DRUG COURTS:
EQUIVOCAL EVIDENCE ON A POPULAR INTERVENTION

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OPEN SOCIETY FOUNDATIONS

As member states of the United Nations take stock of the drug control system, a number of debates have emerged among governments about how to balance international drug laws with human rights, public health, alternatives to incarceration, and experimentation with regulation.

This series intends to provide a primer on why governments must not turn a blind eye to pressing human rights and public health impacts of current drug policies.

WHAT ARE DRUG COURTS?

People arrested for drug use, minor possession of illicit drugs, or other minor, non-violent drug-related crimes represent a high proportion of people in pretrial detention, in prison, on parole or probation, or otherwise in the criminal justice system.

Some countries have adopted drug treatment courts as a way to reduce drug-related incarceration. Drug treatment courts, also called "drug courts," are meant to offer court-supervised treatment for drug dependence for some persons who would otherwise go to prison for a drug-related offense.

The principal objectives of drug courts include ensuring treatment for people in the criminal justice system who need it and confronting drug dependence as a root cause of drug-related crime. There is no single model of drug courts; jurisdictions may differ in their approaches. In many places, court-supervised treatment in drug courts generally entails a structured treatment program that is monitored by a court team that often includes a judge and prosecuting and defense attorneys. Mandatory repeated drug testing (urinalysis) is usually also a feature of these programs.

In the United States, the vast majority of drug courts—an estimated 93 percent—offer treatment "post-adjudication" (after a person has appeared before a judge rather than before a person is charged).[1] Defendants must generally plead guilty as a condition of drug court participation, and if they complete the court-prescribed treatment plan, their sentence may be deferred, modified or suspended, or their criminal record may be expunged.[2] Some courts also offer "pre-adjudication" (deferred prosecution or diversion where defendants enter a treatment program before a charge is entered). According to the Congressional Research Service, most U.S. drug courts used "pre-adjudication" in the early years, but by 2010 about 59 percent of U.S. drug courts had post-adjudication services only. Seven percent offered pre-adjudication treatment, and the rest had some combination of the two.[3]

Drug courts have spread rapidly in the United States since the first one opened in Florida in 1989. As of mid-2013, there were over 2,800 drug courts in all 50 states, and some territories.[4] Drug courts are also found in Australia, Austria, Belgium, Canada, Ireland,

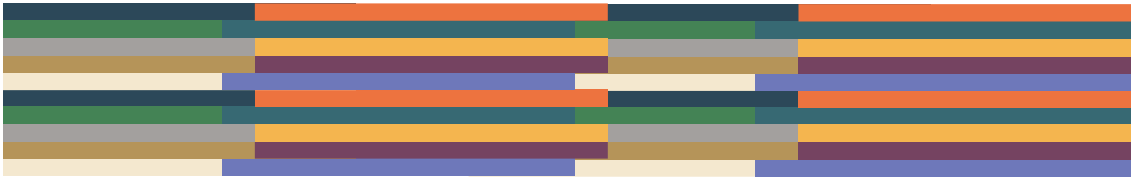
1 C Franco. Drug courts: Background, effectiveness and policy issues for Congress. Washington, DC: Congressional Research Service, Oct. 2010. At: http://fas.org/sgp/crs/misc/R41448.pdf

2 Ibid.

3 Ibid.

4 U.S. National Institute of Justice (Dept of Justice), "Drug courts" (online). http://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx

New Zealand, Norway, and the United Kingdom.[5] With encouragement from the Organization of American States, a number of Latin American countries have adopted or are in the process of adopting drug courts or related problem-solving courts. These include Barbados, Bermuda, Chile, Costa Rica, Dominican Republic, Jamaica, Mexico, Suriname, and Trinidad and Tobago.[6] The Organization of American States contracted the U.S. National Association of Drug Court Professionals, a body that sets standards for U.S. drug courts, to assist in drug court implementation in Latin America.[7]



WHAT THE UN AND OTHER MULTILATERAL BODIES SAY

There is considerable consensus in UN and other multilateral policies and statements that there should be an alternative to criminal sanctions for some categories of drug infractions.

Drug treatment courts are not specified as the only or principal means of providing that alternative, and there is no international law or treaty explicitly addressing drug courts.

All three UN drug conventions have provisions noting that state parties to the convention "in appropriate cases of a minor nature…may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare."[8] The 1988 convention also enjoins countries to "adopt such measures as may be necessary to establish as a

5 UN Office on Drugs and Crime. "Drug treatment courts work!" (brochure). Vienna, 2005. At: http://www.unodc.org/pdf/drug_treatment_courts_flyer.pdf

6 Organization of American States. "Drug treatment courts in the Americas". At: http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/main_eng.asp

7 Organization of American States. "The National Association of Drug Court Professionals, a strong partnership to promote drug treatment courts in the Americas" (online report). At: http://www.cicad.oas.org/Main/Template.asp?File=/fortalecimiento_institucional/dtca/nadcp_eng.asp

8 See Single Convention on Narcotic Drugs, 1961 (as amended by the 1972 Protocol), Article 36.1(b); Convention on Psychotropic Substances, 1971, Article 22.1(b); and Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Article 3.4.

criminal offense under [its] domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption…," but makes clear that treatment as an alternative to criminal prosecution is acceptable. Possession of drugs for personal consumption is exactly the kind of offense for which some drug courts seek to offer an alternative to penal sanctions.

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In addition to these provisions of the UN drug conventions, UN member states adopted a Declaration on Drug Demand Reduction in 1999 following discussions at the UN General Assembly Special Session on drugs in 1998, which includes this provision:

> **In order to promote the social reintegration of drug-abusing offenders, where appropriate and consistent with the national laws and policies of Member States, governments should consider providing, either as an alternative to conviction or punishment or in addition to punishment, that abusers of drugs should undergo treatment, education, aftercare, rehabilitation and social reintegration (para 14).**[9]

A 2012 resolution adopted by the UN Commission on Narcotic Drugs, noting the language on alternatives to criminal sanctions in the UN drug conventions, encourages member states "…to consider allowing the full implementation of drug-dependence treatment and care options for offenders, in particular, when appropriate, providing treatment as an alternative to incarceration…."[10]

9 United Nations General Assembly. Declaration on the Guiding Principles of Drug Demand Reduction. UN doc. no. A/RES/S-20/4, 1999.

10 UN Commission on Narcotic Drugs, Resolution 55/12: Alternatives to imprisonment for certain offenses as demand reduction strategies that promote public health and public safety. Vienna, 16 March 2012. At: https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2010-2019/2012/CND_Res-55-12.pdf

"...there are other kinds of alternatives to criminal sanctions for minor drug offenses, including pre-arrest diversion, health and social service interventions, and legislative change to remove these infractions from penal codes."

In its annual report of 2004, the International Narcotics Control Board weighed in on alternatives to incarceration in some cases with this statement:

Programmes that offer alternatives to prison and combine both law enforcement and individual recovery components have proved to be effective both in treating health conditions associated with drug abuse and in reducing crime; they may also prevent young drug abusers from coming into contact with the criminal culture in prison (part I.B., para 27).[11]

The European Union in its 2013–2016 Action Plan on Drugs includes the goal that by 2015 member states will "provide, where appropriate and in accordance with their legal frameworks, alternatives to coercive sanctions (such as education, treatment, rehabilitation, aftercare and social integration) for drug-using offenders" (action point 21).[12]

The African Union Plan of Action on Drugs for 2013–2017 enjoins member states to "institutionalise diversion programmes for drug users in conflict with the law, especially alternatives to incarceration for minor offenses" (para 36.b.v).[13]

The Hemispheric Drug Strategy adopted by the Organization of American States in 2010 states that it is "necessary to explore the means of offering treatment, rehabilitation and recovery support services to drug-dependent criminal offenders as an alternative to criminal prosecution or imprisonment."[14]

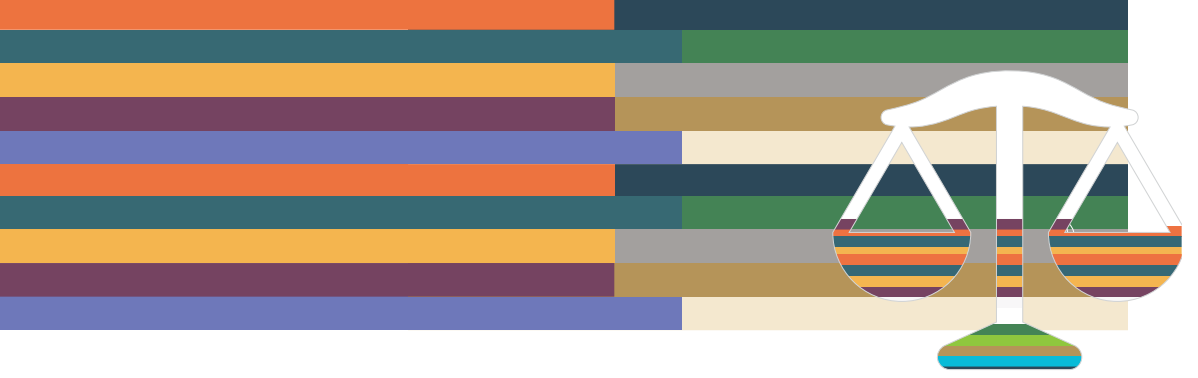
The emphasis in statements by the United Nations and regional bodies is on finding locally appropriate alternatives to criminal sanctions, not necessarily drug courts. As noted below, there are other kinds of alternatives to criminal sanctions for minor drug offenses, including pre-arrest diversion, health and social service interventions, and legislative change to remove these infractions from penal codes.

11 International Narcotics Control Board. *Annual report 2004*. United Nations: Vienna, March 2005. At: http://www.incb.org/documents/Publications/AnnualReports/AR2004/AR_04_English.pdf

12 Council of the European Union, *EU Action Plan on Drugs 2013-2016,* doc. 2013/C 351/01, Brussels, 2013. At: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:351:0001:0023:en:PDF

13 African Union. *AU Plan of Action on Drug Control 2013-2017*. AU doc. no. CAMDC/EXP/2(V), Addis Ababa, 2013. At: http://sa.au.int/en/sites/default/files/AUPA%20on%20DC%20(2013-2017)%20-%20English.pdf

14 Organization of American States. Hemispheric Drug Strategy, OAS General Assembly 40th regular session, Lima, Peru, June 2010. At: http://www.cicad.oas.org/Main/Template.asp?File=/main/aboutcicad/basicdocuments/strategy_2010_eng.asp



DRUG COURT EXPERIENCE: QUESTIONS RELEVANT TO UNGASS DEBATES

There is a growing but mixed literature on the experience and impact of drug courts outside the United States where the courts are relatively recently established.

A 2010 study by the Ministry of Justice of Ireland, for example, noted that in the drug court established in Dublin in 2001 there were relatively few participants—379 over nine years—because pre-conviction referrals were not allowed and there was relatively low awareness of the option of a drug court among lawyers and judges.[15] A study by the Australian Institute of Criminology, a government center, concluded that it was impossible to know whether the drug courts in Australia were having an impact on drug use and drug-related crime because people were followed only for the period of their participation in the court-supervised treatment program, and they might relapse later.[16] Chile has the longest experience of drug courts in Latin America. An evaluation of these courts by the University of Chile underscores the small numbers of people who have come through them, which is perhaps not surprising in that the courts so far only cover crimes for which there is no custodial penalty.[17]

The United States has the longest and most wide-ranging experience with drug courts, and the international influence of its model makes its experience worthy of scrutiny. The largest evaluation of the U.S. drug courts is the multi-site adult drug court evaluation of 2011 financed by the U.S. National Institute of Justice, which also gives grants to drug courts. Covering 23 courts in six sites, this study found significantly lower self-reported rates of having committed a crime in the drug court group in the 24 months after being in court and lower official rearrest rates, though the difference in the latter was not

15 Republic of Ireland, Department of Justice, Equality and Law Reform. Review of the drug treatment court. Dublin, 2010. At: http://bit.ly/1AihLw9

16 J Payne. Specialty courts in Australia: report to the Criminology Research Council. Canberra, 2005. At: http://bit.ly/1L8Xlol

17 Centro de Estudios en Seguridad Ciudadana, Universidad de Chile. Estudio de evaluación de implementación, proceso y resultados del Modelo Tribunales de Tratamiento de Drogas bajo Supervisión Judicial aplicado en Chile—primera version (informe final). Santiago, 2011.

"Of the 260 studies, the U.S. Government Accountability Office found that fewer than 20 percent—44 studies—used sound social science principles."

statistically significant.[18] The drug court participants were significantly less likely to report using all drugs in the two years after court supervision as well as "serious" drugs—that is, not including marijuana and moderate alcohol use.[19] In this study, people underwent an oral fluids (buccal swab) drug test 18 months after leaving court or treatment. The drug court group had significantly lower positive tests (29 percent vs. 46 percent).

Major methodological challenges, however, underscore the limits of much U.S. evaluation of drug courts. In 2011, the non-partisan U.S. Government Accountability Office (GAO) reviewed 260 drug court evaluations, including the U.S. Department of Justice multi-site evaluation, to determine how well the millions of federal dollars invested in drug court were being spent. Of the 260 studies, GAO found that fewer than 20 percent—44 studies—used sound social science principles,[20] a telling finding in itself. "(Previous reviews of drug court evaluations had led GAO to conclude that existing published evaluations had methodological limitations, such as the lack of equivalent comparison groups…)"[21] Of these, GAO determined that in 56 percent of the jurisdictions covered there were statistically significant reductions in re-arrest rates for drug court participants, with larger differences if limited to those who successfully completed the drug court program.[22]

The Congressional Research Service (CRS) also reviewed drug court evaluations in 2010, like GAO, noting the challenges of evaluating these institutions. CRS characterized the growth of drug courts in the United States as a "movement," since it happened largely in the absence of empirical evidence of benefit.[23] CRS also noted the dispute between drug court authorities and some independent observers on the number of people actually

18 SB Rossman, JK Roman, JM Zweig et al. The multi-site adult drug court evaluation: the impact of drug courts. Washington: The Urban Institute, 2011. Impact analysis volume at https://www.ncjrs.gov/pdffiles1/nij/grants/237112.pdf

19 Ibid., p 3.

20 U.S. Government Accountability Office. Adult drug courts: Studies show courts reduce recidivism, but DOJ could enhance future performance measure revision efforts. Washington, DC: GAO-12-53, Dec. 2011. At: http://www.gao.gov/assets/590/586793.pdf

21 Ibid., p 9.

22 Ibid., p 19.

23 C Franco, Congressional Research Service, op.cit.

participating in drug courts because there is not an effective way to count them.[24] According to CRS, whatever the actual number of participants, it appears to be a small percentage of those who could in theory be eligible. According to CRS, many drug court evaluations have been criticized for having poorly defined or biased control groups, omitting data on people who fail to complete the treatment program, and over-reliance on self-reported data. A more trenchant critique in the U.S. case may be that a large majority of studies derive from government-funded evaluations of government-funded courts; there are too few independent evaluations.

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The U.S. experience raises important questions about drug courts and evaluation of claims made about them. Some examples are the following:

"Cherry-picking" and targeting people who do not need treatment: In the United States, where, unlike Europe, there are many arrests linked to cannabis offenses, many have questioned the effectiveness and cost effectiveness of diverting cannabis offenders through drug courts to long treatment programs that were designed to treat opiate or cocaine dependence.[25] Some observers of drug courts suggest that they can report high rates of success because they purposefully target people most likely to complete treatment programs.[26] As noted by Sevigny and colleagues, drug courts needing to show success to gain public funds "face incentives to cherry pick clients, thereby avoiding individuals who pose the greatest risk."[27] Some research raises the question of whether everyone who participates in drug courts is really in need of treatment for drug dependence. A study in the U.S. state of Delaware — relying not just on self-reporting but on analysis of urine tests — concluded that about one third

24 Ibid., pp 7-8. CRS notes that the federally supported National Drug Court Institute asserts that 120,000 people participated in drug courts in 2009, while the NGO Urban Institute estimated there were about 55,000 in that year.

25 Halper, op.cit.

26 E Sevigny, H Pollack, P Reuter. Can drug courts help to reduce prison and jail populations? *Annals of the American Academy of Political and Social Sciences* 647:190-210, 2013; and E Halper, "Drug courts, meant to aid addicts, now a battlefield of pot politics," *Los Angeles Times*, 26 July 2014.

27 Sevigny, Pollack, Reuter, ibid.

"A study in the U.S. state of Delaware — relying not just on self-reporting but on analysis of urine tests — concluded that about one third of the nearly 300 drug court 'patients' in the study did not meet the criteria for drug dependence upon entry."

of the nearly 300 drug court "patients" in the study did not meet the criteria for drug dependence upon entry.[28] Other studies have reached similar conclusions.

No net reduction in incarceration: As noted above, in most U.S. drug courts, participants enter a guilty plea to the charge before them as a condition of participation in drug courts. If the person "fails" court-supervised treatment, he or she is likely to be returned to the adversarial courts and, with a guilty plea on the record, may wind up with a harsher sentence than if he or she had been able with the aid of counsel to mount a defense in the first place. A 2013 meta-analysis of what this means for incarceration outcomes, using data from 19 studies in the United States, concluded drug court participants in the jurisdictions studied did not spend less time overall incarcerated than non-participants because of the long sentences imposed on people who "failed" the court-dictated treatment plan.[29] Relapse is a normal part of efforts to cease drug use (see next section), so treatment "failure" can be frequent. It is then not surprising that, while a lower percentage of drug court participants in this study served custodial sentences for some drug infractions, that result was offset by the prison time triggered by treatment "failure." This striking result calls into question whether drug courts are meeting their most basic goal.

Punishment for "failing" treatment: The World Health Organization defines drug dependence as a chronic, relapsing condition.[30] Relapse is a matter of course in managing drug dependence. UN standards assert that people may need to try several kinds of treatment or several episodes of treatment to overcome drug dependence.[31] In drug courts, people

28 D DeMatteo, DB Marlowe, DS Festinger, PL Arabia. Outcome trajectories in drug court: do all participants have drug problems. *Criminal Justice and Behavior* 36(4):354-368, 2009.

29 E Sevigny, BK Fuleihan, FV Ferdik. Do drug courts reduce the use of incarceration?: A meta-analysis. *Journal of Criminal Justice* 41(6):416-425, 2013.

30 UN Office on Drugs and Crime and World Health Organization. *Principles of Drug Dependence Treatment* (Discussion paper). Vienna, 2008. At: http://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf

31 Ibid.

may be punished for treatment failure by the imposition of more frequent drug tests, more frequent appearances before the court, short periods of incarceration, or being dismissed from the program and redirected to an adversarial court. Punishment for a subjectively judged treatment "failure" violates international standards of care of drug dependence and flies in the face of basic tenets of the right to health. Moreover, as noted in the point below, people may have been offered treatment not appropriate to their situation, as in the case of the thousands of marijuana users in the United States who may be given court-mandated treatment designed to address the use of "hard" drugs.

"In the United States, where opiate dependence remains a problem of public health importance, some drug court judges have arbitrarily decided that opiate maintenance treatment with methadone or buprenorphine is not an appropriate option for court-supervised therapy."

Poor access to appropriate treatment: In the United States, where opiate dependence remains a problem of public health importance, some drug court judges have arbitrarily decided that opiate maintenance treatment with methadone or buprenorphine is not an appropriate option for court-supervised therapy.[32] Given that this therapy has decades of research behind it, is recognized as a crucial tool by national and international authorities, and may be the best clinically indicated therapy for many potential drug court participants, denying this treatment option undermines people's right to essential health services. In the worst cases, methadone maintenance patients required to abandon their medicine may turn to unsafe use of heroin or prescription opiates with potentially disastrous consequences.[33] In February 2015, U.S. federal-level authorities seemed to recognize this concern and said that they would not allocate federal funds to drug courts that refuse to offer treatment at least with buprenorphine.[34] It remains to be seen whether this leverage will be effective.

32 H Matusow, SL Dickman, JD Rich et al. Medication assisted treatment in U.S. drug courts: results from a nationwide survey of availability, barriers and attitudes. *Journal of Substance Abuse Treatment* 44(5):473-480, 2013; and J Csete, H Catania. Methadone treatment providers' views of drug court policy and practice: a case study of New York State. Harm Reduction Journal 10:35, 2013. http://www.harmreductionjournal.com/content/10/1/35

33 Ibid., Csete and Catania.

34 J Davies. White House takes important first step toward fixing broken drug court system. New York, Drug Policy Alliance, 6 February 2015. At: http://www.drugpolicy.org/blog/white-house-takes-important-first-step-toward-fixing-broken-drug-court-system

Unclear cost implications: Many evaluations of drug courts compare the costs of the average drug court program with the cost of incarcerating the same person for an assumed period. In its review of drug court evaluations, the GAO found 11 studies that it judged to have made valid cost analyses, and their findings ranged from a positive benefit of over U.S. $47,000 per drug court participant to a net cost (negative benefit) of $7,000.[35]

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The three studies of the 11 that reported a negative benefit of drug courts used drug courts mostly as an alternative to probation, rather than an alternative to prison. Some studies may have overestimated the benefits by failing to investigate whether there was a net reduction in time of incarceration, as noted above. It would be useful to have a standardized and independently monitored means of accounting for the costs and benefits of drug courts, including the cost to people of being punished for "failing" treatment and of being denied clinically indicated treatment.

Racial discrimination and disparity in drug courts: There is relatively little data on racial and ethnic disparities in the decisions or practices of drug courts in most countries that have them. In the United States, the egregious, disproportionately onerous arrest, conviction, and incarceration of African-Americans and Hispanic Americans are well documented. Some observers hoped that the spread of drug courts would help to redress some of this discrimination. It is difficult to say whether this redress has been achieved across the board because so many drug court evaluations have not disaggregated their results by race or ethnicity.[36] Figures compiled in 2008 by the

35 GAO, op.cit., p 25.

36 DB Marlowe. Achieving racial and ethnic fairness in drug courts. *Court Review* 49:40-47, 2012.

U.S. National Drug Court Institute, which promotes drug courts, indicate that that percentage of African-Americans among all prison inmates (44 percent) and among arrestees for all crimes (28 percent) is much higher than the percentage of African-Americans among drug court participants (21 percent) at that time.[37] Based on an experience in the U.S. state of Wisconsin in which the government turned to drug treatment courts explicitly to redress racial injustice in the criminal justice system, O'Hear[38] concludes that drug courts alone cannot significantly reduce the profound racial disparities in the system. Others have suggested that treatment "failure" rates in drug courts are higher among African-Americans, but one influential study that controlled for socio-economic status, employment, and family support found that when these factors were taken into account, racial differences in treatment outcomes were much less significant.[39] Clearly, there is a need for researchers and evaluators to focus more systematically on racial disparities and other possible discrimination in drug courts.

Difficulty of attributing causal impact: Both GAO and CRS noted the difficulty of defining appropriate control groups in drug court studies, which is a necessary element of any study claiming to attribute causal impact. Drug court participants are generally by definition different from non-participants because of the admission criteria—participants are first-time offenders or minor offenders, those dependent on drugs, and so on. The most methodologically sound way to establish a control group would be to define people eligible for drug court participation and randomly assign them to participate or not, but this approach raises ethical questions and is unlikely to be accepted by most jurisdictions. Thus, while there is a great deal of research on drug courts, very little of it identifies outcomes that can be said to be the direct result of drug court participation. This challenge appears with respect to many multidimensional social programs, but it is particularly noticeable with respect to drug courts, about which many observers make sweeping claims about their lasting benefit.

37 W Huddleston and DB Marlowe. Painting the current picture: a national report on drug courts and other problem-solving court programs in the United States. Washington, DC: National Drug Court Institute, 2011.

38 O'Hear, Michael M., "Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice" (2009). Faculty Publications. Paper 140. http://scholarship.law.marquette.edu/facpub/140

39 A Dannnerbeck, G Harris, P Sundet, K Lloyd. Understanding and responding to racial differences in drug court outcomes. *Journal of Ethnicity in Substance Abuse* 5(2):1-22, 2006.

OTHER WAYS TO AVERT INCARCERATION FOR MINOR DRUG OFFENSES

40 A Rosmarin and N Eastwood. *A quiet revolution: drug decriminalisation policies in practice across the globe*. London: Release, 2012

Drug courts are one approach to dealing with certain drug offenses, but many other approaches are possible.

Numerous countries have simply removed drug consumption and minor possession of drugs defined as "for individual use" from their penal codes and made them civil or administrative offenses or non-punishable triggers for the offer of health and social services.[40] The decriminalization of minor drug offenses in many western European countries, some now for decades, largely explains the lower rates of drug-related incarceration in those countries compared to the United States, for example.

A number of European countries have drug court or drug court-like programs, but as just one of a variety of ways to avert criminal prosecution or imprisonment. For instance, in the United Kingdom there are drug courts but there is also conditional community sentencing—supervised treatment by health authorities in the community amounting to a non-custodial sentence.[41] In a case such as the United States, the removal of mandatory minimum sentences for minor drug offenses at both the federal and state levels would also probably greatly reduce drug-related incarceration.[42]

A pilot project with another type of diversion program is being conducted in the U.S. city of Seattle, Washington. In the Law Enforcement Assisted Diversion (LEAD) program, police encountering low-level, non-violent drug offenders can direct them to a gamut of community services and support without deep involvement with the criminal justice system.[43] Success in the LEAD program is not judged by negative urine tests, but by participation and progress in programming as judged by relevant social and health workers. LEAD is being evaluated for four years with respect to recidivism, health and social outcomes, and cost, and is being closely watched by municipalities in North America and internationally. It was inspired in part by "arrest referral" programs such as those in the United Kingdom where people may be detained briefly (but not formally arrested) to assess whether social or health programs might serve them better than criminal justice interventions.[44] LEAD promises to contribute to answering the question of whether the mechanism of court-determined and court-supervised treatment is necessary for reducing incarceration and recidivism and ensuring health and social support. The U.S. city of Santa Fe, New Mexico, has also launched a pilot LEAD program, and numerous other cities have expressed interest in doing so.

41 UK Drug Policy Commission. Reducing drug use, reducing reoffending: Are programs for drug-using offenders in the UK supported by the evidence? London, 2008.

42 U.S. Department of Justice. Remarks of Attorney General Eric Holder to American Bar Association House of Delegates, San Francisco, 12 August 2013. [http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html]

43 Beckett K. Seattle's Law Enforcement Assisted Diversion Program: lessons learned from the first two years. Unpublished report, 2014. At: http://www.seattle.gov/council/Harrell/attachments/process%20evaluation%20final%203-31-14.pdf

44 United Kingdom Home Office. *Alcohol arrest referral: a guide to setting up schemes*. London 2009. At: http://ranzetta.typepad.com/files/arr-ho-guidance-09.pdf

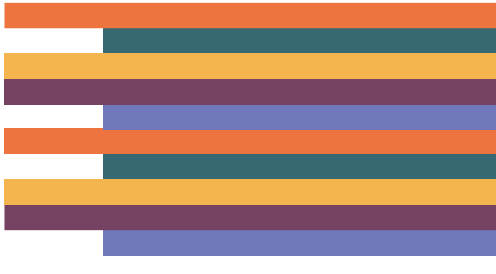
CONCLUSIONS

There is international law and a strong international consensus providing for alternatives to criminal sanctions for some drug offenses, but there is nothing in any consensus statement that requires court-determined and court-supervised treatment as the alternative mechanism.

Though there is a large body of research on the benefits of drug courts, much of it is suspect because of methodological difficulties or because the courts adjust their admission criteria to favor participation of the most potentially successful defendants. Drug court evaluations have also generally failed to account for periods of incarceration ordered because of

"failure" of court-supervised treatment programs, which may negate documented benefits.

Drug courts are depicted by some as a "third way" solution between harsh prohibition and extreme liberalization of drug laws, and drug court evaluations include moving testimonials from judges about how court supervision transforms people's lives and brings them hope of a new life in mainstream society. But in spite of good intentions, these courts do not represent reform if they undermine health and human rights, if they put health decisions in the hands of judges and prosecutors who reject clinically indicated treatment, or if they impose punishment for relapses that are a normal part of drug dependence. Other alternatives to incarceration should be considered, including those that remove incarceration for minor infractions from the penal code and measures that do not confer authority for essential health services to the criminal justice system.



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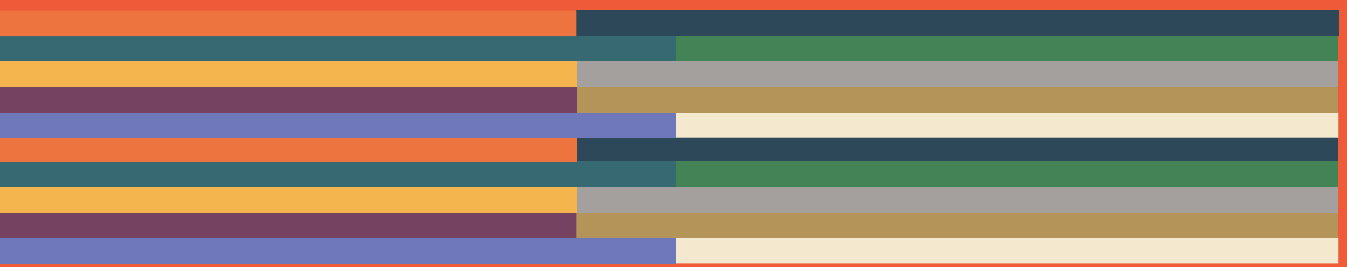

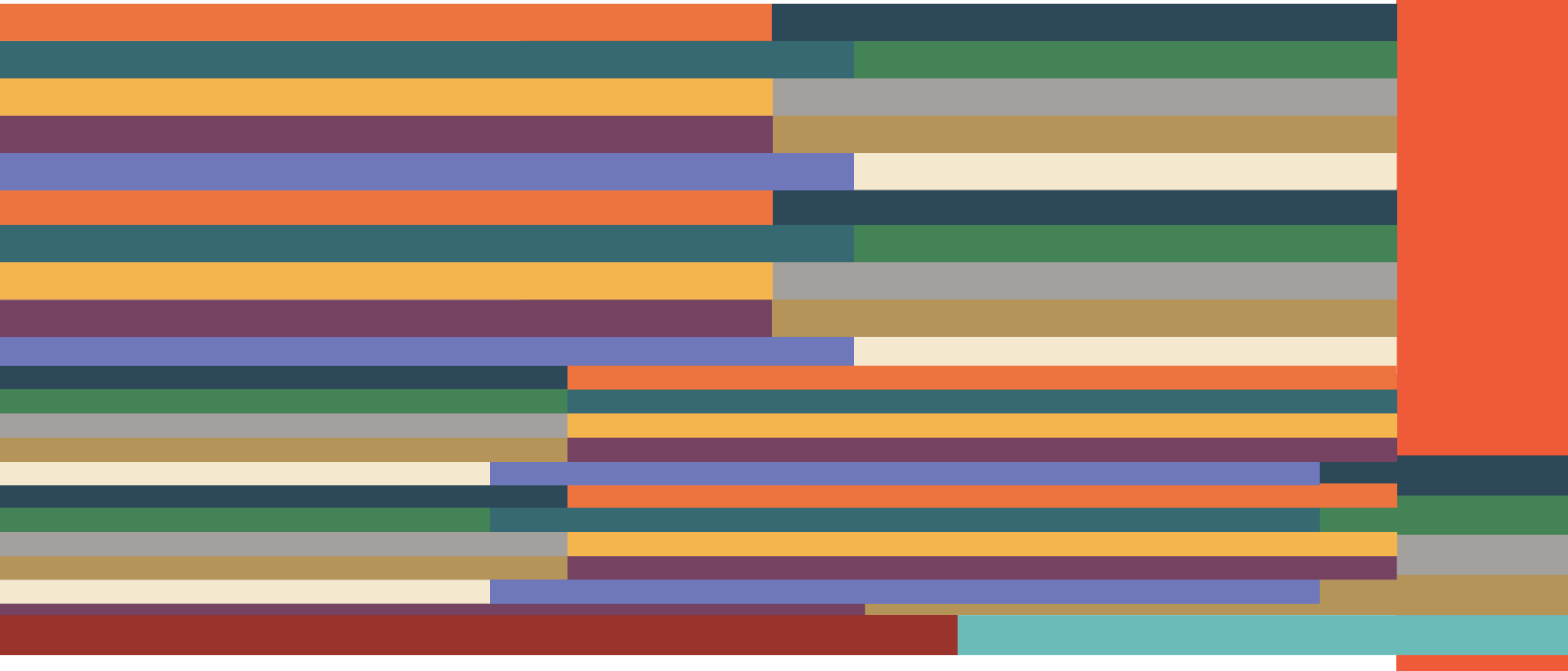

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