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Drug Courts --Just the Beginning: Getting Other Areas of Public Policy in Sync

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Abstract

Although an offender can complete a drug court program in the U.S., have his/her charges dismissed or reduced (or some other amelioration of the criminal justice system penalty that would otherwise have been applied), become drug free, obtain a job, regain custody of his/her children and become a tax paying, law abiding citizen etc., he/she will still be deprived of basic rights afforded to other U.S. citizens because other sectors of public policy still approach addiction with a punitive orientation. Thus, despite the fact that an offender may have made a substantial beginning in recovery, other parts of the system make no accommodation for his/her recovery efforts in, for example, their denial of (1) welfare benefits to persons charged/convicted of drug offenses; (2) educational loans or other benefits to persons charged/convicted of drug offenses; (3) public housing to persons charged/convicted of drug offenses; and (4) voting rights to persons with felony convictions. In addition, deportation proceedings can be instituted -- even for persons with a legal immigration status -- based upon a charge or conviction for a drug offense.

Without changes in other key areas of public policy, the goals and benefits designed to be achieved by the criminal justice system through drug court programs can be thwarted in both the short and long term by the failure of a shift in thinking in other key public sector areas which are critical to meaningfully reintegrating substance addicted offenders into the mainstream of the community. Hopefully policy makers will begin to address this critical need.

Despite the positive benefits that have been widely reported, “Drug Courts” continue to be merely a therapeutic oasis in a still punitive approach to substance abuse applied by most other areas of public policy in the U.S. Even for non violent drug offenders charged under federal statutes -- as opposed to state statutes to which drug court programs can apply -- strict mandatory incarceration penalties are still rigidly enforced. Only time will tell as to whether the growth of *drug court* programs will influence the adoption of more therapeutic -- and less punishment oriented -- responses to substance abuse in non-criminal justice system sectors of public policy and which take into account the medical and other research findings that have been rapidly emerging regarding addiction.

Ironically, the recent fiscal crises that have engulfed most state governments during the past several years -- perhaps 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, public health, and public safety issues that surround substance abuse. These issues need to be addressed regardless of whether any resurgence of economic prosperity occurs that might reinstate incarceration, in and of itself, as a viable response to addiction.

This paper addresses punitive policies toward substance abusers currently applied in a few of the most salient areas of public policy, unconnected with the criminal justice system: public housing; welfare benefits, educational benefits, voting rights, and immigration status. There are, of course, many other sectors that could be examined as well -- employment, medical insurance coverage, professional licensing, to name a few. This paper also focuses on drug courts, specifically, because of their rigid requirements imposed within the framework of the criminal justice system. The observations, however, would be equally applicable to other offenders who have made substantial progress in recovery.

I. Background

Most observers would agree that the U.S. justice system has generally dealt with offenders relatively harshly during the past several decades, resulting in one of the highest incarceration rates in the world. The development of drug courts, therefore, has reflected a shift toward a more humane approach for dealing with certain non violent, drug addicted defendants.

In the context of the traditional process for handling drug possession and related offenses, drug courts reflect a major revolution in the criminal justice system's approach -- particularly in light of the hard line “war on drugs” philosophy that had permeated law enforcement and prosecution policies during the past several decades. By combining the recognition that, while drug usage is a criminal offense, it is also a chronic, relapsing physiological condition, drug courts use the leverage

of the criminal justice system while, at the same time, incorporate the principles of therapy. Providing a wide range of behavioral health, medical, social, and other support services, drug courts provide defendants with an opportunity to become clean and sober, rebuild their lives, and become -- or resume -- living in the community as productive citizens. Those defendants who succeed in the drug court's rigorous requirements, generally have their charges dismissed or reduced, otherwise applicable incarceration sentences suspended, and/or receive other amelioration of the criminal justice penalty that would otherwise have been applied for the drug charge. Those who do not succeed in the drug court are subject to the traditional criminal justice system process and applicable sanctions.

Drug courts have developed at an astounding pace in the U.S. since the first program was introduced in Miami in 1989. Close to 100,000 drug addicted defendants have completed these programs¹, becoming drug free as well as fulfilling a range of rigorous requirements far more difficult to achieve than those of the traditional adjudication process. While the actual percentage of defendants charged with nonviolent drug and drug related offenses who go through drug court programs is, at best, estimated to be less than five percent of the potentially eligible defendant population, the introduction of drug court programs represents a major philosophical shift in the justice system's approach to drug abuse. Proponents hope that, with the availability of additional resources, coupled with program evaluation data and other relevant research findings, policy makers will recognize that the preferred approach for responding to substance abuse is to use the leverage of the criminal justice system to promote offenders' participation in well developed and supervised treatment programs and to apply the penalty of incarceration to only those defendants who continue to use drugs and commit criminal offenses.

Ironically, however, a substance abusing offender can complete the stringent demands of a drug court program, become drug free, have his/her charges dismissed and/or reduced, obtain a job, regain custody of his/her children, and exhibit other attributes of a law abiding, tax paying citizen but still continue to be penalized by other segments of the legal and public benefit systems -- public housing; welfare, educational benefits, voting rights, to name a few. The punitive repercussions of having been a substance abuser that are applied in the noncriminal justice system arena are applied to persons who have been involved with drugs even when they are now in recovery -- including persons who are drug court graduates, and last far longer than the criminal justice system sanctions. In many instances, they are lifetime sanctions. Until these other sectors of public policy revisit their current punitive orientation for dealing with persons who have been involved with drugs, and adopt, as appropriate, a more therapeutic approach, consistent with that developing in the criminal justice system, the penalties which these public sectors impose upon drug offenders-- regardless of their

¹*Drug Court Activity Update. June 2001.* OJP Drug Court Clearinghouse. School of Public Affairs. American University, with estimates of additional participants and graduates projected to reflect current activity based on the numbers of drug courts operating and estimated graduation activity reported.

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efforts at rehabilitation-- may well create barriers that undo the benefits reaped from successful drug court participation.

II. Criminal Justice System Implications of Drug Court Participation

The introduction of the drug court concept has reflected a radically different approach for criminal justice practitioners in dealing with persons addicted to drugs. In place of the traditional application of the a prescribed statutory penalty, drug courts utilize a “carrot and stick” approach: create an incentive to encourage defendants to participate and thereby engage in an intensive treatment process while, at the same time, be prepared to impose sanctions for non compliance. From a criminal justice system perspective, the ultimate end for a successful drug court participant is some amelioration of the criminal justice system penalty that would otherwise have been applied. In some instances, successful program completion may result in outright dismissal of the defendant’s criminal charges; in other situations, generally involving defendants with more extensive criminal records -- which has been increasingly the situation in most drug courts -- successful program completion may trigger a reduction of the original charge(s), suspension of incarceration time, reduction in the period of applicable probation, or other similar criminal justice system benefit.

In addition to completing the drug court and making a substantial beginning in their recovery, most successful drug court participants also demonstrate achievements in other areas of their lives: obtaining employment; regaining custody of and/or visitation with their children; volunteering for community service; enrolling in educational programs, etc.

The drug court approach is by no means based on a “soft on crime” approach but, rather upon a pragmatic recognition by criminal justice policy makers that:

- (1) substance addiction is a chronic, relapsing physiological condition-- in addition to the criminal activity it spurs--and that this condition requires *treatment*;
- (2) incarceration in and of itself – without treatment – has had little impact on reducing drug use among criminal offenders, and there is no indication this situation will change in the future;
- (3) the overall costs to the criminal justice system and larger community that will inevitably result from continuing to deal with substance abusing offenders in the traditional manner and the high rates of recidivism resulting urgently requires a re-examination of traditional processes and serious consideration of alternative, evidence-based², approaches; and, most significantly;
- (4) both research and practical experience demonstrate that “treatment works”.

² The term “evidence-based”, as used in this article, refers to approaches used by criminal justice systems for dealing with substance abusing offenders which research has shown to produce beneficial results.

Given the unusual fiscal and programmatic pressures many probation and corrections departments currently face, the intensive judicial supervision of substance abusing defendants which a drug court program requires also provides an important public safety service for the community which may not be otherwise available.

While drug courts are not a total panacea for addressing substance use in the offender population, their effectiveness compared with the traditional process has been clearly demonstrated in reduced recidivism rates and improved societal functioning of many participants -- even those who have not graduated.³

The drug court approach --with its focus on addressing underlying chronic public health, physiological, psychological and/or socio-economic conditions of defendants which, if left unaddressed, will result in continued justice system involvement -- is now being extended to other types of criminal offenses: vagrancy/homelessness; public nuisance/mental health; and domestic violence, to name a few. This "problem solving" approach is being increasingly applied, in varying degrees, to appropriate segments of the caseloads in many courts and has been adopted as official policy by Chief Judge Judith Kay for the courts in the state of New York.⁴

Despite the wholesale revolution that drug courts have introduced into the criminal justice system's approach for dealing with nonviolent substance abusing defendants, other sectors of public policy have yet to introduce any modifications in their traditional punitive responses to drug addiction and make no allowance whatsoever for an individual's recovery efforts. A few of the most salient areas of public policy in this regard are discussed below.

III. Housing

Housing has been identified by most drug court programs as the most immediate and critical need presented by many participants. Some are homeless; many others live in situations in which family members or other house mates are using drugs, thereby 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

³ See Steven Belenko. Research on Drug Courts: A Critical Review. The National Center on Addiction and Substance Abuse at Columbia University. May 2001; "Drug Court Activity Updates: June 2001". OJP Drug Court Clearinghouse and Technical Assistance Project. American University; and many drug court program evaluations, examples of which are posted on the BJA Drug Court Clearinghouse website:www.american.edu/justice.

⁴ Presentation by Chief Judge Judith S. Kaye to Citizens' Crime Commission, New York City. October 27, 1999. See also *Confronting the Cycle of Addiction and Recidivism: A Report to Chief Judge Judith S. Kaye by the New York State Commission on Drugs and the Courts*. June 2000.

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make clean and sober living arrangements, any chance of their becoming drug free is highly dubious. 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 excellent 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 HOPE Act was deemed to be a tough anti-crime measure designed to make public housing safe for law-abiding residents. However, two provisions of the law have potential detrimental consequences for persons involved with drug use or users, regardless of these individuals' subsequent success in recovery. The first provision 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 The second provision 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 at the state level in non-public housing units as well. For example, under a “Clean Sweep” agreement, the landlord of a major apartment building in the Bronx has agreed 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 felony drug violations occurring in rental property. If the landlord does not take action, the law permits the District

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.

Attorney's Office to proceed with eviction.⁹ A similar bill recently 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 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. and was upheld by the U.S. Supreme Court last year.¹²

Several drug court judges have discussed the feasibility of proposing the development of 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. Apart from the proposed earmark, 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.

IV. Public Welfare Benefits

Well over half of drug court participants are unemployed or have minimal employment when they enter the drug court and over one third lack a high school diploma or GED certificate.¹³ Most have very limited, if any, resources and whatever resources they have available are generally

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 See *U.S. Department of Housing and Urban Development v. Pearlie Rucker, et. al.* Nos. 00-1770 and 00-1781. March 26, 2002.

¹³ *2000 Drug Court Survey Report*. Final Draft. OJP Drug Court Clearinghouse and Technical Assistance Project. School of Public Affairs, American University. November 2001.

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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 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.¹⁴ 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.¹⁵

The Sentencing Project has made an extensive study of the application of this statute¹⁶, which has resulted in the following findings reported in several Sentencing Project publications.¹⁷ Although the federal statute permits states to "opt out" of its provisions or to modify them, as of 2002, the Sentencing Project had found that only eight states¹⁸ and the District of Columbia have opted out of the provisions of the law; 42 states are enforcing the ban in full¹⁹ or in part.²⁰ Twenty-two of these states impose the ban on ex-offenders for life²¹. An additional ten states impose partial denial of benefits and/or limit the ex-offender's ineligibility to a specified time period.²² The

¹⁴ *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.

¹⁵ 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.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ 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.

¹⁹ *Ibid.* p. 2-3.

²⁰ *Ibid.*

²¹ *Ibid.* The Sentencing Project cites the following states as applying the ban in toto as of 2002: 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.

²² *Ibid.* According to the Sentencing Project, the following states limit the ban to either specific offenses and/or a period of time following conviction:

Arkansas, Florida, and Rhode Island limit the ban to offenses involving the sale of drugs

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remaining ten states make benefits dependent on the individual's obtaining drug treatment.²³

Although the ban 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 small 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.²⁴ The Sentencing Project also noted that, when all of the states applying the ban can be 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.

V. Implications of a Felony Conviction on an Individual's Voting Rights

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 often be disenfranchised regardless of the turnaround they have made in their lives as a result of their drug court participation. The U.S., however, 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 12 states.²⁵ In 2002, it was estimated that two percent of the adult

only; Colorado limits the ban to offenses entailing the purchase of drugs with food stamps in which cases persons are ineligible for food stamps only;

Illinois limits the ban to persons convicted of the sale of drugs or possession of a large quantity of drugs but still remain eligible for food stamps;

Louisiana permits eligibility after a one-year period after release from custody or conviction date;

North Carolina permits eligibility after six months but also requires ex-offenders to have successfully completed a drug treatment prior or be participating in one to have their eligibility restored.

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 under two years of age, etc.). Persons convicted of a drug offense remain eligible for food stamps.

In Texas, persons convicted of sale or possession of drugs are ineligible for food stamps only.

Iowa also imposes a partial ban.

In addition, Minnesota and 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.

²³ Ibid. The Sentencing Project identified the follow states as permitting benefits if the ex-offender receives drug treatment: Hawaii, Kentucky, Maryland, Nevada, New Jersey, South Carolina, Utah and Washington.

²⁴ Ibid.

²⁵ See "Disenfranchisement: The Modern-Day Voting Rights Challenge". Marc Mauer. *Civil Rights Journal*. Winter 2002 and "The Impact of Felony Disenfranchisement Laws in the United States." *Human Rights Watch*. published by The Sentencing Project. 1998. (Alabama, Arizona (second felony), Delaware, Florida, Iowa,

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population could not vote as a result of a current or prior felony conviction, including 13% of African American males.²⁶

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 settling the British colonies in the U.S. and elsewhere. The provisions reportedly became incorporated into state laws in the U.S. in the late nineteenth century. Most advocates of voting right reform have noted that these laws serve no discernible legitimate purpose and, in fact, work against the reintegration of offenders into society.²⁷

The following is a statistical overview of the current nature of state felony disenfranchisement statutes, drawn primarily from research conducted by the Human Rights Watch; the Center for Policy Alternatives, and The Sentencing Project. 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.

Currently, forty-eight states and the District of Columbia do not permit prison inmates to vote.²⁸ Only two states have no restrictions on voting rights for convicted felons: Maine and Vermont.²⁹ Seventeen additional states automatically restore the right to vote when the offender has completed his/her period of incarceration.³⁰ Thirty-two states prohibit felons from voting while on parole and 28 of these states also prohibit felons from voting while on probation. Eighteen of these states restore voting rights after the offender completes his/her sentence, including parole or probation.³¹

Kentucky, Maryland (second felony) Mississippi, New Mexico, Texas, Virginia and Wyoming.)

²⁶ See "Disenfranchisement: The Modern-Day Voting Rights Challenge". Marc Mauer. *Civil Rights Journal*. Winter 2002.

²⁷ See "Losing The Vote: The Impact of Felony Disenfranchisement Laws in the United States." Human Rights Watch. 1998.

²⁸ Only Maine and Vermont permit inmates to vote. See "State Action Issues: Voting Rights Restoration Overview". Center for Policy Alternatives. (www.stateaction.org/issues/governance/votingrights/index.cfm) 2003.

²⁹ Hazel Trice Edney. "A Life Sentence: Denying Ex-Felons The Right to Vote". *The Call*. Kansas City, Mo. October 18, 2002..p. 4. See also: "State Action Issues: Voting Rights Restoration Overview". Center for Policy Alternatives. (www.stateaction.org/issues/governance/votingrights/index.cfm) 2003.

³⁰ Connecticut, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, and Utah. See "State Action Issues: Voting Rights Restoration Overview". Center for Policy Alternatives. (www.stateaction.org/issues/governance/votingrights/index.cfm) 2003.

³¹ Arkansas, Arizona, California, Colorado, Georgia, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, South Carolina, Texas, West Virginia, and

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Thirteen states permanently disenfranchise felons unless they apply to the state governor to grant them a pardon or institute other administrative procedure to reinstate their voting rights.³² Generally a waiting period of at least five years is required.

All other states restrict, in varying degrees, the voting rights of convicted felons, even in situations in which they have completed their sentences.³³ These statutory provisions result in the disenfranchisement of millions of U.S. citizens. They also make no exception for drug court graduates, many of whom have felony convictions on their records, either prior to or as a result of the arrest that brought them into the drug court.³⁴

VI. 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.³⁵ However, most programs also strongly encourage participants to engage in post secondary 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.

Under the Higher Education Act of 1998, however, all convicted drug offenders lose their eligibility for federal educational aid, either temporarily or permanently, if they have three

Wisconsin. Two additional states (Tennessee and Washington), permit restoration of voting rights for felons after completion of sentence except for felons convicted before 1986 (Tennessee) and 1984 (Washington.)

³² Alabama, Florida, Iowa, 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.

³³ The Sentencing Project, a nonprofit organization in Washington D.C. that promotes alternatives to incarceration, 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, Assistant Director of the Sentencing Project and the Sentencing Project website: www.sentencingproject.org.

³⁴ Nor do they make any exception for other potentially mitigating factors, such as prior military service, or subsequent restitution or community contributions.

³⁵ 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).

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convictions.³⁶ These provisions apply to all federally sponsored student loans, work study programs and Pell Grants.³⁷ In February 2003, Congressman Barney Frank (Massachusetts) introduced legislation to repeal the provision (H.R. 685) but, as of this date, no action has been taken on this bill.

Several colleges have voluntarily enhanced available financial aid resources to fill the gap created by the exclusion. The Board of Managers at Swarthmore College, for example, has approved a policy mandating the College to replace financial aid the federal government denies to students with drug convictions, beginning in the Fall of 2003.³⁸

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.

VII. Immigration Status

A quite common practice in the drug court process is for a defendant to plead guilty to a drug possession 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 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. The AEDPA eliminates discretionary relief from deportation that had been previously available under Section 212 c 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.³⁹ 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

³⁶ Under the statute, 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.

³⁷ "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).

³⁸ *Swarthmore Phoenix*. March 6, 2002.

³⁹ Reeves and Associates. "Recent Court Decisions Rejects INS' Unconstitutional Interpretation of Law and Forces Reopening of Cases." May 30, 2000.

crimes for which they were subsequently made deportable without any legal relief case.⁴⁰ 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 were 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.⁴¹ 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.⁴² 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.⁴³ In other instances, challenges are being raised on the grounds of inadequacy of counsel in advising the defendant to plea 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, the current state of immigration law means that an otherwise eligible defendant would need to forego the opportunity of drug court participation if it required 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 purpose of this article has been to explore several of the major areas of public policy which have yet to recognize the complex physiological, psychological and other factors contributing

⁴⁰ *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.

⁴¹ Reeves and Associates. “Deportation and Drugs: The Shabu Epidemic”. January 17, 2000.

⁴² *Lugan-Armendariz V.INS*. U.S. Court Appeals for the Ninth Circuit. Case Number 96-70431. August 1, 2000.

⁴³ See “Appeals Court Strikes New Deportation Stand.” Reuters News Service. February 12, 2002.

to drug addiction and the impact which drug court participation has on addressing them. There are numerous other areas of public policy which also could be cited for their punitive approaches to drug offenders which take into no account efforts at rehabilitation and recovery or the length of time the individual has been drug free – licensing requirements of many trades and professions, employment practices, and eligibility to serve as foster or adoptive parents, to name a few. 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 situations in the U.S.. While the issues raised have been addressed here in the context of drug court programs, many observers have also pointed to the discriminatory impact they are having on racial/ethnic, economic, and other segments of the population. Hopefully, greater attention will be given to addressing the overall implications of substance addiction and how they are treated by other public systems --a critical area urgently in need of attention.

Irrespective of the implications of this disconnect in public policy applied to addiction and recovery in general, it is the intent of this article to focus upon drug courts -- which specifically represent a major public policy shift for the criminal justice system and to note how, without changes in other areas of public policy, the goals and benefits designed to be achieved in this one segment of public policy – the criminal justice system – can be thwarted in both the short and long term by the failure of a shift in thinking by other segments of public policy. Hopefully policy makers will begin to address this critical issue.

REFERENCES:

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

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

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

“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).

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

Drug Courts --Just the Beginning: Getting Other Areas of Public Policy in Sync. Caroline S. Cooper, Research Professor. Justice Programs Office, School of Public Affairs, American University, Washington D.C. Prepared for the Middle Eastern-Mediterranean Summer Institute on Drug Use: 2003-2004.

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.

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

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.

Schiraldi, Vincent and Ziedenberg, Jason. *Costs and Benefits? The Impact of Drug Imprisonment in New Jersey.* Justice Policy Institute [Commissioned by the Drug Policy Alliance). Washington D.C. October 2003 (www.justicepolicy.org).

"State Action Issues: Voting Rights Restoration Overview". Center for Policy Alternatives. (www.stateaction.org/issues/governance/votingrights/index.cfm) 2003.

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

U.S Department of Housing and Urban Development v. Pearlle Rucker, et. al. Nos. 00-1770 and 00-1781. March 26, 2002.

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