



JUSTICE PROGRAMS OFFICE SCHOOL OF PUBLIC AFFAIRS

Drug Courts—Just the Beginning: How To Get Other Areas of Public Policy in Sync? UPDATE¹

ADDRESSING CONTINUING COLLATERAL CONSEQUENCES FOR DRUG OFFENDERS

June 30, 2015

Caroline S. Cooper, Research Professor

Director, Justice Programs Office, School of Public Affairs, American University, Washington D.C. and Director, BJA Drug Court Clearinghouse and Technical Assistance Project at American University

¹ Update to *Drug Courts—Just the Beginning: How To Get Other Areas of Public Policy in Sync*. June 2003.

BACKGROUND

In 2003, I prepared an article for the Middle Eastern-Mediterranean Summer Institute on Drug Use: “Drug Courts – Just the Beginning: Getting Other Areas of Public Policy in Sync” which highlighted five areas of public policy in the U.S., unconnected to the criminal justice, that imposed significant –and generally lifetime -- sanctions on drug court graduates regardless of their successful completion of a drug court program and termination from criminal justice supervision. At that time, the extensive research corroborating the effectiveness of drug courts in reducing drug use, recidivism and promoting long term recovery was just beginning to be disseminated, along with scientific findings relating to the neurobiology of addiction, its effects on the brain and cognitive functioning – all confirming that drug use was a symptomatic of a chronic disease and far more than a “behavioral” issue and/or moral failing.

Given these extensive research findings, as well as over a decade of drug court experience at the time, it was therefore discouraging, but not unexpected, that the impact of the research had not yet affected public policy and practice in sectors not directly involved with drug offending and/or treatment. Given the commonly held premise that it takes seventeen years for research to affect practice, I prepared this “update” to determine the degree to which these research findings have now “infiltrated” practice.

The intention in preparing this “Update” twelve years later was to document progress made in reducing these areas of stigma --- come to be known as “collateral consequences” – in light of the tremendous growth of drug courts since the article was first published in 2003, both in the U.S. and abroad, the widely documented effectiveness of these programs in stemming continued drug use and crime, and the growing body of research documenting addiction as a chronic disease for which treatment has proven effective and incarceration in and of itself to be counter-effective.² The expectation was that progress in removing stigma associated with addiction would have been significant during these years.

The results, however, have been the opposite.

While there has been some progress, it has been slow and spotty, and the situation in 2015 can be characterized by continued stigma imposed by multiple sectors of public policy on individuals who have successfully completed drug court programs and which, in many instances, extend for their lifetime. Not only do the major areas of stigma described in the 2003 article continue but, in addition, the preparation of this “Update” has uncovered numerous additional “collateral consequences” that hadn’t formally surfaced in 2003 –exclusions regarding the right to adopt

² Roger H. Peters, Ph.D. “**Drug Court Treatment Services: Applying Research Findings to Practice**”. **Issues Commentary and Resource Brief**. November 2011.

children, grounds for divorce, and a host of professional license requirements, for example. These are further described below.

One very bright spot, however, is surfacing: proposed reforms in the sentencing process that can directly address collateral consequences that may flow from a criminal conviction and discussed in a recent article by Margaret Colgate Love in the *Wisconsin Law Review*³ May 1, 2015:

“... Policy makers are beginning to understand that the goal of reintegrating criminal offenders into society is not well served by a legal system that makes them permanently ineligible for many of its benefits and opportunities and effectively marks them as social outcasts. Because courts have failed to address issues of severity and proportionality raised by punitive mandatory collateral penalties, and because legislatures have been unwilling to dial them back in any meaningful fashion, reformers have turned to the sentencing system to restore collateral consequences to an appropriate regulatory role. One such reform proposal is the American Law Institute’s Model Penal Code: Sentencing (MPC), which integrates collateral consequences into a sentencing system that gives the court rather than the legislature responsibility for shaping and managing criminal punishment in particular cases. Just as the court decides what sentence it will impose within a statutory range, the court also decides which mandatory collateral penalties will apply and for how long. This gives sentencing courts new tools to further the rehabilitative goals of sentencing, and at the same time it enables them to avert issues of proportionality and procedural fairness that lurk in any categorical scheme. In effect, the MPC scheme converts collateral consequences from senseless punishment to reasonable case-specific regulation.⁴

- **Major Paradigm Shift Introduced by the Drug Court Model Regarding Criminal Justice System Response to Drug Offenders: Focus on Treatment Rather Than Punishment**

Through the establishment of “drug courts”, judges in the U.S. have been the leaders primarily responsible for initiating the major shift in criminal justice policy and practice regarding drug offenders that has taken hold during the past 25 years, both in the U.S. and abroad. The basic concept of the “drug court” has entailed the use of the court’s authority – and that of the judge, in particular – combined with the leverage of the criminal justice system to promote drug offenders’ participation in evidence based treatment programs, primarily community based, with the

³ ‘Managing Collateral Consequence in the Sentencing Process: The Revised Sentencing Articles of the Model Penal Code’. *Wisconsin Law Review*. May 1, 2015.

⁴ *Ibid.* p. 247.

judge providing ongoing oversight of participants’ progress as well as ensuring accountability of participants as well as of service providers.

Given the chronic disease nature of addiction, a basic premise of the drug court model is the expectation that relapse may occur, requiring enhanced treatment – and not program termination or incarceration. Most drug court programs extend for 12 -18 months – significantly longer than the 90 day or less treatment programs that had been commonly utilized – and are designed to provide participants with the foundation for recovery through both treatment services per se as well as other services designed to reduce the risk of relapse – housing, education, jobs, etc.—and aftercare/recovery support services that can continue once a participant graduates from the drug court.

The panoply of drug court treatment and ancillary services developed in every state and territory in the U.S. as well as over 25 other countries has provided the vehicle for thousands to begin to recover from addiction, cease criminal activity and to rebuild their lives. Those who complete the “drug court” program generally receive some amelioration of the criminal justice sanction that would otherwise have been applied – in some instances dismissal of the charge altogether, in other instances suspension of incarceration and/or reduction in the period of probation. The benefits drug courts have generated for individual defendants, their families, and the community generally have been enormous.

THE DILEMMA: OTHER SECTORS OF PUBLIC POLICY NOT [YET] ADOPTING THE PARADIGM SHIFT AWAY FROM PUNISHMENT TO TREATMENT

Although an individual can complete a drug court in the U.S., have his/her charges dismissed or reduced, with a sentence of incarceration suspended, or receive some other amelioration of the *criminal justice system penalty* that would otherwise have been applied -- as well as obtain a job, regain custody of his/her children and become a tax paying, law abiding citizen, he/she will still be deprived of basic rights afforded to other U.S. citizens because of the “collateral consequences” of policies imposed outside of the criminal justice system—in some instances not simply because of his/her criminal conviction but also because the conviction was for a *drug offense*.

These “collateral consequences” reflect an array of sanctions imposed by non-criminal justice sectors of public policy and practice that continue to penalize individuals who have been drug addicts in the past, despite their completion of a drug court program, the extent and duration of their recovery, and the fact that their criminal justice system involvement has been terminated. For example, individuals who have been charged/convicted of felony drug offenses will be denied (1) welfare benefits; (2) educational loans; (3) public housing;

and (4) the right to vote, although some states permit restoration of voting rights under specified conditions. Employment opportunities are also greatly restricted – not simply by required disclosures of criminal convictions on application forms but also by licensure and/or security clearance requirements that exclude from consideration persons with a criminal history involving drug offenses. In addition, deportation proceedings can be instituted -- even for persons with legal immigration status -- based upon a drug charge, even one that was dismissed.

- **SITUATION IN 2003: Selected noncriminal justice areas of public policy and practice stigmatizing drug offenders -- and Subsequent Developments through 2014**

As noted above, when this paper was originally prepared in 2003, it focused on five areas of “stigma”, collateral consequences, imposed on drug offenders, apart from any penalties that had been applied by the *criminal justice system*:

- Public Housing
- Welfare Benefits
- The Right To Vote
- Financial Aid For Educations; and
- Immigration Status

These are discussed briefly below, with particular attention to their implications for drug court participants, along with developments, if any, since 2003.

- ELIGIBILITY FOR PUBLIC HOUSING

Housing has been identified by most drug court programs as the most immediate and critical need of participants when entering the program. Some are homeless; many others live in situations in which family members or other house mates are using drugs, making efforts at abstinence extremely difficult if not impossible. Most -- if not all -- drug court participants also lack the resources to find appropriate housing on the open market.

Until and unless these defendants can make clean and sober living arrangements, any chance of their becoming drug free is problematic. Regardless of the quality of treatment and other services provided, a defendant who returns daily to a drug using environment will have little chance of overcoming his/her addiction. It is not a question of becoming strong enough to “just say no”; the issue is complicated by complex personal and emotional relationships and issues with which the participant is dealing as well as his/her personal safety.

Public housing resources, including those made available under the Housing Opportunity Program Extension (HOPE)

Act of 1996⁵, would theoretically provide an ideal resource for the drug court program and participants in need of housing. The reality, however, is that current statutory provisions and widespread local policies result in public housing being unavailable to most drug court participants.

The provisions of the HOPE Act of 1996, with its “one strike, you’re out” philosophy, continues to deny drug offenders eligibility to live in public housing and, further, authorizes public housing authorities to evict drug offenders currently residing in public housing.

When originally enacted, the HOPE Act was deemed to be a tough anticrime measure designed to make public housing safe for law-abiding residents. However, two provisions of the law have come to have potential detrimental consequences for persons involved with drug use or users, regardless of the success of these individuals in subsequent recovery efforts.

First: The HOPE Act requires that the lessee of any public housing unit assume an affirmative responsibility for the law-abiding behavior of all members of the lessee’s household and guests.⁶

Second: The HOPE Act permits public housing authorities to deny admission to or evict individuals who have engaged in criminal activity, especially drug-related criminal activity, on or off public housing premises, regardless of whether they were arrested or convicted for these activities.⁷

Under the Act, a local public housing authority’s receipt of federal funds is based, in part, on its use of a lease that clearly provides that any drug related or other serious criminal activity by a member of a household is grounds for eviction. Although, ultimately, the application of these provisions may be the decision of the local public housing administrator, the provision clearly articulates a policy which most local administrators are in a difficult position to challenge.

Similar restrictions have been reportedly introduced in some state legislatures regarding non-public housing units as well. For example, under a “Clean Sweep” agreement, the landlord of a major apartment building in the Bronx, New York, must agree to implement measures to stop illegal drug activity and improve security, which procedures include barring from tenancy persons who have been convicted within the last five years of a narcotics offense.⁸ Similarly, Tennessee’s “Drug Dealer Eviction Program”, enacted by statute in 1997, provides that individuals can be evicted for

⁵ Public Law No. 104-120; Section 110 Stat.834 (Mar. 28, 1996)42 U.S.C. Section 1437d(1)(5) 1997.

⁶42 U.S. C. Section 1437(d)(1)(5) 1997.

⁷ 24 C.F. R. Section 966.4 (1)(2)(ii)(B) (1999)

⁸ Press Releases. Office of New York State Attorney General Eliot Spitzer. February 4, 2003.

felony drug violations occurring in rental property. If the landlord does not take action, the law permits the District Attorney's Office to proceed with eviction.⁹ A similar bill passed the Rhode Island Senate.¹⁰

No one is arguing that the overall purposes of these statutes and policies are not meritorious. The problem, however, is that they are applied across the board, with generally no exceptions. The result for drug court participants is that they are frequently both (1) ineligible to be considered for public housing if they need it; and (2) evicted if they are already living in a public housing unit.

Families of drug court participants are treated similarly. Occasionally, one hears of a local public housing administrator who has waived the one strike eviction policy for a drug court participant through special agreement with the Court. However, this situation is the rare exception and generally only lasts as long as that particular administrator is in office. Although Housing and Urban Development (HUD) officials have indicated the one strike eviction policy is not a federal requirement but, rather a policy which local public housing authorities are free to disregard¹¹, the reality is that the policy prevails in almost all jurisdictions.

Bills have been introduced into the U.S. House and Senate (H.R. 1999 and S. 771) to allow public- housing agencies to deny or terminate housing assistance if a family member or other person in the family's control engages in any criminal activity, including drug-related crime, on or off the premises; or alcohol or other drug abuse that "threatens the health, safety or right to peaceful enjoyment of the premises" by other residents. The bills remove any discretion the housing authority may have under current law to take efforts at treatment into consideration.

Although there have been challenges to this policy, they have generally not been successful. In *Rucker v. Davis*¹²,

⁹ 30th Judicial District of Tennessee (Shelby County). District Attorney General's Office. Drug Dealer Eviction Program. Jackie Condrey, Investigator. Website of William L. Gibbons, District Attorney General: www.scdag.com/ddev.htm.

¹⁰ An Act Relating to Property-Residential Landlord and Tenant Act. State of Rhode Island. General Assembly. S. 0479. 2003

¹¹ Focus Group Meeting of HUD representatives, drug court judges and others. National Association of Drug Court Professionals. January 2003.

¹² United States Court of Appeals, Ninth Circuit. Pearlie RUCKER; Herman Walker; Willie Lee; Barbara Hill, Plaintiffs-Appellees, v. Harold DAVIS; Oakland Housing Authority, Defendants, United States Department of Housing and Urban Development, Defendant-Appellant. v. Harold Davis; Oakland Housing Authority, Defendants-Appellants, United States Department of Housing and Urban

Development, Defendant. Nos. 98-16322, 98-16542. Decided: January 24, 2001

however, Rucker, an Oakland, California grandmother, was evicted because of her grandson's drug conviction. The decision was upheld by the Ninth Circuit Court but overturned by the U.S. Supreme Court in 2002 on the grounds that Congress did not intend to permit the eviction of innocent tenants and judicial discretion should be exercised in applying the provisions of the statute. The facts surrounding the decision, however, are narrow and still leave substantial discretion to the housing administrator.

Several drug court judges have discussed the feasibility of developing an earmark for drug court participants in local public housing units to provide the court with a ready resource for drug court participants needing housing. One drug court judge has also suggested that drug courts develop a Memorandum of Understanding (MOU) with the local housing authority to designate the drug court as a rehabilitation program as defined in Section III of the Section 8 Tenant Based Assistance: Housing Choice Program, Title 24, Volume 4, Revised as of April 1, 2004, Code of Federal Regulations, which permits public housing authorities to continue to provide assistance if the member "...is participating in or has completed a supervised drug or alcohol rehabilitation program..."¹³

Apart from the proposed earmark and/or MOU, simply permitting drug court participants to apply for and/or remain in public housing units would seem to be in everyone's best interests. The participant and/or his/her family would have a drug free place to live; and the neighbors could have substantial confidence that the participant/resident was being drug tested frequently and closely supervised by the court.

- ENTITLEMENT TO PUBLIC WELFARE BENEFITS: CASH ASSISTANCE AND/OR FOOD STAMPS, OR BOTH

Well over half of drug court participants are unemployed or have minimal employment when they enter the drug court and close to half lack a high school diploma or GED certificate.¹⁴ Most have very limited, if any, resources and whatever resources they have available are generally inadequate to support them during the intensive treatment phases of the drug court program. Nevertheless, if they have a drug conviction on their record, either as a result of the

Development, Defendant. Nos. 98-16322, 98-16542. Decided: January 24, 2001

¹³ Title 24. Housing and Urban development. Chapter IX. Office of Assistant Secretary. Department of Housing and Urban Development. Part 982. Section 8. Tenant Based Assistance: Housing Choice Program. Subpart L. Family Obligations; Denial and Termination of Assistance. Title 24, Volume 4. Code of Federal Regulations. Revised as of April 1, 2004.

¹⁴ 2000 Drug Court Survey Report. Final Draft. OJP Drug Court Clearinghouse and Technical Assistance Project. School of Public Affairs, American University. November 2001.

drug court offense or for a previous conviction – which many participants have--they are ineligible to receive welfare benefits, even temporarily, unless they reside in one of the few states, more specifically described below, which have opted out in whole or in part from these provisions.

Under the provision of Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, also known as the Temporary Assistance for Needy Families (TANF) Act, persons convicted of a state or federal felony offense involving the use or sale of drugs are prohibited for life from receiving cash assistance and food stamps.¹⁵ This provision applies only to drug offenses; persons who are convicted of other offenses, regardless of their seriousness, are not subject to this exclusion.

Enacted as a demonstration of the U.S.'s "war on drugs", the provision reportedly received little discussion when enacted.¹⁶

The Sentencing Project and the Legal Action Center have conducted extensive studies of the application of this statute¹⁷. In 2002, the Sentencing Project reported¹⁸ that, although the federal statute permits states to opt out of its provisions or to modify them, only eight states¹⁹ and the District of Columbia at that time had opted out of the provisions of the law: Connecticut, Michigan, New Hampshire, New York, Ohio, Oklahoma, Oregon and Vermont. In September 2005, the state of Washington also opted out of these provisions²⁰ followed by the New Jersey legislature's lifting of the state's ban on food stamps for drug felony convicts in 2010.²¹

¹⁵ *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. Law No. 104-193. For an excellent discussion of the implications of these provisions, see *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*. prepared by Patricia Allard. *The Sentencing Project*. February 2002.

¹⁶ See *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*. prepared by Patricia Allard. *The Sentencing Project*. February 2002, and her citation to 142 Cong. Record No. 109, Sec. 8498, July 23, 1996.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ See *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*. prepared by Patricia Allard. *The Sentencing Project*. February 2002, p. 3, which cites the following states as having opted out: Connecticut, Michigan, New Hampshire, New York, Ohio, Oklahoma, Oregon and Vermont.

²⁰ Senate Bill 5213 enacted effective September 1, 2005.

²¹ Nicole D. Porter. *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010*. The Sentencing Project.

Currently, thirty-six states enforce the ban in full²² or in part,²³ as further described below:

○ *STATES IMPOSING A LIFETIME BAN*

In 2002, 22 states imposed the ban on ex-offenders for life²⁴: Alabama, Alaska, Arizona, California, Delaware, Georgia, Idaho, Indiana, Kansas, Maine, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia and Wyoming. Subsequently, California, Idaho, and Maine opted out of the ban entirely and Delaware modified the restrictions, so that, at the present, the number of states imposing the ban for life has been reduced from 22 to 18.

According to the Legal Action Center, as of December 2011, in addition to the 14 states that had opted out of the drug felon ban, 26 states plus the District of Columbia had modified it, leaving only 10 states fully implementing the ban²⁵. The following six states permit welfare benefits if the offender receives drug treatment: Hawaii, Kentucky, Maryland, Nevada, South Carolina, and Utah.

○ *STATES IMPOSING A PARTIAL BAN OR LIMITING INELIGIBILITY TO SPECIFIC DRUG OFFENSES AND/OR A SPECIFIED TIME PERIOD*

An additional 11 states limit the application of the ban to specific drug offenses and/or specified time periods, specified time period, as follows:²⁶

²² *Ibid.* p. 2-3.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ See *Opting Out of Federal Ban on Food Stamps and TANF*, prepared by the *Legal Action Center* and McCarty, Maggie, Randy Alison Aussenberg, Gene Falk, and David H. Carpenter. Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance. Rep. Congressional Research Service, 17 Sept. 2013. Web. 08 Oct. 2013.

²⁶ *Ibid.*

Chart 1: STATES LIMITING BAN ON WELFARE BENEFITS TO EITHER SPECIFIC OFFENSES AND/OR A SPECIFIED PERIOD OF TIME FOLLOWING CONVICTION	
State	Comments
Arkansas	Limits the ban on welfare benefits to offenses involving the sale of drugs only;
Colorado	Limits the ban on welfare benefits to offenses entailing the purchase of drugs with food stamps in which case persons are ineligible for food stamps only
Florida	Limits the ban on welfare benefits to offenses involving the sale of drugs only;
Illinois	Limits the ban on welfare benefits to persons convicted of the sale of drugs or possession of a large quantity of drugs but still remain eligible for food stamps;
Iowa	Imposes a partial ban
Louisiana	Permits eligibility after a one-year period after release from custody or conviction date
Massachusetts	Restricts eligibility for cash assistance to individuals incarcerated for a drug conviction during the first 12 months following their release unless the individual qualifies for a waiver under state statute (e.g., pregnancy, disability, caring for a child less than two years of age, etc.). Persons convicted of a drug offense remain eligible for food stamps.
Minnesota	Requires persons convicted of drug offenses to submit to regular drug tests in order to receive benefits although they are not required to receive treatment.
North Carolina	Permits eligibility after six months but also requires offenders to have successfully completed a drug treatment program or be participating in one to have their eligibility restored.
Rhode Island	Limits the ban on welfare benefits to offenses involving the sale of drugs only
Wisconsin	Requires persons convicted of drug offenses to submit to regular drug tests in order to receive benefits although they are not required to receive treatment.

○ *STATES IMPOSING A SPECIFIC BAN ON FOOD STAMPS ONLY*

Chart 2: STATES IMPOSING A SPECIFIC BAN ON FOOD STAMPS ONLY	
State	Comments
Alabama	Bans food stamps for individuals with drug felonies.
Alaska	Bans food stamps for individuals with drug felonies.
Arizona	Ban on food stamps does not apply to individuals who have completed their sentence or are complying with the terms of their judgment, parole, or probation.
Arkansas	Bans food stamps only for individuals convicted of distribution, manufacture, or trafficking; the ban does not apply to drug possession.
California	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.
Colorado	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.

Chart 2: STATES IMPOSING A SPECIFIC BAN ON FOOD STAMPS ONLY	
State	Comments
Connecticut	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.
Florida	Ban food stamps only for individuals convicted of distribution, manufacture, or trafficking; the ban does not apply to drug possession.
Georgia	Ban food stamps for individuals with drug felonies.
Hawaii	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.
Illinois	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.
Idaho	Ban on food stamps does not apply to individuals who have completed their sentence or are complying with the terms of their judgment, parole, or probation.
Indiana	Ban on food stamps does not apply to individuals who have completed their sentence or are complying with the terms of their judgment, parole, or probation.
Kentucky	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.
Louisiana	Ban on food stamps ends one year after completion of sentence/release
Maryland	Ban on food stamps does not apply to individuals in treatment or who have completed treatment
Massachusetts	Ban on food stamps does not apply to individuals who have completed their sentence or are complying with the terms of their judgment, parole, or probation
Minnesota	Ban on food stamps does not apply to individuals who comply with drug testing and test negative
Mississippi	Ban food stamps for individuals with drug felonies.
Montana	Ban on food stamps does not apply to individuals who comply with drug testing and test negative
North Dakota	Ban on food stamps only for individuals convicted of distribution, manufacture, or trafficking; the ban does not apply to drug possession.
Nebraska	Ban on food stamps only for individuals convicted of distribution, manufacture, or trafficking; the ban does not apply to drug possession.
Nevada	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.
North Carolina	Ban on food stamps ends six months after completion of sentence/release
Oregon	Ban on food stamps does not apply to individuals who have completed their sentence or are complying with the terms of their judgment, parole, or probation.
South Carolina	Bans food stamps for individuals with drug felonies.
Tennessee	Ban on food stamps does not apply to individuals who have completed their sentence or are complying with the terms of their judgment, parole, or probation.
Texas	Bans food stamps for persons convicted of sale or possession of drugs
Utah	Ban on food stamps does not apply to individuals in treatment or who have completed treatment.
Virginia	Ban on food stamps does not apply to individuals who have completed their sentence or are complying with the terms of their judgment, parole, or probation.
West Virginia	Bans food stamps for individuals with drug felonies.

Chart 2: STATES IMPOSING A SPECIFIC BAN ON FOOD STAMPS ONLY	
State	Comments
Wisconsin	Ban on food stamps does not apply to individuals who comply with drug testing and test negative
Wyoming	Bans food stamps for individuals with drug felonies.

○ STATES WHICH DO NOT IMPOSE A BAN ON WELFARE BENEFITS OR FOOD STAMPS

Chart 3: STATES WHICH DO NOT IMPOSE A BAN ON WELFARE BENEFITS OR FOOD STAMPS	
Delaware	Ohio
Kansas	Oklahoma
Maine	Pennsylvania
Michigan	Vermont
New Hampshire	Washington
New Mexico	District of Columbia
New York	

Although the ban on welfare benefits, including food stamps, applies to all individuals convicted of a felony drug offense, special attention has recently been given to the impact of the ban on women who, although representing a minority of felons convicted of drug offenses, represent the majority of primary caregivers and welfare recipients. In 2002, the Sentencing Project estimated that 92,000 women and 135,000 children were affected by the ban in the 23 states for which they were able to compile data.²⁷

The Sentencing Project has also noted that, when all of the states applying the ban are taken into account, these figures will undoubtedly increase substantially. They will also, of course, continue to increase sharply each year as the law continues to be applied.

• **RIGHT TO VOTE**

The right to vote and to participate in the political process has always been considered a fundamental right in the U.S. Yet drug court participants – particularly those who have a felony conviction on their record, for either past offenses or the present drug court offense--will frequently be disenfranchised regardless of the outcome of their drug court participation.

The U.S. is reportedly the only democracy in the world in which convicted offenders who have completed their sentences can be disenfranchised for life, as is currently the situation in six states -down from 12 states in 2003.²⁸ As of

²⁷ Ibid.

²⁸ See “Disenfranchisement: The Modern-Day Voting Rights Challenge.” Marc Mauer. *Civil Rights Journal*. Winter 2002 and “The Impact of Felony Disenfranchisement Laws in the

2013, it was estimated that 5.85 million Americans were not eligible to vote as a result of felony disenfranchisement laws²⁹ that apply in the District of Columbia and all states except Maine and Vermont, including 13% of African American males.^{30 31 32}

The historical roots for disenfranchising convicted felons appear to originate in medieval practices of banishing offenders from the community at a time when eligibility to vote was considered a privilege rather than a right. Ironically, these practices led to a number of individuals

United States.” *Human Rights Watch*. published by *The Sentencing Project*. 1998. (Alabama, Delaware, Kentucky, Mississippi, Virginia and Wyoming.)

²⁹ Felony Disenfranchisement Laws in the United States. Publication. The Sentencing Project, June 2013. Web. 14 Oct. 2013.

³⁰ See Disenfranchisement: The Modern-Day Voting Rights Challenge. Marc Mauer. *Civil Rights Journal*. Winter 2002.

³¹ See “Disenfranchised Florida Felons struggle to Regain Their Rights”. *New York Times*, March 28, 2004. In Florida, the *New York Times* reported, a state which permits the granting of “clemency” to felons who apply for restoration of their voting rights, a backlog of 35, 585 applications to the Clemency Board was reported as of March 15, 2004. The *New York Times* further reported that a 2001 study by a University of Minnesota sociologist “counted more than 600,000 in Florida, not including those still in prison, on parole or on probation” who had been disenfranchised.

³² See Marc Mauer and Tushar Kansal. “Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States.”. The Sentencing Project. February 2005.

settling in the British colonies in the U.S. and elsewhere. Disenfranchisement provisions reportedly became incorporated into state laws in the U.S. in the late nineteenth century. Most advocates of voting rights reform have noted that not only do these laws work against the reintegration of offenders into society³³ but they also serve no discernable purpose.

While there are a number of reform proposals presently being considered which may result in some reforms being enacted, the basic concept of felony disenfranchisement appears to still permeate the framework of most state voting rights statutes.

In twelve states, an individual convicted of a felony may lose his or her voting rights permanently depending on the state, nature of the crime committed; time elapsed since completion of sentence and other variables.³⁴

In those states in which voting rights can be restored upon the request of the defendant, historically it has been the defendant's burden to ensure that these restrictions are lifted -- frequently entailing an extended bureaucratic process that many defendants are not in a position to pursue. The Sentencing Project has determined, for example:

➤ Since 1992, 107 persons have had their voting rights restored in Mississippi, compared to a disenfranchised population of 82,202;

➤ Since 1992, 343 persons in Florida regained their voting rights out of a pool of 44,001;

➤ Between 1999 – 2005, 48,000 persons regained their voting rights throughout the country, out of an estimated pool of 613,514.³⁵

In a few states, legislation has been enacted to shift the burden of initiating the restoration of voting rights process from the individual to a state agency, requiring information to be provided to offenders regarding their voting eligibility upon release, or directly before.³⁶

³³See *Losing The Vote: The Impact of Felony Disenfranchisement Laws in the United States*. Human Rights Watch. 1998.

³⁴**Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Tennessee, Virginia, and Wyoming.** See "State Felon Voting Laws." ProCon. N.p., 18 July 2013. Web. 14 Oct. 2013.

³⁵Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States. Marc Mauer and Tushar Kansal. The Sentencing Project. February 2005.

³⁶Florida (2006), Kentucky (2001), Louisiana (2008), New Jersey (2010), New York (2010), North Carolina (2007), and Virginia (2000). See Nicole D. Porter. "Expanding the Vote:

Only two states have no restrictions on voting rights for convicted felons: Maine and Vermont.³⁷ All other states restrict, in varying degrees, the voting rights of convicted felons, even in situations in which they have completed their sentences, ³⁸making no exception for drug court graduates, many of whom, as noted, have felony convictions on their records, either prior to or as a result of the arrest that brought them into the drug court.³⁹

Currently, 48 states and the District of Columbia do not permit prison inmates to vote.⁴⁰

In 2003:

➤ Thirty-two states prohibited felons from voting while on parole and 28 of these states also prohibited felons from voting while on probation.

Currently, however, four states restore voting rights after a term of incarceration and parole and nineteen states restore voting rights after a term of incarceration, parole and probation.⁴¹ However, some of these states also require the offender to make special application for restoration of his/her voting rights and action on the applications are made on a case by case basis.⁴²

State Felony Disenfranchisement Reform, 1997-2010." The Sentencing Project. October 2010.

³⁷ Hazel Trice Edney. *A Life Sentence: Denying Ex-Felons The Right to Vote*. *The Call*. Kansas City, Mo. October 18, 2002..p. 4.

³⁸*The Sentencing Project* has published a number of excellent reports dealing with felon disenfranchisement statutes and closely tracks developments in this area. See, in particular, various articles by Marc Mauer, Executive Director of the Sentencing Project and the Sentencing Project website: www.sentencingproject.org.

³⁹Nor do they make any exception for other potentially mitigating factors, such as prior military service, or subsequent restitution or community contributions.

⁴⁰Only Maine and Vermont permit inmates to vote. See *Legislative Changes on Felony Disenfranchisement, 1996-2003*. The Sentencing Project. September 2003.

⁴¹After incarceration and parole: California, Colorado, Connecticut and New York. After incarceration, parole, and probation: Alaska, Arkansas, Georgia, Idaho, Kansas, Louisiana, Maryland, Minnesota, Missouri, New Jersey, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia and Wisconsin. See "State Felon Voting Laws." ProCon. N.p., 18 July 2013. Web. 14 Oct. 2013.

⁴²Arkansas, Arizona, California, Colorado, Georgia, Louisiana, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, West Virginia, and Wisconsin. Two additional states (Tennessee and Washington), permit restoration of voting

- Eight states permanently disenfranchised felons unless they applied to the state governor to grant them a pardon or instituted other administrative procedure to reinstate their voting rights.⁴³ Generally a waiting period of at least five years had been required.

As of 2014, two more states (Tennessee and Iowa) in addition to the original eight are now included in this practice.⁴⁴

Virginia had also begun to ease restrictions on felons who have lost their right to vote. Drug offenses are being categorized with other non-violent felonies. Restoration of voting rights reportedly now takes only weeks or months to be processed, as opposed to years previously.⁴⁵

- ELIGIBILITY FOR FEDERAL AND STATE EDUCATIONAL BENEFITS

With over one third of adult drug court participants lacking a high school degree or GED certificate at time of program entry, most drug court programs require participants to have a high school degree or equivalent in order to complete the program.⁴⁶ However, most programs also strongly encourage participants to engage

rights for felons after completion of sentence except for felons convicted before 1981 (Tennessee) and 1984 (Washington); Iowa and North Carolina recently enacted this legislation and Nebraska is considering similar provisions.

⁴³ Alabama, Delaware, Florida, Kentucky, Mississippi, Nevada, Virginia, and Wyoming. See State Action Issues: Voting Rights Restoration Overview@. Center for Policy Alternatives. (www.stateaction.org/issues/governance/votingrights/index.cfm) 2003. Estimates of the numbers of disenfranchised felons who successfully regain their voting rights under these procedures are extremely low. See Disenfranchisement: The Modern-Day Voting Rights Challenge. Marc Mauer. *Civil Rights Journal*. Winter 2002.

⁴⁴ "State Felon Voting Laws." ProCon. N.p., 18 July 2013. Web. 14 Oct. 2013.

⁴⁵ Laris, M. (2014, April 19). Voting-Rights Quest in Va. Will Become Easier for Ex-Cons Held on Serious Drug Charges. *The Washington Post*.

⁴⁶ Even discounting the impact of a drug offense conviction for a juvenile participating in a juvenile drug court program, many of the offenders affected by these provisions are adolescents whose cases are being handled in the adult criminal court. Three states establish adult jurisdiction at the age of 16 (**Connecticut and New York, North Carolina**), and ten additional states establish adult jurisdiction at the age of 17 (**Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin**).

in postsecondary education to be able to effectively compete in the job market and to enhance personal skills that will aid them in sustaining their recovery and building drug-free lives.

Federal Loans: Under the Higher Education Act of 1998, all convicted drug offenders lose their eligibility for federal educational aid, either temporarily or permanently, if they have a conviction for a drug offense.⁴⁷ Under the provisions of the Act, one conviction for a drug possession charge will result in denial of eligibility for education funding for one year. A second drug possession conviction will extend the period for ineligibility for additional two-years, with permanent disqualification resulting from a third conviction. A conviction for the sale of a controlled substance can result in disqualification for two years, with any subsequent conviction resulting in permanent disqualification.⁴⁸

These provisions apply to all federally sponsored student loans, work study programs and Pell Grants.⁴⁹

In February 2003, Congressman Barney Frank (Mass.) introduced legislation to repeal the provision (H.R. 685), which was referred to committee but no action was taken. As of 2006, according to an analysis by the Department of Education, one in every 400 students applying for federal financial aid for college is rejected because of a drug conviction.⁵⁰

In 2006, the U.S. Department of Education reported that since 2000 when the drug provision was added to the Higher Education Act, 180,000 students had been denied financial aid due to a drug conviction.⁵¹

As of 2014, despite continued congressional debate and the advocacy of a coalition of over 200 health, education, criminal justice, and student groups for its repeal, the provision of the law are still in force.

⁴⁷ Under the Higher Education Act of 1998, offenders are ineligible for educational aid for one year for a first offense, two years, for the second offense, and permanently for a third offense.

⁴⁸ See Demlietner, N.V. (2002). \

⁴⁹ "How to Create an Underclass, Or How the War on Drugs Became a War on Education," *6 Univ. of Iowa Journal of Gender, Race & Justice* 61, (2002), with Eva Nilsen (symposium).

⁵⁰ Leinwand, Donna. "Drug Convictions Costing Students Their Financial Aid." USA Today. N.p., 14 Apr. 2006. Web. 14 Oct. 2013.

⁵¹ See Mulligan, C., Dobler, B., Wibby, K., & Borden, D. (2006).

State Loans: Some – but not all – states follow the federal prohibitions regarding the implications of drug offenses on eligibility for educational loans. In 22 states, financial aid is denied to all or most students with drug convictions (Alabama, Alaska, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Louisiana, Maine, Massachusetts, Montana, New Hampshire, New Jersey, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and West Virginia.)

Eleven states permit the individual education institution to make the decision regarding the eligibility of an individual with a drug conviction (Arizona, Connecticut, Kansas, Maryland, Michigan, Mississippi, Nebraska, North Carolina, North Dakota, Ohio, and Virginia.). For the remaining 17 states and the District of Columbia, a drug conviction does not disqualify a student for education benefits.⁵²

Several colleges have voluntarily enhanced available financial aid resources to fill the gap created by the federal exclusion. The Board of Managers at Swarthmore College, for example, approved a policy mandating the College to replace federal financial that may be denied to a student because of a drug conviction, beginning in the Fall of 2003.⁵³

The arguments for repeal of these provisions have been voiced from many sectors and for many reasons which go beyond the focus of this article. Suffice it to say that denial of educational financial assistance to individuals who admittedly have been drug addicts but have subsequently assumed the difficult requirements of a drug court program is clearly counterproductive to the rehabilitative goals drug court programs are advancing.

- IMMIGRATION STATUS

A common practice in the drug court process is for a defendant to plead guilty to a drug possession or related charge with the understanding that he/she will then be able to enter the drug court program and, if successful, have his/her charge dismissed or reduced to a misdemeanor at the time of program completion. However, if that individual is not a U.S. citizen, he/she may be subject to subsequent deportation under provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA) enacted in 1996, on the basis of the initial plea.

The AEDPA eliminates the discretionary relief from deportation that had been previously available under Section 212c of the Immigration and Nationality Act which had provided authority to the Attorney General to waive the deportability of legal permanent residents who had committed certain crimes, including drug-related offenses, if

their sentence had been less than five years and they had lived in the U.S. for at least seven years.⁵⁴

At the time of the AEDPA enactment, the INS took the position that the elimination of Section 212(c) relief was retroactive, thereby applying the AEDPA provisions to the situation of permanent residents who had relied on the law and pled guilty to crimes for which they were subsequently made reportable without any legal relief.⁵⁵ In *In re Mauro Roldan-Santoyo*, the Board of Immigration Appeals held that a conviction, even if vacated or dismissed pursuant to a drug rehabilitation statute, was still a conviction for immigration purposes and subjected a legal permanent resident to deportation.

While subsequent court challenges to the retroactivity of the AEDPA provisions have been upheld, the prospective application of the AEDPA provisions are still valid.

Nevertheless, case law in various circuits is beginning to emerge indicating that challenges to the application of the AEDPA provisions may, in certain limited circumstances, be successful. In some instances these appear to be based on an interpretation of the requirements of an “aggravated felony” under INS statute and regulation.⁵⁶

- In August 2000, for example, the Ninth Circuit partially overruled the decision by The Board of Immigration Appeals in the *Roldan-Santoyo*, holding that an expungement or other rehabilitative relief would eliminate a conviction of simple possession of a controlled substance for deportation purposes if the conviction was a first offense.⁵⁷
- Similarly, in February 2002, the Third Circuit Court of Appeals in Philadelphia departed from opinions in seven other circuits and overturned a lower court ruling permitting the deportation of a Haitian citizen who was a U.S. resident on the basis of a guilty plea to possession of cocaine. In making its determination, the court found that such a conviction did not involve a finding of trading or dealing required to constitute an aggravated felony under federal law.⁵⁸

⁵⁴ Reeves and Associates. Recent Court Decisions Rejects INS= Unconstitutional Interpretation of Law and Forces Reopening of Cases. @ May 30, 2000.

⁵⁵ *In Re Mauro Roldan-Santoyo*. File A90 286-629-Boise. Board of Immigration Appeals. Executive Office for Immigration Review. U.S. Department of Justice. March 3, 1999.

⁵⁶ Reeves and Associates. Deportation and Drugs: The Shabu Epidemic@. January 17, 2000.

⁵⁷ *Lugan-Armenariz V.INS*. U.S. Court Appeals for the Ninth Circuit. Case Number 96-70431. August 1, 2000.

⁵⁸ See Appeals Court Strikes New Deportation Stand.@ Reuters News Service. February 12, 2002.

⁵² Ibid

⁵³ *Swarthmore Phoenix*. March 6, 2002.

- In December 2006, the U.S. Supreme Court resolved the conflicting views of various federal Appellate Courts in *Lopez v. Gonzales*,⁵⁹ holding that a first offense drug possession charge, when considered a misdemeanor under federal law but a felony under state law, did not constitute a “drug trafficking” aggravated felony under federal law,⁶⁰ and thus was not a deportation eligible offense.
- In other instances, challenges are being raised on the grounds of inadequacy of counsel in advising the defendant to plead guilty to a drug possession charge in light of the potential immigration consequences.

Regardless of these legal challenges, however, the elimination of statutory discretion in the application of the provisions of the Immigration and Nationality Act still appears to be the prevailing law. Applied to drug court participants, it appears that the current state of immigration law strongly suggests the advisability for an otherwise drug court eligible defendant to forego drug court participation if it requires an up-front plea to a drug possession offense, which many programs do. Whether or not this situation would constitute a denial of due process apart from the other issues it presents is a matter which subsequent litigation will need to determine.

The U.S. Supreme Court 2010 decision in *Padilla v. Kentucky*⁶¹ speaks directly to the obligation of counsel to inform their clients of the potential immigration consequences of pleading to drug and other related offenses which have immigration consequences and risk of deportation. The situation is complicated by the fact that (1) the list of criminal offenses for which conviction carries potential immigration consequences is lengthy and includes some offenses which may be considered misdemeanors under various state laws and may also entail convictions for which defendants were unrepresented; and (2) a “conviction” for federal immigration law purposes can include cases referred for diversion or with deferred adjudication and not considered to have the status of a “conviction” in terms of the state court proceeding.

In April 2013, the Supreme Court’s decision in *Moncrieffe v. Holder*⁶² appears to provide some clarification regarding the

⁵⁹ Does not include possession of over 5 grams of crack cocaine, or possession of flunitrazepam. Offenses after the first may be considered aggravated felonies, under specific circumstances.

⁶⁰ See “Practice Advisory: Defending Immigrants with Prior Drug Possession Convictions in Illegal Entry/Reentry Cases – The Impact of *Lopez v. Gonzales*.” Immigrant Defense Project. December 2006.

⁶¹ *Padilla v. Kentucky*, 559 U.S. (2010).

⁶² *Moncrieffe V. Holder*, Attorney General. The United States Court Of Appeals For The Fifth Circuit. N.D.

drug offenses that would subject a defendant to deportation. In *Moncrieffe* a Jamaican citizen residing in the United States legally with a green card, pled guilty under Georgia law, to possession of marijuana (1.3 grams) with intent to distribute. Under the provisions of the Controlled Substances Act, a drug conviction is punishable as a felony. Under the Immigration and Nationality Act, a noncitizen convicted of an “aggravated felony” is not only deportable but also ineligible for discretionary relief.

Pursuant to the provisions of these two statutes, the Federal Government sought to deport Moncrieffe. A Georgia court ruled that distributing marijuana without compensation constituted an “aggravated felony” subject to deportation and Moncrieffe was deported back to Jamaica. The Supreme Court later ruled, however, that the “social sharing of a small amount of marijuana” by a legal immigrant does not constitute an “aggravated felony” and therefore, did not require mandatory deportation. The Court held further that, if a non-citizen’s conviction for a marijuana distribution offense failed to establish that the offense involved either compensation or more than a small amount of marijuana, the conviction did not constitute an “aggravated felony” for purposes of the Immigration and Nationality Act, thereby providing some limitation regarding the application of the Immigration & Nationality Act to drug offenders.

OTHER AREAS OF PUBLIC POLICY AND PRACTICE STIGMATIZING DRUG OFFENDERS

In addition to the five areas of public policy imposing sanctions on persons who have been drug offenders that have had significant national application, numerous additional areas of public policy and practice also impose sanctions on individuals who have been drug offenders, with varying degrees of application, a few of which are discussed below.

- **Employment**

- *Employment applications requesting criminal history*

It has not been uncommon for employment applications to request an applicant to indicate whether they have ever been arrested.

Ten states⁶³ have now enacted “Ban the Box” laws preventing the disqualification of applicants based solely on their criminal history.⁶⁴

Supreme Court of the United States. No., 23 Apr. 2013. Web. 14 Oct. 2013.

⁶³ These states include: California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Mexico and Rhode Island.

In 2010, Massachusetts limited the information potential employers could retrieve through background checks to:

- up to ten years history for information related to felony charges, and
- up to five years history for misdemeanor charges or pending criminal charges.⁶⁵

California requires that employers take into consideration evidence of rehabilitation for offenses in addition to the age at which the offense was committed.⁶⁶

Similar legislation has been enacted in several other states as well. New York, Pennsylvania, and Wisconsin, for example, have enacted legislation preventing an employer from inquiring into an applicant's criminal history until an interview has been conducted.

o *Professional Licenses*

Disqualification for eligibility for professional licenses based on a drug offense is generally determined by state, rather than federal, law. Most professions have established licensure requirements which almost invariably include reference to the implications of a criminal conviction generally and a drug conviction in particular. The following are a few examples:

- In Connecticut and Montana the state can deny or revoke a cosmetologist, barber, or hairdresser license based on a conviction for a controlled substance offense.
- Utah has enacted a five year bar for cosmetology, hairdresser, and barber licenses for individuals convicted of a felony controlled substance offense.
- Four states make drug offenders ineligible for nursing or health care professional licensing (Florida, Indiana, Kansas, and Pennsylvania). Additionally, fourteen states prohibit licenses for registered nursing for persons convicted of misdemeanors and felonies (Arizona, Colorado, Connecticut, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Montana, Nebraska, Nevada, and Texas).

In 22 states and the District of Columbia, a misdemeanor or felony conviction results in ineligibility for cosmetology, barber, and hairdresser licenses.⁶⁷

Five states prohibit individuals with convictions for controlled substance offenses from obtaining licenses as massage therapists. (California, Pennsylvania, Rhode Island, Utah, and West Virginia). In Utah, the ineligibility is for five years for felony controlled substance offenses and ineligibility for three years for misdemeanor controlled substance offenses.

o *Eligibility for Specific Professional Positions:*

Examples

➤ Day Care/Child Care Positions

Under federal law, background checks are required for employment of persons working with individuals under 18 years of age in positions relating to social service, health and mental health care, day care, education and rehabilitative programs. Persons with prior drug convictions are generally ineligible for these positions.⁶⁸ New York imposes a five year ban on individuals with prior controlled substance offenses from working in child care. Louisiana statute provides that, if a daycare employee is convicted of a controlled substance offense, information surrounding the conviction can be published to the parents or guardians of child in the day care facility.

Individuals with drug convictions can also be prohibited from employment or serving as volunteers in adult day care or family day care facilities. New York State further enforces this restriction by imposing a period of five years ineligibility for drug-related felons to be employed, volunteer, operate a facility or reside in a home providing child day care.⁶⁹ Montana enacts a mandatory five year prohibition on day care licenses for felony drug offenders.

o Teachers

Nineteen states plus the District of Columbia prohibit individuals with convictions for controlled substances to serve as a teacher (Georgia, Nevada, Michigan, Washington State, Pennsylvania, California, New Mexico, Illinois, Alaska, Tennessee, Arizona, Hawaii, Louisiana, Idaho, New Jersey, Connecticut, Delaware, Oregon, and Maine). In Pennsylvania, individuals with a prior conviction for controlled substances are ineligible from acting as a private tutor.

o Veterinarians

South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia, and Wisconsin,

⁶⁸ 48 CFR 337.103.71(c)

⁶⁹ NY CLS Soc. Serv. § 390-b(3)

⁶⁴ "Ban the Box" legislation prohibits employers from performing background checks or inquiring about criminal history prior to deeming the applicant, otherwise, qualified for the position.

⁶⁵ Massachusetts Senate Bill 2583

⁶⁶ California Senate Bill 1055 (2010)

⁶⁷ Alabama, Colorado, Delaware, Idaho, Illinois, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Nevada, New Hampshire, New York, North Dakota, Oklahoma,

Conviction for an offense involving a controlled substance can provide grounds for revoking veterinarian licenses and accreditation of veterinary facilities.⁷⁰ Wisconsin, Delaware, South Carolina, and Nebraska suspend or revoke veterinary technician licenses upon conviction of a controlled substance offense.

- **Dentists**

Licenses for dentists and dental hygienists can be revoked in 17 states⁷¹ if the dentist or dental hygienist is convicted of a drug offense. In eight of these states, licenses for dental hygienists can also be revoked or denied (Alabama, California, Kansas, Mississippi, Montana, South Carolina, Tennessee, Texas, Virginia).

OTHER AREAS OF CIVIL RIGHTS

- **Juror Eligibility**

Juror eligibility is generally determined on a state by state basis. Twenty-two states prohibit individuals convicted of a felony from jury service unless the conviction has been expunged or the individual's "civil rights" have otherwise been restored. – requirements which, in most states, are difficult to satisfy in light of the limited availability of expungement options for drug offenders. (Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah, Washington, and Wisconsin)⁷²

Six states prohibit drug offenders from serving on a jury without exception. (Alabama, Colorado, Nevada, New Jersey, New Mexico, Texas, Vermont, Virginia)⁷³

- **Insurance Coverage for Substance Use Treatment**

Historically, there has been a lack of parity regarding insurance benefits for mental health treatment, compared with treatment for physical conditions. The 1996 Mental Health Parity Act (MHPA) corrected some of these deficiencies, requiring parity between a health plan's lifetime/annual dollar limit for mental health benefits and

equivalent medical/surgical benefits.⁷⁴ The MHPA, however, did not address other important parity issues including: limitations on mental health treatments (hospital visits and outpatient visits), required co-pays for services,⁷⁵ exemptions for companies of 50 or fewer employees, and exemptions for companies that opt out of offering mental health coverage altogether.⁷⁶

A number of these issues have been addressed in the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) which extended MHPA parity requirements to substance use disorders⁷⁷ ⁷⁸ and addressed other parity issues, including required co-payments, deductibles, treatment limitations/visits, and out-of-network benefits.

Gaps still remain, however, regarding parity in a number of areas. Currently, for example, small employers and employers that have opted out of mental health coverage in general are exempt from MHPAEA, as they were under MHPA - potentially leaving thousands of individuals in need of substance use disorder treatment benefits still uninsured. While the Affordable Care Act (ACA) provides for behavioral health services, there are many pending issues regarding the extent to which the ACA provisions currently apply.

- **Family Relationships**

- *Eligibility to Adopt/Provide Foster Care*

Under federal law, individuals convicted of a drug or drug-related offense are ineligible from adopting a child or serving as a foster care guardian for five years following the conviction.⁷⁹ Twelve states have enacted laws adopting federal provision relating to eligibility of individuals convicted of offenses entailing controlled substances (Alabama, Alaska, Arizona, California, Indiana, Iowa, Minnesota, Missouri, North Dakota, Oklahoma, and Virginia).

- *Retaining Custody of Children*

Drug offenders face the possibility of losing custody of their children if convicted and sentenced to prison. When a parent is incarcerated, if there is no other family members to

⁷⁰ 9 CFR 161.6(e)

⁷¹ Alabama, California, Colorado, Delaware, Georgia, Kansas, Kentucky Maryland, Mississippi, Montana, Nevada, New Hampshire, Pennsylvania, South Carolina, Tennessee, Texas, Virginia,

⁷² Travis, L. F. . Reanalyzing the prevalence and social context of collateral consequence statutes. *Journal of Criminal Justice*, 435-453.

⁷³ Ibid

⁷⁴ See "Parity in Insurance Coverage." National Alliance on Mental Illness. Also see "The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)." U.S. Department of Labor. 2010.

⁷⁵ "Parity in Insurance Coverage." National Alliance on Mental Illness.

⁷⁶ Ibid.

⁷⁷ "The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)." U.S. Department of Labor. 2010.

⁷⁸ "Understanding Drug Abuse and Addiction." National Institute on Drug Abuse. 2008.

⁷⁹ 42 USC 671 (a)(20)(A)(ii)

take care of the child, the child will be placed in foster care. Under the provisions of the Adoption and Safe Families Act (ASFA0, if the child remains in foster care for 15 out of the most recent 22 months, a permanency plan is required, which can entail termination of parental rights if the parent is not able to provide a permanent placement for the child.⁸⁰ In Pennsylvania, the court has discretion to deny custody to a parent seeking custody on the grounds of a prior drug conviction. Similarly in Kansas, the court can consider prior drug offenses as a factor when determining custody.⁸¹

➤ *Grounds for Divorce*

In 29 states⁸², conviction of a felony offense, drug related included, can be grounds for divorce.

• **State Registries**

A number of states require offenders to register as drug offenders through a state registry. In California, individuals with prior drug offenses must register with local law enforcement authorities as an offender.⁸³ Arizona requires prior offenders to send a notice of conviction to appropriate licensing or registration boards.⁸⁴ Similarly, in South Carolina, individuals must send in notification of offense into licensing and registration boards.⁸⁵ Drug offenders in Kansas must register in the state offender registry which is available to the public and submit information relating to the offense, current name, address, professional licensing the individual holds and their photo.⁸⁶ In Tennessee, an individual convicted of a methamphetamine purchase, possession, production or any related offense must be registered in a public registry.⁸⁷

In an attempt to reduce the impact of the collateral consequences that may be imposed under applicable state law on drug offenders, some states have implemented certificate programs that permit offenders to corroborate their rehabilitation efforts since their arrest/conviction.⁸⁸ New York instituted the “Certificate of Relief from Disabilities and Certificate of Good Conduct”⁸⁹ program for

⁸⁰ Pub. L. No. 105-89, Sec. 103

⁸¹ K.S.A. 23-3203

⁸² Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Mississippi, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and West Virginia.

⁸³ California Penal Code Section 1210.1

⁸⁴ A.R.S. 13-3414

⁸⁵ S.C. Code Ann. 44-53-330

⁸⁶ K.S.A 22-4904

⁸⁷ Tenn. Code Ann. 39-17-436

⁸⁸ Ibid, p. 6

⁸⁹ N.Y. Correct. §§700-705

individuals with no more than two low-level felonies that permit them to document their rehabilitation efforts. North Carolina and Ohio have similar certificate programs, with the certificate provided under North Carolina’s Certificate of Relief Act⁹⁰ relieving the individual from “collateral consequences” arising from his/her convictions.

WHERE ARE WE TODAY?

While there has definitely been some progress --forward movement in some sectors -- the basic approach for addressing the situation of drug offenders across public policy sectors continues to be characterized by a punitive orientation, with little acknowledgment of the disease aspect of addiction, the effectiveness of treatment for the disease, and the efforts made by thousands of drug offenders, particular drug court participants, to recover -- and their success in recovery. Particularly troubling is that, in many instances, drug offenders are subject to these “collateral consequences” because they are *drug* offenders – not simply offenders.

• **Bright spots emerging**

Among the bright spots that have emerged during the past decade, in addition to those noted in the areas of “collateral consequences” discussed above, include:

- Federal efforts to reform drug sentencing policy and practice on a number of levels, including increasing judicial and prosecutorial discretion and expansion of therapeutic approaches; and
- Efforts at the state level to reduce prison expansion and costs, although much of these efforts is a response to concerns relating to fiscal shortfalls rather than developing therapeutic initiatives.
- Expansion (so far only slight) of expungement and related provisions of state statutes applied to drug and related offenses.⁹¹

Ironically, the recent fiscal crises that have engulfed most state governments during the past several years— more than research findings per se—have spurred a rethinking about how the criminal justice system approaches substance abuse and the cost-effectiveness of treatment vs. incarceration alone. Hopefully this process will also stimulate examination of the complex and interrelated socio-economic, family,

⁹⁰ North Carolina House Bill 641 (2011)

⁹¹ See “*Overview of State Statutory Expungement Provisions Potentially Relevant to Drug Court Participants.*” *BJA Drug Court Technical Assistance Project. American University June 2012 (Update).*

public health, and public safety issues that surround substance abuse and addiction.

These issues need to be addressed regardless of whether any resurgence of economic prosperity makes a return to traditional incarceration practices for drug offenders more feasible.

In addition, noteworthy progress has been made in lifting the ban on food stamps and TANF (welfare) benefits for individuals with drug felonies. As of 2011, 16 states plus Washington, D.C. have lifted the ban on food stamps and 14 states have lifted the ban on TANF.

Between 1997 and 2010, 23 states have reformed their felony disenfranchisement policies as they relate to voting rights.⁹²

The United States Supreme Court decision in *Moncrieffe* alleviates, to some degree, the penalty of deportation as a result of a drug conviction for non-citizens holding that if a noncitizen's conviction for a marijuana distribution offense fails to establish that the offense involved either remuneration (money) or more than a small amount of marijuana, it is not an "aggravated felony"⁹³ for deportation purposes.

There has also been progress in developing parity in health insurance coverage for addiction/behavioral health services and services for other medical conditions although there is still much further to do.

- **Policy-wise, however, the landscape, however, remains essentially unchanged**

For the most part, however, the situation in 2014 is unchanged from what it was in 2003 in terms of the overall philosophical framework with which addiction is viewed, and the stigma that is still associated with drug use and drug offenses.

Federal law continues to suspend eligibility for federal student aid if an individual is convicted of possession or sale of illegal drugs⁹⁴. Drug crimes remain the only offense for which an individual can be denied financial aid.

⁹² See Nicole D. Porter. "Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010." The Sentencing Project. October 2010.

⁹³ *Moncrieffe V. Holder*, Attorney General Certiorari To The United States Court Of Appeals For The Fifth Circuit No. 11-702. Argued October 10, 2012—Decided April 23, 2013

⁹⁴ *Felony Disenfranchisement Laws in the United States*. Publication. The Sentencing Project, June 2013. Web. 14 Oct. 2013.

The Housing Opportunity Extension (HOPE) Act of 1996, with its "one strike, you're out" philosophy, also continues to deny drug offenders the eligibility to live in public housing and evicts such offenders currently residing in public housing.

Drug offenses also continue to have serious immigration consequences, which include deportation, mandatory detention, ineligibility to obtain lawful residency, loss of eligibility for asylum, and can result in a temporary or permanent bar to citizenship.⁹⁵

"Drug courts" continue to be a therapeutic oasis in a still largely punitive public policy milieu for persons who are/have been drug users. Without changes in other key areas of public policy, the rehabilitative goals and benefits of drug court programs can continue to be thwarted --in both the short and long term --by the failure of other key public sector areas to shift their policies and practices to meaningfully promote and support the reintegration of substance offenders into the community. Hopefully policy makers will begin to address this critical need in the years ahead.

WHERE TO GO FROM HERE?

As noted earlier, the purpose of this article has been to highlight a number of (the many) non-criminal justice areas of public policy which impose significant sanctions on persons who have been convicted of a drug offense in addition to the criminal justice penalties already applicable -- and the slow efforts at reform. As noted, many of the "collateral consequences" cited are directed toward drug offenders per se, and not all individuals who commit felony offenses. All of these areas of public policy not only affect what drug courts are able to accomplish but are integrally related to the ability of drug courts to achieve their goals in both the short and the long term.

The issues addressed in this article have only summarily touched the surface of the widespread stigma that is attached -- and continues to be attached -- to substance addiction in a wide range of contexts in the U.S. Irrespective of the extent of disconnect in public policy in terms of efforts to promote recovery by the criminal justice system, on the one hand, and to stigmatize drug offenders -- often singling them out from other convicted offenders --on the other hand, it is clearly time to begin to bridge the divide. Perhaps criminal justice leaders will again need to take the initiative.

Two options immediately surface:

⁹⁵ *Immigration Consequences of Drug Offenses: Handout*. Publication. National Association of Criminal Defense Lawyers, 2012. Web. 14 Oct. 2013.

- (1) Greater application of expungement provisions for felony drug offenses conditioned on clear indicia of defendants' recovery ; and
- (2) For drug court programs, greater use of deferred prosecution and sentencing options that can provide dismissal of the charges of drug court participants who complete the program and satisfy whatever other requirements may be applicable.
- achieved through drug court programs can be thwarted by the failure of a shift in both policy and practice in the broad areas of public policy that need to promote – and sustain – recovery efforts by individuals suffering from substance use disorders – employment, education, public housing, public benefits, health care – and many other areas. The urgency for public leaders to tackle these issues and develop an action plan to identify and eliminate the stigma associated with the disease of addiction cannot be overstated.

Over the longer term, however, without changes in other areas of public policy, the goals and benefits designed to be

REFERENCES:

After Prison: Roadblocks to Reentry. A Report on State Legal Barriers Facing People with Criminal Records. A Report by the Legal Action Center. 2004.

Patricia Allard. *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses.* The Sentencing Project. February 2002.

"Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States". Marc Mauer and Tushar Kansal. The Sentencing Project. February 2005.

(2014). Ban the Box: Major U.S. cities and countries adopt fair hiring practices to remove unfair barriers to employment of people with criminal records. Retrieved from National Employment Law Project (NELP).

"Disenfranchisement: The Modern-Day Voting Rights Challenge. Marc Mauer. *Civil Rights Journal.* Winter 2002.

Demlietner, N.V. (2002). Collateral damage: No re-entry for drug offenders. *Bill. L. rev.*, 47, 1027-1054.

Fact Sheet: The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). U.S. Department of Labor. 2010.

Farst, K.J., Valentine, J.L., Hall, R.W. (2011). Drug testing for newborn exposure to illicit substances in pregnancy: Pitfalls and pearls. *International Journal of Pediatrics* 2011.

Felony Disenfranchisement Laws in the United States. Publication. The Sentencing Project, June 2013. Web. 14 Oct. 2013.

Festinger, D. S., McMatteo, D. S., Marlowe, D. B., & Lee, P. A. (2005). Expungement of arrest records in drug court: Do clients know what they're missing? *Drug Court Review*, 5(1), 1-19.

Hazel Trice Edney. AA Life Sentence: Denying Ex-Felons The Right to Vote@. *The Call.* Kansas City, Mo. October 18, 2002. Horwitz, Sari. "Holder Seeks to Avert Mandatory Minimum Sentences for Some Low-level Drug Offenders." *The Washington Post.* N.p., 11 Aug. 2013. Web. 08 Oct. 2013.

"How to Create an Underclass, Or How the War on Drugs Became a War on Education," *6 Univ. of Iowa Journal of Gender, Race & Justice* 61, (2002), with Eva Nilsen (symposium).

Immigration Consequences of Drug Offenses: Handout. Publication. National Association of Criminal Defense Lawyers, 2012. Web. 14 Oct. 2013.

In Re Mauro Roldan-Santoyo. File A90 286-629-Boise. Board of Immigration Appeals. Executive Office for Immigration Review. U.S. Department of Justice. March 3, 1999

Jeremy Travis et al., *From Prison to Home: The dimensions and consequences of prisoner reentry* 13 (2001).

Kalogeras, Steven. *Legislative Changes on Felony Disenfranchisement, 1996-2003.* The Sentencing Project. September 2003

¹ Laris, M. (2014, April 19). Voting-Rights Quest in Va. Will Become Easier for Ex-Cons Held on Serious Drug Charges. *The Washington Post.*

Drug Courts --Just the Beginning: Getting Other Areas of Public Policy in Sync? Update: Addressing Continuing Collateral Consequences. Caroline S. Cooper, Research Professor and Director, Justice Programs Office, School of Public Affairs, American University, Washington D.C. and Director, BJA Drug Court Clearinghouse at American University. [Prepared originally for the Middle Eastern-Mediterranean Summer Institute on Drug Use: 2003-2004.] Revised, June 2015.

Leinwand, Donna. "Drug Convictions Costing Students Their Financial Aid." USA Today. N.p., 14 Apr. 2006. Web. 14 Oct. 2013.

Levi, Robin, and Judith Appel. Collateral Consequences: Denial of Basic Social Services Based Upon Drug Use. Rep. Office of Legal Affairs, Drug Policy Alliance, 13 June 2003. Web. 08 Oct. 2013.

Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses. prepared by Patricia Allard. The Sentencing Project. February 2002

Losing The Vote: The Impact of Felony Disenfranchisement Laws in the United States. Human Rights Watch. 1998.

Lugan-Armendariz V.INS. U.S. Court Appeals for the Ninth Circuit. Case Number 96-70431. August 1, 2000.

Mulligan, C., Dobler, B., Wibby, K., & Borden, D. (2006). Falling through the cracks: Loss of state-based financial aid eligibility for students affected by the federal higher education act drug provision. *Coalition for Higher Education Act Reform.*

Natividad Rodriguez, M., Farid, E., & Porter, N. (2011). State reforms promoting employment of people with criminal records: 2010-11 legislative round-up. Retrieved from National Employment Law Project (NELP), the National H.I.R.E. Network, and The Sentencing Project

InfoFacts: Understanding Drug Abuse and Addiction. National Institute on Drug Abuse. (<http://www.drugabuse.gov/infofacts/understand.html>) 2008.

Abby Goodnough. "Disenfranchised Florida Felons Struggle to Regain Their Rights." *New York Times*, March 28, 2004.

Opting Out of Federal Ban on Food Stamps and TANF, prepared by the Legal Action Center and McCarty, Maggie, Randy Alison Aussenberg, Gene Falk, and David H. Carpenter. *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance.* Rep. Congressional Research Service, 17 Sept. 2013. Web. 08 Oct. 2013

Pager, D, Western, B., Sugie, N. (2009). Sequencing disadvantage: Barriers to employment facing young black and white men with criminal records. *The ANNALS of the American Academy* 623(195).

Parity in Insurance Coverage. National Alliance on Mental Illness.

(http://www.nami.org/Content/ContentGroups/Policy/WhereWeStand/Parity_in_Insurance_Coverage_-_WHERE_WE_STAND.htm).

Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. Law No. 104-193.

Pinard, M., Thompson, A.C. (2005-2006). Offender reentry and the collateral consequences of criminal convictions: An introduction. *N.Y.U. Law Review & Social Change*, 30, 585-620.

Political Punishment: The Consequences of Felon Disenfranchisement for Rhode Island Communities. Special Report on the Impact of incarceration and Reentry from the Rhode Island Family Life Center. Barshall Clement and Nina Keough. [2005] Nicole D. Porter. *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010.* The Sentencing Project. October 2010.

Porter, N.D.Q. (2014). The state of sentencing 2013: Developments in policy and practice. Retrieved from The Sentencing Project website.

Practice Advisory: Defending Immigrants with Prior Drug Possession Convictions in Illegal Entry/Reentry Cases – The Impact of *Lopez v. Gonzales*. Immigrant Defense Project. (http://www.immigrantdefenseproject.org/docs/07_DefendingImmigrantswithPriorDrugPossession.pdf) 2006.

Reeves and Associates. Recent Court Decisions Rejects INS Unconstitutional Interpretation of Law and Forces Reopening of Cases. May 30, 2000.

Reeves and Associates. Deportation and Drugs: The Shabu Epidemic@. January 17, 2000.

Reeves, Robert. "Supreme Court Expands Relief for Certain Drug Convictions." *Asian Journal* (2013): n. pag. *Asian Journal*. 16 May 2013. Web. 14 Oct. 2013

Drug Courts --Just the Beginning: Getting Other Areas of Public Policy in Sync? Update: Addressing Continuing Collateral Consequences. Caroline S. Cooper, Research Professor and Director. Justice Programs Office, School of Public Affairs, American University, Washington D.C. and Director, BJA Drug Court Clearinghouse at American University. [Prepared originally for the Middle Eastern-Mediterranean Summer Institute on Drug Use: 2003-2004.] Revised, June 2015.

"State Felon Voting Laws." ProCon. N.p., 18 July 2013. Web. 14 Oct. 2013

"The Impact of Felony Disenfranchisement Laws in the United States." *Human Rights Watch*. published by The Sentencing Project. 1998.

"The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia". Ryan S. King and Marc Mauer. September 2004.

U.S. Department of Housing and Urban Development v. Pearlie Rucker, et. al. Nos. 00-1770 and 00-1781. March 26, 2002.
Woods, Jeff. "Welfare Recipients to Lose Benefits after Second Drug Conviction." *The City Paper*. N.p., 04 May 2011. Web. 15 Oct. 2013.