lower rates of recidivism than their general court counterparts” (Miethe, Lu & Reese, 2000, p. 529). Ultimately, however, they observed higher recidivism numbers for drug court participants than the control group. They concluded that the most likely cause for these unexpected observations was that the drug court they observed was actually more stigmatizing than reintegrative despite how it is structured.

The Wolfer and Roberts (2008) study asked previous drug court participants about their experiences and attempted to uncover themes that may apply to existing sociological and criminological theories. They did not decode a “magic bullet” or a perfect, all-encompassing theory, but they did field useful responses in relation to
Braithwaite’s (1989) theory of reintegrative shaming and Reckless’ (1961) containment theory. The theory of reintegrative shaming has already been discussed, and unlike the Miethe et al. study, Wolfer and Roberts found support for it as a viable theoretical paradigm. However, they did find it difficult to link shaming to the role of program structure (2008, p. 503).

Containment theory seems to provide a necessary link between program structure and outcomes (Wolfer & Roberts, 2008, p. 499). Basically, containment theory argues that an individual with a balance of inner- and outer-contains will remain law-abiding (Wolfer & Roberts, 2008, p. 499). Inner contains are our personal controls like morals while outer containments are the “structural cushion” which keeps our behavior within an acceptable range, like the law (Wolfer & Roberts, 2008, p. 499). In relation to their study, the researchers argue that the drug court model provides a “much needed outer containments” to help keep the participants from reoffending (Wolfer & Roberts, 2008, p. 503). These theories, particularly therapeutic jurisprudence and restorative justice, guided the collection and interpretation of the present study.
Methods

The present study seeks to identify what success looks like from the perspective of drug court stakeholders, primarily their directors. The literature presents a formalized interpretation of success, often through the comparison of recidivism rates between drug court participants and a control group (United States Government Accountability Office, 2005). These quantitative analyses have been, and will continue to be, vital in furthering our understanding of the extent to which drug courts can influence future outcomes. Additionally, quantitative analyses will be necessary in order to isolate the components of drug courts that have the greatest likelihood of affecting these outcomes (Goldkamp, 2001; Turner, Longshore, Wenzel, Deschenes, Greenwood, Fain & McBride, 2002; United States Government Accountability Office, 2005; Shaffer, 2010).

However, exploratory research using qualitative methodologies can help to provide direction for these quantitative endeavors. This is the rationale behind the current study. Through interviewing drug court stakeholders, a more full understanding of their motivations can be elucidated. Ultimately, this line of research has led to the beginnings of that understanding and will hopefully be useful for academic and practitioner communities alike. For instance, are drug court stakeholders as intensely interested in the recidivism rates of their court’s participants as the research on drug courts is?

As has been mentioned, the expansion of drug courts has led to a proliferation of the problem-solving court model into the realms of domestic violence, mental
health, re-entry, etc. Additionally, there are several types of drug courts themselves: adult, family, juvenile, and tribal. While the general method and structure used by each type is similar, they are distinct enough to warrant separate research initiatives. For the purposes of this study, only adult drug courts were examined. Currently, in the state of Ohio there are seventy-six (76) operating drug courts, of which there are thirty-three (33) adult courts. The sample that was produced from these courts (n = 11) is sufficient for the purposes of exploratory research. While no direct generalizations will or should be made from this sample to the population of courts in the country, the drug court model appears rigid enough to warrant discussion of a general Ohio drug court experience.

A list of active adult courts was compiled with the help of representatives of the Ohio Supreme Court Specialized Docket section. A blanket email was sent out to the directors of these courts with information about the study and the minimal commitments associated with participation. An attempt was made to utilize snowball sampling by encouraging respondents to identify individuals that they believed to have valuable insight on drug courts. Ultimately, only one additional respondent was added to the sample from this type of inquiry. The sample is made up of a variety of stakeholders and practitioners involved with drug courts in Ohio. Seven study respondents are acting directors/ coordinators of a drug court, one is a magistrate in charge of overseeing the drug court docket, one is a judge in charge of a drug court docket as well as a regular docket, one is the chief probation officer in charge of overseeing the intensive supervision of drug court participants, and one is an
administrator in charge of coordinating the funding and evaluation of drug courts in Ohio.

The original goal in constructing a sample for this study was to deal solely with drug court directors. However, it became apparent early on that such a limitation would lead a drastically reduced sample size. By including drug court professionals other than directors, a more representative sample was formed that included individuals associated with a third of all operating, adult drug courts in Ohio. This benefit, taken along with the exploratory nature of this research, outweighed the potential misgivings of working with a varied group of individuals. Additionally, the broader sample led to insights that would have likely been unavailable had the study only relied on the responses of directors. Any findings associated with this study are thus not generalizable to directors per se, but rather to drug court professionals operating in Ohio. Moreover, the gender breakdown for this sample was four men and seven women. Ideally, the gender variable would be controlled for, but once again this was compromised in order to attain a sufficient sample size.

A uniform interview instrument was used during the collection of data, although the interviews were semi-structured in order to field the most candid and natural responses possible. According to Lofland and Lofland, the interview guide is neither a schedule nor a questionnaire, and such a conceptualization of the interview process was followed in this study (1995, p. 85). Although, certain questions were probed more than others in order to ensure consistency across interviews. See the attached Appendix for a copy of the instrument that was used during the interview
process. All interviews were held over the telephone except for one that was in-person. No time-limit was put on the interviews and they ended up ranging in length from ten (10) to fifty-three (53) minutes, with an average length of thirty minutes (30). The interviewees were guaranteed confidentiality and anonymity throughout the course of this investigation, and this measure was respected.

The primary research question that guided the collection, organization and analysis of data was: what are the outcomes that indicate drug court success? Also, do practitioners assign a different weight to the various markers of success/outcomes than researchers do? After each interview was completed, it was transcribed. The data analysis portion of this research was done via emergent-theme coding. In brief, coding is the “process of categorizing and sorting data” (Lofland & Lofland, 1995, p. 186). Because the interviews were fairly structured, it was rather simple to pick the appropriate themes that were developed. The first major theme that was chosen was efficacy. Keywords associated with efficacy were chosen based on extensive reading of drug court literature and included the following terms: effective, it works, recidivism, crime, restore, build, drug use, cost/benefit, graduation, success, treatment, diversion, jail, prison, termination, accountability. These keywords served as the basis of an initial coding of the interviews into the theme of efficacy. However upon further analysis, quotes were sorted according to their substantive association with the theme and not solely based on whether they contained a keyword. This led to an extensive sheet with quotes associated with drug court efficacy.
This same method was used to code two more themes that emerged during the
interview process: structure and services. The two themes were discussed frequently
by respondents and the difference between them is not easily apparent. The structure
theme included keywords such as treatment, phase, and graduation. The services
theme included keywords such as GED, life skills, and job help. Simply put, structure
refers to requirements while services refer to those things provided outside of what the
court may be expected to provide. In other words, anything that fell outside of the
explicit structure of a program was included in the services theme. What will be
provided in the coming sections of this paper are the most illustrative findings that
resulted from the careful analysis of these themes.
Findings

Recidivism as a Marker of Success

All of the findings of this study should be prefaced with a concern that was touted by several respondents. Drug courts are not a “magic bullet” that can act as all things to all people. Rather, some people do better than others in a drug court programs. Isolating the characteristics of participants that have the greatest amount of success in the program will be an important challenge for researchers to address. One director that was interviewed described how some participants, “end up falling flat on their face”, while others “take it seriously from day one…and put all their heart and soul into it.” The following findings are thus predicated on the understanding that the views and experiences of this study’s respondents are not necessarily stable across courts. That being said, those that are presented offer the valuable insights of Ohio drug court professionals.

The intense focus on recidivism as the quintessential marker of success in the drug court setting has already been examined through a review of the available literature. This qualitative study was not focused on gathering self-reported recidivism data, but rather how the respondents viewed recidivism in the first place. However, several respondents did offer their recidivism rates during the interview. The first interviewee that was spoken with, a female, drug court director, explained her frustration with some court analyses because, “people can doctor the statistics to make them look any way you want.” She went on to say that she has personally
scoured the court records to determine that her court’s recidivism rate is 9%. Now, what exactly does this mean? Broadly speaking, a recidivism rate refers to the percentage of individuals who are cited for committing an additional criminal offense after they’ve already been adjudicated for a separate offense. However, this begs several questions. For instance, which individuals should be included in the calculation; only graduates, or participants who were in the program at all? Moreover, should only certain kinds of offenses be included? If an individual in a DTC goes out and commits an offense that is completely unrelated to drug activity, should that count against the court itself? What actually should be considered a recidivism episode; re-arrest or re-conviction? Addressing these questions is not within the scope of this study, but the answers will undoubtedly have important implications for the nature of future research on drug courts.

For the above example, the DTC director was referring to drug court graduates who commit new felony offenses; no other numbers were offered. This does not necessarily mean that they are not collected, but it seems obvious that the DTCs, like any program, would prefer to convey their lowest recidivism rate as opposed to say the misdemeanor reconviction rate, which may be much higher. Now, if we expand these criteria in any way the recidivism rate will go up; perhaps drastically. New felony convictions seem to be more important and interesting than following individuals who commit a lesser, misdemeanor crime. Therefore, a recidivism statistic that monitors the felony recidivism rate might be said to be the primary statistic, while other ones could be looked at as auxiliary statistics. For this study, there is no way to determine
such auxiliary recidivism numbers, simply because the data was not included. However, such collections could prove useful in future studies so long as drug courts maintain their records.

Ultimately, it became evident that there is a disproportionate emphasis on recidivism between research and practice. Nobody that was interviewed indicated that recidivism reduction is the sole marker of success that they concern themselves with, whereas there have been a number of evaluations where the sole outcome being referenced for success is recidivism. Moreover, generally speaking the interviewees seemed resistant to putting a lot of weight on the recidivism rates of their participants.

This can be contrasted with the ways in which the available literature approaches the drug court success. Bozza emphasized the central place of recidivism in a discussion of drug court outcomes and claimed that, “the only reason problem-solving courts exist is to respond to persons who have committed crimes, and if they do not significantly reduce recidivism, there is no reason for them to continue” (2007, p.117). As has been discussed, drug courts were more accurately created for a multitude of reasons including both structural and ideological hang-ups pertaining to traditional case processing (Hora, 2002; Dorf & Fagan, 2003). This point notwithstanding, Bozza raises an important consideration. Can the continued funding of drug courts be justified if they are not producing recidivism reductions in their targeted populations? Even if it is shown that they produce other positive outcomes, is recidivism the end all and be all of drug court success?
To reiterate, the drug court stakeholders that were interviewed for this study seem to suggest that this is not the case. Second, while the available literature does seem to be heavily focused on recidivism reduction, Bozza’s view that the very existence of these courts is tied to their ability to reduce recidivism is in the minority. A male probation office with a drug court in northern Ohio summed up the divergence between research and practice rather succinctly when he said, “while I understand the importance of recidivism studies, it’s not something that I in any way, shape or form lose sleep over or spend a lot of time, energy or monies on.” He went on to say that his role is to focus on the individuals while they’re in the program, “and hope to goodness that [they] don’t see them back.” This response was at one extreme of the views of recidivism focused studies. The same respondent discussed how every slip up is not weighted the same. For instance, “if Suzie Smith completes our drug court program and six months later Suzie gets arrested for misdemeanor drug paraphernalia…you know, I don’t necessarily view that as a failure.” He argued that recidivism studies do not capture the extent to which the program has impacted a person’s life.

Many respondents saw recidivism as having some place but did not emphasize its importance. One participant, a drug court evaluator, suggested that when evaluating the success of drug courts, “definitely recidivism is a piece of that but [it’s] not the only thing we look at.” So what do they look at? Well, there is a whole host of criteria that are being examined in the newer literature that has previously been disregarded in favor of recidivism analyses. These can be referred to as the secondary...
benefits of drug courts and a more full discussion of them will be had in a later section of this paper.

Most of the interviewees seemed enthusiastic about the success of their programs. It is unclear whether the reluctance to rely on recidivism is based on a lack of confidence in their own program’s recidivism reduction capability or a lack of confidence in recidivism as the best marker of success in the first place. Some of the respondents were apathetic in relation to the use of recidivism as a marker of success while others recognized that it has its place. For example, several of them used low recidivism rates as synonymous for success. While discussing an external study of their court, a male magistrate in charge of a long-running drug court docket, said that for individuals who didn’t complete the program, but had at least been in the program three months, their recidivism rate dropped to 36.5 % (as compared to a 63% control). He went on to say that, “that was a real eye opening study, for everyone in the county to see those kinds of numbers, that kind of success.” It’s notable that at the same court, program graduates had a remarkable recidivism rate (15%) compared to the same control (63%).

Drug courts are an alternative. They are referred to as a “specialized docket” with a particular target population. This means that they are constantly compared to the traditional method of justice-dispensing; the criminal trial court. Currently the traditional method of doling out punishment in the U.S is prison. A female drug court director conveyed her opinion on incarceration in saying: “jail is not the best option for reducing recidivism and for helping these people get clean and sober. Jail isn’t
going to do that.” She went on to say that if you’re somebody who works for the courts and you believe that jail solves the problem, “then you don’t need to be in that job.” She believed that keeping the addicted out of jail is something that is supported by evidence-based practices. When probed a little further she remarked that, “[jail] doesn’t solve the problem, it makes it worse, it’s costing money and you’re not learning anything.” The relative cost of drug courts will be discussed further in a later section, but the idea that incarceration doesn’t teach the offender anything shows the therapeutic leaning of this participant and others who made similar remarks. This therapeutic leaning was made even more evident by participants’ discussion of secondary benefits.

*The Secondary Benefits of Drug Courts*

There are a host of other outcomes, unrelated to recidivism, that this study’s respondents discussed. According to my data, drug court stakeholders seem to be genuinely committed to treating the “whole person” rather than just the symptoms associated with a participant’s drug addiction. As has been argued, the research associated with drug court outcomes has been primarily focused on the effect of drug courts on subsequent criminal recidivism. This study does not aim to add one way or the other to the discussion of whether drug courts actually do reduce recidivism. The vast majority of studies have demonstrated these reductions sufficiently. Rather, this study was aimed at fielding responses from stakeholders regarding other outcomes
associated with drug court participation. The qualitative nature of analysis lends itself to fielding complete responses from respondents, and this study’s interviewees overwhelmingly discussed the impact that their programs have on participants in addition to, or sometimes in place of, recidivism reductions.

Some of these benefits have been measured in past studies, like the attainment of a GED, college diploma, or driver’s license or the maintenance of sobriety (United States Government Accountability Office, 2005; Berman & Feinblatt, 2005). Others have simply been alluded to, like the rebuilding of families, birth of drug-free babies, and newly tax-paying participants. Still others have yet to be explored to any substantive end, like the reintegration of participants back into the community, the support that is developed and maintained after the program, or the overall betterment of the previously drug addicted individual. These themes will now be discussed more fully by alluding to the responses fielded from this study’s interviewees. Many of the responses that will be presented and discussed were prompted by the question: “What are the markers of success, or otherwise successful outcomes of your drug court program.”

One of the most emphatic points made by respondents was that the drug court model positively impacts the sobriety of participants. One female director announced:

I see a lot of markers but it’s…sobriety for me being the biggest one…and then all the things that come with being sober you know, a level of functioning they didn’t have before. So all the other areas of their life…the things that they’ve lost the things that they haven’t been able to do, they can do because they’re sober and not messed up on heroin and they’re not drinking and driving.
This quote brings up an important point. Sobriety is a necessary condition for the betterment of the individual in other aspects of their life. Every other outcome is based on the sobriety of the individual. The same respondent summed this point up by saying, “you know I’ve had conversations with people, trying to tell them, you know the job is important, being able to support yourself is important but if you’re not sober, none of that’s going to matter because it’s all going to go away.” It is clear that one of the primary concerns of drug courts has been, and should remain to be, the lasting sobriety of their participants.

The entire drug court concept can be seen as being strongly rooted in the disease model of addiction (Dorf & Fagan, 2003; Miller, 2004). Another female director emphasized this by saying, “if we’re looking at addiction as an illness, and we believe it’s a brain illness, then you know we need to treat those people instead of just incarcerating them.” Drug court success is predicated on the belief that substance abuse is strongly associated with criminality (Carey, Finigan & Pukstas, 2008). By getting participants the substance abuse treatment that they need, the hope is that the subsequent criminality that they used to resort to will be averted. There is evidence that supports this line of thinking. A study published in 1994 found that substance abuse treatment was associated with lower levels of self-reported criminality (Gerstein, Harwood, Fountain, Suter & Malloy, 1994). A female director that contributed to this study argued that, “most people, if they were in their sober mind, they wouldn’t think
to steal for drugs or use drugs and drive and do all these things that they did to get into the program, so when they’re sober they don’t make decisions like that.”

Sobriety as an important outcome was a sentiment reiterated over and over by respondents. Two of them mentioned “Faces of Meth”, a project that was created by the Multnomah County Sheriff’s Office in Oregon (Faces of Meth, 2005). Below are samples of the mug shots provided by the Faces of Meth campaign:

![Figure 1](image1.png)

*Figure 1*. The physical effects of meth. Two examples of the “Faces of Meth” campaign.

In reference to “Faces of Meth”, a female drug court director maintained that, “we can do that with our clients, and you can see a difference in what they look like when they come into the program and what they look like when they leave.” The Faces of Meth project demonstrates the negative, physical transformation of addicts, while the treatment that drug courts provide can represent a positive transformation, both physical and emotional.

A female director mentioned a different “faces” campaign, this one is called “Faces & Voices of Recovery” (Faces & Voices of Recovery, 2011). Based on the
information on their website, the Faces & Voices of Recovery organization is committed to “organizing the recovery community” and advocating for that community in way of public policy (Faces & Voices of Recovery, 2011). The website is jam-packed with statistics and resources directed at individuals whom are battling addictions with drugs and alcohol. One of the most telling statistics is that, according to the 2006 National Survey on Drug Use and Mental Health, approximately 20.4 million Americans were current illicit drug users (i.e. used an illicit drug within the month preceding the survey) (Substance Abuse and Mental Health Services Administration, 2007). To put this in perspective, this figure represented over eight percent of the total U.S population at the time.

The respondent who mentioned Faces & Voices of Recovery described it as being:

a new kind of movement for people who have years of sobriety, they’re trying to change that Lindsay Lohan face of rehab which is kind of like a big joke, and show that there are millions of people out there who are doing well and they’re trying to change that persona of rehab being something that can’t work.

As has been referenced, the court system, and specifically drug courts, doesn’t exist in a vacuum (Feeley, 1992). Public campaigns such as Faces of Meth and Faces & Voices of Recovery do have an impact on the public perception of addiction which in turn may have an impact on drug courts’ ability to remain politically popular.

One secondary benefit that has been mulled over by previous researchers is GED attainment (Center for Court Innovation, 2003; Government Accountability
Office, 2005). This falls under a more general heading of individuals furthering themselves while in a drug court program. Many courts require that their participants be employed and have a GED, for example, before being cleared to graduate. The courts that the respondents of this study oversaw had similar requirements. However, more often than not they identified their courts as operating on a case by case basis. In discussing her court’s requirements, one female director explained that their graduates “[have] a driver’s license and they have to have a GED too, but again that’s person to person.” This individualized nature of the program seems to make the experience a more therapeutic one than having a blanket requirement that must be filled prior to being released from the program. Another respondent, a male director, explained that the drug court attempts to connect the participant with the services that they are in most need of. He emphasized, “ultimately the goal is to get them drug free, to get their life in order, you know become positive citizens of the community, get a job, GED...”

The overall “furthering” of the individual was touched on by many respondents. The male magistrate that was interviewed captured the views of the other participants when he elaborated on the markers of success that he sees in his program:

Beyond recidivism and cost savings though, we’ve had fifty graduating classes, hundreds of people. We’ve had nine drug free babies who were born to program participants. And you know, you can’t put a dollar figure on what a crack addicted, someone who’s addicted at birth, the kind of expenses and social costs, just the human costs. So we’re real proud of our drug free babies from program participants, like I said, we’ve had over fifty GEDs, people have earned in the program. You know, it’s about saving lives, and we see that on a regular basis.
The holistic and therapeutic concept of “saving lives” echoes the opinions of other respondents. Moreover, in reference to the drug free babies that are born to participants in their program, another male director mentioned how, “they’re better parents…and if they’re sobered up, we won’t have their children as clients too.”

There is a difference between the benefits that a participant sees while in the program, usually at the behest of a program stakeholder in some form, and the types of outcomes that come outside of the drug court’s walls and as a result of a true change in the individual’s life. Getting a participant access to a GED class or job training is one thing, but fundamentally altering the way they view responsibility in their own lives is another thing entirely. The different form that individual participants’ experiences can take has already been discussed, but respondents also offered that each drug court participant has different issues that need to be addressed. One female director mentioned that “for some individuals it is gaining employment, it’s getting your license back, it’s getting a house, it’s getting your children back from Children’s Services, sometimes it’s getting weekend visits with your kids now and you know just kind of building.”

The point that drug court isn’t forever is an important one. Once drug court participants are done with the program, and hopefully graduate from it, they are put back out into the same circumstances that existed prior to their entering the court. Now, they may have a new job, or a GED, but will they be able to resist the urge and pressure to get high once they are no longer reporting for drug screens? The respondents to this study indicated that reintegration and the building of a healthy
independence are concerns that they try and address. Structurally, some of the courts are set up in a way that presumably promotes reintegration. A female director informed that, “the third phase [of their program] is their transition phase and that’s transitioning away from accountability to the court and into the kind of accountability to a recovery community.” Other respondents emphasized that they try and encourage participants to take responsibility for their own lives.

So what does a participant’s life look like after graduation? Well, the drug court professionals that were interviewed primarily saw their participants living more productive and healthy lives than when they entered the program. Many respondents of this study saw their previous drug court participants build relationships while inside the program that continued upon graduation. A common example was the continued interaction between drug court participant and the drug court itself: “we have a lot of graduates who will just randomly show up at the program offices, they know when the groups are scheduled and say, ‘hey can I sit in today?’” A female director mentioned the positive influence that a “sober support network” can have on the participant post-graduation. The network she’s was referring to are the people that participants meet during their Narcotics Anonymous (NA) and Alcoholics Anonymous meetings (AA), as well as other drug court participants.

According to the drug court stakeholders interviewed in this study, the growth of the participants is something that continues past graduation. They emphasized that treatment is a process, a long one at that, and graduation signifies a period of success
but not necessarily the end-goal of their programs. One female director of a large court discussed how, upon graduation, her drug court’s participants are:

still building, and I think that’s one important thing is the fact that just because somebody makes it through a program successfully, that doesn’t mean that they’re going to change for the rest of their lives. It just means that they’re learning to cope with their stresses and they’re learning that there are other options.

Other interviewees mentioned how their graduates want to go back to school to become “treatment people” because of the help that the drug court personnel had provided them. All of the benefits that have been discussed thus far refer to those that the drug court participant receives. Now, it will be useful in constructing a holistic understanding of drug court outcomes to discuss findings in relation to the benefits that the court’s themselves may reap; namely, the costs and benefits associated with drug court operation.

The Costs and Benefits of Drug Courts

As has been cited, in their review of drug court evaluations, Jensen and Mosher (2006) acknowledged a dearth of cost/benefit research. Such research is vital for policy makers and practitioners and thus warrants a discussion in this study. There were some reports that took costs and benefits into account prior to the Jensen and Mosher study, and more have followed (Byrne, Schauffler, Lightman, Finigan & Carey, 2004; Logan, Hoyt, McCollister, French, Leukfeld & Minton, 2004; Carey & Finigan, 2004; United States Government Accountability Office, 2005; National
Institute of Justice, 2007; Brocato & Koob, 2010; Blom, Galbo-Moyes & Jacobs, 2010). Carey & Finigan concluded that the Multnomah County Drug Court saved money for the county as compared with traditional court processing; a lot of money (National Institute of Justice, 2007, p. 53). Over a ten year period the authors estimate that taxpayers saved more than $9 million, not including avoided costs like future jail stays and victimization, and over $79 million when avoided costs are taken into account. The authors argue that the short duration of the status hearings in the drug court setting contribute to the reduced cost of adjudication (National Institute of Justice, 2007, p. 53). This conclusion seems to go against what many may think about the cost of drug courts due to the increased supervision and treatment provided to participants. The second figure of $79 million is even more illustrative of the profound economic impact that drug courts can have.

The meta-analysis completed by the Government Accountability Office in 2005 has already been referenced in relation to recidivism reductions. It was also noted in the study that existing evaluations paid too little attention to secondary benefits, including costs and benefits. Only four evaluations that were reviewed by the GAO study had substantial data in relation to costs and benefits. The aforementioned Carey and Finigan study (National Institute of Justice, 2007) was included in the GAO review and it was the only court that found drug court case processing to be less expensive than the traditional model (United States Government Accountability Office, 2005, p. 71). The GAO report went on to identify two separate categories for the benefits associated with recidivism reductions: “(1) reduced future expenditure by
criminal justice agencies and (2) reduced future victimization” (United States Government Accountability Office, 2005, p. 72). Taking all of the future outcomes into account paints a promising fiscal picture. The four evaluations that were reviewed by the GAO study were studies of seven total drug courts. In each, there were positive net benefits. In other words, the anticipated savings outweighed the costs of the courts and ranged from $1,000 to $15,000 (United States Government Accountability Office, 2005, p. 73).

The respondents of this study did not spend a large amount of time focusing on the costs and benefits of their courts. Cost reductions as a result of avoiding victimization and structural costs in the future are still excellent examples of secondary benefits though. The male magistrate that contributed to this study discussed a separate study that was completed by an outside source that compared their court to probation, parole, community corrections, halfway houses, and prisons. According to the interviewee, of all the different institutions that were considered in the analysis, their drug court program was the most cost effective by far. He said that, “for every dollar invested in drug court diversion, four dollars were saved overall through the system.”

However, a separate view was touted by another study respondent, a drug court evaluator. She argued that there is too much going on in the drug court participant’s life to be able to definitively attribute costs and benefits to the drug court, or any other entity for that matter. In her words, “there are really so many tentacles that spread out from this that are hard to track. I think it’s hard to get a true picture of what all the
benefits are.” Despite this view, the increase in the number of cost/benefit studies in the past few years demonstrates the necessity of an economic analysis of drug courts. Such studies will likely continue to play an important role for decision-makers in choosing whether to continue support for drug courts. As it currently stands, there does not appear to be any significant lack of support for drug courts, especially in Ohio.

**The Institutionalization of Drug Courts in Ohio**

The proliferation of drug courts has been successful in embedding them in the U.S criminal justice system. In her 2002 work, Hora describes how decisions made by three powerful, legal organizations demonstrate the institutionalization of the therapeutic jurisprudential model and drug courts. First, the Bureau of Justice Assistance updated their Trial Court Performance Standards to include a standard that identifies effective trial courts as those that are responsive to “emergent public issues such as drug abuse” (Hora, 2002, p. 1481). Second, the Conference of Chief Justices and the Conference of State Trial Court Administrators adopted a joint resolution in support of expanding drug courts and the expansion of “the principles and methods employed in problem solving courts” (Hora, 2002, p. 1482). Last but not least, the American Bar Association, Judicial Administration Division, adopted the Ten Key Components into their standards relating to drug court practices (Hora, 2002, p. 1483). Taken together, these three formalized decisions demonstrate how well-rooted drug courts have become in the criminal justice system. They have been institutionalized
and with the support of major players, like the American Bar Association, their continued practice seems insured for years to come.

The participants of this study discussed the proliferation and institutionalization of the drug court model in their community and across Ohio. They mentioned the expansion of the problem solving court model into other facets such as reentry courts, domestic violence courts, and most recently veteran’s courts. Study respondents also discussed the institutionalization of the model in reference to a new rule change that has been implemented by the Ohio Supreme Court. Rule 36.02 pertains to the maintenance of specialized dockets; it calls for the certification of all drug courts by the beginning of the 2013 calendar year. In order to receive certification, a specialized docket must follow a set of standards that are put forth in the rule change. The new standards present guidelines in relation to:

1. Planning Process
2. Non-adversarial Approach
3. Legal and Clinical Eligibility and Termination
4. Assessment and Referral
5. Individual-needs and Evidence-based Practices
6. Participant Monitoring
7. Status-review Hearings
8. Substance Monitoring
9. Treatment and other Rehabilitation Services
10. Incentives and Sanctions
11. Professional Education
12. Effectiveness Evaluation
   o (Amendments, 2011)

These standards borrow heavily from the Ten Key Components. Recall that the key components recommend that drug courts should:
Every single one of the key components has been included in one way or another in the creation of the new standards for Ohio’s specialized dockets. The least obvious inclusions are #3 and #10. However, both are addressed in new Ohio standard #1: the planning process. The tenth key component refers to building relationships within the community. Within the planning process section of the new Ohio rule, it is noted that community members can sit on the treatment team of the court. Additionally, the rule says that the treatment team, “should work with local community members to ensure the best interests of the community are considered” (Amendments, 2011).

In addition to the drug court coordinators that were interviewed, an individual who works as a drug court administrator and evaluator was also included in this study. When asked about the creation of the new Ohio standards she mentioned that the committee in charge of drafting them was made up of fifteen judges, a prosecutor, a defense attorney, a magistrate and probation officers. Also, when questioned about the role of the Ten Key Components in the construction of the new standards, she said:
That’s where the standards came from so you should be able to recognize those as you go through them…our approach when we were drafting these was we looked at all the key components that exist. Because there’s some for mental health courts, there’s some for drug courts, there’s like promising practices in reentry and so on and so forth. And then we took a look at what the other states have done as far as their standards and certifications. And in combination with looking at how Ohio law works and Ohio statues this is what we came up with.

In discussing the impetus for creating a set of standards, the interviewee brought up the tenure of a previous chief justice in Ohio whom had gotten involved with drug courts shortly after their inception. The interviewee described the justice as the real “powerhouse” behind getting drug courts started in Ohio. She said, “his goal in sentence rule was [that] he wanted to institutionalize these programs in Ohio because he realized that they were beneficial.” The interviewee described the new rule change as doing the same sorts of things that the Supreme Court has always done with new and existing specialized dockets, but that this is a formalization of that approach.

Other respondents seemed to be supportive of the new rule change. Some mentioned that they are aware of other courts that run programs that are not up to par. A female director said that, “it’s very helpful to have some standards, so not just any court can develop or…present that they have a specialized docket when clearly they don’t do things, you know, maybe that most of the other specialized dockets do.”

Drug courts do have a degree of variability from court to court, but overall the ten key components represent a stable framework from which minor variations are
tolerated. Another female director vented that “there are so many drug courts out there that are really screwing it up, and it’s nice that there’s going to be oversight.”

A now infamous example of a court that is really “screwing it up”, so to speak, is the drug court discussed on National Public Radio’s show, “This American Life” (Glass, 2011). The segment, called “Very Tough Love” highlights the operation of a drug court in Georgia, run by one Judge Williams, whose court doles out long periods of shock incarceration and even indefinite detentions (Glass, 2011). Williams’ court diverges so much from the ten key components that it is hardly acceptable to call it a drug court at all. NPR is careful to make this distinction and to discuss how Williams’ court departs from NADCP guidelines, but the story itself received much national attention when Judge Williams was forced to step down from the bench upon its airing. Williams’ court is a reminder of what can go wrong when judges abuse their discretion.

An important consideration to take into account when discussing the future of drug courts is that, just like the traditional justice model, they are open to the influence of outside factors. Our justice system is not a closed system; rather, it is vulnerable to pressure put on by both the public and political spheres (Feeley, 1992). One of the key pressures that drug courts are faced with is the need for sustained funding from outside sources. In a 2009 interview with the Center for Court Innovation, NADCP Director West Huddleston III discussed this point. He cited that three years prior, in 2006, Department of Justice (DOJ) funding for drug court programs all but dried up, dropping from around $40 million to just around $10
million. Huddleston argued that, “the economy, coupled with the federal investment dropping, really hurt drug court’s ability to take on more clients, to take on more participants” (Wolf, 2009).

Several of this study’s respondents also discussed the influence of funding on their operation. Many noted that they are having trouble taking in as many clients and providing as comprehensive of treatment plans as they used to during better economical periods. One female respondent, a coordinator of a court, noted, “it’s hard to sustain with all the cuts that are happening on the state and federal level. To sustain a level of treatment, as I’ve said when we had federal money at the beginning, and that’s what happens…So, that’s impacted the positive outcomes.” That being said, in the same 2009 interview mentioned previously, Huddleston also discussed that current funding levels have rebounded to an historic high of $64 million out of the DOJ (Wolf, 2009). If it is the case that reduced funding adversely affects drug court outcomes, then the near future appears to be a comparative non-issue as far as budgetary pressures are concerned.

Furthermore, the participants of this study all saw the continued expansion of drug courts as the probable future of the specialized docket. As a male probation officer put it, “the secret of drug courts is out.” Not a single respondent believed that drug courts would falter or begin to decline in political popularity. One did argue that the emphasis at the national level remains too focused on providing funding for starting-up new drug courts whereas there remains little funding for existing programs seeking to expand or to solidify themselves. Ultimately the consensus was
well versed by a male director’s insistence that drug courts “are justly needed” and that “the money, energy and treatment [are] well served on this population.” The findings associated with this study have research and theoretical implications which will be discussed in the next section.
Conclusion

This study succeeded in fielding the responses of drug court stakeholders in relation to the outcomes and evaluation of drug courts. As a result of the analysis of these responses, several conclusions have been drawn.

*Secondary Benefits*

First, drug courts have a wide-degree of effects on their participants. Moreover, there seems to be a disparity in the attention paid to recidivism between drug court professionals and researchers. The existing evaluations and literature on drug courts paint a singular vision of what success in the drug court setting refers to; namely, the reduction of recidivism. However, I contend that researchers need not stop there. There are additional systemic and individualized positive outcomes that can and should also be reviewed when discussing drug court success.

There is a tough definitional issue that has arisen as a result of this study’s line of inquiry. Namely, a better distinction needs to be drawn between primary and secondary outcomes of drug courts. As has been discussed, the quintessential outcome is, and for all intents and purposes will remain, recidivism reductions (United States Government Accountability Office, 2005). What then, should we call the other outcomes associated with drug courts? Should they all be seen as *supplementary* to recidivism? Or perhaps they are a *secondary* impact of sobriety. This is an important
question to ask because the definition of such outcomes also implies their relative importance in terms of future research.

Drug courts generally accept the disease model of addiction, i.e. that drug addiction is a “biologically induced susceptibility to cravings for the addictive substance, which may be more or less controllable, depending on the individual addict” (Miller, 2004, p. 1518). And as the participants in the present study emphasized, they believe wholeheartedly that drug court participants will likely cease committing crimes if they get clean. In other words, their criminality is fueled by their addiction. However the question still remains as to what other benefits to the participant, such as GED and job attainment, rebuilding of family and social ties, etc., as well as systemic benefits, such as cost reductions, should be labeled. Throughout this study, such outcomes have been referred to as “secondary benefits” and the term seems appropriate. Ideally, future researchers will maintain consistency in their description of such outcomes. Whether they use this term or a different one is irrelevant.

The respondents of this study emphasized the role of sobriety in the lives of the individual. Some mentioned that the reoffending of a participant is not the end of the world, particularly if they are picked up for a lesser crime than they were originally committing. The drug court professionals that were interviewed all seemed genuinely concerned with succeeding in getting their participants off of drugs and leading more productive lives. While measuring sobriety is intuitively more difficult than measuring a hard statistic like recidivism (mainly because sobriety need be measured using self-report data or the result of drug screens rather than more readily available
arrest records) it is still something that should be taken more into account in future research.

The whole impetus for this study was that drug court stakeholders have a specific place in the justice system, and in drug courts specifically, that privies them to an expert opinion on outcomes that should be valued. Most importantly, every other outcome associated with the existence of drug courts hinges upon the maintenance of sobriety. Several respondents of this study emphasized this point and made clear that all the things that a drug court participant can build around them will simply fall down if they don’t remain sober.

**Theoretical Implications**

In their 2008 study, Wolfer and Roberts used an inductive method, “in order to see whether client comments about program effectiveness and process create themes or patterns that resonate with current sociological or criminological theories” (Wolfer & Roberts, 2008). The present study follows in a similar vein and there does appear to be useful theoretical implications as a result of the interviews that were conducted with drug court professionals. Earlier in this paper, the theories of therapeutic jurisprudence and restorative justice were defined. Moreover, Braithwaite’s theory of reintegrative shaming and Reckless’ containment theory were also defined.

The responses of the drug court stakeholders included in this study lend credence to the efficacy of both therapeutic jurisprudence and restorative justice as
viable theoretical frameworks for understanding drug court programs. Additionally, there appears to be some support for both Braithwaite’s (1989) theory of reintegrative shaming and Reckless’ (1961) containment theory, the former to a greater extent. Recall that therapeutic jurisprudence is the study of the therapeutic and anti-therapeutic outcomes of legal statues and entities (Lurigio, 2008). This paper has highlighted the therapeutic leanings of drug court professionals. The Ohio drug court stakeholders that were interviewed for this study all demonstrated a commitment to treating participants’ individual problem areas. The drug court evaluator interviewed for this study sums this concept up nicely when she says, “it’s amazing…to see how when you start working with someone on little areas, other areas start really getting better.” In fact, this study’s interviewees rarely made comments that leaned towards anti-therapeutic outcomes. At times drug courts rely on brief stints of jail-time as a punishment for non-compliance, generally reserved for the most recalcitrant participants (Carey, Finigan & Pukstas, 2008). It can be argued that these periods of “shock incarceration” do serve a therapeutic purpose inasmuch as they are arguably a vital component of an otherwise largely therapeutic program. However, this study’s respondents readily put forward that the use of jail and prison in traditional case processing is rarely helpful. Perhaps this will come to be viewed as another “contraindicated” feature, as discussed by Bowers (2008).

In addition to therapeutic jurisprudence, the application of the restorative justice model to a study of drug courts seems to be supported by the evidence collected in this study. Restorative justice emphasizes the effect that criminal case
processing has on the victim, offender, and community (Fulkerson, 2009). This paper has already argued that a loosely constructed definition of “victim” is appropriate in a discussion of restorative justice; the addicted drug addict can and should be conceptualized as a victim of their addiction. Moreover, the responses that were gathered in this study show that the opinions of some drug court professionals seem well aligned with restorative justice principles. One female director emphasized the role of the community:

Yeah, I mean it’s not just the participants, it’s the whole community. Because so many of these people…it just branches out with their children and their parents. We’re keeping their kids with their parents now instead of sending these parents off to rehab and hoping for the best. We’re teaching them how to be sober in their own community

The offender’s children can be seen as a member of the larger “community” construct. As such, we see an equal concern for the offender and the community in this remark. Drug court professionals seemed genuinely concerned with the overall well-being of members of the community in addition to the needs of the victim/offender in their program. Additionally, the rule change being handed down by the Ohio Supreme Court not only shows the institutionalization of drug courts in general but also the institutionalization of restorative justice practices within drug courts. Part of the new guidelines encourage drug court professionals to maintain consistent contact with community organizations and to include community leaders in the planning and practice of drug courts in this state.
However, to mirror the concern brought up by Fulkerson, drug courts rely heavily on the role of government and a heavy-handed coercion. Drug court programming primarily takes place in the courtroom rather than in the community which raises concerns for how good of a fit restorative justice is within the drug court model (Fulkerson, 2009). This being said, the model need not be a perfect match with restorative justice in order to benefit from studies that focus on restorative justice. That is to say, because the drug court movement was theory-less at its inception, we may never find a perfect theoretical, explanatory framework. So long as a theory leads to a line of inquiry that is interesting and beneficial to a discussion of drug court success, researchers should not hesitate to use it as a tool in the explanation of drug court outcomes. Only a handful of researchers have yet to seriously apply the restorative justice framework to an analysis of drug courts (Fulkerson, 2009; O’Hear 2009). Furthermore, therapeutic jurisprudence has shown itself useful in discussions revolving around program structure, but less so in discussing program success (Wolfer & Roberts, 2008). As such, restorative justice remains an untapped resource for the investigation of drug court outcomes.

As a final note, drug courts are a fascinating criminal justice revolution. They have come to be an institutionalized entity within our court system. However, they are one answer to the problem of substance abuse. Millions of citizens remain addicted to substances that destroy them physically, mentally, and socially (Substance Abuse and Mental Health Services Administration, 2007). The judge that was interviewed for this study offers that drug courts have to deal with the problem of addiction
retroactively. As such, he compared them to an emergency room — only able to help after an individual has been harmed. In order to fix the problem, he argued that “the drug court is just a part of the process and it’s going to take some other things done at a bigger level, broader level than mine.” In this context, and based on the findings of this study, it seems that drug courts are doing what they can to address and treat addicted offenders.
References


Appendix: Interview Guide

- As drug court director, what are your responsibilities?
- Could you please describe your drug court program?
  - Who is the targeted population?
  - How are they admitted into the program?
    - Guilty plea or not?
  - What is the structure of the program?
  - What are the requirements for completion?
- What usually goes wrong for those who don’t graduate?
- What do you see as markers of success for your program?
  - Reduced recidivism?
    - How important?
  - Reduced drug use?
    - How important?
  - Cost/benefit analysis?
    - How important?
  - Graduation rates?
    - How important?
- What does the typical success story look like?
  - What does a graduate’s life look like after they complete the program?
- What is the greatest success story of a participant of your court program?
  - If everything could go as planned, what would the outcome be?
- What benefits do you see your program offering to participants?
  - GED program?
  - Felony waived?
  - Job search help?
  - How are these services sought out?
- How do you decide to change things?
  - Alter treatment plans?
- How is your program evaluated?
  - What are the consequences of a poor evaluation? A good one?
  - How often are evaluations conducted?
  - Do you wish that something else was taken into account?
- Do you ever feel pressure to demonstrate the effectiveness of your court program?
  - How so?
  - In what ways do you deal with this pressure?
    - Are certain outcomes accentuated over others?
- Do you think that your program does anything unique in relation to other drug courts?
Do you read through existing evaluations put out by the state?
  - Federal?
  - Academic research?
  - If so, have you changed the way your program operates based on these evaluations?
    - How does a program get changed? Could you change it if you wanted to?

Do you think drug courts will continue to expand across the country?
  - Why? Why not?
  - What is the future of drug courts?