



Alternatives to Incarceration for Drug-Related Offences

Policy Review Paper

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October 2015

This paper is largely based on the report *Alternatives to Punishment for Drug-Using Offenders* by the European Monitoring Center for Drugs and Drug Addiction.

Treatment as an alternative to incarceration/punishment of drug-using offenders

Introduction

Every year the size of prison population is growing throughout the world, placing enormous financial burden on states. On the other hand, it has been shown that incarceration is inadequate to achieve desirable outcomes, especially with regards to drug use (i.e. reducing its scale); rather, incarceration is harming to offenders as well as their families and public in general in long-term perspective. Studies have shown that incarceration rarely plays a positive role in rehabilitation of an individual. Instead, it promotes criminalization of individuals, prompts the cycle of repeat crimes and repeat arrests, which has an opposite effect on reducing the size of prison population and building a safe society.

According to the EU Drugs Strategy for 2013-2020, “In order to prevent crime, avoid recidivism and enhance the efficiency and effectiveness of the criminal justice system while ensuring proportionality, the EU shall encourage, where appropriate, the use, monitoring and effective implementation of drug policies and programmes including arrest referral and appropriate alternatives to coercive sanctions (such as education, treatment, rehabilitation, aftercare and social reintegration) for drug-using offenders.” (Council of the European Union, 2012).

Based on the international framework, illegal possession of psychoactive substances is punishable with incarceration or other punishment, depending on the seriousness of the act (United Nations, 1961, 1971, 1988). These measures were originally intended to punish those involved in the supply chain but have also been actively used over the recent years to punish drug users despite the fact that same international conventions clearly stipulate that drug users may be given an alternative punishment in place of deprivation of liberty or additional measures such as treatment, education, aftercare, rehabilitation and social integration, i.e. rehabilitative intervention rather than punitive measures and incarceration (EMCDAA 2015). These alternatives have received more attention over the last 20 years, after accumulation of data that question effectiveness of the punitive model and views users (especially, problem drug users) as individuals in need of treatment, not as deviants.

Incarceration does not reduce drug use or drug-related offences

Offenders who were incarcerated are no less likely to commit a new offence compared to offenders sentenced to an alternative community sanction. Same is true for longer or shorter periods of incarceration (Paul Gendreau 1999). After the practice of mass incarcerations and increased length of sentence for years, studies have shown that measures taken by law enforcement authorities targeting individual drug-users have no effect on reducing the market of illicit psychoactive substances (Dave Bewley-Taylor (2009). Instead, evidence shows that there is no direct association between the severity of punishment and rates of crime. Incarceration often worsens already complicated life of drug users, especially young users. Prison environment brings them closer to other criminals and crime groups, creates the stigma and criminal identity. All of this reinforces social exclusion, deteriorates health and social skills of the individual concerned. Education, treatment, rehabilitation, aftercare and social reintegration can be an effective alternative of criminal sanctions because it has been proven that treatment is more effective than incarceration for reducing drug related offences (Dean Gerstein 1990, Gydish J 2001, Chandler et al., 2009).

For instance, studies in the UK have clearly illustrated that treatment of drug dependence reduces crime rate (GCDP 2011). According to the National Institute for Drug Abuse (NIDA) in the U.S., denying treatment to those with drug dependence backfires in the form of a vicious circle of drug use and crime (NIDA 2014). Scientific evidence proves that treatment of drug dependence is far effective and more cost-effective than incarceration for addressing the problem of substance use and dependence. Reduced crime rate, improved health and social outcomes are indicators of success that benefit not only individual substance users but also public in general (EMCDDA 2005).

Cost Effectiveness

One of the most well-known conclusions drawn about cost-effectiveness of treatment is from the study of Rydell and Everingham: seven dollars in social cost are averted for every dollar spent treating heavy cocaine users (Rydell & Everingham, 1994). Further studies project higher return rate of 1:9.5 or 1:18 (depending on assumptions used to project the rate). Most of the costs are averted by reduced crime rate (Godfrey, Stewart, & Gossop, 2004). The study reviews programs focused on abstinence as well as methadone substitution therapy (both have been linked with reduced rate of drug-related crimes). Similar conclusions have been drawn in Austria, Canada, the Netherlands, Germany, Spain and Switzerland. At least two countries have found heroine substitution therapy effective and have linked it to significant decreases in rate of drug-related crimes, improved health and increased rate of employment (Uchtenhagen, 1997; van den Brink, 2003). In light of abundant research data, there is no doubt about treatment being the most effective method for reducing crime rate among the population with serious drug problems.

Alternatives to punishment/incarceration – overview of European practice

Alternatives to punishment/incarceration entail measures that target offending problem drug users (as well as non-violent offenders under the influence of psychoactive substances) with the aim of keeping them out of jail and offering a more effective way to solve the problem. There are many different types of interventions. Below we offer an overview of examples of successful interventions.

Seriousness of drug-related crimes in Europe is determined by intent of an individual as opposed to the amount of illegal substance seized. Most countries in Europe prefer to include “small quantities” in applicable legislation, in order to allow police and courts to determine who’s behind the amount in question – a drug user or a drug dealer. None of the countries make such decisions solely on the basis of quantities of drugs seized (EMCDDA, 2005).

Rehabilitative Measures

Alternative for problem drug users or conditional sentence may be used against drug-related or other types of offences (e.g. committing a crime to fund one’s own drug use).

Role of Police

Arrest referral is a partnership initiative between police and local addiction services in which independent experts meets with offenders at police stations, evaluates them and refer them to drug treatment services as appropriate (Hunter, 2005). It was introduced in England and Wales in 2002, where it is not an alternative to prosecution but rather, a technique for engaging with users. The plan

of arrest referral was later integrated in the drug interventions program, where criminal justice experts and treatment providers work together with other services to provide solutions tailored to existing situations (mostly for offenders that commit crime to get money for drugs). The program focuses on reducing drug-related crime by engaging with drug users and referring them to appropriate treatment and support services (Home Office, 2011).

Role of Prosecutors

The prosecutor may suspend proceedings prior to a decision to deliver a prison sentence or to transfer the case to the court for trial. In some countries, suspension of proceedings is applied only for illegal possession or use by problem drug users (France, Luxemburg, Romania). Italy practices similar approach: an administrative offender meets with an expert of drug addiction for an interview and may be referred to treatment, if deemed appropriate. In Spain administrative punishment may be revoked if the offender seeks help in a treatment facility (Ley Organica 1/92, Article 25).

Some countries in contrast offer alternatives to problem drug users even if they have committed other crimes (not subject to prosecution by drug laws but connected to drug use). These countries include Belgium, Greece, Austria, Latvia and the Netherlands. Similar but slightly different approach is practiced in Poland where it is up to the offender to seek treatment, not the prosecutor. Polish legislation allows prosecutors to suspend prosecution for all offences punishable by deprivation of liberty for up to five years, if the offender seeks help in a treatment or preventive program. Criminal prosecution can be suspended after the offender pleads guilty. Then the court delivers its verdict but the verdict is not enforced if the offender completes the rehabilitation program successfully.

Courts

Suspension of court proceedings before delivering a sentence is available in many European countries. Usually court requires attendance of treatment with defendant's consent (Belgium, Czech Republic, Denmark, France, Luxemburg, Austria) or the defendant himself/herself requests treatment (Hungary, Czech Republic). Czech Republic practices similar approach to all types of offences punishable by deprivation of liberty for up to 5 years. There are no restrictions based on types of offences in Denmark. We already outlined the practice in Belgium, France, Luxemburg and Austria, also applicable to courts and prosecutors. In Hungary drug addiction is not subject to any type of punishment for possession of a small quantity (for personal use), if the offender provides a document certifying his/her participation in treatment or preventive/consultancy services before sentencing. Drug laws in Poland allow courts to revoke punishment after declaring of conviction, if the offender concerned successfully completes a rehabilitation program. Specialized courts in Czech Republic, Estonia, Spain, France, Germany, Lithuania, Luxemburg, the Kingdom of Netherlands, Austria, Slovakia and other countries have also adopted this practice.

Czech Penal Code provides a conditional waiver of punishment for less serious offences if the offender agrees to treatment, psychological counseling or abstinence from substance use. In Estonia jail time from 6 months to 2 years can be substituted by a treatment program if the offence was caused by drug dependence, while the penal code in Latvia allows suspension of full liability in similar cases. Spain's penitentiary regulations allow voluntary treatment outside of prison, while in practice offenders often agree to their transfer to a therapeutic community (with restricted freedom). Drug laws in Germany allow the judge to defer execution of punishment for drug dependent individuals sentenced to less than 2 years in prison, if they agree to attend a treatment program. In Luxemburg the court has the right to request treatment or rehabilitation as a protective measure and suspend the punishment. It is mandatory for courts in Austria to suspend execution of punishment for a drug

dependent individual sentenced to less than 3 years in prison for a minor supply/distribution offence if the offender is addicted and has a chance of successful treatment. Courts in Slovakia have the right to refer offenders to therapy as a conditional suspension of prison sentence with a probation and supervision. In France, Croatia, Sweden, the United Kingdom and Norway offenders can be ordered to attend a rehabilitative course after they have been sentenced by court. The mechanism is described in the Public Health Code in France and is viewed as a punishment. Offenders with drug dependence (or susceptible to drug use) can be sentenced to a rehabilitative course (usually in addition to community service), while in Croatia laws on combating drug abuse envisage an obligatory treatment in a medical or social care institution for offenders who are drug dependent or are experimental users of psychoactive substances (from 3 months to 1 year). The Criminal Code mandates courts to use treatment measures in appropriate cases (e.g. offence punishable with jail time of up to six months). In Sweden and Norway, the Penal Code envisages probation for offenders and requirements of probation order may include attending a drug addiction treatment course.

Involuntary treatment is applied in cases involving offences committed under intoxication and may entail “protective” measures (protecting individual and general population). The mechanism exists in many European countries (Bulgaria, Czech Republic, Denmark, Germany, Spain, Croatia, Lithuania, Netherlands, Slovakia, Sweden) and has a historical perspective derived from a perception of addiction as a mental disorder that leads to institutionalization. The mechanism regulated by the Civil Code in Spain and can be applied against any individual whose physical state may pose a risk to general population. Although such rehabilitative intervention is performed outside prison by health professionals, individuals involved in this program are placed in closed institutions and therefore right to liberty guaranteed by the European Convention of Human Rights is at the core of the matter.

Such systems are rather controversial; in less developed countries they may effectively take on the role of compulsory detention systems, with little effectiveness in treating drug dependence and lack of consideration for human rights (Hall et al., 2012). The system is rarely used in European countries listed above: e.g. in Czech Republic – 3% of drug offenders in 2010, in Lithuania – five out of 1 346 offenders in 2010. According to the UNODC, involuntary treatment should be used to address acute medical or security emergencies and should be terminated as soon as the acute emergency has passed. Long-term residential treatment without patient’s consent is a form of incarceration (UNODC, 2010).

Rehabilitative approach for non-problem drug users

According to legal framework, users without any diagnosis of dependence, who are guilty of illegal possession of small quantities of substance, may be referred to consultation or rehabilitation course (France, Croatia, Italy, Latvia, Luxembourg, Portugal). Such approach is often viewed as preventive; however, to what extent a warning of police or a prosecutor can be considered counseling or a deterrent is debatable.

Users in Italy are interviewed by the prefecture and then referred to local drug addiction services for a rehabilitation program. In Croatia, Latvia and Luxembourg, these measures are applied to non-problematic users. In France, Drugs Awareness Course has been in place since 2007 to ensure that criminal justice system (mostly the prosecutor) can take adequate measures for occasional, non-problematic users. Participation costs (about EUR 450) are paid by offenders. This approach may be considered as a combination of measures (rehabilitation and punishment).

Variations of the Portuguese model for non-problematic users model are currently under discussion in Scandinavia and Malta. In June 2011, the Stoltenberg Commission in Norway recommended

administration of motivational interviews for persons arrested for minor drug offences or a more long-term intervention program for rehabilitation (as a conditional sentence). In Malta new arrest referral scheme will work alongside extra judicial body comprised of a chair and two experts in the field of drug use. Offenders with no prior criminal record (first-time offenders) arrested for possession of a small quantity of substance for personal use are offered to apply to the extra judicial body and follow its instructions. This usually results in suspension of criminal prosecution. Other countries use preventive and educational measures that target first and foremost young offenders. The Early Intervention Program in Germany was created mainly for young offenders between the ages of 14-18 but individuals up to age 25 are also eligible for participation. Such local preventive measures allow intervening without institution of criminal proceedings. The program was adopted by many other European countries under the name of 'FreD goes Net'. In Luxembourg first time young offenders are referred to the youth solidarity team (Project IMPULS) funded by the Ministry of Health. Annual statistics illustrate that 18% of 300-400 referred offenders is 18 years of age or older. Similar alternatives include the initiative launched in the UK in 2002, which is not an alternative to punishment but rather, an opportunity for engage users in treatment: offenders are evaluated by drug addiction specialists at police stations in order to decide whether to refer them to a treatment facility (Hunter, 2005). Later referral became a part of the program for intervention of psychoactive substances, where criminal justice experts and treatment providers work together with other services to provide solutions for adult offenders (program beneficiaries mostly include users that commit crime to get money for drugs). The program focuses on reducing drug-related crime by engaging with drug users and referring them to appropriate treatment and support services. In Italy an administrative offender meets with an expert of drug addiction for an interview and may be referred for treatment if deemed appropriate. In Spain administrative punishment may be revoked if the offender seeks help in a treatment facility. This approach is applied in cases that involve illicit possession for use and personal use. (Ley Organica 1/92, Article 25). This mechanism is represented schematically in the chart below. Variances exist due to diverse legal and judicial contexts and drug situations in different countries, all of which affects decisions that legislators make.

Offence	
Police	Arrest referrals (e.g. Ireland, Malta, UK) Commission for dissuasion of drug abuse (Portugal)
Prosecution	Suspension of proceedings Drugs awareness course (France) Motivational interviewing (Norway) Extra-judicial body (Malta)
Court	Suspension of proceedings Suspension of punitive sentence Sentencing to rehabilitative measures Drug court (e.g. Belgium, Ireland, UK, Norway)
Punishment	

Specialized drug courts in Europe

Specialized drug courts deal with offenders with drug problems (USGAO, 2011). The concept was first developed in the late 80s in the U.S. based on the belief that problems associated with drug-

related offences require social and therapeutic rather than legal approach. Unlike normal courts, drug courts work with many different agencies (correctional, health, social welfare agencies) in order for the criminal justice system to play the role of health management rather than punitive role. These courts usually do not carry out trials to determine guilt/innocence of an offender. Instead, many of them require the offender to plead guilty before s/he is allowed to attend a program (Glasgow Court also accepts cases referred from police). The offender then undergoes a treatment course under the court's supervision. The guilty plea serves as leverage for court to force the defendant to enter and complete a treatment program. In Europe, drug courts were established on a trial basis in Ireland in 2011, in Scotland in 2001/2 and in England in 2009, as well as in Norway and Belgium in 2008. In addition to working with different agencies, these courts share the feature of continued engagement throughout the program, limitations on the seriousness of the offender eligible (only non-violent offenders in Ireland and Scotland) and the aim to keep drug offenders out of prison. First-time offenders are not eligible for drug courts in Europe; rather, the offender should have a history of problems with substance use and related criminal behavior. Because the system is still operating on a trial basis, the scope of its coverage is rather limited. In Norwegian model, for legal reasons, courts are less involved in the program (the judge is not part of the team and there are no pre-court meetings); however, decisions about offender progress or punishment are made by courts. Following evaluation of all these projects for their effectiveness, the decision was made to continue with the pilots.

Effectiveness of alternative measures

Evaluation of the Drug Treatment Alternative to Prison (DTAP) by Columbia University for its effectiveness suggests that the program has successfully decreased crime recidivism rates and use of psychoactive substances. It also increased possibilities for employment and saved costs related to placing offenders in prison (incarceration). Costs of the program per client, including residential treatment, professional training and support services totaled USD 32,974, two times cheaper than average cost of incarceration that the state should pay throughout the jail time of 25 months (USD 64,338). The program is available in New York, allowing individuals with dependence on psychoactive substances or alcohol to join a residential therapeutic community where the treatment may last for up to 2 years, as an alternative of deprivation of freedom.

California's Substance Abuse and Crime Prevention Act (SACPA) is a success story. According to the Act, non-violent offenders eligible for participation in the program will be released on probation and ordered to attend a treatment course instead of probation only or incarceration. Offenders on probation or who violated terms of release by committing a non-violent crime related to drugs are also eligible for a treatment course. Within the SACPA the treatment entails full continuum of care, including preventive activities like education, promotion of employment, family counseling and other services. Over 12,000 probationers joined the program during its first year. Their services cost USD 4,500 per year per participant, while annual average cost per inmate is USD 27,000. In Texas (since 2003) possession of illegal substance quantity of 1 gram or less is punishable by a treatment course, not prison. The new regulation allowed Texas to save USD 115 million over the course of 5 years. In Hawaii (since 2002), non-violent offenders convicted of drug use or possession, join the probation system and a treatment program (Brown, 2004). The Smart Project – Project Hope: Hawaii's Opportunity Probation with Enforcement has positively contributed to the decrease of substance use and recidivism rates. Since 2004 the program has been using testing and "swift and sure punishment approach" to discourage criminal behavior and drug use of probationers under a single judge's

supervision. Researchers compared HOPE probationers with a control group. Results of the evaluation showed the following:

- ✓ Program participants were 55% less likely to be arrested for a repeat offence;
- ✓ They were 61% less likely to miss their probation appointments;
- ✓ 71% less likely to use psychoactive substances;
- ✓ 52% less likely to have their probation revoked (Bulman, 2010).

Annual cost of the program is USD 2,500 per probationer, a slight increase over traditional probation; however, it can help make considerable savings in incarceration, treatment and other criminal justice costs (Angela Hawken 2007). Having seen the program results, other states started adopting model practices (Alaska, Nevada, Oregon, Arizona). Results of a field experiment for determining the impact of HOPE, funded by the U.S. Department of Justice, were expected to come out in late 2015 (CICAD, 2014).

An alternative to the HOPE project is Smart Probation—The 24/7 Sobriety Project: started in South Dakota in 2005, the program has been designed to reduce the re-offence rates of repeat DUI offenders. The project requires participants to maintain full sobriety from alcohol and other psychoactive substances if they want to maintain their driving license and avoid jail. Those who participated in the program for at least 30 consecutive days are nearly 50% less likely to repeat the DUI offence while the results are sustained longer than those of more traditional interventions (e.g. ignition interlock devices) (Loudenberg, 2011).

Alternative to Prison Program, DTAP has been available in Brooklyn since 1990. Participants of the program were 33% less likely to be detained and 65% less likely to be incarcerated (National Center on Addiction and Substance Abuse, 2003).

Conclusion

Treatment of drug dependence is far more effective than getting the cycle of offenders in and out of the corrections system (Doug McVay 2004). After four decades of research and hundreds of studies it is safe to conclude that treatment of drug dependence is the most effective intervention to reduce rates of use of alcohol and other psychoactive substances, to reduce drug related offences, and to improve health and social functioning for people with substance use related problems. Countries where persons with substance dependence were treated as individuals in need of care, as opposed to criminals that should be punished, showed highly positive results in reducing crime rate, improving health and overcoming drug dependence.

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