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An Exposition of the Effectiveness of and the Challenges Plaguing Maine's Juvenile Drug Treatment Court Program

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AN EXPOSITION OF THE EFFECTIVENESS OF AND THE CHALLENGES PLAGUING MAINE'S JUVENILE DRUG TREATMENT COURT PROGRAM

Jason E. Rayne

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AN EXPOSITION OF THE EFFECTIVENESS OF AND THE CHALLENGES PLAGUING MAINE'S JUVENILE DRUG TREATMENT COURT PROGRAM

Jason E. Rayne*

I. INTRODUCTION

Since 1989, trial courts across the United States have been developing and implementing the drug court model.¹ Drug courts are treatment-based programs that are considered less adversarial² than traditional methods of adjudication.³ By early in the new millennium, drug courts had “achieved considerable local support and [had] provided intensive, long-term treatment services to offenders with long histories of drug use and criminal justice contacts, previous treatment failures, and high rates of health and social problems.”⁴ Drug courts were developed in part to quell the trend of prison overcrowding associated with America’s increased “war on drugs” during the 1980s.⁵ Courts were equally burdened during this period of time and were forced to develop more efficient methods for processing drug offenders.⁶ It became apparent that the connection between drug abuse and non-violent criminality might be better addressed by treating individuals’ substance abuse, thereby reducing their attendant criminal behavior.⁷ The result was an adult

* J.D., University of Maine School of Law, 2009.

1. Michael Polakowski et al., *Treating the Tough Cases in Juvenile Drug Court: Individual and Organizational Practices Leading to Success or Failure*, 33 CRIM. JUST. REV. 379, 380 (2008).

2. See NATL. ASS’N. OF DRUG CT. PROF’S, DRUG CT. STANDARDS COMM’N., DEFINING DRUG COURTS: THE KEY COMPONENTS, (NAT’L ASS’N. OF DRUG CT. PROF’S 2004) (1997) [hereinafter DEFINING DRUG COURTS]. In 1997, the National Association of Drug Court Professionals (NADCP) released a publication outlining *The Key Components* of drug courts. Key Component # 2 provides that drug courts employ a non-adversarial approach to allow prosecution and defense counsel the opportunity to promote public safety while protecting participants’ due process rights. The purpose of Key Component #2 is described as follows:

To facilitate an individual’s progress in treatment, the prosecutor and defense counsel must shed their traditional adversarial courtroom relationship and work together as a team. Once a defendant is accepted into the drug court program, the team’s focus is on the participant’s recovery and law-abiding behavior—not on the merits of the pending case. The responsibility of the prosecuting attorney is to protect the public’s safety by ensuring that each candidate is appropriate for the program and complies with all drug court requirements. The responsibility of the defense counsel is to protect the participant’s due process rights while encouraging full participation. Both the prosecuting attorney and the defense counsel play important roles in the court’s coordinated strategy for responding to noncompliance.

Id.

3. Polakowski et al., *supra* note 1, at 379.

4. STEVEN BELENKO, RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 1 (The Natl. Ctr. on Addiction and Substance Abuse at Columbia Univ. 2001).

5. Polakowski et al., *supra* note 1, at 379.

6. Deborah Koetzle Schaffer, *Reconsidering Drug Court Effectiveness: A Meta-analytic Review 1* (June 26, 2006) (unpublished Ph.D. dissertation, Univ. of Cincinnati), available at <http://www.ohiolink.edu/etd/view.cgi?ucin1152549096> (last visited Apr. 25, 2010).

7. *Id.*

drug court model,⁸ the success of which has spun out into other treatment based models,⁹ including juvenile drug courts.¹⁰

Maine was one of the first states to implement a statewide system of adult and juvenile drug courts.¹¹ Maine's Juvenile Drug Treatment Court Program (JDTCP) was a success on many levels from the time its first adolescent participant was inducted on January 26, 2000.¹² One primary difference between Maine's JDTCP and others across the nation was the quality of the data on which the outcome evaluations for Maine's program were based.¹³ Maine's program was one of the first in the nation to be evaluated by employing a quasi-experimental, matched pair design.¹⁴ The matched control group for these studies was statistically generated¹⁵

8. DEFINING DRUG COURTS, *supra* note 2, at 1. The drug court model is described within Key Component #1 of *The Key Components*.

The mission of drug courts is to stop the abuse of alcohol and other drugs and related criminal activity. Drug courts promote recovery through a coordinated response to offenders dependent on alcohol and other drugs. Realization of these goals requires a team approach, including cooperation and collaboration of the judges, prosecutors, defense counsel, probation authorities, other corrections personnel, law enforcement, pretrial services agencies, TASC programs, evaluators, an array of local service providers, and the greater community. State-level organizations representing AOD issues, law enforcement and criminal justice, vocational rehabilitation, education, and housing also have important roles to play. The combined energies of these individuals and organizations can assist and encourage defendants to accept help that could change their lives.

Id.

9. BELENKO, *supra* note 4, at 5. As of May 2001, there were 483 adult, 158 juvenile, thirty-eight family, and nine combination adult—juvenile—family drug courts in operation in the United States. *Id.*

10. Schaffer, *supra* note 6, at 3.

11. DONALD F. ANSPACH ET AL., EVALUATION OF MAINE'S STATEWIDE JUVENILE DRUG TREATMENT COURT PROGRAM I (College of Arts and Sciences, Univ. of Southern Maine 2003).

12. *Id.* at i.

13. ANDREW FERGUSON ET AL., A PROCESS AND SITE SPECIFIC OUTCOME EVALUATION OF MAINE'S JUVENILE DRUG TREATMENT COURT PROGRAMS 26 (Dept. of Sociology Univ. of Southern Maine 2006). Maine's evaluations have employed a quasi-experimental matched pair design. *Id.* Andrew Ferguson, a principal investigator and project manager for the Maine evaluations explained the difference between an experimental design and a quasi-experimental design. The traditional experimental design means that all participants (experimental group and control group) are randomly assigned. Telephone Interview with Andrew S. Ferguson, Research Assoc., Hornby Zeller Associates, Inc. (Mar. 6, 2010). Because the focus of these evaluations was Maine's JDTCP, experiment participants could not be assigned completely at random. *Id.* (the study by definition was already narrowed to a non-random assignment; a group of juveniles in Maine who were identified as being a risk to themselves and the community at large because of their level of substance abuse and attendant criminal behavior). Ferguson explained that where incorporating the experimental design was impossible in this instance, utilizing a quasi-experimental matched pair design was the "next best thing." *Id.* Each individual in the control group was matched with an individual in the experimental group across a number of variables. FERGUSON, ET AL., *supra* note 13, at 26. The data used "included substance abuse screening results and general demographic information." *Id.* See *infra* note 32. The advantage of Maine's quasi-experimental design over JDTCP evaluations conducted without a control group is that it generated more useful information about the effectiveness of the program as compared to traditional adjudication by reducing potential sources of "selection bias," (without a comparison group, a study may only compare the behaviors of dissimilar "self-selecting" groups, for example program graduates and those who are expelled from the program). *Id.* at 27 notes 10-11 and accompanying text.

14. ANSPACH ET AL., *supra* note 11, at 2. See also FERGUSON ET AL., *supra* note 13, at 26.

from a pool of Maine's juvenile offenders who were adjudicated traditionally, were not referred to the JDTCP, and whose known demographic characteristics were similar to their experimental counterpart.¹⁶

From its inception, Maine's JDTCP proved to be effective at lowering post-program recidivism rates for program graduates (as compared to the control group and those expelled from the program), while growing the percentage of program graduates to well above the national average for similar juvenile programs.¹⁷ This difference between Maine's graduation rate and the national average was significant because one-year post-program recidivism was lower in Maine's graduates than the matched control group or those who were expelled from the program.¹⁸ Maine's JDTCP also appeared to reduce individual drug use while participants were retained in the program.¹⁹ Post-program arrests for drug and alcohol violations were less likely to occur within Maine's JDTCP participant group as compared to a non-participant, matched control group.²⁰ Finally, Maine's program continued to improve its cost effectiveness while in operation, showing a cost savings over the traditionally adjudicated control group within five years of the

15. Interview with Andrew S. Ferguson, Research Assoc., Hornby Zeller Associates, Inc., in So. Portland, Me. (Oct. 16, 2008) [hereinafter Ferguson Interview].

16. FERGUSON ET AL., *supra* note 13, at 26.

17. DONALD F. ANSPACH & ANDREW S. FERGUSON, PART II: OUTCOME EVALUATION OF MAINE'S STATEWIDE JUVENILE DRUG TREATMENT COURT PROGRAM 2 (College of Arts and Sci. Univ. of Southern Maine 2005) [hereinafter ANSPACH & FERGUSON]. The national average graduation rate for JDTCs is approximately 29 percent. *Id.*

The outcome evaluation released in 2003 reported a 35 percent graduation rate for program participants. ANSPACH ET AL., *supra* note 11, at i. Graduates recidivated at a rate of 30 percent within the first twelve months after completing the program. *Id.* at 28. Those expelled from the program recidivated at a rate of 48 percent. *Id.* The control group recidivated at a rate of 49 percent. *Id.*

The outcome evaluation released in 2005 reported that the rate of successful program completion had risen to 39 percent from the 35 percent previously reported in 2003. ANSPACH & FERGUSON at 2. Graduates recidivated at a rate of 34 percent within the first twelve months after completing the program. *Id.* at 6. Those expelled from the program recidivated at a rate of 49 percent. *Id.* The control group recidivated at a rate of 52 percent. *Id.*

Finally, the 2006 evaluation reported a 42 percent graduation rate for the statewide program. FERGUSON ET AL., *supra* note 13, at 3 (Maine's JDTCP graduation rate increased steadily over a two and-a-half year period—from 35 percent, to 39 percent, to 42 percent—achieving a graduation rate that was 13 percent better than the national average of 29 percent during the final period of evaluation). The 2006 evaluation reported that graduates recidivated at a rate of 33 percent within the first twelve months after completing the program. *Id.* at 28. Those expelled from the program recidivated at a rate of 48 percent. *Id.* The control group recidivated at a rate of 43 percent. *Id.* The effectiveness of the JDTCP becomes clear when comparing the twelve month post program recidivism rates of drug court graduates to those of the control group. During the three periods of evaluation, drug court graduate recidivism ran between 10 percent and 19 percent lower than that of the control group, while the graduation rate increased by 7 percent.

18. FERGUSON ET AL., *supra* note 13, at 27-28.

19. *Id.* at 16. The JDTCP's 2006 evaluation found that 49 percent of the then current participants used drugs or alcohol on a daily basis prior to admission to the program. *Id.* Seventy-two percent of the JDTCP participants admitted to using drugs two to three times per week prior to program admission. *Id.* Yet participants tested positive only 15 percent of the time when randomly drug tested while participating in the program. *Id.* Furthermore 45 percent of participants tested positive only once during 2004 and 2005. *Id.* The 2006 evaluation concludes that the totality of this data provides strong evidence to suggest that Maine's JDTCP reduced drug use among participants while in the program. *Id.*

20. ANSPACH ET AL., *supra* note 11, at 29.

program's implementation.²¹

Despite the program's successes in its first five years of operation, today's reality is grim. Over the last few years the budget crisis in Maine has delivered a series of unmerciful blows to its JDTCP. Funding dried up for the continuation of the quasi-experimental, matched pair evaluations after the completion of the 2006 evaluation.²² In July 2008, Maine's Office for Substance Abuse (OSA) cut funding for the program by \$120,000 per year, leaving the Augusta-Waterville and Bangor Drug Courts without case managers.²³ By September 2008, the total number of participants at all six JDTCP sites had fallen to 57 percent capacity, the lowest it had been in years.²⁴ The program's death knell came in May 2009 when OSA

21. *Id.* at 35. The 2003 evaluation's analysis of the annualized operational costs and crime reduction benefits of Maine's JDTCP showed a total cost of \$760,161 for the traditionally adjudicated control group (N=105) versus a total cost of \$853,379 for the JDTCP (N=105). *Id.* This means the JDTCP was operating at a cumulative loss of \$93,218 because the program was running too far below capacity (arbitrarily set at fifteen participants per site; ninety total for six sites). *Id.* By the time of the 2006 evaluation, the total cost for the traditionally adjudicated control group (N=219) was \$973,115 versus a total cost of \$931,926 for the JDTCP (N=219). FERGUSON ET AL., *supra* note 13, at 32. The JDTCP had reversed its cumulative loss, producing a net savings of \$41,189 to date due to increased program participation resulting in reduced detention and criminal case processing costs and an overall savings in crime reduction. *Id.*

22. Ferguson Interview, *supra* note 15; Interview with Lindsay Camire, Family & Juvenile Drug Court Coordinator, in Augusta, Me. (Nov. 3, 2008) [hereinafter Camire Interview].

23. Meeting minutes, Me. Juv. Drug Treatment Ct. Program Steering Comm. (June 16, 2008) [hereinafter Minutes June 16, 2008].

24. During the three years between September 2005 and September 2008, the JDTCP's highest participation numbers were at 84 percent capacity, with seventy-six participants in December 2005. Minutes Dec. 1, 2005. The program's lowest participant numbers were at 57 percent capacity, with fifty-one participants in September 2008. Minutes Sept. 22, 2008.

I derived these percentages by totaling participant numbers reported at the Maine Juvenile Drug Court Steering Committee's quarterly meetings between September 2005 and September 2008 and dividing each quarter's participant total by the entire program's capacity. Capacity for each site was fifteen participants. During those three years there were six active sites (Augusta-Waterville, Bangor, Biddeford, Lewiston, Portland, and West Bath). The capacity for the entire program at any given time was ninety participants (fifteen participants at six sites equals ninety). In December 2005, there were fifteen participants in Augusta-Waterville, twelve in Bangor, ten in Biddeford, thirteen in Lewiston, twelve in Portland, and fourteen in West Bath (a total of seventy-six participants across all six sites). Dividing the total number of participants at that time (seventy-six) by the program's capacity (ninety), it is clear that the program was running at 84 percent capacity in December 2005. Likewise, by adding the total number of program participants in September 2008 (ten in Augusta-Waterville, two in Bangor, eight in Biddeford, ten in Lewiston, twelve in Portland, and nine in West Bath equals a total of fifty-one participants) and dividing that number by the program's capacity (ninety) it is evident that Maine's JDTCP was running at 57 percent capacity at that time.

Following the same formula for the participant numbers reported at each quarterly meeting during the three-year period between September 2005 and September 2008, it is evident that the program's participant numbers were indeed highest in December 2005 (84 percent capacity) and lowest in September 2008 (57 percent capacity). See Minutes Sept. 26, 2005 (Maine's JDTCP at 81 percent capacity); Minutes Feb. 27, 2006 (Maine's JDTCP at 68 percent capacity); Minutes May 8, 2006 (Maine's JDTCP at 72 percent capacity); Minutes Sept. 25, 2006 (Maine's JDTCP at 64 percent capacity); Minutes Dec. 4, 2006 (Maine's JDTCP at 66 percent capacity); Minutes Feb. 12, 2007 (Maine's JDTCP at 67 percent capacity); Minutes May 21, 2007 (Maine's JDTCP at 62 percent capacity); Minutes Sept. 10, 2007 (Maine's JDTCP at 76 percent capacity); Minutes Jan. 7, 2008 (Maine's JDTCP at 70 percent capacity); Minutes Apr. 7, 2008 (Maine's JDTCP at 71 percent capacity); Minutes June 16, 2008 (Maine's JDTCP at 68 percent capacity).

announced its decision to cut funding for the \$388,000-a-year program entirely. That decision became effective July 1, 2009.²⁵

Maine's Juvenile Drug Courts proved themselves capable of cost effective operation while meeting nationally accepted standards. They provided a socially beneficial alternative to traditional adjudication of non-violent juvenile offenders with histories of substance abuse. This Article discusses the effectiveness of Maine's JDTCP as compared to similar programs in other states. It documents some of the challenges Maine's JDTCP faced, the benefits forgone by OSA's decision to pull the plug, and the potential in Maine for future treatment court programs like this one.

II. MAINE'S PROGRAM V. NATIONAL BENCHMARKS

A. Evaluations: Quality of Data

By 2001, drug courts had become a popular method of processing and treating many drug-involved offenders, yet there was still a scarcity of "empirically sound and comprehensive research on drug court operations and impacts."²⁶ Drug court evaluations were beginning to incorporate experimental designs in order to better test the effectiveness of specific program components.²⁷ Steven Belenko, in a 2001 review of drug court research, commented that the use of experimental designs to test program outcomes was an encouraging trend.²⁸ Maine's program was among the trendsetters.²⁹

While many JDTCP evaluations have attempted to analyze outcome data utilizing an experimental design, it is difficult to find programs like Maine's that have incorporated matched pairing as well.³⁰ Andrew Ferguson, a principal

25. Bill Nemitz, *Drug Court, But Not Kids, Going Away*, PORTLAND PRESS HERALD, June 30, 2009, at B1.

26. BELENKO, *supra* note 4, at 6.

27. *Id.* at 6-7. For example, the National Institute on Drug Abuse funded several drug court evaluations (ongoing in 2001) that employed experimental designs to test the effectiveness of various components in drug courts. *Id.*

28. *Id.* at 2.

29. ANSPACH ET AL., *supra* note 11, at 2. The Fourth Year Outcome Evaluation Report on Maine's JDTCP, released in September 2003, was one of the first studies on juvenile drug courts that employed a quasi-experimental, matched pair design. *Id.* Matched pairing of program participants attempts to reduce potential sources of selection bias that might occur in similar studies, which do not employ a matched pair design. *See supra* note 13.

30. For example, an evaluation of Beckham County's JDTCP in Oklahoma used a control group of nine juveniles from Beckham County's Graduated Sanctions Program to compare to nine graduates from the JDTCP. DAVID WRIGHT & BOB CLYMER, BECKHAM COUNTY JUVENILE DRUG COURT: PHASE II ANALYSIS AND EVALUATION 4 (Okla. Crim. Just. Resource Ctr. 2000). While both groups had a median age of fifteen, there is no indication that each juvenile in the graduate group was matched by age to a juvenile in the control group. *Id.* at 5. While only 56 percent of the JDTCP graduates were male, 100 percent of the control group was male. *Id.* Sixty-seven percent of the JDTCP graduates, but only 56 percent of the control group, were Caucasian. *Id.* The graduate group had no African-American participants, while 33 percent of the control group was African American. *Id.* And while 22 percent of the program graduates were of Native American descent, none of the control group participants were. *Id.* (this data indicates that the Beckham County JDTCP did not painstakingly match individual participants

investigator and project manager for Maine's JDTCPC evaluations, explains that evaluations of this type are often limited by the data that is available for study.³¹ Maine's JDTCPC evaluations avoided many of these limitations because data collection and evaluation was a priority for Maine's program at the time of implementation rather than an afterthought.³²

The matched pair design of Maine's JDTCPC evaluations attempted to create a control group that behaved as the participant group would have had the participants not been referred to and inducted into the JDTCPC.³³ The behavior of the participant group was tracked and compared against that of the matched control group in order

in their experimental group to individuals in their control group on a number of specific demographic criteria as Maine's JDTCPC did).

An evaluation of the Kalamazoo County JDTCPC in Michigan compared an experimental group of 147 JDTCPC participants with a control group of only seventy-eight non-participants. DAVID J. HARTMANN, & GAYLE M. RHINEBERGER, EVALUATION OF THE KALAMAZOO COUNTY JUVENILE DRUG TREATMENT COURT PROGRAM: OCTOBER 1, 2001-SEPTEMBER 30, 2002 YEAR 5, at 47 (Kercher Ctr. for Soc. Research W. Mich. U. 2003). While both groups had to qualify for the JDTCPC based on specific admission criteria, 82.3 percent of the JDTCPC participants were male compared with only 75.6 percent of the control group population. *Id.* at 47, 48. While 62.6 percent of the JDTCPC participants were White, Non-Hispanic, only 47.4 percent of the control group matched this ethnic classification; 29.3 percent of the JDTCPC participants were of African American descent as compared to 47.4 percent of the control group; 3.4 percent of the JDTCPC participants were Hispanic as compared to just 1.3 percent of the control group; and 4.8 percent versus 3.8 percent were classified as multi-racial. *Id.* at 48. *See also* EDWARD J. LATESSA, ET AL., OUTCOME EVALUATION OF OHIO'S DRUG COURT EFFORTS FINAL REPORT (Ctr. For Crim. Just. Research, Univ. of Cincinnati 2002); KEVIN M. THOMPSON, A PRELIMINARY OUTCOME EVALUATION OF JUVENILE DRUG COURT -RECIDIVISM ANALYSIS 11 (Dept. of Sociology, N.D. St. Univ. 2001).

Evaluations of Maryland's and Virginia's JDTCPC did not include any control group data. *See* DAVE CRUMPTON ET AL., MARYLAND DRUG TREATMENT COURTS INTERIM REPORT OF THE EFFECTIVENESS OF JUVENILE DRUG COURT (NPC Research 2006); SUMMARY REPORT ON VIRGINIA'S DRUG COURT PROGRAMS (Off. of the Exec. Sec. Sup. Ct. of Va. Va. Dept. of Crim. Just. Serv. 2003).

31. Ferguson Interview, *supra* note 15.

32. *Id.* According to Ferguson, many studies of this type are attempted retrospectively rather than prospectively leading to such data limitations. *Id.* Maine's evaluations were well-funded and were a part of the JDTCPC plan at the outset of the program instead of an afterthought, which allowed project investigators to construct and make subsequent additions to a matched pair control group. *Id.* Ferguson explained that the data used to construct the control group was gained through access to Maine's Department of Corrections (DOC) and Juvenile Treatment Network (Day One) records. *Id.* Each time a new participant was inducted into drug court, Ferguson input a number of matching variables for that participant into a database and the best-fitting adolescent was generated from that system. *Id.* Ferguson used Day One's Management Information System (MIS) and DOC records to find a non-participant "match" with similar demographic characteristics, substance use history, and criminal risk factors "including: date of entry, age, race, gender, county of residence, ASAM score, JASAE drug and alcohol scores, Yo-LSI measure of criminal risk, living situation and school status." FERGUSON ET. AL., *supra* note 13, at 26. Maine's JDTCPC admissions procedure requires that "[t]he treatment provider will use American Society of Addiction Medicine (ASAM) criteria to determine the necessary level of care for the client." STATE OF MAINE JUVENILE DRUG TREATMENT COURT PROCEDURAL MANUAL, Me. Juv. Drug Treatment Ct. Program Steering Comm. 8 (2000). The Juvenile Automated and Substance Abuse Evaluation (JASAE) is administered to each potential JDTCPC candidate by the drug court case manager, juvenile community corrections officer (JCCO), or treatment provider during the drug court screening process (unless there is already a JASAE that is less than six months old on file for the candidate). *Id.* at 7. The Youthful Level of Service Inventory (Yo-LSI) is administered to each potential JDTCPC candidate by a JCCO to determine the level of criminal risk the client presents. *Id.*

33. Ferguson Interview, *supra* note 15.

to better gauge the effectiveness of the JDTCP versus traditional adjudication.³⁴ The experimental matched pair design provided excellent data about the effectiveness of Maine's program through the last "data dump" in 2005, which culminated in a process and cross-site outcome evaluation of Maine's program, released in March 2006.³⁵ Unfortunately, OSA did not approach Ferguson to compile further JDTCP data subsequent to the 2006 evaluation; the reason for this was a lack of funding to pay for his work.³⁶

In addition to the experimental matched pair design, Belenko suggests that periodic, multi-year analysis is required in order to "gauge the long-term impacts of drug courts."³⁷ Maine's program had been producing periodic, multi-year evaluations up until the 2006 evaluation. This ongoing evaluation of Maine's JDTCP provided the opportunity to track program progress beyond the scope of one unique evaluation period. It is for this reason that longer range trends in program performance could be identified—for example, the increased percentage of program graduates and the increased cost effectiveness (overall savings as compared to traditional adjudication) of the program over time.³⁸

Yet by 2008, Maine's program was struggling to track its own changing landscape. Without the resources to fund Ferguson's continued matched pair evaluation, Lindsay Camire, Family and Juvenile Drug Court Coordinator, was charged with the task of tracking program participant recidivism.³⁹ During a November 2008 interview, Camire explained that the process of pulling information from the Management Information System⁴⁰ to create data sheets was tedious and time consuming but the real challenge was getting re-arrest information from the State Bureau of Investigation (SBI).⁴¹

34. See FERGUSON ET AL., *supra* note 13.

35. See *supra* note 17 (summarizing the data on program recidivism rates produced by the 2003, 2005 and 2006 matched pair evaluations of Maine's JDTCP). For a summary of the annualized operational costs and crime reduction benefits of Maine's JDTCP produced by the 2003 and 2006 matched pair evaluations, see the discussion at note 21.

Ferguson's analysis of site-specific data in the 2006 evaluation included cross-site comparison of the productivity; topic areas of pre-court meetings and drug court status hearings; drug testing practices and results; frequency of case management supervision; types of rewards and sanctions over time; and participants sanctioned for drug tests at each of the six JDTCP locations. FERGUSON ET AL., *supra* note 13 at 3, 10, 13, 15, 16, 17, 21, 22.

36. Ferguson Interview, *supra* note 15. Ferguson said he thought Maine's JDTCP would have liked to continue funding evaluations but the money simply was not there. *Id.* The 2005 evaluation was funded, with federal dollars from the Bureau of Justice Assistance, not with state funds, so one could argue the money actually ran out in 2003. *Id.*

37. BELENKO, *supra* note 4, at 2. For example, studies of the Orange County, California, and Las Vegas, Nevada, drug courts found that recidivism statistics varied by a participant's year of admission. *Id.* at 53. Belenko explains that the effectiveness of a drug court program "may fluctuate over time because of external or internal factors such as staff changes, changes in the treatment provider, [and] alterations in drug court program design." *Id.*

38. See *supra* notes 17, 21.

39. Camire Interview, *supra* note 22.

40. Management Information System (MIS) is the Juvenile Treatment Network's (Day One) database. Ferguson Interview, *supra* note 15.

41. Camire Interview, *supra* note 22. By November 2008, Camire had been working on the project for six months and SBI continued to balk at providing the requested information for approximately 300 JDTCP participants. *Id.* Though district attorneys for three counties provided re-arrest data for the

Even if Camire had been successful in compiling accurate re-arrest data for all then-current JDTCP participants, recidivism is only one measure of program effectiveness. Many other valuable measures of program effectiveness ceased being tracked after the release of Ferguson's 2006 evaluation.⁴² Moreover, even though there had been new program inductees, there had been no additions to the matched control group since Ferguson's 2006 evaluation.⁴³ This means that data collected on new program inductees was never measured against a non-participant population.⁴⁴

One of Camire's strongest motivations when looking at possible grants for Maine's JDTCP was to find a way to fund another evaluation; she believed producing a new JDTCP evaluation should have been "one of [the JDTCP's] top priorities."⁴⁵ Camire said that the bulk of the time and money Ferguson needed to complete his evaluations related to the creation of the matched control group, but she strongly believed that Maine's JDTCP would benefit from the continuation of Ferguson's multi-year evaluations.⁴⁶ When asked about the then-current method of program evaluation Camire stated, "I absolutely think that we need, for our own benefit and to keep track of what we're doing, to have [Ferguson continue to perform these evaluations]."⁴⁷

B. The Key Components

In 1997, the National Association for Drug Court Professionals (NADCP) released a publication outlining the "Key Components"⁴⁸ of drug courts in an attempt to define the requisite elements of such a program. These components

participants living in their counties, the information was limited because it did not reflect re-arrests occurring in other counties. *Id.*

42. See *supra* note 35 (Ferguson's analysis of site-specific data).

43. Camire Interview, *supra* note 22.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. DEFINING DRUG COURTS, *supra* note 2, at iii.

Key Component #1: Drug courts integrate alcohol and other drug treatment services with justice system case processing.

Key Component #2: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

Key Component #3: Eligible participants are identified early and promptly placed in the drug court program.

Key Component #4: Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

Key Component #6: A coordinated strategy governs drug court responses to participants' compliance.

Key Component #7: Ongoing judicial interaction with each drug court participant is essential.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

Key Component #10: Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Id.

provide performance benchmarks that guide the “best practices, designs, and operations of drug courts nationally.”⁴⁹ While the “Key Components” were originally developed for adult drug court programs, they have provided useful guidance for the development of juvenile drug courts as well.⁵⁰

Maine’s JDTC process evaluations utilized the “Key Components” to measure the effectiveness of the program.⁵¹ The 2006 evaluation provided information on various process measures that relate to the “Key Components,” including an assessment of the program’s target population, admissions-related procedures, drug testing practices, use of sanctions and incentives, case management supervision, substance abuse treatment, and the use of ancillary services.⁵² Though cross-site analysis revealed slight differences in JDTC operations at the various court locations, the 2006 process evaluation concluded that the program as a whole measured well against the suggested practices and performance measures of the “Key Components.”⁵³

Because of the comprehensive nature of drug court participation, one of the essential functions of juvenile drug court operations is to maintain close supervision of participants as they progress through the program.⁵⁴ Case managers at each site provide most of the requisite supervision of participant progress.⁵⁵ Among other responsibilities, case managers administer drug tests and monitor participant compliance with drug court rules and requirements by keeping in contact with participants, schools, family members, employers, and peers.⁵⁶ The 2006 evaluation showed that Maine’s JDTC case managers contacted each participant an average of 1.9 times per week, and that most of these contacts were in-person.⁵⁷

But the elimination of case manager positions at the Bangor and Augusta-Waterville sites in July 2008 compromised the ability for those sites to continue measuring well against the “Key Components.”⁵⁸ Maine’s JDTC Steering Committee became concerned when OSA decided to cut funding to those sites, recognizing that “case managers [were] the heart of the program [because they maintained] constant contact with the youth, their families, and their providers.”⁵⁹ After the funding decision was announced in June 2008, Juvenile Community Corrections Officers (JCCO’s) assumed some of the case managers’ responsibilities—for example, administering drug tests as well as reporting on

49. FERGUSON ET AL., *supra* note 13, at 1.

50. *Id.* at 1 n.2.

51. *Id.* at 1.

52. *Id.*

53. *Id.* at Executive Summary.

54. *See id.* at 16.

55. I worked closely with case managers for Maine’s JDTC while serving as a member of Maine’s Juvenile Drug Court Steering Committee and as a Student Defense Attorney with the Cumberland Legal Aid Clinic. Case managers had more first-hand contact with program participants than any other drug court team member. They were responsible for closely monitoring and helping to facilitate each participant’s daily progress.

56. *See* FERGUSON ET AL., *supra* note 13, at 16.

57. *Id.*

58. Minutes June 15, 2008, *supra* note 23, at 3.

59. *Id.*

family, school, and treatment attendance.⁶⁰ But the JCCO's were already stretched beyond capacity with their regular caseloads and were not able to fulfill all drug court case management responsibilities at the affected sites.⁶¹ Though the team members remaining at those sites were committed to serving the remaining participants, the future of operations was uncertain.⁶² Neither site was accepting new referrals.⁶³ Both the Bangor and Augusta-Waterville teams planned to see their then-current participants through to graduation and there seemed a vague possibility that Augusta-Waterville might also consider new referrals, but the Bangor site planned to discontinue operations once its remaining participants had completed the program.⁶⁴

C. Primary Measurements of Program Success

Belenko describes drug courts as criminal justice-based interventions and explains that, as such, their primary goals are: (1) to reduce participant relapse to drug use; and (2) to reduce participant recidivism.⁶⁵ Maine's program appeared to achieve both of these goals.

Between 2004 and 2005, only 15 percent of the drug tests administered to Maine's JDTCP participants resulted in positive findings for the presence of drugs or alcohol.⁶⁶ This was 9 percent better than the national average, which was 24 percent positive drug tests for drug court participants.⁶⁷ It was also 20 percent better than the national average—at 35 percent—of positive drug tests administered to offenders in the juvenile justice system.⁶⁸ But perhaps more impressive than Maine's performance as measured against national averages is the comparison between Maine JDTCP participants' frequency of drug use prior to entering drug court versus the percentage of positive tests once inducted into the program. Forty-nine percent of Maine JDTCP participants studied between 2004 and 2005 reported that they used drugs on a daily basis prior to drug court induction, and 72 percent reported drug use at a frequency of two-three days per week.⁶⁹ Yet subsequent to induction, 34 percent of JDTCP participants did not test positive for the duration of their drug court participation, and 45 percent tested positive only once during the program.⁷⁰ These numbers suggest that Maine's program dramatically reduced juvenile drug use among participants while in the program. Additionally, post-program arrests for drug and alcohol related crimes were 4 percent less likely to occur among the experimental JDTCP participant group—22 percent for JDTCP participants, compared with 26 percent for the control group—indicating that Maine's JDTCP continued to have a positive effect on participant drug relapse

60. *Id.* at 2.

61. *Id.* at 3.

62. *Id.*

63. Camire Interview, *supra* note 22.

64. *Id.*

65. BELENKO, *supra* note 4, at 26.

66. FERGUSON ET AL., *supra* note 13, at 15.

67. *Id.*

68. *Id.*

69. *Id.* at 16.

70. *Id.*

subsequent to program completion.⁷¹

Maine's lowest one-year, post-program recidivism numbers were those within the JDTCP graduate population, with graduates 10 percent less likely to reoffend than the control group.⁷² Moreover, Maine's JDTCP graduation rate of 42 percent was 13 percent better than the national average.⁷³ Though it is apparent that Maine's JDTCP reduced post-program recidivism rates,⁷⁴ a national benchmark for JDTCP recidivism remains elusive. Differences in available data, collection method, and measurement from one program evaluation to the next make meaningful interstate/inter-program comparison difficult.⁷⁵ While national research on adult drug court programs has shown reduced criminal activity in program graduates, "it has been more difficult for researchers to draw meaningful conclusions about such outcomes for juvenile drug courts."⁷⁶ Maine's 2005 evaluation cites the following reasons for this difficulty:

Juvenile drug court programs are more recent than adult drug court programs, typically have had far fewer enrollments, and are strategically more difficult to research given the high degree of confidentiality, and in many cases inaccessibility, of juvenile court and treatment records. Among the evaluations that have been conducted, few include analyses of post-program recidivism, incorporate an experimental design or utilize multivariate models to assess program outcomes.⁷⁷

It seems the lack of definitive national data on JDTCP recidivism has been recognized by the U.S. Department of Justice; in 2006 the Office of Juvenile Justice and Delinquency Prevention (OJJDP) solicited bids from professionals who wished to conduct a four-year national cross-site evaluation of juvenile drug courts.⁷⁸ Andrew Ferguson, the project manager for the Maine evaluations, submitted a bid on the OJJDP's four-year evaluation project prior to the end of August 2006.⁷⁹ Fourteen months later, the OJJDP announced that Edward J. Latessa⁸⁰ had won the bid.⁸¹ Though Ferguson is not aware of what Latessa proposed, he assumed it included a study of recidivism and perhaps with that, a validation of Latessa's Youthful Offender Level of Service Inventory (Yo-LSI) instrument.⁸² If and when this study is released, a more standardized measuring stick may emerge for comparison of recidivism numbers between JDTCPS in different states.

Another issue that arises with respect to JDTCP recidivism data "is a lack of

71. *Id.* at 29.

72. *See supra* note 17.

73. *Id.*

74. *Id.*

75. Ferguson Interview, *supra* note 15.

76. ANSPACH & FERGSON, *supra* note 17, at 4.

77. *Id.*

78. Ferguson Interview, *supra* note 15.

79. *Id.*

80. Edward J. Latessa, Ph.D., is well-respected in his field and among other projects, was the principal investigator on the Outcome Evaluation of Ohio's Drug Court Efforts released in July 2002.

81. Ferguson Interview, *supra* note 15.

82. *Id.* The Youthful Level of Service Inventory (Yo-LSI) was administered to each JDTCP candidate in Maine to determine the level of criminal risk the client presented. *See supra* note 32.

specificity about data collection time frames.”⁸³ Belenko explains that because reducing recidivism is a primary goal for all drug courts, it is important for researchers to distinguish between in-program and post-program re-arrests.⁸⁴ Though Maine’s 2003 JDTCPC evaluation included in-program recidivism data along with one-year, post-program recidivism data,⁸⁵ Maine’s 2005 and 2006 JDTCPC evaluations focused on one-year, post-program recidivism numbers exclusively.⁸⁶ At any rate, these Maine evaluations do not lack the specificity about data collection times that Belenko identifies as a shortfall in other states’ program evaluations.

D. Measuring Maine’s Program Against Other Similar Programs

A brief look at recidivism and graduation numbers as well as the composition of control groups from JDTCPC evaluations in two other states highlights the difficulty in comparing data for Maine’s JDTCPC⁸⁷ with that of other similar programs nationally. For example, Latessa’s 2002 evaluation of Ohio’s JDTCPC reports a graduation rate of 48.9 percent, but the information is based on only 133 participants, which is less than half of the total 310 participants because graduation status data was “not available.”⁸⁸ While the Ohio evaluation reports a recidivism rate of 55.7 percent for JDTCPC participants and 75 percent for the control group, it appears that recidivism data was only available for 194 of 310 participants and just forty individuals in a 134-person control group.⁸⁹ Moreover, there is no indication of the specific time frame measured, and the JDTCPC participant and control groups “differed significantly in terms of race, education, and employment status.”⁹⁰

In contrast, both race and education, among other criteria, were factors used in constructing the matched-pair control group that Maine’s evaluations employed.⁹¹ Maine’s evaluations also measured a specified time frame (one-year, post-program)⁹² and did not suffer from the data collection difficulties that the Ohio study experienced with respect to the availability of data for experimental or control groups.⁹³

An outcome evaluation of North Dakota’s JDTCPC, released in June 2001, reported a recidivism rate of 15.6 percent in the experimental group versus 57.1

83. BELENKO, *supra* note 4, at 29.

84. *See id.*

85. ANSPACH ET AL., *supra* note 11, at 28. The 2003 evaluation’s recidivism data distinguishes between in-program and post-program arrests for both experimental and control groups. *Id.* For a summary of the post-program recidivism data contained in the 2003 evaluation, see the general discussion and synthesis at note 17.

86. *See supra* note 17. The 2005 and 2006 evaluations do not examine in-program recidivism data. For a summary of the post-program recidivism data contained in the 2005 and 2006 evaluations, see the discussion at note 17.

87. *Id.*

88. LATESSA ET AL., *supra* note 30, at 67.

89. *Id.* at 68

90. *Id.* at 50.

91. FERGUSON ET AL., *supra* note 13, at 26.

92. *Id.* at 27.

93. Ferguson Interview, *supra* note 15.

percent in the control group.⁹⁴ At first glance this recidivism data appears to be much more favorable than that of Maine's JDTCP.⁹⁵ However, the data did not reflect post-program recidivism, instead it reflected recidivism data for one year following admission to drug court for a participant group of only thirty-two individuals.⁹⁶ The control group was comprised of just twenty-eight juveniles who had been referred to juvenile court and who met the criteria for the state's JDTCP.⁹⁷ The control group's recidivism data corresponded to a period of one year after the subject's last referral to juvenile court, but because the information was collected based on the start date of each juvenile's last referral, the data collection periods were not simultaneous.⁹⁸

Again, this North Dakota evaluation suffers from shortfalls that the Maine evaluations do not. First, both the experimental and control groups were extremely small in number (roughly one-third the size of Maine's 2003 evaluation groups, or one-sixth the size of Maine's 2006 evaluation groups), which likely skewed the statistical reliability of the evaluation's findings.⁹⁹ Second, unlike that of Maine's evaluations, the control group in North Dakota's evaluation was not a strictly defined matched-pair control group, nor was its control group as large in number as its experimental group. Finally, though the data collection periods were the same in length for both the experimental group and the control group, they were not simultaneous, and therefore did not control for recidivism trends outside the JDTCP like the Maine evaluations did.

E. Cost/Benefit Analysis of Maine's Program

After achieving the primary goals of reducing participant relapse to drug use and reducing participant recidivism, there is the question of whether Maine's JDTCP produced a net economic benefit. Belenko identifies this empirical question by asking, "whether the costs of operating such programs are lower than the economic benefits or avoided costs¹⁰⁰ that accrue because incarceration time is

94. See THOMPSON, *supra* note 30, at 11.

95. See *supra* note 17.

96. THOMPSON, *supra* note 30, at 10.

97. *Id.* at 5.

98. *Id.* at 10.

99. KEVIN M. THOMPSON, STATISTICAL SUMMARY OF NORTH DAKOTA JUVENILE DRUG COURT – MAY 2000 TO JUNE 2002, at 6 (Dept. of Sociology, N. D. St. Univ. 2002). To further illustrate the likelihood that the small participant and control groups skewed the accuracy of the June 2001 evaluation's recidivism analysis, we can refer to the follow-up statistical summary on North Dakota's program, which was released one year later in June 2002. The statistical summary reported on experimental and control groups that had increased in size since the 2001 evaluation; the experimental group had grown to fifty-six (from thirty-two) and the control group had grown to forty-five (from twenty-eight). *Id.* Recidivism grew to 27.3 percent (from 15.6 percent) in the larger experimental group, while the rate of recidivism fell to 53.3 percent (from 57.1 percent) in the larger control group. As can be seen from these recidivism statistics for North Dakota's program—it appears that the larger experimental and control groups begin normalizing the program's recidivism data because relatively higher rates of recidivism are reported in the experimental as compared to the control group when studying a larger cross section of offenders.

100. Maine's 2006 evaluation discusses the costs attendant to substance abuse:

The annualized economic cost [] of substance abuse in the United States exceeds \$275 billion. Such costs occur because of lost earnings, losses in productivity, direct salary

reduced, or because drug treatment reduces the likelihood of relapse and recidivism.”¹⁰¹ Studies have concluded that JDTCs generate criminal justice savings.¹⁰²

Maine’s JDTC evaluations analyzed the operational costs¹⁰³ and crime reduction benefits of Maine’s program to determine whether a net economic benefit was achieved as compared to traditional adjudication.¹⁰⁴ After twenty-seven months of operation, Maine’s 2003 JDTC evaluation showed that the annualized cost of processing 105 participants in juvenile drug court was \$93,218 more than the annualized cost of processing a matched sample of traditionally adjudicated juvenile offenders.¹⁰⁵ This lack of cost effectiveness was attributed to low enrollment in the program during implementation.¹⁰⁶ But after fifty-six months of operation, serving 219 JDTC participants, Maine’s program generated a net savings of \$41,189.¹⁰⁷ The primary indicators producing this savings were a \$230,858 reduction in detention costs, a \$15,226 reduction in criminal case processing costs, and a \$47,221 in savings from overall crime reduction.¹⁰⁸ It is important to note that the cost benefit analysis in both evaluations is conservatively estimated as it focuses only on criminal justice related costs; there are many social and familial benefits generated by Maine’s JDTC as well, but there is a lack of available data to measure those benefits.¹⁰⁹

F. Alternative Measures of Program Success

The economic success of a drug treatment program like the JDTC model is far from the only measure of its effectiveness. JDTCs provide substance-abusing juveniles with the treatment, ancillary services, and other supports they need to become more functional in a number of areas of their lives. It would follow that these improvements in the lives of individual juveniles would translate into social improvements for society as a whole; the whole is only as good as the sum of its parts. It is for this reason that it is important not to focus solely on the economic costs and benefits of such a program when assessing its effectiveness and sustainability.

In August 2006, another outcome evaluation of the North Dakota JDTC was

costs and indirect costs of organizations that deal with the repercussions of substance abuse including the criminal justice system, mental health organizations, hospitals[,] and social service industries, to name a few.

FERGUSON ET AL., *supra* note 13, at 30.

101. BELENKO, *supra* note 4, at 41.

102. *Id.*

103. Program start-up costs of \$313,500 were excluded from this analysis because the concern for cost effectiveness of the program was appropriately attributed to its ongoing costs of daily operations once the program was already in place. FERGUSON ET AL., *supra* note 13, at 31.

104. *See generally supra* note 21.

105. ANSPACH ET AL., *supra* note 11, at 33.

106. *Id.* at 35.

107. FERGUSON ET AL., *supra* note 13, at 30.

108. *Id.* at 32.

109. *Id.* at 30.

released. The goal of this study was to “assess treatment progress differences”¹¹⁰ between JDTCP participants and substance abusing juveniles who were not exposed to a JDTCP.¹¹¹ The study employed the Child and Adolescent Functional Assessment Scale (CAFAS)¹¹² to comprehensively measure the differences in the functionality of adolescents receiving treatment for substance abuse.¹¹³ The experimental group consisted of ninety-six subjects participating in the JDTCP, and the control group was comprised of ninety-four subjects who were receiving treatment but were not exposed to the JDTCP.¹¹⁴ CAFAS ratings were assessed by licensed addiction counselors at each juvenile’s intake, ninety days following treatment and at discharge (between six and nine months following admission).¹¹⁵ In each of seven subscales, JDTCP graduates, those expelled from the JDTCP and the control group showed marked improvements in functionality from intake to ninety days into treatment.¹¹⁶ But after ninety days of treatment, functionality improvements leveled off or worsened on each subscale for those who were terminated from the JDTCP and for the control group, while the functionality of JDTCP graduates continued to make substantial improvements on each subscale until discharge.¹¹⁷

The results of North Dakota’s 2006 evaluation indicate that while treatment for substance abuse in juveniles is beneficial for all who participate, those who successfully complete a JDTCP benefit the most, achieving the highest levels of functionality as a result. This would seem to corroborate other evaluation findings that recidivism tends to be lower among JDTCP graduates than among those terminated from JDTCP or those who are traditionally adjudicated. Increased gains in individual functionality likely lead to greater reductions in criminal behavior. Decreased criminal behavior leads to decreased economic cost of criminal justice. Still there are benefits to the individual. For example, a greater sense of self-esteem and a healthier life outlook. There are also benefits to their families and society as a whole, such as more desired and productive daily interactions with rehabilitated juveniles, which cannot be measured in dollars. These benefits, though difficult to

110. KEVIN M. THOMPSON, AN OUTCOME EVALUATION OF JUVENILE DRUG COURT USING THE CHILD AND ADOLESCENT FUNCTIONAL ASSESSMENT SCALE, at Executive Summary (Dept. of Crim. Just. N. D. St. Univ. 2006). The 2006 outcome evaluation of North Dakota’s JDTCP postulated the following:

Exposing drug court participants to weekly sessions in front of a judge who holds them accountable for treatment progress, school grades, family functioning, community service, meetings with probation officers, and appropriate behavior toward others should enhance treatment outcomes relative to non-drug court participation.

Id.

111. *Id.*

112. *Id.* at Research Design. The 2006 evaluation used CAFAS to measure adolescent functioning of juveniles in the experimental and control groups on seven subscales: (1) School Performance; (2) Home Functioning; (3) Delinquency; (4) Behavior Toward Others; (5) Moods/Emotions; (6) Substance Use; and (7) Family/Social Support. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at Executive Summary

117. *Id.*

quantify, strongly support the continued operation of JDTCs as a matter of public policy.

III. MAINE'S PROGRAM STRUGGLES TO SURVIVE

A. Funding and Enrollment Difficulties

The 2006 evaluation of Maine's JDTC reported that at that time Maine's six juvenile drug courts served a combined population of 883,410 people in seven counties, which is approximately 70 percent of the state's population.¹¹⁸ But OSA's July 1, 2008 funding cut left the Augusta-Waterville and Bangor sites without case managers.¹¹⁹ This cut would eventually force the Bangor and Augusta-Waterville sites to close their doors.¹²⁰ In 2006, the two sites together served a population of 262,033 citizens, which amounts to approximately 30 percent of the entire program's population.¹²¹ Cutting the served population by 30 percent was a drastic change in the wrong direction. The six original sites were meant to be pilots for an expanding program,¹²² instead of expanding, the program was forced to downsize in 2008.

Camire explained that these two sites in central and northern Maine consistently had difficulty achieving the target enrollment of fifteen participants per site.¹²³ This is the reason that OSA decided to cut funding to the sites in 2008.¹²⁴ Yet Ferguson found a substantial population of juveniles whose criminal and drug abuse histories qualified them as potential candidates for JDTC while researching DOC and MIS records to construct the matched control group for the Bangor and Augusta areas.¹²⁵ Lack of referrals appeared to be the primary issue plaguing enrollment numbers at these sites.¹²⁶ Camire said that she was not aware of a specific reason for the lack of referrals but insisted it had been an issue for quite some time.¹²⁷ The Drug Court Steering Committee discussed other options that might have bolstered enrollment in the program, such as moving one of the courts to Ellsworth.¹²⁸ In fact, combining the Augusta and Waterville programs was one such attempt at solving the enrollment dilemma.¹²⁹

In actuality, these two sites did *not* always perform poorly in terms of enrollment. For instance, the Augusta site was at 80 percent capacity or higher (twelve to fifteen participants) for more than three consecutive quarters between

118. FERGUSON ET AL., *supra* note 13, at 2.

119. Minutes June 16, 2008, *supra* note 23.

120. Camire Interview, *supra* note 22.

121. FERGUSON ET AL., *supra* note 13, at 2.

122. Hon. Christine Foster, District Court Judge, Maine District Court, Speech at Day One's 35th Annual Celebration: Acceptance of Award on Behalf of the Biddeford Juvenile Drug Treatment Court Team (Nov. 20, 2008).

123. Camire Interview, *supra* note 22.

124. Interview with Kristen Jiorle, Research Adolescent Substance Abuse Specialist, Maine Office for Substance Abuse, in Biddeford, Me. (Dec. 18, 2008).

125. Ferguson Interview, *supra* note 15.

126. Camire Interview, *supra* note 22.

127. *Id.*

128. *Id.*

129. *Id.*

September 2005 and May 2006.¹³⁰ Bangor was at 73 percent capacity or higher (eleven to twelve participants) for the last quarter of 2005.¹³¹ Camire found it ironic that enrollment for the Augusta-Waterville site in November 2008 was at its highest since May 2006—operating at 66 percent capacity with ten participants.¹³² In contrast, the remaining four sites (Biddeford, Lewiston, Portland, and West Bath) were at their lowest combined enrollment in over three years in September 2008 (approximately 65 percent capacity with thirty-nine participants).¹³³

No matter how the enrollment numbers are analyzed, the 2008 funding cut significantly reduced the reach of Maine's JDTCP. The 70 percent of Maine's population that was once served by the program was reduced to less than 50 percent of Maine's population after the two northern sites were forced to close. Even more troubling was the lack of an alternative treatment program that might take the place of the JDTCP in the affected geographical areas.¹³⁴

In the midst of a global recession the likes of which our generation had never experienced, proponents of Maine's JDTCP felt the need for action. On November 20, 2008, Biddeford District Court Judge Christine Foster¹³⁵ addressed Maine's JDTCP funding challenges during an award acceptance speech at Day One's 35th Annual Celebration. Appealing to the better judgment of Maine's drug treatment community, Judge Foster suggested that spending money now to preserve all that the JDTCP had achieved since inception would be more advantageous than spending that same money on a failing program in the future.¹³⁶

Unfortunately the state funding picture became increasingly bleak in late 2008. A curtailment order during the last quarter of the year impacted OSA by \$100,000, which translated to an additional \$26,000 funding cut to Maine's JDTCP for the fiscal year.¹³⁷ Thankfully the supplemental budget, which emerged in mid-

130. Minutes Sept. 26, 2005; Dec. 19, 2005; Feb. 27, 2006; May 8, 2006, *supra* note 24. The Augusta site was operating at 87 percent capacity with thirteen participants ($13 \div 15 = 80$ percent) in September 2005. Minutes, Sept. 26, 2005, *supra* note 24. Augusta's enrollment had risen to 100 percent capacity with fifteen participants by December 2005. Minutes Dec. 19, 2005, *supra* note 24. In February 2006, the Augusta site ran at 80 percent capacity with twelve participants. Minutes, Feb. 27, 2006. Augusta's enrollment remained at twelve participants in May 2006. Minutes May 8, 2006, *supra* note 24.

131. Minutes, Sept 26, 2005; Dec. 19, 2005, *supra* note 24. The Bangor site was operating at 73 percent capacity with eleven participants ($11 \div 15 = 73.3$ percent) in September 2005. Minutes, Sept 26, 2005, *supra* note 24. The Bangor site was at 80 percent capacity with twelve participants in December 2005. Minutes, Dec. 19, 2005, *supra* note 24.

132. Camire Interview, *supra* note 22.

133. Minutes Sept. 22, 2008, *supra* note 24.

134. *Id.* When serving on the Maine Juvenile Drug Court Steering Committee, there was ample discussion about how to better serve rural areas with juvenile offenders because they remain particularly severed from access to important social services, when compared to their urban peers. The Steering Committee discussed the possibility of a voluntary post-adjudication-pre-disposition judicial monitoring project in which the juvenile offender would appear before a judge for monthly status reports. Successful monthly updates would have allowed the juvenile to withdraw his guilty plea to a felony charge, in exchange for a final disposition on a misdemeanor charge. No such program had yet materialized.

135. The Honorable Christine Foster was the JDTCP Judge for the Biddeford Drug Court.

136. Foster Speech, *supra* note 122.

137. Minutes, Dec. 15, 2008, at 1.

December 2008 did not call for any further cuts to the program.¹³⁸ Recognizing the need for alternatives, Camire incorporated a non-profit organization called the Maine Alliance for Drug Treatment Courts (MADTC).¹³⁹ MADTC was formed to facilitate fund-raising and donation collection for all of Maine's drug courts.¹⁴⁰ While this action seemed encouraging on its face, MADTC was only expecting to generate between \$5,000 and \$10,000 in its first year of operation,¹⁴¹ and any monies the corporation did generate would not be earmarked for the JDTCP exclusively.

Amidst mounting uncertainty, a final glimmer of hope appeared on the horizon early in 2009. The U.S. House of Representatives passed the 2009 Omnibus Appropriation Bill on February 25, 2009. The bill provided nearly \$64 million in federal appropriations for drug court programs across the nation.¹⁴² The Senate passed the bill on March 10, 2009.¹⁴³ While this federal earmark was encouraging, there was no guarantee that the increased appropriations would translate to an increase in funding for Maine's JDTCP. In fact, within three months, such a funding solution would be too late.

B. Maine Pulls the Plug on Its JDTCP

OSA's decision to cut case manager funding to the four remaining sites hit hard and fast. The decision shocked every team member at the Biddeford site on May 7, 2009, when case manager Sarah Marcou explained at the pre-court meeting that her days were numbered.¹⁴⁴ At first, no one could articulate exactly how or why the decision was made or who was responsible. In a September 2009 interview, Portland District Court Judge Keith Powers¹⁴⁵ explained, "The Office of Substance Abuse through DHHS had some serious budget issues in the Legislature and [OSA's] Director, Guy Cousins, had to make some cuts somewhere[,] and he chose the Juvenile Drug Court funding, which basically cut out our case managers for all the remaining sites."¹⁴⁶ Cousins was not happy about the decision he had to make, but given Maine's budget crisis, he felt he had no other choice.¹⁴⁷

138. Camire Interview, *supra* note 22.

139. Minutes, Dec. 15, 2008, at 1.

140. *Id.*

141. Camire Interview, *supra* note 22.

142. The bill earmarks \$40 million for the Bureau of Justice Assistance (Department of Justice) and nearly \$24 million for the Center for Substance Abuse Treatment (Department of Health and Human Services). This is the largest annual federal appropriation in the history of drug courts and represents a 250 percent increase from similar appropriations in 2008. E-mail from West Huddleston, Chief Exec. Officer, Natl. Assn. of Drug Ct. Prof., to Christopher Northrop, Assoc. Clinical Professor, University of Maine School of Law (Feb. 25, 2009, 21:37:05 GMT) (on file with Christopher Northrop).

143. Kate Phillips, *Senate Passes \$410 Billion Spending Bill*, The Caucus Blog - NYTimes.com, Mar. 10, 2009, <http://thecaucus.blogs.nytimes.com/2009/03/10/senate-passes-410-billion-spending-billhfo/> (last visited Mar. 28, 2010).

144. This Article's Author was in attendance at the pre-court meeting at Biddeford JDTC on May 7, 2009.

145. Hon. Keith Powers is the JDTCP Judge for the Portland site. He also chaired Maine's JDTCP Steering Committee until its final meeting on June 29, 2009.

146. Interview with Hon. Keith A. Powers, District Court Judge, Maine District Court, in Portland, Me. (Sept. 10, 2009) [hereinafter Powers Interview].

147. *Id.*; Nemitz, *supra* note 25.

OSA did appropriate some “wind-down” funding¹⁴⁸ so that the remaining JDTCP participants could finish out the program. In September 2009, three of the remaining four sites continued to operate through “wind-down.”¹⁴⁹ Sarah Marcou, former case manager for the Biddeford site, was managing the entire caseload for all three sites.¹⁵⁰ However, the remaining participant numbers were down, meeting frequency was down, and Marcou had less regular contact with each juvenile.¹⁵¹ The “wind-down” funding was enough to keep Marcou on as case manager through the end of December 2009. Some clients’ programs were accelerated so they might graduate from the program by the end of 2009.¹⁵² The fourth site, located in West Bath, consolidated its remaining JDTCP participants with another weekly court program instead of continuing to operate the JDTCP separately.¹⁵³

Juvenile Defense Attorney Christopher Northrop¹⁵⁴ did not support OSA’s decision to discontinue funding for the JDTCP, but he believes that incorporating the “wind-down” phase was much more beneficial than it would have been to discontinue the program abruptly and renegotiate participants’ plea agreements.¹⁵⁵ In his estimation, those who were still participating in the program were still benefiting from the program.¹⁵⁶ When asked how he felt about the future in Maine for programs like this one, Northrop responded:

I think that this model has real value, and I am hoping that the Task Force, even if they don’t recreate a drug court, will create a court that puts kids and judges into this kind of contact. I think it’s valuable for everyone in the system.¹⁵⁷

He went on to explain, “In my experience the judges that have done the Juvenile Drug Treatment Court have changed their involvement and their approach to juvenile issues, and I like the changes they’ve made.”¹⁵⁸

148. Powers Interview, *supra* note 146.

149. The three JDTCP sites that continue to operate through “wind down” are Portland, Biddeford, and Lewiston. *Id.*

150. Interview with Christopher Northrop, Assoc. Clinical Professor, University of Maine School of Law, in Portland, Me. (Sept. 24, 2009) [hereinafter Northrop Interview]. By March 5, 2010 only the Lewiston Juvenile Drug Court remained in operation as its last two participants worked toward graduation. Interview with Sarah Marcou, Case Manager, Maine JDTCP, in Biddeford, Me. (March 5, 2010).

151. I worked closely with Marcou when she was case manager and I was student defense attorney for Biddeford Juvenile Drug Court in 2008 and 2009. At that time Marcou met with her Biddeford clients every week. During the last two quarters of 2009, her caseload spanned three cities in Maine, so she was unable to play as intimate a role in each juvenile’s life. *Id.* Most of the JDTCP sites met once a week for status hearings prior to “wind-down,” but subsequently each site met only bi-weekly. *Id.*

152. *Id.*

153. The Honorable Joseph H. Field was the JDTCP Judge in West Bath. He continues to operate a weekly court program called, “The Wednesday Afternoon Club.” This program functions as a combined DOC juvenile check-in and intensive court supervision program for juvenile probationers. Powers Interview, *supra* note 146.

154. Northrop is an Associate Clinical Professor of Law at University of Maine School of Law’s Cumberland Legal Aid Clinic (CLAC). Northrop heads CLAC’s Juvenile Justice Clinic, and he sits on the Executive Committee for Maine’s Juvenile Justice Task Force.

155. Northrop Interview, *supra* note 150.

156. *Id.*

157. *Id.*

158. *Id.*

Northrop said his original understanding was that Maine's Juvenile Justice Task Force (Task Force)¹⁵⁹ would be instrumental in determining the viability of the JDTCP going forward, but then the JDTCP "died overnight."¹⁶⁰ While the Task Force's Community Services Subcommittee continues to look at other therapeutic court models to fill the void in Maine,¹⁶¹ the initiative is in its infancy, and there are no guarantees that a replacement program will emerge.¹⁶²

Without the JDTCP, district court judges in Maine will have fewer options when deciding how best to protect society while assisting the rehabilitation of young individuals in need of intensive supervision and services. At least in the short-term, OSA's decision to cut the JDTCP will likely lead to more juvenile commitments to Long Creek and Mountain View Youth Development Centers.¹⁶³ This could cost Maine's taxpayers tens of thousands of dollars.¹⁶⁴ But the consequences of losing the program run far beyond the purely economic. When asked what his largest regret would be if this type of alternative program for juveniles ceased to exist in Maine, Judge Powers replied:

It's obvious that there is a rampant substance abuse problem [in Maine], which relates also to people's family, education, and mental health issues that need addressing beyond what we are able to do by just bringing people into juvenile court. If we don't have a program that can deal with those issues adequately, there will be people with more serious problems that don't get resolved, there will be more crime, there will be more expense, and we won't be doing our jobs as judges or probation officers or treatment professionals or educators [I]t would be very tragic to have a significant, clear need not be met, at least to some degree, by people who have the ability to do it.¹⁶⁵

Judge Powers says that he and other judges in Maine have genuinely enjoyed presiding over the JDTCP. He believes in promoting this sort of social work before kids become adults, and he feels it shows that judges care about their communities.¹⁶⁶

159. *Id.* Maine's Juvenile Justice Task Force (Task Force) was informally assembled in late 2008. *Id.* Its first official meeting convened on May 22, 2009. *Id.* The Task Force has three subcommittees that are addressing issues of education, incarceration, and community services for Maine's juvenile population. *Id.* The Task Force is chaired by Hon. Leigh Saufley, Chief Justice of the Maine Supreme Judicial Court; Karen Baldacci, First Lady; and Peter Pitegoff, Dean of the University of Maine School of Law. *Id.*

160. *Id.*

161. *Id.* One such model is a court program based in Milwaukee, Wisconsin. Milwaukee's program is a family therapeutic court, which works with kids who find themselves in trouble with the juvenile system. *Id.*

162. The Task Force planned to hold a statewide summit in Augusta on December 4, 2009, to share some of its findings and proposals. Powers Interview, *supra* note 146. I volunteered at the summit on December 4, 2009. It was a groundbreaking effort to bring treatment professionals, attorneys, law-makers, and members of Maine's judiciary together to discuss juvenile needs in the state. At that time it seemed any new proposals were not yet near implementation.

163. *Id.*

164. OSA Director Guy Cousins estimated the annual cost of keeping a juvenile in the JDTCP was \$4,562, while the annual cost of committing the same juvenile to Long Creek Youth Development Center is approximately \$125,000. Nemitz, *supra* note 25.

165. Powers Interview, *supra* note 146.

166. *Id.*

III. CONCLUSIONS AND RECOMMENDATIONS

Maine's JDTCP reduced participants' in-program drug use and post-program recidivism for drug-related crimes. Post-program recidivism was lowest in Maine's JDTCP graduates, and the program's graduation rate grew to 13 percent higher than the national average by the time of the 2006 evaluation. During the same period, the program generated an overall savings in criminal justice expenditures. These numbers indicate that the program was a success; as such, it should have been expanding to serve more of Maine's population. Instead of expanding, the program has vanished.

Research conducted to construct matched control groups for the JDTCP evaluations found juvenile populations near all six sites that were in need of such a program. The program's inability to generate the requisite number of referrals to maintain the targeted participant population is a problem that must not be "solved" by curtailing therapeutic court operations in those areas. The State of Maine must find a way to continue serving its substance-abusing juvenile population through a system of therapeutic jurisprudence.

The 2006 evaluation reported Maine's JDTCP had generated a net savings of \$41,189 to date (as compared to traditional adjudication). If the program were merely breaking even in terms of criminal justice cost-benefit analysis, the *social benefits* of therapeutic jurisprudence might still justify continued investment in the program at previous funding levels. Maine's program could incorporate alternative methods of evaluation—such as the CAFAS employed in North Dakota's 2006 evaluation—in an attempt to more comprehensively measure the scope of individual and community benefits produced by the program. The findings of such alternative evaluation would likely weigh strongly against the decision to cut the program.

The matched-pair design of Maine's 2003 JDTCP evaluation and the continuity of subsequent evaluations through 2006 provided a quality of data that far exceeds that of many other similar programs in other states, yet funding challenges ground this data stream to a halt. Subsequent to the 2006 evaluation, data relating to juvenile participants at the Bangor and Augusta-Waterville sites was no longer updated in MIS, which made it nearly impossible to collect accurate and complete data. Furthermore, new program inductees were not paired with matched control subjects at any of the six JDTCP sites after the last evaluation. This disruption in the continuity of evaluation jeopardized the program's ability to effectively monitor its own progress. If the evaluation process had continued during the final years, cutting the program may have been far too difficult to justify.

The State of Maine must find a way to replace the JDTCP with a similar model in the future, and, in doing so, it must strongly consider dedicating a portion of program funding to reinstate the quasi-experimental, matched pair evaluation design, which set its JDTCP apart from other similar programs across the nation.