

## **Substance Use Disorders and Criminal Offenders: Critical clinical considerations for Criminal Justice Reform**

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There are tremendous strengths involved in the combination of the addiction treatment system and the criminal justice system, especially as it relates to the current opioid crisis. However these strengths also address criminal justice offenders who are involved in other alcohol or drug abuse situations as well.

These strengths are epitomized in the addiction treatment and criminal justice innovation widely known as drug courts and specialized dockets, but apply to the substance abuse oriented criminal justice reform movement in general.

In spite of these remarkable innovations there is also an urgent need for sentencing reform and further reform of the approach that the criminal justice system in Ohio takes to substance-abusing offenders. The current effort to reform sentencing has great promise, and is an outstanding opportunity to further improve on the work that has already taken place in drug courts and specialized dockets. There is a danger however that the current effort to provide reform presents a substantial risk of undoing and weakening some of the progress that has been made already.

The best way to understand both the current opportunity as well as the current risk of sentencing reform efforts, is to recall the evolution of drug courts and specialized dockets over the last two decades.

### **Background:**

There are strengths and weaknesses of both the addiction treatment infrastructure and the criminal justice system. The strengths of the addiction treatment system tend to address to the weaknesses of the criminal Justice system. Conversely, the strengths of the criminal Justice system tend to address to the weaknesses of the addiction treatment system. The bullet points below summarize the strengths and weaknesses of the addiction treatment system as well as the strengths and weaknesses of a traditional criminal justice approach to substance abuse offenders.

### **Strengths of the Addiction Treatment System:**

- Effective (high quality counseling, with Medication Assisted Treatment and 12 step participation produces 40-60% one year sobriety rates)
- Cost effective (3 times more cost effective than treating high blood pressure re: \$/year of life saved.
- Well supported by data
- Existing infrastructure

### **Weaknesses of the Addiction Treatment System:**

- Lack of coercion (leads to high levels of *early* drop outs, high relapse rates)
- Weak long term monitoring (leads to high levels of *later* drop outs, high relapse rates)
- Variable quality depending on the provider

### **Strengths of the Criminal Justice System: (IF felony level charges are initially retained)**

- High level of coercion (leads to low levels of *early* drop outs)
- Threat of incarceration (leads to low levels of *later* dropouts)
- Strong tradition of long term monitoring (probation)

### **Weaknesses of the Criminal Justice System: (the reason for reform)**

- It is not treatment (and thus not a clinically effective intervention for substance abusers)
- It is really expensive (and thus NOT cost effective)
- So it is ineffective and expensive (if not combined with actual treatment)

### **Drug Courts & Specialized Dockets (Merging Addiction Treatment with Criminal Justice)**

- Realizes the promise of criminal justice reform
- Uses the strengths of treatment and the criminal justice system, *and* minimizes the weaknesses of each, producing far superior results for less cost

So in summary, the current drug court and specialized docket efforts optimize short-term coercive control over substance-abusing in offenders in order to maximize adherence with a combination of treatment and monitoring.

### **Sentencing Reform:**

Sentencing reform resulting in decriminalization *in the initial stages of dealing with a substance abusing offender* removes the coercive control, and therefore 1) markedly decreases the likelihood that the individual will participate in a full addiction recovery program, 2) minimizes the chance that they will participate in meaningful monitoring following the addiction treatment program, and 3) markedly increases the risk of relapse to addiction and recidivism in the criminal justice system.

Alternatively, maintaining substance-abusing offenders in a felony level offense, with much greater access to drug courts and felony level monitoring, 1) increases the chance of adherence, 2) increases the chance of sobriety, 3) decreases the chance of relapse and recidivism, and therefore 4) improves the outcome for both the offender and society. Following a reasonable period of sobriety and adherence (typically considered 18 to 24 months), it is an optimal time to implement sentencing reform guidelines in order to make it simple and likely that people can have felony convictions expunged, and be able to go on about their lives with a greater opportunities for employment and full participation in their communities. This is summarized in the bullet points below:

## **Risks of Misguided Criminal Justice Reform**

- Too early decriminalization removes the coercion (back to high dropout / relapse rates)
- Municipal probation less intense than County probation (less supervision and higher relapse rates)
- Less coercive control and less supervision leads to poorer treatment outcomes (lower effectiveness and less cost effectiveness)
- Decriminalization should be a *promised* incentive for adherence and sobriety, not something that is granted immediately through misguided criminal justice reform.