

The San Francisco Sentencing Commission

City & County of San Francisco

(Administrative Code 5.250 through 5.250-3)

AGENDA

Wednesday, July 24, 2013
Screening Room
Delancey Street Foundation
600 Embarcadero
San Francisco, CA 94107

Note: Each member of the public will be allotted no more than 3 minutes to speak on each item.

1. Call to Order; Roll call; Agenda Changes.
2. Public Comment on Any Item Listed Below (discussion only).
3. Review and Adoption of Meeting Minutes from April 3, 2013 (discussion & possible action).
4. Staff Report on Sentencing Commission Activities (discussion only).
5. Presentation on Earned Compliance Credit by National Council on Crime and Delinquency (discussion only).
6. Presentation on California Drug Law and Local Practice by Sharon Woo, Assistant Chief Operations, San Francisco District Attorney's Office (discussion only).
7. Presentation on Design Options for Drug Policy by Dr. Robert MacCoun, UC Berkeley professor of law and public policy (discussion only).
8. Presentation on Seattle based Law Enforcement Assisted Diversion (LEAD) Program by Lt. Nollette, Lisa Duggard, and Ian Goodhew (discussion only).
9. Members' Comments, Questions, and Requests for Future Agenda Items.
10. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.
11. Adjournment.

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Persons who are unable to attend the public meeting may submit to the San Francisco Sentencing Commission, by the time the proceedings begin, written comments regarding the subject of the meeting. These comments will be made a part of the official public record, and brought to the attention of the Sentencing Commission. Written comments should be submitted to: Tara Anderson Grants & Policy Manager, San Francisco District Attorney's Office, 850 Bryant Street, Room 322, San Francisco, CA 941023, or via email: tara.anderson@sfgov.org

MEETING MATERIALS

Copies of agendas, minutes, and explanatory documents are available through the Sentencing Commission website at <http://www.sfdistrictattorney.org> or by calling Tara Anderson at (415) 553-1203 during normal business hours. The material can be FAXed or mailed to you upon request.

ACCOMMODATIONS

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TRANSLATION

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Administrator
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place,
San Francisco, CA 94102-4683.
Telephone: (415) 554-7724
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DRAFT MINUTES

Wednesday, April 3, 2013

10:00 a.m. – 12:00 p.m.

Hall of Justice

Room 551

850 Bryant Street

San Francisco, CA 94103

Members in Attendance: Bob Dunlap (Felony Supervisor, Public Defender's Office); Christine DeBerry (Chair) (Chief of Staff, District Attorney's Office); Family Violence Council Appointee Minouche Kandel (Bay Area Legal Aid); Reentry Council Appointee Catherine McCracken (Center on Juvenile and Criminal Justice); Sheriff Ross Mirkarimi; Board of Supervisors Appointee Theshia Naidoo (Drug Policy Alliance); Mayoral Appointee Professor Steven Raphael (Goldman School of Public Policy, UC Berkeley); Reentry Council Appointee Karen Roye (Director, Department of Child Support Services); Deputy Chief David Shinn (Police Department); Chief William Sifferman (Juvenile Probation Department); Chief Wendy Still (Adult Probation Department).

Members Absent: Public Defender Jeff Adachi; Director of Health Barbara A. Garcia (Department of Public Health); District Attorney George Gascón

1. Call to Order; Roll call; Agenda Changes.

Chair DeBerry called the meeting to order and welcomed commission members and members of the public to the third meeting of the San Francisco Sentencing Commission. DeBerry thanked the Police Department for making the room available for the day's meeting and asked the Commissioners to introduce themselves. Each member, or substitute member, introduced him or herself.

DeBerry asked if any Commissioners had changes to the proposed agenda. No Commissioners proposed changes to the agenda. DeBerry then reviewed the procedure for public comment, and asked if the public would like to comment on agenda item 1. Hearing none, the hearing proceeded to the next item.

2. Review and Adoption of the Meeting Minutes from December 12, 2012 (discussion and possible action)

DeBerry asked the Commissioners to review the Minutes and asked if anyone had edits or additions to the December 12th meeting minutes.

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David Shinn moved to accept the minutes and Minouche Kandel seconded. All members voted in favor and the motion passed.

3. Staff Report on Sentencing Commission Activities (discussion only)

DeBerry asked Tara Anderson to provide an overview of the activities of the Sentencing Commission since the December 12th meeting. Anderson gave an overview of the National Council on Crime and Delinquency's role as a Technical Assistance provider. She gave a summary of active realignment strategies and an overview of existing realignment programs. Anderson reported that staff reached out to the presiding judge for San Francisco Superior Courts, but the Court declined on account of perceived breaches of judicial ethics and issues with separation of powers.

DeBerry asked Minouche Kandel to provide an update on the Family Violence Council. Kandel reported that the Council last met on February 20, 2013. They have a new certified counseling program for individuals convicted of child abuse, which is getting many referrals from adult probation. They also have released a new smartphone application created for elder abuse: "368+". Elder abuse community was active in creating the application and anyone can download it for free. Kandel reported that a joint publication campaign for all forms of domestic violence, child abuse, and elder abuse is coming soon. Lastly, audits and site visits of batterers intervention programs are ongoing.

DeBerry asked Karen Roye to provide an update on the Reentry Council. Roye reported that the Reentry Council discussed the following items at their last meeting:

- Shortening of standard term for individuals convicted of certain crime from 3 to 2 years
- Expanding and improving pre-trial diversion
- Eliminating Disproportionate Minority Contact in SF
- Board of supervisors appointed Robert Bowden to reentry council for remainder of term.
Holds the seat for a formerly incarcerated individual

The next Reentry Council meeting is May 14, 2013.

DeBerry calls on Mai Linh Spencer, legal consultant from the National Council on Crime and Delinquency to present on successful sentencing reform. DeBerry directs Commissioners to tab 5 in their packets.

5. Presentation on a National Summary of Successful Sentencing Reform by National Council on Crime and Delinquency (discussion only)

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Mai Linh Spencer begins her presentation using PowerPoint. A copy of the PowerPoint slides can be found in the April 3, 2013 meeting packet.

While going through her presentation, Linh Spencer highlighted the following Keys to Success for Sentencing Commissions

- Successful commissions have multiple voices representing multiple communities rather than a single visionary voice of vanguard.
- Successful commissions have had help from outside Technical Assistance provider in order to support rigorous data analysis.

After her presentation, Linh Spencer asks the commission if there are areas into which they would like her to look more deeply.

Bob Dunlap referenced ways custodial time decreases – e.g. reward for good behavior – and he asked if there are jurisdictions that are reducing time during a supervisory period as a result of good behavior. Dunlap asked if there are probation departments giving a month off sentence for every month of good behavior on the program. Linh responded that yes, many departments reduce a sentence by 5 or so days for every month of good behavior; Missouri gives a month off for every month of good behavior. Chief Wendy Still added that there are examples of this in the report NCCD provided. Chief Still raised that the goal of this is to motivate shorter sentencing and to give incentives – she has had conversations with judges about this in terms of the sentencing recommendations probation gives the courts.

Linh Spencer clarified that the Commission would like her to look at states that have created incentives in community supervision in order to reduce time under supervision. Chief Still confirmed that request and specified that she would also like to know *what* the incentives are and if they have research on outcomes.

Sheriff Mirkarimi said he has noticed that out of 9 jurisdictions in NCCD report, 6 were south of the Mason/Dixon line. He went on to say these areas have disproportionate sentencing of people of color. The Sheriff would be interested in how these sentencing reforms have affected prison/jail population demographics, especially with respect to race. Linh responds that it might be too early to get firm numbers and, though she doesn't want to rely too much on the forecast, she will provide a report on that if she cannot find solid data.

Chief Sifferman spoke on the relationship between sentence and the length of time a case has been in the system. He said case processing issue has an impact on the eventual disposition of the case. Whether a case gets stale or falls apart can show up in the sentence, e.g. result from a plea bargain vs. a conviction after a trial. This relationship could tell the Commission about how

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expedited case processing affects the sentence and the process of rehabilitation. Chief Still stated that for the majority of cases getting prison/jail only sentences, looking at early resolution might be a good focus; judges in San Francisco are supportive of fast tracking motions to revoke.

Linh asked the commission if they can suggest a starting point for research. Chief Still responded that there is a working group for the fast track of motions to revoke issue and she will let Linh know when they have results. DeBerry added that the DA's office likely knows of some research and, as an office, will get back to Linh. DeBerry said that DA Gascón supports early accountability, "swift and certain." Chief Still added that front-end sentencing is what makes a difference, not sanctioning after sentencing. Professor Steven Raphael contributed that a judge in Hawaii is committed to the HOPE program and may be starting a pre-trial HOPE program. Chief Still added that Sacramento also has a pilot program and she would be happy to reach out to the judge there if there is interest.

Linh concluded her presentation and DeBerry introduced Lizzie Buchen and Selena Teji from the Center on Juvenile and Criminal Justice (CJCJ).

6. Presentation of California Realignment Sentencing Trends by Center on Juvenile and Criminal Justice (discussion only).

CJCJ has been collecting data on realignment since its inception and Buchen and Teji presented their information via PowerPoint. A copy of the PowerPoint slides can be found in the April 3, 2013 meeting packet.

Buchen and Teji note, along with the slide titled "Determining Success," that the state is using faulty success metrics, including population in prison and ability to provide medical/mental health, to determine the success of realignment. These metrics do not acknowledge the counties trying to implement realignment on the ground. There is more data available from some localities, this depends on which counties collect this data.

During the presentation, Sheriff Mirkarimi noted that even if other counties push back against realignment, it is important to ensure San Francisco maintains a carve-out of realignment opportunities to continue the good work they are doing.

Sheriff asked what a good entry point would be to start getting better collective data. He spoke to concerns about getting around siloes in San Francisco. Buchen and Teji responded that a commission is a good place to start to begin to maintain a centralized location where everyone can report their data to. They added that it is also important to be able to access each other's raw data.

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Sheriff suggested to the Commission that they schedule a conversation with the Department of Technology to talk about getting on the same page with regards to research. DeBerry noted this for a further discussion as well as the issue of data-tracking as a commission. Chief Still contributed that before realignment she and her colleagues decided what pieces of data to collect through the process – there is a lot of data already being collected that needs to be analyzed.

Buchen and Teji concluded their presentation and DeBerry introduced Chief Still as the next presenter giving an overview of the 1170(h), Public Safety Realignment, sentencing trends from October 2011 to February 2013. DeBerry applauded Chief Still's contribution to San Francisco and to the Commission.

7. Presentation of San Francisco Realignment Sentencing Trends by the Adult Probation Department (discussion only).

Chief Still presented using information provided in the meeting packet as well as a PowerPoint presentation. A copy of this information is included in the April 3, 2013 meeting packet.

With regard to some data included in her report, Chief Still noted that the “White” category includes Hispanic because this is the way the courts track it. The CDCR collects data that differentiates between “White” and “Latino” – she recommended the Commission figure out a way to collect more universal data. Sheriff Mirkarimi agreed that it is a disservice to collect data so differently. Chief Still recommended having a meeting about this specifically and inviting the courts and someone from the Justice Project. Professor Raphael suggested adopting the language the Census uses, which would be consistent with federal reporting.

Chief Still concluded her presentation and DeBerry introduced Luis Aroche from the District Attorney's office to present on their Alternative Sentencing Program.

8. Presentation on san Francisco District Attorney Alternative Sentencing Planner Program by Luis Aroche (discussion only).

Luis Aroche gave a presentation via PowerPoint. A copy of these PowerPoint slides are included in the April 3, 2013 meeting packet. There was no discussion or questions following the presentation.

DeBerry thanked Aroche for the presentation and asked Tara Anderson to provide an overview of the third party and collaborative research on public safety realignment currently underway.

9. Overview of Current Realignment Research (discussion & possible action).

Tara Anderson went through the research report provided in the April 3, 2013 meeting packet. A copy can be found in that packet.

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Anderson stated that the Commissioners can suggest other research they're aware of and the planning committee can solicit presentations from them. She then went through the summary of bills in the packet and, in addition, noted the following:

The Senator sponsoring SB210 is considering pulling the bill off this year.

SB466 would create a criminal justice policy institute, which is in line with the goals of the commission. Chief Still stated that if this bill were to pass, Stanford would likely be the anchor. They have created a think tank that would be the foundation.

Thesia Naidoo highlighted bills that were not included in the report: SB649, AB222, AB828, AB651, and SB283. Naidoo motioned that the commission officially endorse SB649. DeBerry responded that the commission will come back to these bills at a future meeting, but individual commissioners are welcome to weigh in as they see fit in the meantime. Sheriff Mirkarimi suggested that Naidoo go to the Board of Supervisors for support.

10. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.

DeBerry asked the public if anyone would like to provide comment. No one came forward.

11. Members' Comments, Questions, and Requests for Future Agenda Items.

DeBerry then asked the Commission if they had suggestions for future agenda items. Naidoo suggested the commission look for examples of sentencing alternatives internationally, as well as within the U.S. DeBerry responds that they are looking into this.

Chief Still thanked everyone staffing the meeting. She is looking forward to taking action.

12. Adjournment.

DeBerry asked if there was a motion to adjourn the second meeting of the Sentencing Commission. Chief Wendy Still moved to adjourn and Minouche Kandel seconded. All members voted in favor and the motion passed.

Agenda Item 5: STATES OFFERING COMPLIANCE CREDITS FOR PROBATIONERS¹

State/ Year/ Statute	Exclusions	Credit Name, Calculation, and Mechanism	Definition of Compliance; Grounds for Forfeiture	Links to Bills and Reports/Notes
<p><u>AZ</u> 2008 Ariz. Rev. Stat. § 13-924</p>	<ul style="list-style-type: none"> • Lifetime probation • Class 2 or 3 felony • Misdemeanor offense • Sex offenses 	<p>On recommendation of probation officer, the court may grant probationer 20 days of earned time credits (ETC) for every 30 days of compliance with specified terms.</p>	<p>A probationer is in compliance when:</p> <ul style="list-style-type: none"> • Progressing in her/his case plan; • Current on restitution payments; and • Current in completing community restitution [community service]. <p>Any credits earned are revoked if a probationer violates the specified terms of supervision.</p>	<p>SB 1476 http://www.azleg.gov/legtext/48leg/2r/bills/sb1476p.pdf</p> <p>According to a Pew Research Center report, in the two years following Arizona’s probation reform (which included, among other measures, ETC), new felony convictions of probationers declined by 31% and probation revocations dropped by 30%. See http://www.acgov.org/probation/documents/PEWStudyonImpactofArizonaProbationReform.pdf</p>
<p><u>AR</u> 2011 Ark. Code § 16-90-1304</p>	<ul style="list-style-type: none"> • Sex offenses • Violent felonies • Kidnapping • Manslaughter • Driving while intoxicated • Class A or Y felonies 	<p>The Department of Community Correction (DCC) can award 30 days of earned discharge credits for each month of compliance with the terms of supervision.</p>	<p>Statute defines compliance as fulfilling court-ordered conditions and a set of predetermined criteria established by the DCC in consultation with judges, prosecuting attorneys, and defense counsel.</p> <p>Policy 5-4-11 defines compliance as:</p> <ul style="list-style-type: none"> • Current on financial obligations;  • Met the goals of supervision plan (e.g., attended programs, meetings, services as directed); • No positive drug test; 	<p>Act 570 http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act570.pdf</p> <p>Statute provides for notification and objection procedure before sentencing court discharges probationer.</p> <p>DCC 2012 Annual Report provides the following.</p> <ul style="list-style-type: none"> • “As of August 31, 2012, 11,344 offenders were eligible for EDC. Since implementation, 45% of eligible clients were awarded

¹ This table is based in part on materials provided by the Vera Institute of Justice, Center on Sentencing and Corrections.

State/ Year/ Statute	Exclusions	Credit Name, Calculation, and Mechanism	Definition of Compliance; Grounds for Forfeiture	Links to Bills and Reports/Notes
			<ul style="list-style-type: none"> • Reported as required; • No new arrests or charges; • Not found in violation of any other supervision conditions; and • Not on pre-trial, pre-adjudication, boot camp, or drug court without probation. <p>Earned credits will be forfeited if the probationer is subsequently convicted of a felony for which he/she is incarcerated. The DCC has sole discretion to forfeit any earned credits.</p>	<p>EDC.</p> <ul style="list-style-type: none"> • "The number of EDC days awarded since August 2011, is 76,986. • "Of the 49 offenders eligible for discharge, 12 objections were received." <p>Retrieved from http://www.dcc.arkansas.gov/publications/Documents/publications/ar11_12.pdf</p>
<p><u>CO</u> 2011 Colo. Rev. Stat. § 18-1.3-301(1)(I)</p>		<p>Probationer is eligible to receive up to 10 days of time credits for each month during which the probationer makes consistent progress in specified categories.</p> <p>The Community Corrections Program administrator makes the determination that the probationer has made consistent progress and is eligible to receive time credits.</p>	<p>Probationer demonstrates consistent progress in:</p> <ul style="list-style-type: none"> • Maintenance of employment, education, or training, including attendance, promptness, performance, cooperation, care of materials, and safety; • Development and maintenance of positive social and domestic relations; • Compliance with rules, regulations, and requirements of residential or nonresidential program placement; • Completion and compliance with components of the individualized program plan; and • Demonstration of financial responsibility and accountability. <p>See statute for additional limitations. Credits are forfeited if probationer escapes or absconds.</p> <p>"If the program administrator determines that the offender engaged in criminal activity during the time period for which the time credits were granted, the program administrator may withdraw the time credits</p>	<p>SB 11-254 http://www.leg.state.co.us/clics/clics2011a/csl.nsf/fsbillcont3/C63C85A533331523872578730065A48D?open&file=254_enr.pdf</p> <p>Statute specifies that the Community Corrections Program administrator "shall develop objective standards for measuring progress in the categories listed ... shall apply such standards consistently to evaluations of all such offenders, and shall develop procedures for recommending the award of time credits to such offenders."</p> <p>Statute specifies that reviews of individual records must be conducted at least once every six months. C.R.S.A. 18-1.3-301 http://search.jurisearch.com/NLLXML/getcode.asp?datatype=S&statecd=CO&sessionyr=2012&TOCID=11779&userid=GUEST9&cvfilename=&noheader=1&Interface=NLL</p>

State/ Year/ Statute	Exclusions	Credit Name, Calculation, and Mechanism	Definition of Compliance; Grounds for Forfeiture	Links to Bills and Reports/Notes
<p><u>DE</u> 2012 Del. Code tit. 11, § 4383</p>	<ul style="list-style-type: none"> Sex offenses Violent felonies Any offense for which a longer probation period is necessary to ensure that the probationer fully pays restitution 	<p>The Department of Correction commissioner may award up to 30 days of earned compliance credits for 30 days of compliance with conditions of supervision, not to exceed half of the probationary period.</p>	<p>granted during such period.”</p> <p>Statute specifies that Commissioner of Corrections is to adopt rules and regulations.</p> <p>Credits will be forfeited upon conviction of a new crime or upon revocation of probation.</p>	<p>SB 226 http://www.delcode.delaware.gov/title11/c043/sc08/index.shtml</p>
<p><u>MD</u> 2012 Md. Code, Corr. Serv. § 6-117</p>	<ul style="list-style-type: none"> Violent crimes Homicide by motor vehicle or vessel while under the influence of alcohol Drug offenses Supervision was transferred to/from another state 	<p>A probationer can earn 20 days of earned compliance credits for every month of compliance with specified terms of supervision.</p> <p>The Department of Public Safety and Correctional Services determines when a probationer is in compliance and eligible to receive credits.</p>	<p>Compliance means the probationer:</p> <ul style="list-style-type: none"> Fulfills the conditions of supervision; Has no new arrests; Has not violated any no-contact provisions; Is current on court-ordered payments; and Is current on any other supervision requirements. <p>Once a probationer’s served time plus credits amounts to the total sentenced term, he/she is put on abatement, a less active form of supervision, where obligations are defined as (1) obey all laws; (2) report to agency; and (3) obtain permission before relocating out of state.</p> <p>If the probationer violates a term of supervision while on abatement, the court may order the probationer to return to active supervision.</p>	<p>HB 670 http://mgaleg.maryland.gov/2012RS/chapters_noln/Ch_565_hb0670e.pdf</p> <p>Statute specifies that credit program is to be applied prospectively only; sentences commenced before Act’s passage are not eligible.</p>
<p><u>MO</u> 2012 Mo. Rev. Stat. § 217.703</p>	<ul style="list-style-type: none"> Lifetime supervision Most sex offenses Absconders For the following offenses, the sentencing court may determine that an 	<p>The Division of Probation and Parole (the Division) awards 30 days of earned compliance credits for every full calendar month of compliance with terms of probation. Probationers can begin accruing credits after the first full month of</p>	<p>Compliance means the absence of a violation report by the probation officer or a motion to revoke/suspend probation by a prosecuting attorney.</p> <p>All credits will be revoked if the court revokes probation. Credits will not accrue in any</p>	<p>HB 1525 http://www.house.mo.gov/billtracking/bills121/biltxt/truly/HB1525T.htm</p> <p>Offenders sentenced before September 1, 2012 are eligible to earn credits beginning October 1, 2012.</p>

State/ Year/ Statute	Exclusions	Credit Name, Calculation, and Mechanism	Definition of Compliance; Grounds for Forfeiture	Links to Bills and Reports/Notes
	<p>offender is ineligible to earn credits.</p> <ul style="list-style-type: none"> » First or second involuntary manslaughter » Second-degree assault » Second-degree domestic assault » Second-degree assault of a law enforcement officer » Second-degree statutory rape » Second-degree statutory sodomy » First-degree child endangerment » Felony weapons offenses 	<p>supervision.</p>	<p>month where the probationer has violated probation or a hearing is pending on a motion to revoke or suspend credits.</p> <p>Once time served on probation plus credits satisfy total term, the sentencing court orders the final discharge, so long as the offender has completed at least two years of her/his probation.</p>	<p>Award or rescission of credits is not subject to appeal or motion for post-conviction relief.</p> <p>At least twice per year, the Division must calculate and notify offender of remaining months of probation (accounting for credits).</p> <p>No less than 60 days before date of final discharge, the Division shall notify sentencing court and prosecutor of impending discharge.</p>
<p><u>NV</u> 2007 Nev. Rev. Stat. § 176A.500</p>		<p>An eligible probationer can earn one deduction of 10 days for every month of compliance with the terms of supervision and an additional deduction of 10 days for every month of participation in approved employment or other programs.</p> <p>The Division of Parole and Probation determines when a probationer is eligible to receive time deductions.</p>	<p>Probationer is: in compliance with terms and conditions of probation; current with supervision fees and court-ordered fines, fees, and restitution, including victim restitution; and actively involved in employment or enrolled in a program of education, rehabilitation, or any other program approved by the DPP.</p> <p>Probationer who is a participant in specialty court programs (mental illness/substance abuse) is given a deduction if actively involved in employment/approved program only if he/she has successfully completed the specialty court program.</p>	<p>Nevada AB 510 http://statutes.laws.com/nevada/title-14/chapter-176a/duration-arrest-for-alleged-violation/176a-500</p> <p>The Nevada Offender Tracking Information System calculates credits automatically.</p>

State/ Year/ Statute	Exclusions	Credit Name, Calculation, and Mechanism	Definition of Compliance; Grounds for Forfeiture	Links to Bills and Reports/Notes
<p>SC 2010 S.C. Code Ann. § 24-21-280</p>	<p>Offenders with aggregate terms less than 366 days without a break in supervision</p>	<p>Probationers can earn up to 20 days of compliance credits for each 30-day period of full compliance.</p> <p>The probation officer, in consultation with his/her supervisor, identifies eligible probationers and awards credits accordingly.</p>	<p>Compliance means the probationer has “fulfilled all of the conditions of his supervision, has no new arrests, and has made all scheduled payments of his financial obligations.”</p> <p>The South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) can revoke any portion of earned credits if an individual violates a condition of supervision during a subsequent 30 day period.</p> <p>SCDPPPS Procedure No. 147 (issued February 28, 2011) states that the offender management system automatically denies credits for:</p> <ul style="list-style-type: none"> • Case status (pending warrant or citation); • Supervision status (institutionalized or absconded); • Financial obligation arrearage (not including fine/surcharge, Public Defender Fund, and/or DNA arrearage); or  • Documented case sanctions (violation response). <p>Officer can override denial of credits as positive. Any portion of previously awarded credit can be revoked if offender is noncompliant with conditions.</p>	<p>SB 1154 http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm</p> <p>Denial of credits is not subject to appeal.</p> <p>SCDPPPS report on FY 2011: 294 offenders were eligible to earn compliance credits, which is 1% of the active offender population. A total of 2,080 credits were earned and 8,140 denied. The primary reason for denial was supervision fee arrearages; the secondary reason was restitution arrearages.</p> <p>There were 4,966 offender revocations, a 12% reduction from FY 2010. A total of 4,141 involved compliance revocations, a 13% reduction from FY 2010. A total of 825 involved new offense revocations, a 6% reduction from FY 2010.</p> <p>During FY 2011, the number of offenders admitted to the Department of Corrections as a result of compliance revocations was reduced by 579.</p> <p>http://www.ncsl.org/Documents/cj/SC_SROCreport.pdf</p> <p>(Note that the relevant Omnibus Act did not become law until late 2010 and early 2011, so FY 2011 includes pre-Act months)</p>

State/ Year Title of Law (Bill)	Exclusions	Credit Name, Calculation, and Mechanism	Definition of Compliance; Grounds for Forfeiture	Links/Notes
<p><u>SD</u> 2013 S.D. Codified Laws § 23A-27</p>	<ul style="list-style-type: none"> • Felony probation for a term of less than six months • Sex offenses 	<p>Probationers can earn at least 15 days of discharge credits for each month of compliance with the conditions of supervision.</p>	<p>Bill specifies that the Supreme Court shall establish rules for criteria and procedures for earning and awarding credits and the State Court Administrator’s Office oversees the award of earned discharge credits.</p>	<p>SB 70 (sections 22 to 26) http://legis.state.sd.us/sessions/2013/Bills/SB70ENR.pdf</p>
<p><u>TX</u> 2011 Tex. Code of Crim. Pro. Art. 42.12 (Sec. 20A)</p>	<ul style="list-style-type: none"> • Family violence offenses • DUIs (driving under the influence) • Reportable sex offenses • Kidnapping • Arson • Delinquent in paying fines or restitution 	<p>Eligible probationers may earn time credits for:</p> <ul style="list-style-type: none"> • Earning designated, court-ordered certificates (between 90 and 120 days); • Making designated, court-ordered payments (between 15 and 60 days); or • Completing designated, court-ordered treatment programs (between 30 and 90 days). <p>The probation officer notifies the court of eligible probationers and the court awards credits after reviewing the supervision record.</p>	<p>Compliance means the probationer is not delinquent in paying fines, costs, or fees and has fully satisfied ordered victim restitution. In addition, the probationer must complete the specific requirements for each type of time credit as follows.</p> <ul style="list-style-type: none"> • Earning certificates: <ul style="list-style-type: none"> » High school diploma or high school equivalency certificate; and/or » Associate’s degree. • Full payment of any: <ul style="list-style-type: none"> » Court costs; » Fines; » Attorney’s fees; and/or » Restitution. • Completion of treatment/rehab programs: <ul style="list-style-type: none"> » Alcohol or substance abuse counseling or treatment; » Vocational education or training program; » Parenting class or parental responsibility program; » Anger management program; and/or » Life skills training program. <p>The court may order some or all credit to be forfeited if the probationer violates the terms of supervision.</p>	<p>HB 1205 (2011) http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/HB01205F.pdf</p>



Date: June 20, 2013

Subject: Earned Compliance Credit

Author: The Vera Institute of Justice, Center on Sentencing and Corrections¹

I. Background

Early release policies based on earned credits or good behavior are widely used in the criminal justice system. Most states have policies awarding eligible inmates in prison “good time” or “earned” credit accelerating their release. For offenders on community supervision, many states have early termination policies, which generally allow for the supervising officer to recommend early termination of the offender’s supervision term based on good behavior.

Legislation known as “Earned Compliance Credit” (“ECC”) is relatively new, and it applies the concept of “good time” to individuals on community supervision. ECC legislation standardizes and imposes consistency on early termination policies, making accelerated release from supervision more automatic. Most ECC legislation reduces the time that offenders serve on active parole or probation supervision by a specific number of days per month that they are in full compliance with their conditions of supervision. Upon recommendation of the supervising officer, the court or the supervisory authority may reduce the period of supervision by the amount of credit earned.

ECC is premised on the evidence-based principle that resources should be directed at those who are at the greatest risk of reoffending. Research demonstrates that moderate- to high-risk offenders benefit most from supervision and services and that lower-risk offenders often do worse with additional conditions. In addition, recidivism is much more likely in the immediate weeks and months following release. By shortening the supervision period of lower-risk offenders who comply with their conditions and complete certain goals, agencies can manage their caseloads and devote time and effort to those who warrant it most.

ECC is intended to achieve the following outcomes:

- Increase the number of successful discharges from supervision;
- Reduce the number of revocations;
- Increase the number of offenders completing treatment programs and leading successful, non-criminal lives; and
- Allocate caseload resources consistent with evidence-based practices.

II. State Examples

Since 2007, at least twelve states have passed earned compliance credit legislation. The chart below summarizes ECC legislation and policy in some of these states, based on a review of the law, policy, and/or telephone interviews.

¹ For further information about this memo or Vera’s Center on Sentencing and Corrections, please contact Alison Shames, Associate Director and Director of Programming, ashames@vera.org. This memo was originally prepared in response to a request from a jurisdiction and it is current as of November 2012.

State	Citation	Population	Exclusions	Credit Calculation	Defining Compliance
NV	AB 510 (2007)	Probation and Parole	<ul style="list-style-type: none"> • Felony sex offenses • Violent felonies • Category A or B felony • Felony DUI 	<ul style="list-style-type: none"> • Up to 20 days per month. • Nevada Offender Tracking and Information System (NOTIS) automatically calculates credits once employment and fees entered. • Partial credit if current with restitution and supervision fees. • Partial credit for maintaining employment. 	<ul style="list-style-type: none"> • Current with any supervision fees. • Current with restitution payments. • Diligence in labor or study (e.g., maintaining employment).
AZ	SB 1476 (2008)	Probation	<ul style="list-style-type: none"> • Lifetime probation • Class 2 or 3 felonies • Misdemeanor-only convictions • Sex offenders 	<ul style="list-style-type: none"> • 20 days of credit for 30 days of compliance. • Calculation is programmed into offender management system and assumes best case scenario that all credits will be earned. 	<ul style="list-style-type: none"> • Current with conditions of case plan and financial obligations. • Credits are automatically forfeited if one is taken to court for a violation of probation.
OR	HB 3508 (2009)	Probation and Parole	None listed.	Reduction in active probation may not exceed 50 percent of the supervision term.	<ul style="list-style-type: none"> • Compliant probationers and parolees are eligible to be transitioned to inactive supervision. • DOC issues rules for probationers, and statute issues rules for post-supervision population, regarding inactive status.
SC	SB 1154 (2010); SCDPPPS Policy & Procedure No. 147 (2011)	Probation	Offender must have an aggregate term of supervision of more than one year (366 days or more) without a break in supervision.	<ul style="list-style-type: none"> • Up to 20 days per credit period. • Credit earnings are prospective and will begin accruing on the date that the aggregate supervision period is \geq 366 days. • Credits can only be earned prospectively and will not be retroactively awarded. • Credits are applied every 31st day of the supervision cycle, if applicable. 	<ul style="list-style-type: none"> • SCDPPPS Procedure No. 147 states that the offender management system automatically denies credits for: <ul style="list-style-type: none"> ○ case status (pending warrant or citation), ○ supervision status (institutionalized or absconded), ○ financial obligation arrearage (not including fine/surcharge, Public Defender Fund, and/or DNA arrearage), or ○ documented case sanctions (violation response). • Officer can override denial of credits as positive. • Any portion of previously awarded credit can be revoked if offender is non-compliant with conditions.
NE	LB 191 (2011)	Parole	None listed.	10 days per month.	<ul style="list-style-type: none"> • No charges of misconduct. • No breach of parole conditions.
KY	HB 463 (2011); KY DOC Policies & Procedures 27-20-03 (2012)	Probation and Parole	Probationer must have served at least 18 months of his or her term of supervision and not violated the terms of supervision in previous 12 months.	<ul style="list-style-type: none"> • 7 days per month. • Offender management system automatically awards credit unless officer overrides and supervisor approves. 	Kentucky Policy 27-20-03 defines compliance as: <ul style="list-style-type: none"> • Following case plan • No new arrests • Has made scheduled monthly restitution payments • No violation reports • No return to custody • No warrant for parole violation

State	Citation	Population	Exclusions	Credit Calculation	Defining Compliance
AR	Act 570 (2011); Arkansas DOC Policy 5-4-11 (2011)	Probation and Parole	<ul style="list-style-type: none"> Sex offenses Violent felonies Kidnapping Manslaughter DWI Class A felonies involving controlled substances Class Y felonies 	<ul style="list-style-type: none"> Up to 30 days per month. Credits automatically awarded unless officer opts out. Noncompliance results in the client not earning credits for the specific month of noncompliance. Earned credits will be forfeited if the client is subsequently convicted of a felony for which he/she is incarcerated. 	<p>Arkansas' Policy 5-4-11 defines compliance as:</p> <ul style="list-style-type: none"> Current on financial obligations, Met the goals of supervision plan (e.g. attended programs, meetings, services as directed) for the month, No positive drug test for the month, Reported as required for the month, No new arrests or charges for the month, Not found in violation of any other supervision conditions for the month, and Not on Pre-trial, pre-adjudication, boot camp, or drug court without probation.
MD	S.B. 691 (2012)	Probation, parole, and mandatory release supervision	<ul style="list-style-type: none"> Crimes of violence Sexual crimes (Tit. 3 subtitle 3) Vehicular homicide while under the influence (2-503) Various drug distribution crimes (5-602 through 5-617, 5-627, 5-628) 	Up to 20 days per month.	<p>Statute defines compliance as:</p> <ul style="list-style-type: none"> Full compliance with conditions, goals, and treatment, as determined by the Department of Corrections,* No new arrests, No violations of no contact orders, Current on court-ordered payments of restitution, fines and fees related to offense for which credits are being accrued, and Current on other community supervision requirements. <p>*Department policy not yet finalized.</p>
MO	H.B. 1525 (2012); Missouri DOC Procedure P3-4.16 (2012) [N.B. this is a temporary operating procedure]	Probation, parole, and conditional release	<ul style="list-style-type: none"> Various sexual offenses (see Mo. Rev. Stat. 217.03) Lifetime supervision For certain crimes, sentencing court may find an offender ineligible based on the nature of offense or history and character of the offender. 	<ul style="list-style-type: none"> 30 days per calendar month. After violation or suspension of supervision, earning of credits resumes if and when supervision resumes. All credits are rescinded if supervision is revoked or client is placed in 120-day program as a sanction. 	<ul style="list-style-type: none"> No violation report No notice of citation filed by officer No motion to revoke or suspend by prosecutor Not in absconder status

III. Potential Challenges

While ECC legislation can be written quite simply and succinctly, a number of issues must be resolved before arriving at acceptable language and in actual implementation. Some of the issues to consider include:

- How to define “compliance”.
- The time period by which to calculate the credit.
- What, if any, offense categories should be excluded.
- Whether to terminate supervision early if restitution or other fines and fees remain owing.
- The guidelines around forfeiture proceedings.
- How earned credits and early termination will impact any revenue earned by the collection of supervision fees.
- The way in which earned credit impacts the discretion of the court or parole board.

A. Definition of “Compliance”

The chart on the preceding pages demonstrate that “compliance” is defined differently in each state. Some states include a long list of conditions that must be met, while others highlight the most serious conditions that cannot be violated. Many states make the awarding of credit automatic, and the offender management system is programmed to award the credit unless the supervising officer manually opts out.

Some ways in which a jurisdiction might approach this question include: examining the standard conditions and determining which ones are most serious to prohibit the award of credit; considering whether an all-inclusive list of conditions will limit the awarding of credit to the extent that the statute would have no impact on the population; deciding how to program the offender management system in terms of automatic or manual award of credit; and whether linking the credit to a case plan is practical given the use of case plans by officers.

B. Calculation of Credit

The credit calculation is typically an exact number of days for each month that an individual is in full compliance with his or her conditions or an exact number of days for the completion of specified goals. For example:

- In Nevada, parolees and probationers can earn up to 20 days of “good time” credit per month.
- In Texas, probationers earn credit based on completion of programming or goals, e.g., 90 days for completing alcohol or substance abuse counseling or treatment, 30 days for completing anger management, up to 90 days for paying fines, fees, and restitution.

C. Exclusions

Most jurisdictions exclude offenders convicted of certain categories of violent and sex crimes from receiving earned compliance credits. For example, Nevada, Arkansas, and Texas exclude certain (but not all) violent and sex offense categories.

In making a decision about exclusions, a state may wish to consider:

- The number of offenders on supervision convicted of such excludable offenses (to determine whether the exclusion would negate any positive impact of the law).
- The potential for victims groups or prosecutors to object to the policy if no such exclusions are included.
- Whether to adhere to evidence-based practices and include all offenses but target the termination of those who are assessed as lower-risk offenders.

Many states also exclude offenders who are placed on supervision for less than a minimum time period, often 12 months. Furthermore, the earned credits cannot reduce a supervision term to a term shorter than that same minimum time period.

D. Payment of Restitution

Some states question whether to allow early termination if the offender is fully compliant but for an outstanding restitution order. In other words, the offender is making his or her restitution payments as required, but has not yet paid the restitution order in full. States take different approaches:

- In Arizona, individuals can be moved off of supervision yet still subject to a restitution order, whereby the courts can attach liens to the offender's assets if he or she fails to make payments.
- In some states, the restitution order becomes a civil order of the court and failure to make payments would place the offender in contempt of court. This approach maintains a penalty for failure to pay, without additional expenditure of community supervision resources.
- Another solution is to move those individuals to a non-monitored or administrative caseload (rather than terminate their supervision entirely), where the only obligation is to make restitution payments. The threat of revocation remains, but the offender does not report and the officer does not actively monitor the offender.

E. Forfeiture of Credit

Almost all of the ECC legislation includes a section concerning the forfeiture of earned compliance credits. Some examples:

- Nebraska's statute allows for its parole board to forfeit earned credits if the individual has been found in breach of parole conditions or has engaged in misconduct while on parole.
- In South Carolina, the statute states that for probationers, "any portion of the earned compliance credits are subject to be revoked by the department if an individual violates a condition of supervision during a subsequent thirty-day period."
- Arkansas's Department of Community Corrections has the sole discretion to forfeit any credits earned while on probation or parole. The statute also states that a conviction of another felony offense while on probation or parole "may" result in forfeiture of credits.

D. Supervision Fees

Some jurisdictions encounter pushback from agencies that rely heavily on supervision fees paid by the offenders. The concern is that moving individuals off of supervision early (and therefore potentially decreasing the overall number of people on supervision) will result in lost revenue.

- In many states (e.g., Arizona), the probation department believes that it is inappropriate to keep someone on supervision simply because the agency needs the revenue. Furthermore, one reason ECC is enacted is because the state is predicting an increased number of people being placed on supervision (either because of sentencing reform or policies encouraging the early release of inmates onto parole). Thus, for every individual who may be released by ECC, there is a new offender who is placed on the caseload.
- Another option is to create a sliding scale of fees and, rather than moving an offender off of supervision entirely, place them on a non-monitored caseload and charge just a fraction of the supervision fee.

E. Discretion of the Court or Parole Board

Jurisdictions face the question of whether to make the application of credit automatic upon the recommendation of the supervising officer or subject to the discretion of the court or parole board. Most states provide the court (in the case of probationers) or the parole board (in the case of parolees) with the discretion to accept or reject the recommendation of the supervising officer. In some instances, the prosecutor and victim are also given the opportunity to object to, or at least be notified before, the early termination.

The benefit of making it automatic is that it encourages consistency of application across counties and court rooms. The downside is that it may encounter significant pushback from the judiciary, prosecutors, and/or victims groups. One solution is to engage these stakeholders in the drafting process and obtain their feedback, reach a compromise, and try to win their support before the legislation is introduced.

Conclusion

Any jurisdiction contemplating the adoption of an earned compliance credit policy must resolve the questions noted in this memo as well as others. The jurisdiction should consider the outcomes it hopes to achieve and make attempts to measure these outcomes if or once the policy is enacted and implemented.

Draft: 7/17/2013

Design Options for Drug Policy

Robert MacCoun
Goldman School of Public Policy and
Berkeley Law, UC Berkeley

7/17/13

SF Sentencing Commission

1

Roadmap

- Drug use: Historical trends and recent picture
- Choosing among drug-law regimes
 - Decriminalization
 - Legalization: Commercialization
 - Other ways to legalize
- The evidence
 - Portugal, Italy, Spain
 - Netherlands
 - Swiss heroin maintenance
 - Home cultivation in Australia and Alaska

7/17/13

SF Sentencing Commission

2

Roadmap

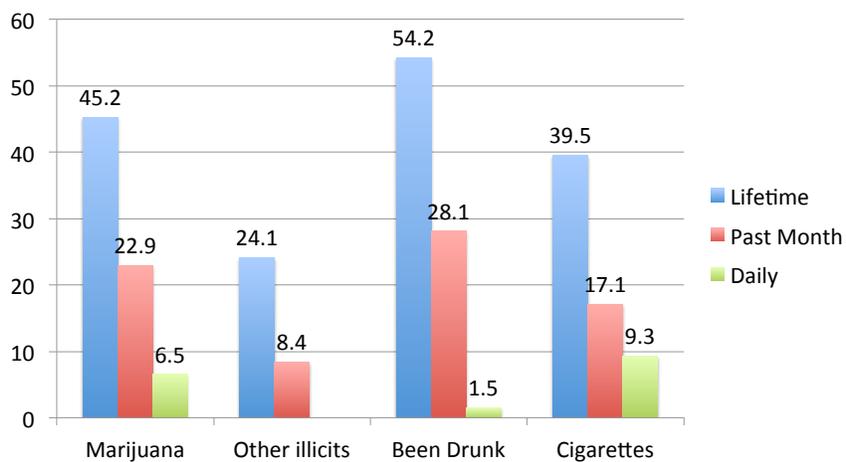
- **Drug use: Historical trends and recent picture**
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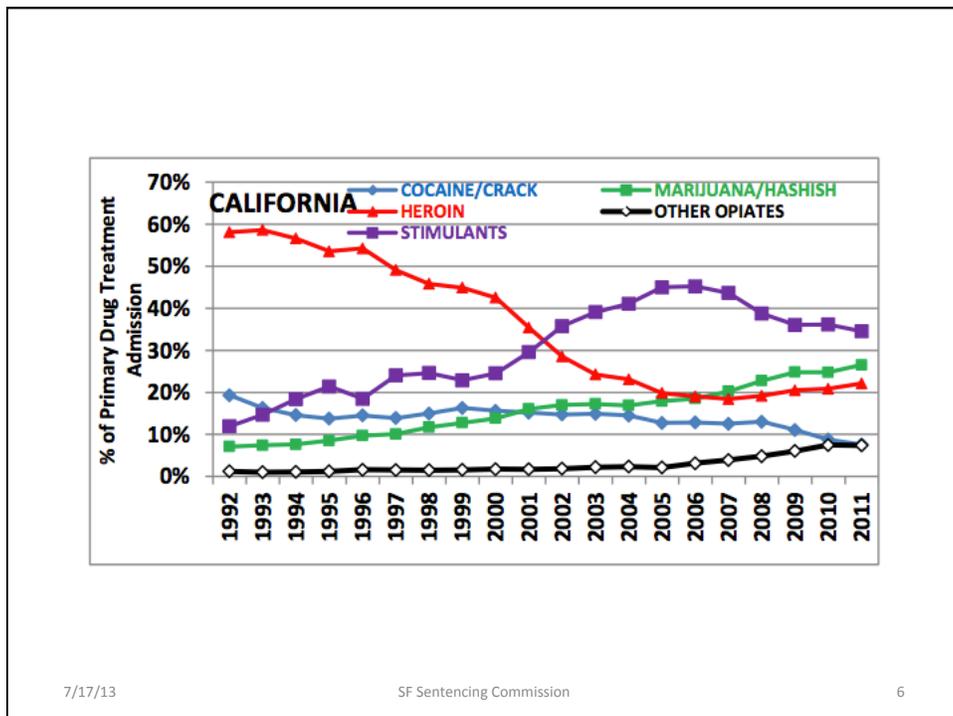
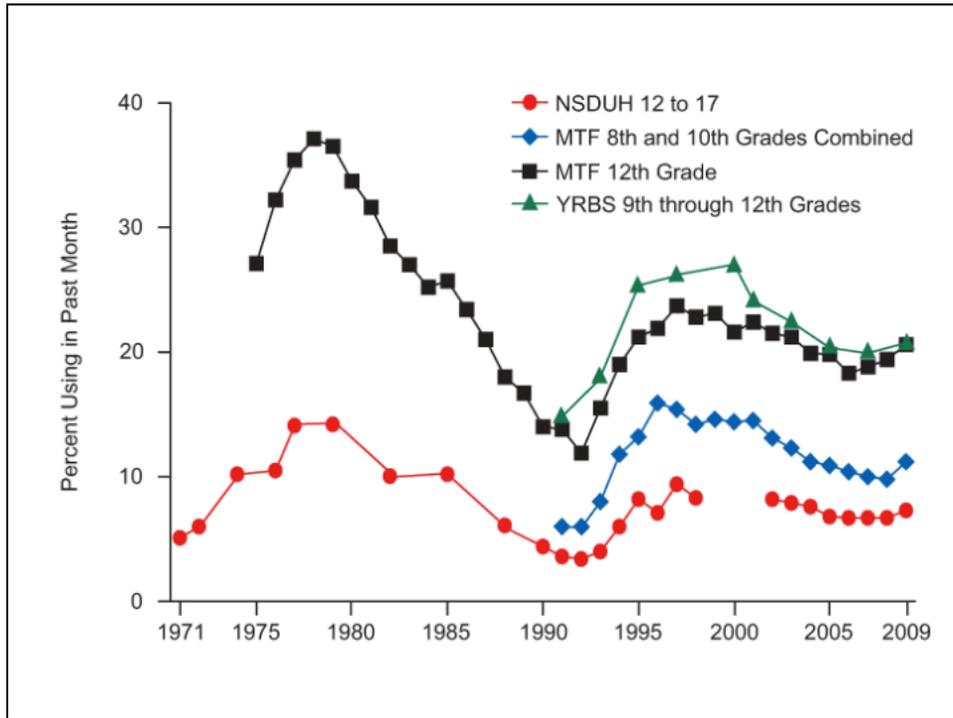
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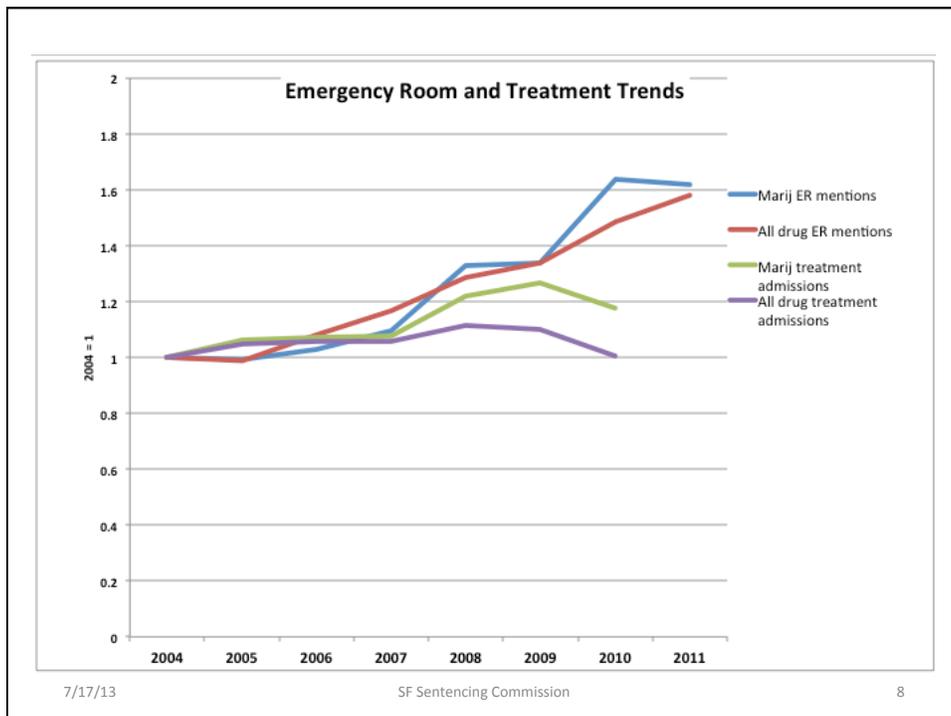
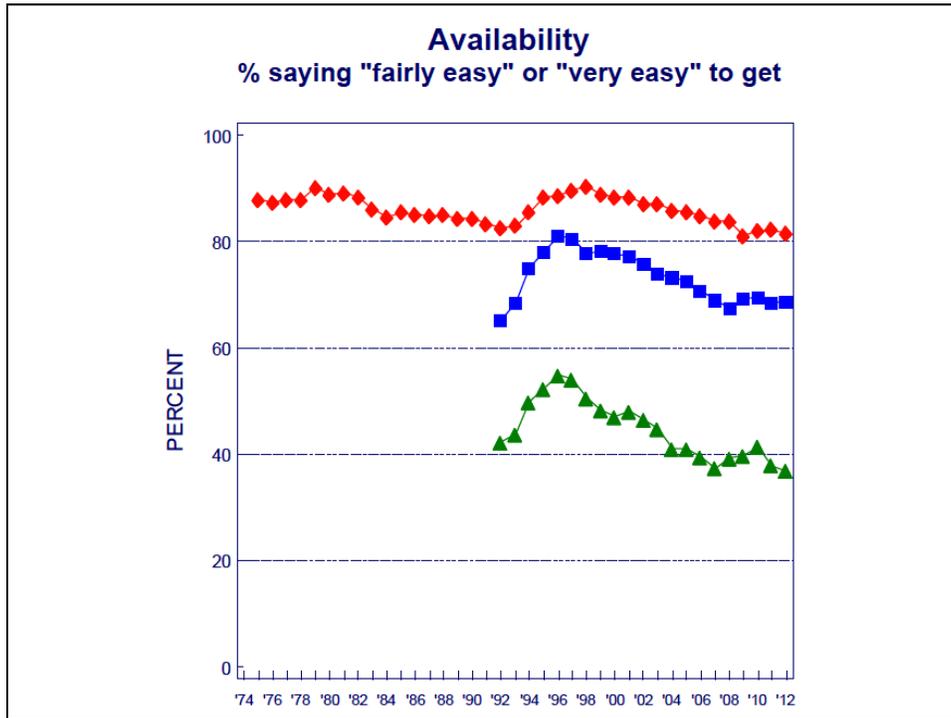
SF Sentencing Commission

3

Prevalence among HS Seniors (MTF, 2012)





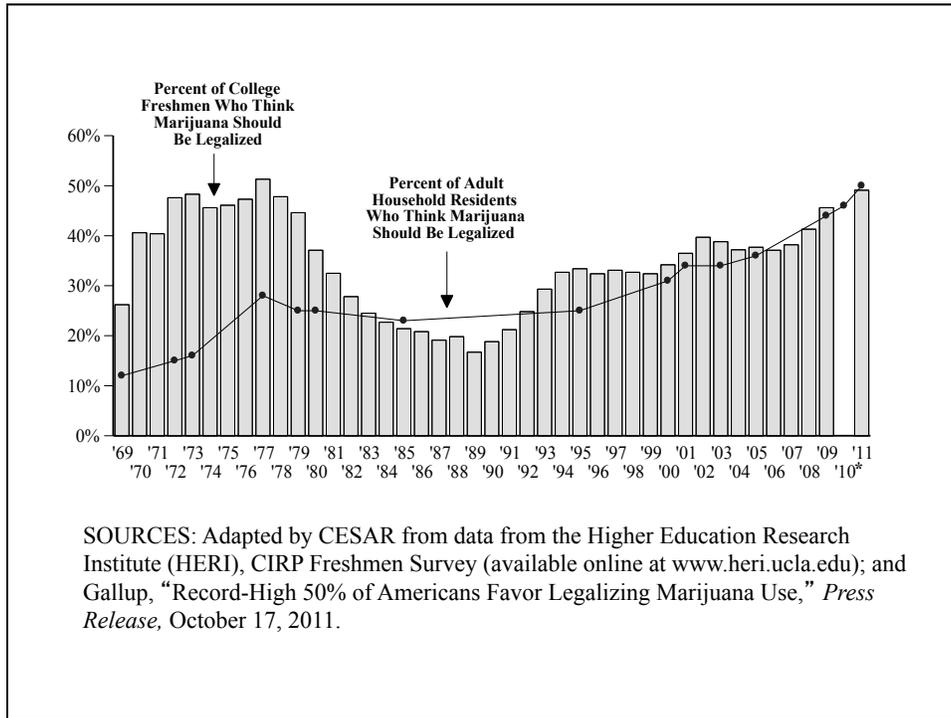


Nov. 2012: State legalization in Washington and Colorado

- Washington I-502 (55% of vote)
 - 25% tax at 3 levels (*producer, processor, retailer*)
 - *No home growing*
- Colorado Amendment 64 (55% of vote)
 - 15% excise tax
 - *Allows home growing*
- Fed response still unclear

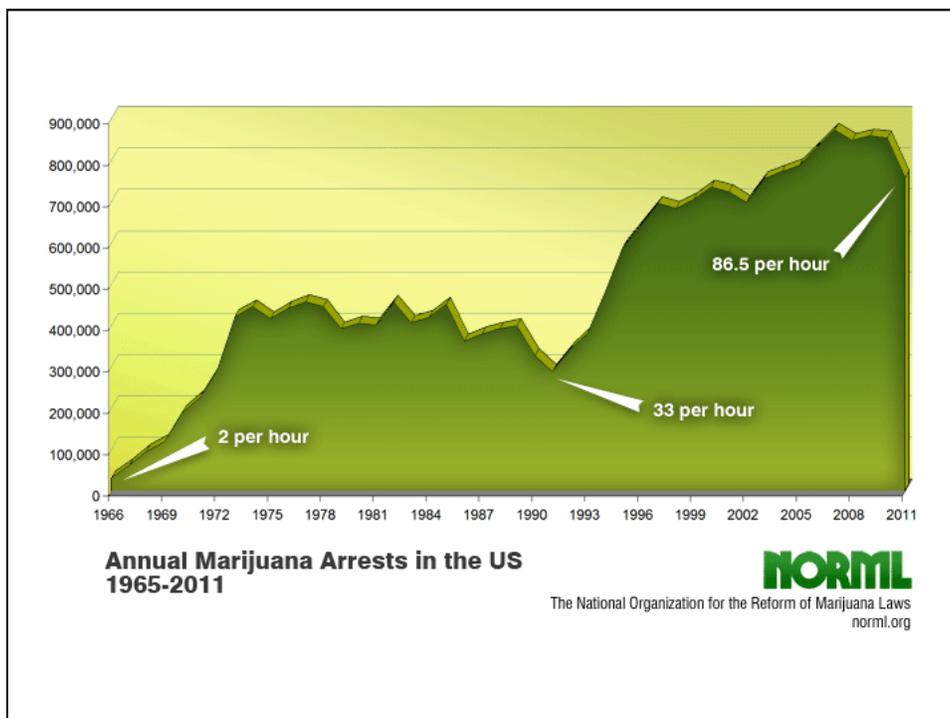
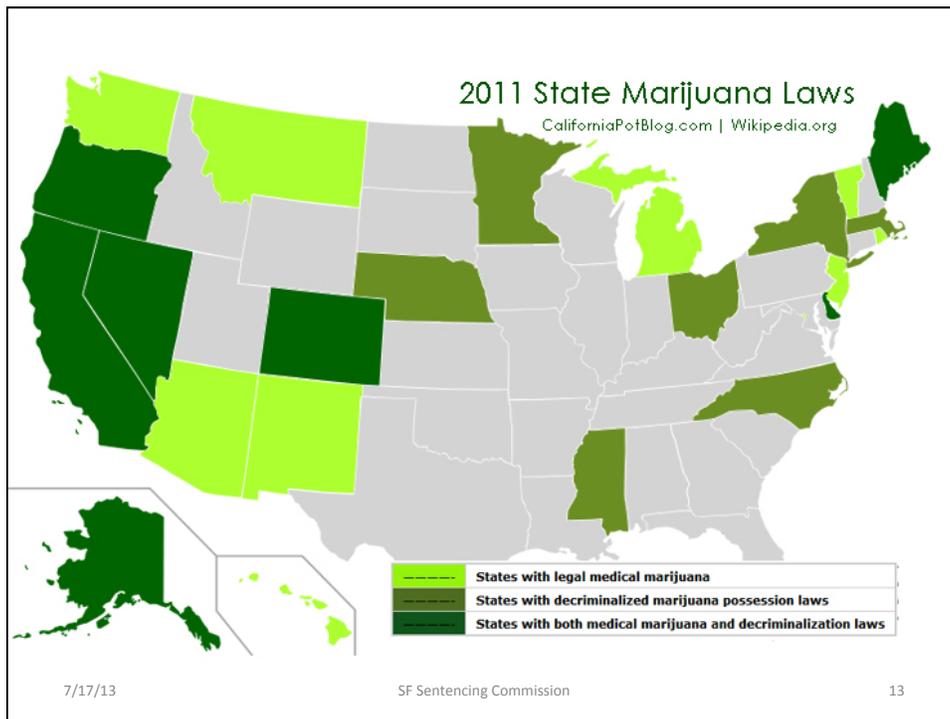
Fed response?

- 12/6/12 NYT: **Statement by United States attorney in Seattle, Jenny Durkan:** “In enacting the Controlled Substances Act, Congress determined that marijuana is a Schedule I controlled substance,” she said.
“Regardless of any changes in state law, including the change that will go into effect on December 6 in Washington State, **growing, selling or possessing any amount of marijuana remains illegal under federal law.**”
- 12/14/12: Obama tells Barbara Walters “we’ve got bigger fish to fry”



Roadmap

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Regime	Model
<div style="display: flex; flex-direction: column; align-items: center; justify-content: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); border: 1px solid black; padding: 2px;">Prohibitory</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); border: 1px solid black; padding: 2px;">Prescription</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); border: 1px solid black; padding: 2px;">Regulatory</div> </div>	Pure Prohibition: Full prohibition, with no allowed use for any purpose whatever (e.g., heroin, marijuana).
	Prohibitory Prescription: Prohibited except for narrow therapeutic purposes unrelated to addiction; administered by a doctor or other health professional (e.g., cocaine).
	Maintenance: Prescribed for relief of addiction; otherwise prohibited (e.g., methadone). Administered by an authorized agent, or for some patients, self-administered under tight supervision.
	Regulatory Prescription: Self-administered, under prescription, for relief of psychiatric problems (e.g., anxiety, depression); otherwise prohibited (e.g., current U.S. regime for Valium, Prozac).
	Positive License: Available for any reason to any adult in possession of an appropriate license, gained by demonstrated capacity for safe use (theoretical regime from Kleiman, 1992a).
	Negative License: Available for any reason to any adult who has not forfeited the right by violating conditions of eligibility (theoretical regime from Kleiman, 1992a).
	Adult Market: Available to any adult (e.g., alcohol).
	Free Market: Available to any individual (e.g., caffeine).

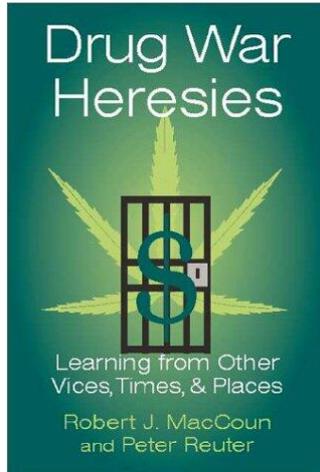
← Decreasing Restrictiveness

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Critical distinctions

- Decriminalization: Eliminates jail/prison as penalty for *possession* (usually 1st offense, small quantities)
 - *Lower risk, lower payoffs*
- Legalization: Legalizes *sales and or distribution* (usually for adults)
 - *Higher risk, higher payoffs*

Principles for assessing alternatives



- Legalization will significantly reduce *average harm per dose* (medical, crime, etc.)
- Legalization will significantly increase *number of doses consumed*
- Net effect (*harm/dose x doses*) is unknown

7/17/13

SF Sentencing Commission

17

OCCASIONAL
PAPER

Altered State?

Assessing How Marijuana
Legalization in California Could
Influence Marijuana Consumption
and Public Budgets

Beau Kilmer, Jonathan P. Caulkins,
Rosalie Liccardo Pacula, Robert J. MacCoun,
Peter H. Reuter

1. Pre-tax retail price will likely drop by more than 80 percent (<\$40/oz)
2. Consumption will increase; unclear by how much
3. Criminal justice expenditures on enforcing marijuana laws are in the millions, not billions
4. Revenues could be dramatically lower or higher than the BOE's estimate

Roadmap

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 - Permitted home cultivation in South Australia

Decriminalization nations

- Portugal gets a lot of recent attention
- Changes are more modest than commonly recognized
 - Decriminalized *possession* of all drugs
 - Did not legalize *sales*
- Spain or Italy have had similar laws since 1970s
- Evidence suggests decriminalization has little impact on levels of use

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21

ARTICLES



Interpreting Dutch Cannabis Policy: Reasoning by Analogy in the Legalization Debate

Robert MacCoun and Peter Reuter

The Dutch depenalization and subsequent de facto legalization of cannabis since 1976 is used here to highlight the strengths and limitations of reasoning by analogy as a guide for projecting the effects of relaxing drug prohibitions. While the Dutch case and other analogies have flaws, they appear to converge in suggesting that reductions in criminal penalties have limited effects on drug use—at least for marijuana—but that commercial access is associated with growth in the drug-using population.

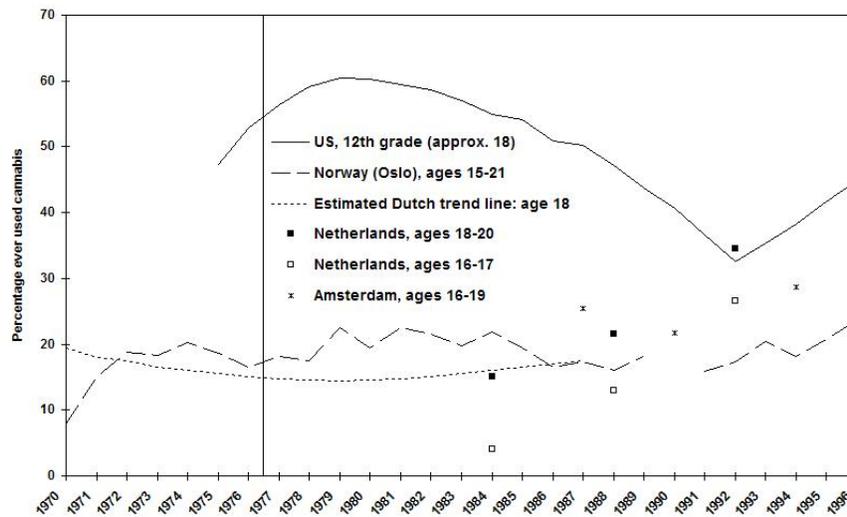
Science, 1997

Dutch Policy (1976-present): “De facto” legalization

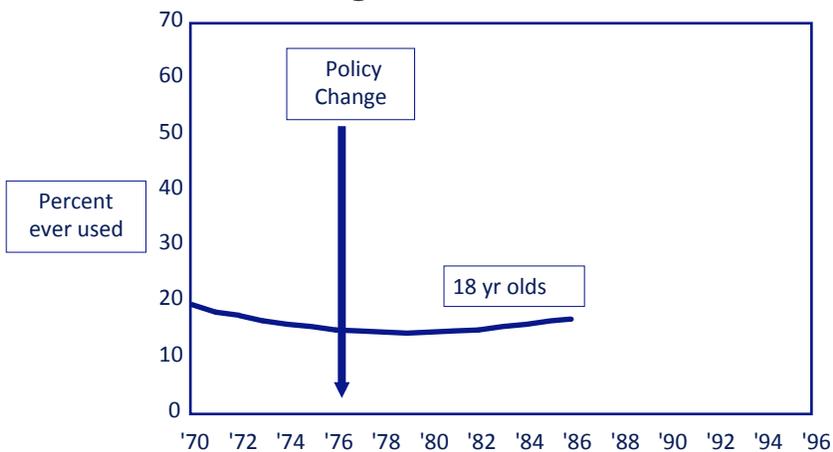
- Marijuana still illegal but formal written policy of non-enforcement for small quantities
- Regulated system of coffeeshops and other retail outlets
- Designed to separate soft, hard markets



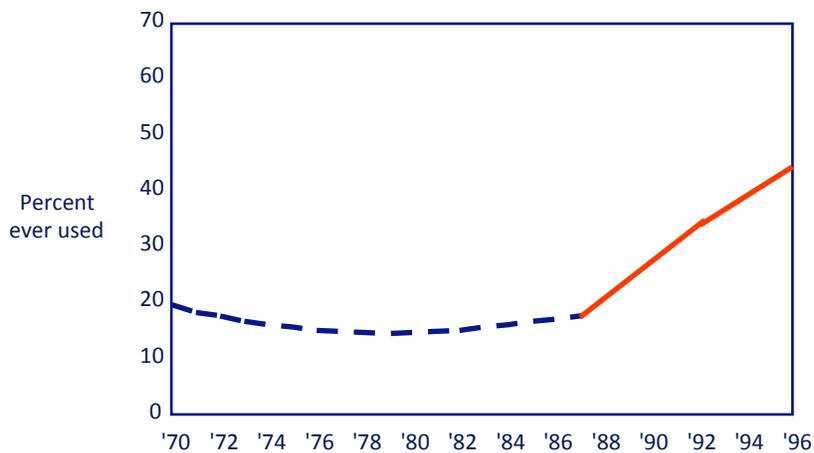
MacCoun & Reuter (1997, *Science*)

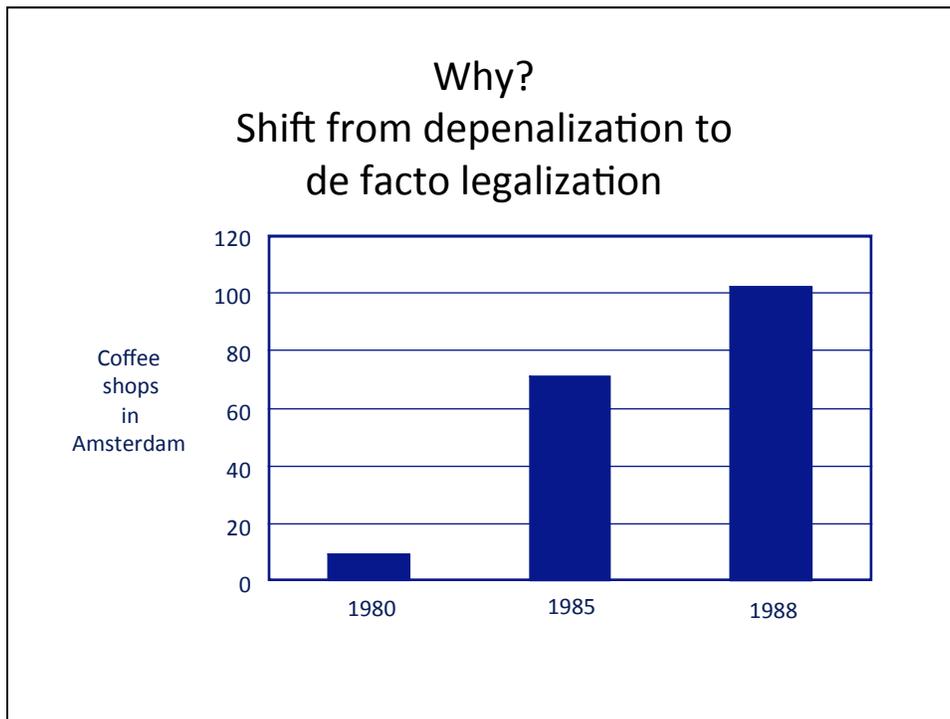


Change Had No Effect on Prevalence During First Decade...



...But Use Increased Sharply in Second Decade





As of 2011

- About 700 coffeeshops
- 50-150 metric tons of marijuana at a value of €300-600 million
- At least a million tourist visitors
 - But new policy will change that

But use levels are typical for Europe

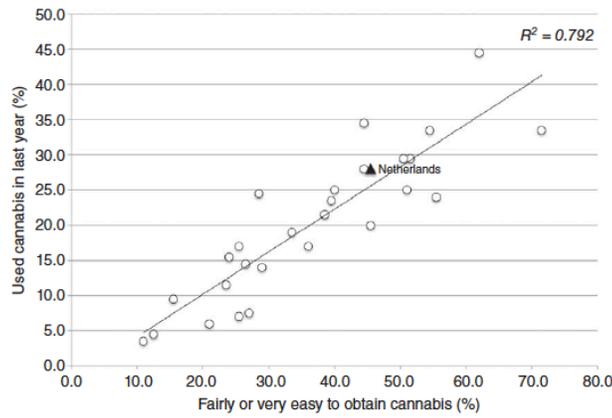


Figure 1 Association between perceived availability of cannabis and its use in past year for students aged 15–16 years (average of 2003 and 2007 data). The black triangle represents the Dutch estimate. Source: See Table I

And Dutch users don't escalate use at higher rates...

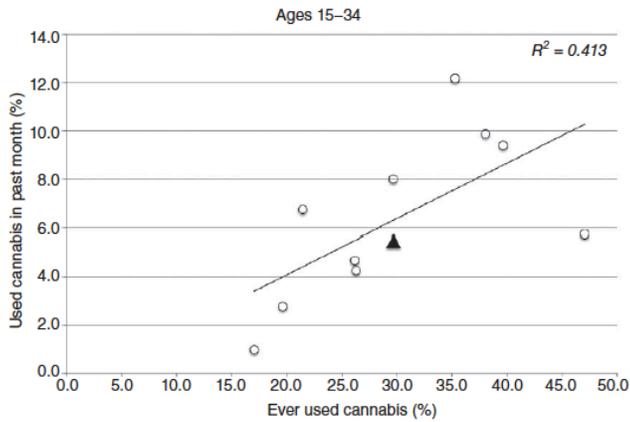
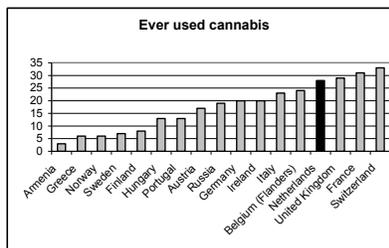
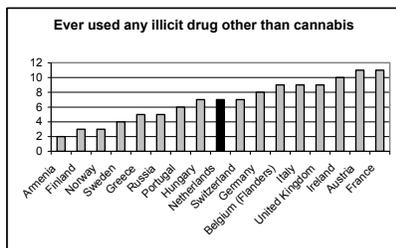
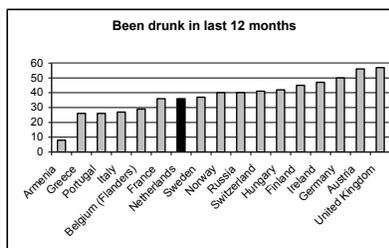
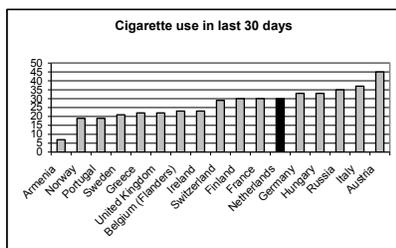
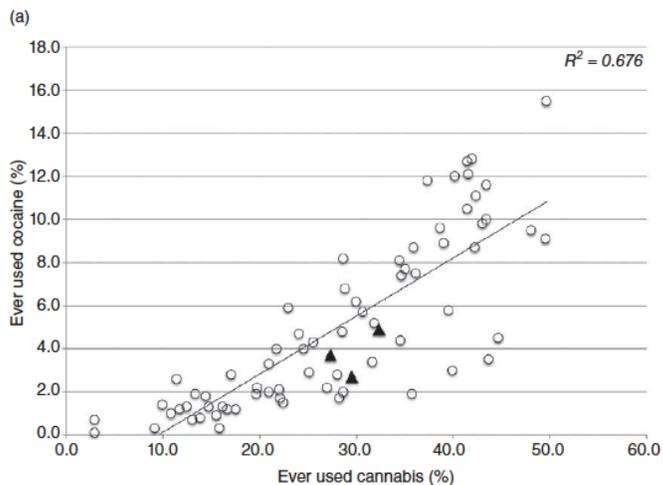
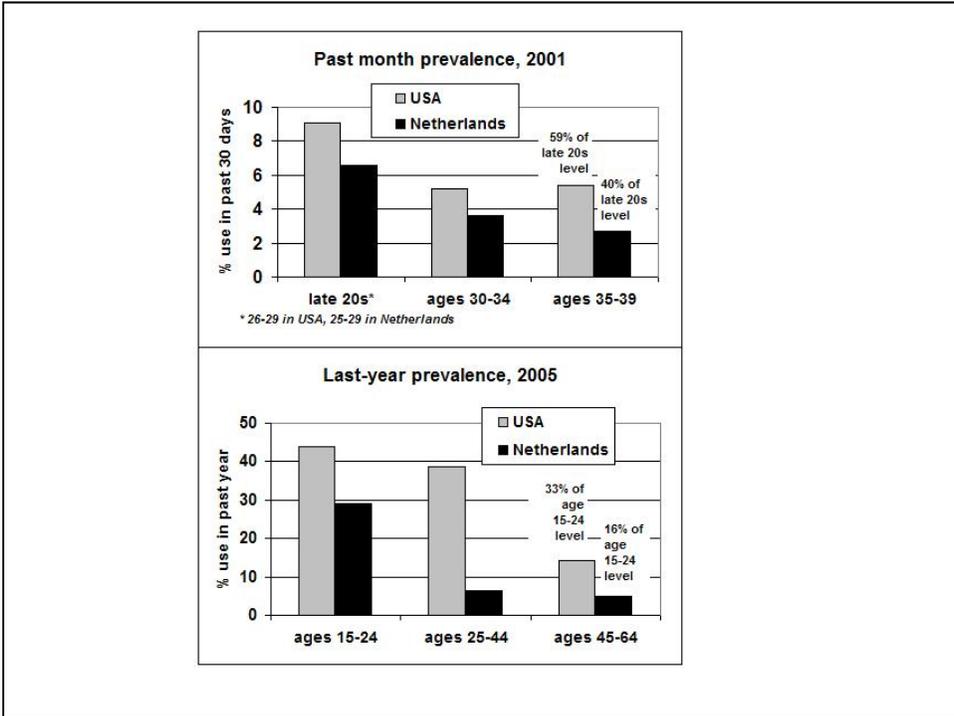


Figure 2 Association between life-time and past-month prevalence of cannabis use. (a) Students aged 15–16 (averaged across years 2003 and 2007). The black triangles estimate Dutch estimates. For sources, see Table I. (b) People aged 15–34, various European nations (various years between 1998 and 2008). Source: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), GPS-2 and GPS-6

Dutch “separate the markets” idea may have worked





Swiss heroin maintenance

- No overdoses, no leakage into illicit market
- Addicts chose high but stable doses
 - 500-600 mg daily
 - reached rapidly
- Reductions in crime
- Major improvements in work
 - unemployment fell from 44% to 20%
 - permanent jobs rose from 14% to 32%
- Retention high; 69% at 18 months
 - half of “drop-outs” moved to other treatments

South Australia 1987 Cannabis Expiation Notice (CEN) policy

- Depenalized home cultivation
- Modest monetary
- Initial CEN scheme allowed for up to 10 plants
 - later reduced to 3 plants in 1999, now down to only one plant

	South Australia	MEAN for other states /territories	MEDIAN for other states /territories
Past-year cannabis use (%)	10.2	10.0	9.3
Ratio of cannabis users to cocaine users	7.8	7.9	6.3
Ratio of cannabis users to ecstasy users	3.5	2.8	2.6
Recent cannabis use by 14-24 year olds	17.5	18.1	18.1
Any illicit excluding cannabis by 14-24 year olds	4.6	5.4	4.4

Data from the 2007 National Drug Strategy Household Survey

Conclusions

- Decriminalization of possession appears to pose little risk of increased use
 - *But doesn't eliminate black market, income-generating crimes, etc.*
- Legalization: Details matter
 - *commercialization will increase use*
 - *prices matter, but hard to get right*
 - Dutch prices stayed high; ours could drop a lot
 - *home cultivation appears low risk*

LEAD LAW ENFORCEMENT ASSISTED DIVERSION

Healthy Families, Safer Streets: The LEAD Program

- Lisa Dugaard, Deputy Director, The Defender Association
- Ian Goodhew, Deputy Chief of Staff, King County Prosecutor's Office
- Lieutenant Deanna Nollette, Seattle Police Department

July 2013
San Francisco, CA
info@leadkingcounty.org
www.LEADKingCounty.org

LEAD LAW ENFORCEMENT ASSISTED DIVERSION

- VIDEO EMBED

<http://www.youtube.com/watch?v=nBF8zY5lpAI>

LEAD LAW ENFORCEMENT ASSISTED DIVERSION

Lisa Daugaard:
Deputy Director -
The Defender Association

LEAD LAW ENFORCEMENT ASSISTED DIVERSION



October 13, 2011
Contact: Dan Donohoe, KCPAO (206) 296-9029 Mark Cooke, ACLU of Washington (206) 624-2184

Local Leaders Announce Innovative Project to Divert Drug Offenders from Jail to Services

Law Enforcement Assisted Diversion (LEAD) Project Begins in Belltown

SEATTLE – A unique coalition of government officials, law enforcement agencies, and community leaders announced today that an innovative new pilot program is now operating in Belltown. Instead of arresting low-level drug offenders and prosecuting them, law enforcement will divert them to community-based treatment and support services. Only a limited number of participants will initially be allowed into the program on a pilot basis.



Ian Goodhew:
Deputy Chief of Staff -
King County Prosecuting
Attorney's Office

- What is LEAD?
 - LEAD gives police officers on the street a choice when arresting a “low level” drug offender
 - LEAD gives “low level” drug offenders a choice between jail or services

WHAT LED THE KING COUNTY PROSECUTOR'S OFFICE TO PARTICIPATE IN LEAD?

- **1988-2002: Traditional Drug Prosecution: The War on Drugs**
 - Era of the Open Air Drug Market
 - School Zone Prosecutions
 - Prison Sentences double, sometimes triple

- **1993: High water mark: 26% of all Prison Inmates in the state of Washington in on drug convictions**

- **Seattle Police Department & Racial Disparity Project**
 - Continual litigation over SPD drug enforcement policies

 - Police are arresting individuals easily caught selling and buying drugs in open air drug markets

 - The arrests are disproportionately of African Americans & other minorities

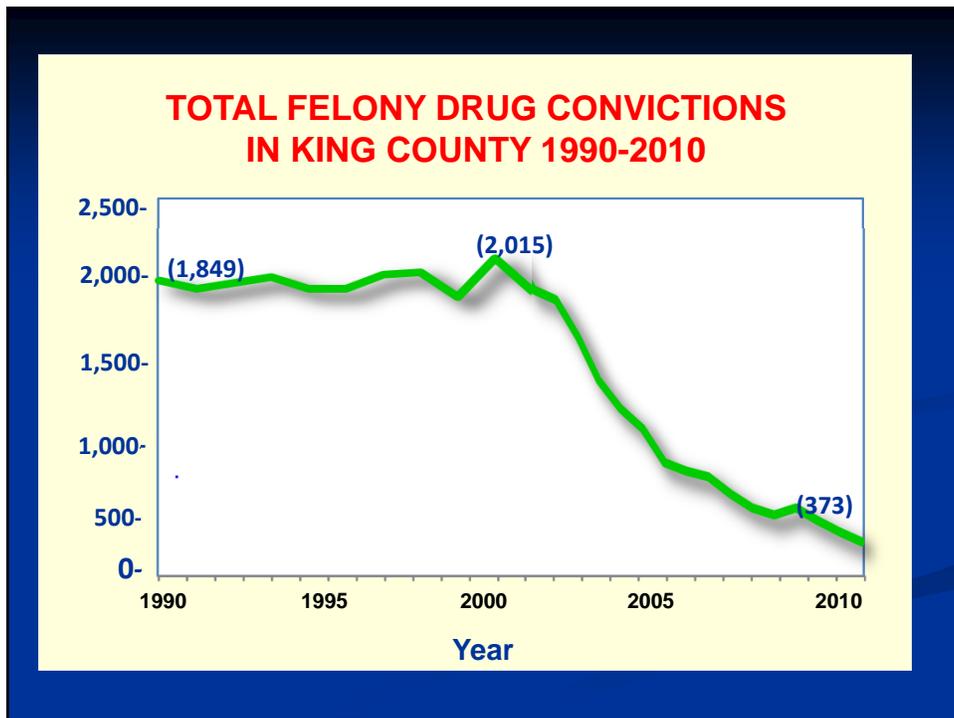
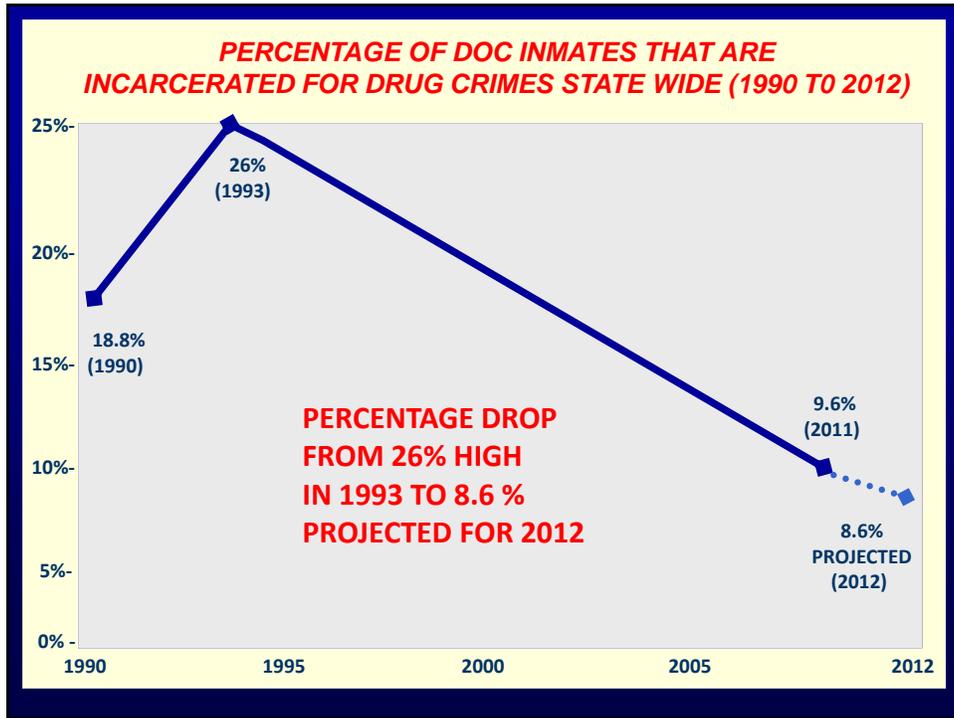
 - The RDP brings motion after motion in our drug prosecutions hoping to have the charges dismissed

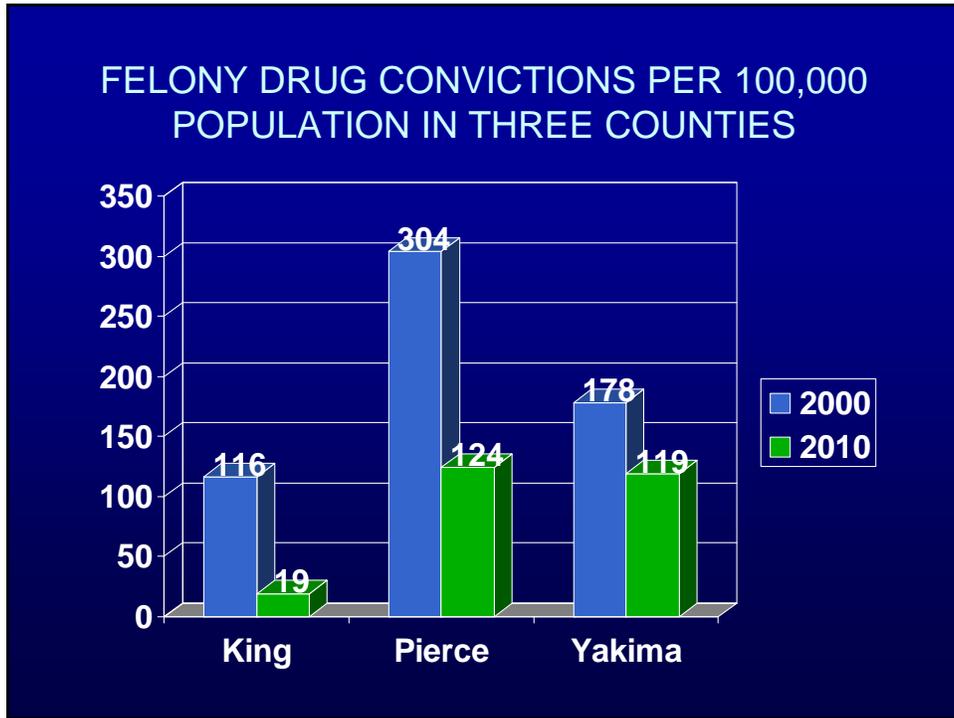
 - The litigation goes on and on and on.....

- **2002 - A New Approach:**
- **Nixon goes to China:**
 - Norm Maleng pushes reform of state drug laws
- **Hardline prosecutors begin to think that treatment, not prison is the answer**
- **Dwindling resources and growing prison costs**

REASONS FOR DROP IN DRUG PROSECUTIONS

- **King County Drug Court (1994)**
- **Amendment of State Drug Sentencing Laws (2002)**
- **Drug Offender Sentencing Alternatives (DOSA)
(2002)**
- **2008-2010 Budget Cuts: 36 DPAs & 15 Staff**
- **The “old ways” of prosecuting were gone**





- What is LEAD?
 - Discretion of Police turned on its head

- What is the goal of LEAD?
 - Something different for everyone
 - For Prosecutors & Police it is simple: less crime

- What do fellow prosecutors & police think about LEAD?

- Will LEAD work?

LEAD LAW ENFORCEMENT ASSISTED DIVERSION

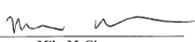
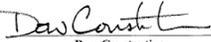
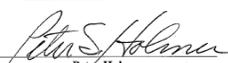
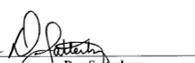
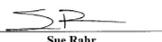
“LEAD’s goal is to improve public safety and public order, and to reduce the criminal behavior of people who participate in the program”

- 1) Governing Structure
- 2) Operational Structure
- 3) Community Involvement

LEAD LAW ENFORCEMENT ASSISTED DIVERSION

Governing Structure:

- Memorandum of Understanding
- Policy Coordinating Group

 Mike McGinn Seattle Mayor Date: 10-14-10	 Dow Constantine King County Executive Date: 9-16-10
 Peter Holmes Seattle City Attorney Date: 10-4-2010	 Dan Satterberg King County Prosecutor Date: 9/23/10
 John Diaz Chief of Police Seattle Police Department Date: 9/21/10	 Sue Rahr King County Sheriff Date: 10/1/10
 Floris Mikkelsen Director, The Defender Association Date: 9/22/2010	 Kathleen Taylor Executive Director, ACLU of Washington Date: 10/15/2010

LEAD LAW ENFORCEMENT
ASSISTED DIVERSION

- Operational Workgroup
 - Meets every two weeks
 - Discusses LEAD client status
 - Problem-solving
 - Significant policy change decision made by Policy Coordinating Group

LEAD LAW ENFORCEMENT
ASSISTED DIVERSION

- Community Involvement



LEAD LAW ENFORCEMENT
ASSISTED DIVERSION

Deanna Nollette:

Lieutenant- SPD



LEAD LAW ENFORCEMENT
ASSISTED DIVERSION

Paths into LEAD

- Social contact
- Arrest Diversion

LEAD LAW ENFORCEMENT ASSISTED DIVERSION

Excluding Factors for LEAD Participation:

- Amount of drugs over 3 grams (exceptions for marijuana and pills)
- Not amenable to diversion
- Delivery or possession with intent to deliver and reason to believe selling is for profit (not subsistence dealing)
- Exploitation of minors or others in dealing
- Promoting prostitution
- Criminal history (violence, firearms, sex offense, etc.)

LEAD LAW ENFORCEMENT ASSISTED DIVERSION

How Does the Diversion Process Actually Work?

- Arrest: buy bust or proactive patrol
- Arrest/transport/ criminal history check
- Screen with trained sergeant (mental state/intoxication level/safety)
- Green light shift (part of evaluation process)?
- Discuss with suspect
- Refer or book
- All paperwork/evidence/property seizure done per standard protocol
- Case sent to chosen detective in narcotics with LEAD “hold”
- Referral to LEAD caseworker made

LEAD LAW ENFORCEMENT
ASSISTED DIVERSION

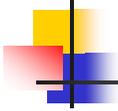
How We've Made It Work So Far

- Front end work: team chosen, agreements, parameters, geography
- Focus group, revisions/ then training
- No significant changes in business practices / Additional paperwork
- Regular feedback
- Regular staffing
- Shared goals/objectives/
- Troubleshooting
- OFFICER DISCRETION
- Priority for command staff: time, mission, funding

LEAD LAW ENFORCEMENT
ASSISTED DIVERSION

Unintended Consequences

- Continuity on LE side
- New crimes/ DV/ Buy and Slides
- Self referrals
- Security issues
- Misunderstandings
- Geography
- Defining Success



REACH Project Established 1996

30 Case Managers, 2 Nurses, 1 Mental Health Specialist

- ✓ Sobering Center
- ✓ King County Drug Court
- ✓ HIV Enhanced Engagement Team (HEET)
- ✓ HMC Respite
 - ✓ Housing Health Outreach Team (HHOT)
 - ✓ Encampment Outreach
 - ✓ Law Enforcement Assisted Diversion (LEAD)

Population served: homeless and addicted

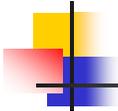
Mission: To increase clients' stability through individually delivered intensive case management.

Client-Centered Goals:

- ✓ *Increase housing stability*
- ✓ *Improve health status*
- ✓ *Reduce or eliminate alcohol and other drug use*
- ✓ *Improve economic stability*

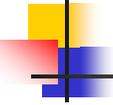
Harm Reduction Approach: case management services not contingent on client's endorsing an abstinence goal

Clinical Approach: Motivational Interviewing



REACH Funding

- Healthcare for the Homeless Network (Public Health – Seattle/King County)
- MHCADS (Department of Community and Human Services)
- United Way
- City of Seattle
- Housing and Urban Development
- King County Veterans & Human Services Levy
- LEAD Project – Ford, Open Society, others



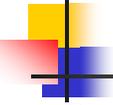
REACH Populations Served

- Serving the most vulnerable, those least likely to access services independently
 - Chronically homeless and addicted
 - Chronic medical conditions including HIV
 - Co-occurring mental health, esp. those not served by the RSN
 - Extensive criminal histories
- High utilizers of medical and social services
- Drug Court clients with high social service needs
- Individuals in encampments
- Individuals referred by Seattle Police through the LEAD Project



REACH Approach

- Client-centered – street-based vs. facility-based
- Multi-disciplinary intervention services
 - Medical
 - Mental Health, including weekly psychiatric consultation
 - Intensive Case Management – lower client/case manager ratio
- Stage of Change / Motivational Interviewing approach
- Systems advocacy



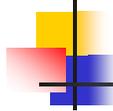
REACH Interventions

- Outreach and engagement – “It’s all about relationships”
- Assessment and service planning
- Individual case management
 - Transportation
 - Accompaniment to appointments
- Group treatment and activities
 - Seeking Safety
 - Camera Club
- Housing placement and maintenance
- Nursing and mental health interventions



REACH Collaborations

- Community Medical Clinics
- Shelter & Housing Providers
- Addiction Treatment Providers
- Mental Health Treatment Providers
- “High Utilizer” Group
- Criminal Justice
- Protective Payees
- DSHS

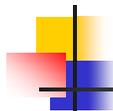


LEAD Project

Awarded contract for management services through RFP process in August, 2011. Staff hired and trained during Fall, 2011.

Since inception:

- 41 referrals – 28 male, 13 female; 29 Black, 9 White
- 31 active participants (Have completed screening, intake and participating with case manager in working towards goals)

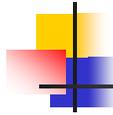


LEAD Project Services

The following intensive case management services are provided to LEAD participants within a harm reduction model:

Enrollment in program

- Screening and psychosocial intake
- Outreach and engagement—drop-in
- Goal setting/treatment planning
- Basic Needs:
 - Assistance in applying for services including entitlement and housing programs
 - Assistance in accessing shelters, short term motel stays, feeding programs
 - Assistance with basic needs including hygiene items, food, clothing
 - Support in accessing medical and dental services
- Housing:
 - Assistance in accessing transitional and permanent housing
 - Rental assistance including deposits and fees



LEAD Project Services (con't.)

- Treatment Services
 - Facilitation of admission to addiction and mental health treatment programs
 - Addiction and mental health recovery support
- Education/Job Training/Employment
 - Assist participants in accessing educational, job training and employment resources
- Legal Concerns
 - Attending court appearances
 - Advocacy with courts, Department of Corrections, Probation
 - Financial assistance in payment of fines
 - Support in facilitating completion of community service
 - Assistance with child welfare system, child support
- Relationship building
 - Community
 - Criminal Justice System
 - Service providers



Evaluation

- Evaluation built into project design.
- Private funding for evaluation design.
- Plan is to collect data while proceeding with project.
- Begin formal evaluation at end of two years (October 2013)



Evaluation

- Using questions from validated instruments for intake.
- Conducted pre-implementation focus groups.
- Have completed stakeholder evaluation.
- Doing participant interviews right now.
- Planning for process design, hope to begin soon.



Evaluation

- Quasi-experimental design (red light/green light).
- Key questions for final evaluation: recidivism and cost-benefit.
- Cost benefit primarily focusing on criminal justice system (for savings reinvestment), but other benefits crucial to consider as well.



Replication/transfer

- All stages of development well-documented.
- Stakeholder analysis.
- Process evaluation underway.
- Attention paid to adaptability in different settings.

Law Enforcement Assisted Diversion (LEAD):

A Pre-Booking Diversion Model for Low-Level Drug Offenses

Processing low-level drug offenders through the criminal justice system is a costly and generally ineffective way to change problematic behavior and impact public safety. As current economic realities force regional criminal justice stakeholders to re-examine spending, pre-booking diversion programs offer a viable, cost-effective alternative to the status quo that can positively impact troubled individuals and neighborhoods.

I. PROBLEM: OUR CURRENT APPROACH TO LOW-LEVEL DRUG OFFENSES IS INEFFECTIVE AND UNSUSTAINABLE.

- ❑ **Reliance on traditional criminal sanctions for low-level drug offenses is an ineffective strategy for improving public safety and addressing quality of life concerns.** The current approach to low-level drug offenses only moves a relatively small fraction of offenders off the streets, for brief periods of time, and at a significantly higher cost than non-criminal justice system interventions. It diverts increasingly limited law enforcement resources from more serious crimes, with little to no improvement in neighborhood quality of life. Absent other interventions, it does not reposition offenders to make positive life changes. Instead, it creates or reinforces connections to other offenders in custody, and burdens individuals with court records that become barriers to housing, employment, and education. Moreover, traditional drug law enforcement has a well-documented disparate racial impact.
- ❑ **With public coffers shrinking and demand for services growing, Seattle-King County can no longer afford to rely exclusively on criminal sanctions to address problematic, drug-related behavior.** The direct costs of the traditional approach to drug enforcement are not limited to policing, but also include all other components of the criminal justice system – prosecutors and public defenders, courts, pre-trial and post-conviction jail stays, and even jail-based health care associated with incarcerating addicted and mentally ill offenders. A growing body of behavioral health and public policy research suggests that alternative interventions may provide less costly ways to intervene without compromising public safety, and

may also be more successful in changing behavior.¹ By diverting low-level drug offenders from booking and prosecution into an intensive, community-based intervention, Seattle-King County policymakers can ensure that problematic, street-based drug activity is being addressed in a cost-effective way, that offenders are being held accountable for behavior change, and that law enforcement is able to dedicate its resources to addressing serious and violent crime.

- ❑ **Current drug law enforcement strategies have a tremendously disparate impact on communities of color, particularly African-Americans.** The War on Drugs has resulted in a massive expansion of the U.S. criminal justice system – from the budgets, size, and authority of local law enforcement agencies to the number of prisons and jails. While this growth has not resulted in any meaningful progress in improving public safety or decreasing drug use and addiction, it has had the well-documented impact of enhancing racial disparities within the criminal justice system. According to the Sentencing Project, “three-fourths of all persons in prison for drug offenses are people of color.”² In Seattle, Blacks were more than 21 times more likely to be arrested for selling serious drugs than whites in 2005-2006, despite the fact that multiple data sources suggest that whites are the majority of sellers and users of serious drug in Seattle. The reasons behind this profound racial disparity in drug arrests are complex. Pre-booking diversion interrupts the cycle which currently perpetuates racial inequality, allowing officers instead to help individuals access meaningful interventions that will interrupt their problematic behavior.

¹ Steve Aos, Marna Miller, and Elizabeth Drake. (2006). *Evidence-Based Adult Corrections Programs: What Works and What Does Not*. Olympia: Washington State Institute for Public Policy.

² “Racial Disparity.” The Sentencing Project. Accessed online at <http://www.sentencingproject.org/template/page.cfm?id=122>.

II. SOLUTION: PRE-BOOKING DIVERSION OF LOW-LEVEL DRUG OFFENDERS TO A HIGH QUALITY, COMMUNITY-BASED INTERVENTION

What is Pre-Booking Diversion?

A pre-booking diversion program is one that identifies low-level drug offenders for whom probable cause exists for an arrest, and redirects them from jail and prosecution by providing linkages to community-based treatment and support services. Pre-booking diversion programs consist of both a law enforcement and social services component. The integrity of both components is critical to any successful pre-booking diversion initiative. Pre-booking programs involve specialized training for police officers, and a crisis drop-off center with a no-refusal policy for persons brought in by the police.³

In Seattle-King County, Harborview's Crisis Triage Center already functions as a pre-booking diversion alternative for individuals suspected of having co-occurring substance abuse and mental health disorders, by providing law enforcement officers with a 24/7 drop-off location where people can be taken for assessment, acute care, and referrals to services in lieu of booking. The CTC is a national model for pre-booking diversion programs for the mentally ill.⁴

Similar pre-booking mechanisms could also be used to address low-level drug offenses, using a less intensive, community-based intervention aimed at long-term behavior change. To highlight the important role that law enforcement officers play as "first responders" to street-level drug activity, we are referring to this Seattle-King County model as Law Enforcement Assisted Diversion (LEAD).

LEAD Goals

- Reduce number of low-level drug offenders entering criminal justice system.
- Redirect public safety resources to more pressing priorities, such as serious and violent crime.
- Improve individual and community quality of life through research-based, public health-oriented interventions.
- Sustain funding for alternative interventions by capturing and reinvesting criminal justice system savings.

Local Community-Based Programs Provide Promising Results

Seattle already has two promising, community-based, pilot intervention programs that are working to prevent individuals with a history of street-based drug-related activity from continuing their illegal behavior – Get Off the Streets (GOTS) and Communities Uniting Rainier Beach (CURB). A September 2009 evaluation found that the programs demonstrated reductions in criminal justice involvement and improvement in quality of life for participants in line with similar programs across the country. Importantly, many CURB and GOTS participants also reported an increase in the difficult to measure, but critical areas of personal dignity, a restored connection with family, and a commitment to self-improvement. The Seattle City Council has expressed a commitment to continued funding of these programs, and working to improve their success rates.

Herbert, Steve, et al. Assessment of Three Public Safety/Human Services Projects: Court Specialized Treatment and Access to Recovery Services (CO-STARs), Get Off the Streets (GOTS), and Communities Uniting Rainier Beach (CURB), (Seattle: University of Washington, September 2009).

³"Jail Diversion." Center for Mental Health Services' National GAINS Center. Substance Abuse and Mental Health Services Administration. Accessed online at http://www.gainscenter.samhsa.gov/html/jail_diversion.

⁴ National GAINS Center for People with Co-Occurring Disorders in the Justice System (1999). *Blending funds to pay for criminal justice diversion for people with co-occurring disorders*. Fact Sheet Series. Delmar, NY: David Wertheimer.

Essential Principles for Making LEAD A Success

- ❑ **Adequate training and clear administrative policies and diversion protocols for law enforcement officers.** Law enforcement officers' role and responsibility are integral to pre-booking diversion. In order to maximize positive results, clear direction from the command staff is necessary.
- ❑ **Service-dedicated resources,** meaning approximately 50% of program resources will be directed toward acquiring direct services for program participants, rather than toward program overhead, administration or staffing.
- ❑ **Commitment to a harm reduction approach,** meaning a focus on individual and community wellness, rather than an exclusive focus on sobriety, by immediately addressing the participant's drug activity and any other factors driving his/her problematic behavior, even if complete abstinence from drug use is not immediately achieved.
- ❑ **Use of peer outreach workers and case managers to enhance the program's effectiveness with potential participants.** Decades of research demonstrate that peer-based interventions are a highly successful way to intervene with marginalized populations. Moreover, case studies in an analogous context clearly suggest that peer-based interventions are a promising, cost effective practice for engaging individuals with mental illness and a history of criminal justice involvement in the community. Peer outreach workers and case managers serve as community guides, coaches, and/or advocates, who work to link diverted individuals to housing, vocational and educational opportunities and community services, while also providing credible role models of success.⁵
- ❑ **Involvement of neighborhood public safety leaders.** Concerned community members will have the opportunity to engage with the program as it develops,

through an advisory board structure. This will help ensure community public safety leaders' comfort with a new approach. Ideally, community members will also be able to refer individuals for program participation and suggest areas of focus for outreach workers.
- ❑ **Specially-tailored interventions to address individual and community needs.** Each drug activity "hot spot" has its own unique character. Rather than attempting a "one size fits all" approach, community-based interventions should be specifically designed for the population in that particular neighborhood.
- ❑ **Clearly delineated evaluation criteria and procedures** to ensure accountability to the public and facilitate review of programmatic effectiveness by policymakers.
- ❑ **Commitment to capturing and reinvesting criminal justice savings** to sustain pre-booking diversion programs, and support improvement and expansion of other "upstream" human services and education efforts.

LEAD Protocols

Final eligibility criteria, program details, and administrative oversight procedures will be determined via agreement of all relevant stakeholders. At a minimum, these stakeholders would include the involved community public safety leaders, advocacy groups, government and criminal justice agencies, service providers, and contract administrators. Development of program details will be informed by the protocols developed for the diversion of jail-bound mentally-ill offenders to King County's planned community-based Crisis Diversion Facility. The final eligibility criteria, program details, and administrative oversight procedures will be memorialized in a Memorandum of Understanding (MOU) among all participants.

⁵ Davidson, L., & Rowe, M. (2008). *Peer support within criminal justice settings*. Delmar, NY: CMHS National GAINS Center.

III. CONCLUSION: A CALL TO ACTION

Unless the region takes action to interrupt the flow of low-level drug offenses into the criminal justice system, it will be forced to expand its secure confinement options, and reduction of criminal justice expenditures will not be possible without compromising other serious public safety goals, such as prevention and deterrence of violent crime. Given the state of the national and regional economy, it is fair to say that there is little to no public support for expanding local incarceration capacity. However, economic crisis also brings with it the opportunity to revisit our current approach, so that jail and justice system expansion can be avoided without sacrificing public safety.

A majority of regional criminal justice system stakeholders have expressed a commitment to trying something new. The time for Seattle-King County to develop an innovative, pragmatic solution to addressing low-level drug offenses is now. We invite you to join us in exploring how a pre-booking diversion program for low-level drug offenders can reduce criminal justice costs and offer a meaningful response to community concerns about the problem of street-based drug activity.

It is common knowledge that the Belltown neighborhood has suffered over the years from an intractable open-air drug market. The Belltown Community would like to see a Law Enforcement Assisted Diversion (LEAD) program implemented to meaningfully address the causes of drug crime and associated public safety issues. We strongly believe that this model is an important and necessary component of an overall public safety strategy.

— Richard Nordstrom,
Belltown Community Council
