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. 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

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

"... 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 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 1996, 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 whether they were arrested or convicted for these activities.

- **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.
- **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.

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. Similarly, Tennessee’s “Drug Dealer Eviction Program”, enacted by statute in 1997, provides that individuals can be evicted for

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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. A similar bill passed the Rhode Island Senate. 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 disregard, 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, 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, the United States District Court for the Southern District of California held that the policy is not a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The court noted that Congress has permitted mandatory eviction for drug offenders since 1988, and that the policy is narrowly tailored to address the problem of drug abuse.

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. 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 conviction or drug use, drug court participants may be eligible for public assistance.

**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.
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. 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. The Sentencing Project and the Legal Action Center have conducted extensive studies of the application of this statute. In 2002, the Sentencing Project reported that, although the federal statute permits states to opt out of its provisions or to modify them, only eight states 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 provisions followed by the New Jersey legislature’s lifting of the state’s ban on food stamps for drug felony convicts in 2010.

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

- **States imposing a lifetime ban**
  
  In 2002, 22 states imposed the ban on ex-offenders for life: 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 ban. 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**
  
  An additional 11 states limit the application of the ban to specific drug offenses and/or specified time periods, specified time period, as follows:


17. Ibid.

18. Ibid.


20. Senate Bill 5213 enacted effective September 1, 2005.

### Chart 1: States Limiting Ban on Welfare Benefits to Either Specific Offenses and/or a Specified Period of Time Following Conviction

<table>
<thead>
<tr>
<th>State</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>Limits the ban on welfare benefits to offenses involving the sale of drugs only;</td>
</tr>
<tr>
<td>Colorado</td>
<td>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</td>
</tr>
<tr>
<td>Florida</td>
<td>Limits the ban on welfare benefits to offenses involving the sale of drugs only;</td>
</tr>
<tr>
<td>Illinois</td>
<td>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;</td>
</tr>
<tr>
<td>Iowa</td>
<td>Imposes a partial ban</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Permits eligibility after a one-year period after release from custody or conviction date</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>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.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>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.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>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.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Limits the ban on welfare benefits to offenses involving the sale of drugs only</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>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.</td>
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</tbody>
</table>

### States Imposing a Specific Ban on Food Stamps Only

<table>
<thead>
<tr>
<th>State</th>
<th>Comments</th>
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</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Bans food stamps for individuals with drug felonies.</td>
</tr>
<tr>
<td>Alaska</td>
<td>Bans food stamps for individuals with drug felonies.</td>
</tr>
<tr>
<td>Arizona</td>
<td>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.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Bans food stamps only for individuals convicted of distribution, manufacture, or trafficking; the ban does not apply to drug possession.</td>
</tr>
<tr>
<td>California</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have completed treatment.</td>
</tr>
<tr>
<td>Colorado</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have completed treatment.</td>
</tr>
<tr>
<td>State</td>
<td>Comments</td>
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<tr>
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<tr>
<td>Connecticut</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have</td>
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<td></td>
<td>completed treatment.</td>
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<tr>
<td>Florida</td>
<td>Ban food stamps only for individuals convicted of distribution, manufacture,</td>
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<tr>
<td></td>
<td>or trafficking; the ban does not apply to drug possession.</td>
</tr>
<tr>
<td>Georgia</td>
<td>Ban food stamps for individuals with drug felonies.</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have</td>
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<tr>
<td></td>
<td>completed treatment.</td>
</tr>
<tr>
<td>Illinois</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have</td>
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<tr>
<td></td>
<td>completed treatment.</td>
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<tr>
<td>Idaho</td>
<td>Ban on food stamps does not apply to individuals who have completed their</td>
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<td></td>
<td>sentence or are complying with the terms of their judgment, parole, or</td>
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<tr>
<td></td>
<td>probation.</td>
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<tr>
<td>Indiana</td>
<td>Ban on food stamps does not apply to individuals who have completed their</td>
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<tr>
<td></td>
<td>sentence or are complying with the terms of their judgment, parole, or</td>
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<tr>
<td></td>
<td>probation.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have</td>
</tr>
<tr>
<td></td>
<td>completed treatment.</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Ban on food stamps ends one year after completion of sentence/release</td>
</tr>
<tr>
<td>Maryland</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have</td>
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<tr>
<td></td>
<td>completed treatment</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Ban on food stamps does not apply to individuals who have completed their</td>
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<tr>
<td></td>
<td>sentence or are complying with the terms of their judgment, parole, or</td>
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<tr>
<td></td>
<td>probation.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Ban on food stamps does not apply to individuals who comply with drug</td>
</tr>
<tr>
<td></td>
<td>testing and test negative</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Ban food stamps for individuals with drug felonies.</td>
</tr>
<tr>
<td>Montana</td>
<td>Ban on food stamps does not apply to individuals who comply with drug</td>
</tr>
<tr>
<td></td>
<td>testing and test negative</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Ban on food stamps only for individuals convicted of distribution,</td>
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<tr>
<td></td>
<td>manufacture, or trafficking; the ban does not apply to drug possession.</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Ban on food stamps only for individuals convicted of distribution,</td>
</tr>
<tr>
<td></td>
<td>manufacture, or trafficking; the ban does not apply to drug possession.</td>
</tr>
<tr>
<td>Nevada</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have</td>
</tr>
<tr>
<td></td>
<td>completed treatment.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Ban on food stamps ends six months after completion of sentence/release</td>
</tr>
<tr>
<td>Oregon</td>
<td>Ban on food stamps does not apply to individuals who have completed their</td>
</tr>
<tr>
<td></td>
<td>sentence or are complying with the terms of their judgment, parole, or</td>
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<tr>
<td></td>
<td>probation.</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Bans food stamps for individuals with drug felonies.</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Ban on food stamps does not apply to individuals who have completed their</td>
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<td></td>
<td>sentence or are complying with the terms of their judgment, parole, or</td>
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<tr>
<td></td>
<td>probation.</td>
</tr>
<tr>
<td>Texas</td>
<td>Bans food stamps for persons convicted of sale or possession of drugs</td>
</tr>
<tr>
<td>Utah</td>
<td>Ban on food stamps does not apply to individuals in treatment or who have</td>
</tr>
<tr>
<td></td>
<td>completed treatment.</td>
</tr>
<tr>
<td>Virginia</td>
<td>Ban on food stamps does not apply to individuals who have completed their</td>
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<tr>
<td></td>
<td>sentence or are complying with the terms of their judgment, parole, or</td>
</tr>
<tr>
<td></td>
<td>probation.</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Bans food stamps for individuals with drug felonies.</td>
</tr>
</tbody>
</table>
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.

Chart 2: STATES IMPOSING A SPECIFIC BAN ON FOOD STAMPS ONLY

<table>
<thead>
<tr>
<th>State</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wisconsin</td>
<td>Ban on food stamps does not apply to individuals who comply with drug testing and test negative</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Bans food stamps for individuals with drug felonies.</td>
</tr>
</tbody>
</table>

○ 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

<table>
<thead>
<tr>
<th>Delaware</th>
<th>Ohio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kansas</td>
<td>Oklahoma</td>
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<tr>
<td>Maine</td>
<td>Pennsylvania</td>
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<tr>
<td>Michigan</td>
<td>Vermont</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Washington</td>
</tr>
<tr>
<td>New Mexico</td>
<td>District of Columbia</td>
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<tr>
<td>New York</td>
<td></td>
</tr>
</tbody>
</table>

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 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


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.


27 Ibid.

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 society 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

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,38 making 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.43 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


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.

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


42 Arkansas, 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 rights statutes.


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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. 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. 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.

- **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. 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. Additionally, Arkansas, 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.


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).

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.


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.

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.

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 is still in force.

**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.
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.

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.\(^{52}\)

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- **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.\(^{53}\)

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.\(^{54}\) 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.\(^{55}\)

- 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.\(^{56}\)

- 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.\(^{57}\)

\(^{52}\) Ibid

\(^{53}\) Swarthmore Phoenix. March 6, 2002.

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**References:**


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In December 2006, the U.S. Supreme Court resolved the conflicting views of various federal Appellate Courts in *Lopez v. Gonzales*., holding that a first offense drug possession charge\(^{59}\), 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

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\(^{59}\) 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.


\(^{62}\) Moncrieffe V. Holder, Attorney General. The United States Court Of Appeals For The Fifth Circuit. N.D.

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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 states\(^{63}\) have now enacted “Ban the Box” laws preventing the disqualification of applicants based solely on their criminal history.\(^{64}\)

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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.

**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 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.

**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 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.

**Teachers**


**Veterinarians**

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

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)

**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.
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 states 71 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 disorders 77 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

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75 “Parity in Insurance Coverage.” National Alliance on Mental Illness.

76 Ibid.


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 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. 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.

- **Grounds for Divorce**

In 29 states, 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. Arizona requires prior offenders to send a notice of conviction to appropriate licensing or registration boards. Similarly, in South Carolina, individuals must send in notification of offense into licensing and registration boards. 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. In Tennessee, an individual convicted of a methamphetamine purchase, possession, production or any related offense must be registered in a public registry.

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. New York instituted the “Certificate of Relief from Disabilities and Certificate of Good Conduct” program for 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 Act, 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.

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,

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80 Pub. L. No. 105-89, Sec. 103
81 K.S.A. 23-3203
83 California Penal Code Section 1210.1
84 A.R.S. 13-3414
86 K.S.A 22-4904
87 Tenn. Code Ann. 39-17-436
88 Ibid, p. 6
89 N.Y. Correct. §§700-705
90 North Carolina House Bill 641 (2011)
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 drugs.94 Drug crimes remain the only offense for which an individual can be denied financial aid.

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:

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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


Greater application of expungement provisions for felony drug offenses conditioned on clear indicia of defendants’ recovery; and

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.

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

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