

Reducing revocations and sanctions in adult probation for drug-related offenses

Purpose

The purpose of this review is to identify theory and effective strategies for reducing revocations and sanctions in adult probation with a focus on probationers who have substance use disorders.

Approach

We used a five-phase rapid evidence review process to assess the relevant research literature with a focus on systematic and conceptual reviews. The sources for the review included PubMed, Academic Search Complete, and Google Scholar. The initial searches yielded 531 articles. Following title and abstract review and exclusion, we retained 18 articles for full text review and coding. To be included, articles had to focus on strategies to improve probation outcomes without using revocation as a behavior change strategy. Articles could be empirical review, individual studies, conceptual review or opinion papers. The full text articles and a list of other useful resources are included at the end of this report.

Findings

The search identified three schools of thoughts in the research literature relevant to this question. The first included scholarship on *therapeutic jurisprudence*, the second arose from *harm reduction* philosophies, and the third explored the use of *incentives* on top of routine probation practice. We also identified a meta-literature related to ethical and effectiveness considerations of compulsory treatment. We begin by summarizing articles that reviewed the ethics of compulsory treatment, followed by a synthesis of the literature within the three scientific schools of thought in adult probation and SUD outcomes.

Ethical and effectiveness considerations in compulsory treatment. Four of the articles explicitly addressed the ethics or effectiveness of compulsory and coerced treatment for SUD. Stevens (2012) argues that the issue of “effectiveness is secondary to the issue of ethics.” He draws from human rights law and the ethics guiding medical intervention to analyze the ethical implications of forcing or coercing clients in SUD treatment. He defines two types of coercion. The first type is when a client is given no choice about treatment (compulsory), the second is when the client is given a choice between treatment or punishment (quasi-compulsory). Stevens argues that compulsory treatment is never ethical and quasi-compulsory treatment (giving individuals a choice) is only ethical for clients who are drug-dependent and the site and approach to treatment must not exceed restrictions to liberty posed by the offense seriousness. For example, for client who only have a drug possession offense, it would exceed proportionality to offer drug treatment in a residential, secure setting because of the restrictions to liberty. In cases where the client is also convicted of harm towards others, the treatment alternative could include more proportionally restrictive settings if the client is facing penal sanctions that would restrict their liberty due to the potential to inflict ongoing harm. The four articles addressing the effectiveness of compulsory treatment include a systematic review that had a rigorous approach to reviewing the relevant literature (Werb et al., 2019), a literature review that did not use a rigorous review method (Hunt et al., 2003), a case study of client perspectives of coerced treatment (Urbanoski, 2010), and a conceptual overview of the literature on strategies to reduce drug-related harm by leading research figures (Degenhardt et al., 2019). The papers were consistent in concluding that compulsory treatment for SUD-related harm was ineffective or, at

best, mixed. Urbanoski (2010) finds that the “perception of coercion” can reduce motivation to engage in treatment. In other words, motivation to actively participate in treatment is strengthened when the client does not feel coerced but feels they have voluntarily chosen a treatment option.

Therapeutic jurisprudence. The field of therapeutic jurisprudence hypothesizes that the legal process can be structured in such a way to promote recovery. We identified two papers that reviewed the conceptual assumptions and effectiveness of this approach. Shaffer et al (2011) conducted a meta-analysis of drug court evaluations (from the U.S.) using a rigorous method. The review found variation in individual evaluations and that, overall, drug courts were moderately effective reducing recidivism but could not conclude they were effective in reducing SUD. The analysis found that providing drug education to clients and using internal drug treatment providers facilitated more effective outcomes. Hora (2002) provided a conceptual review of the research literature on drug courts, concluding they can be “therapeutic or anti-therapeutic.” Overall, there appear to be risks to using drug courts and uncertainty regarding how to structure drug courts to eliminate risk.

Harm reduction. We identified twelve papers that reviewed harm reduction or human rights-based approaches to drug-related offenses and harms. The majority of the papers were conceptual overviews or opinion papers. In addition to the Werb et al (2016) review of compulsory treatment cited earlier, we identified a systematic review of police-based diversion as a strategy for reducing legally coercive approaches to addressing drug-related offenses (Blais et al, 2022). Blais et al (2022) used rigorous review methods and concluded police-based diversion was effective in reducing recidivism and promising in reducing SUD and improving overall health. The remaining articles provided conceptual overviews of harm reduction and strengths-based or human rights-based approaches to drug-related offenses as alternatives to formal legal involvement or non-proportionate coercion. For example, Vandeveldt et al. (2017) notes that strengths-based approaches to drug-related offenses differ in aims and approach from risk-based models (e.g. Risk Needs Responsivity) and the two cannot be compared on their “outcomes” alone.

Incentive schedules. We identified four papers focusing on rewards and sanctions as a behavior change strategy within a legal process for drug-related offenses. Three of the four papers examined the use of rewards and sanctions within therapeutic courts (mental health and drug courts). In a 4-site study of mental health courts, Callahan et al (2013) found that individuals with person-related offenses were the least likely to receive sanctions and those with only drug-offenses were the most likely. The authors conclude that the use of sanctions and rewards lacks consistency and an understanding of ethical and effectiveness considerations. Lindquist et al (2006) conducted a multi-site study of drug courts in Florida and found that sanctions were used by drug courts more often than typical probation, and rewards were used only half as much as sanctions. The analysis did not examine the relationship between sanctions, rewards, and outcomes. Barber Rioja (2014) provides a conceptual review and proposal that rewards should be “tailored” to individual preferences and goals in order to be more effective. Marlowe et al (2008) compared providing higher and lower value incentives in a reward schedule for adults and probation and did not finding meaningful differences in the size of the reward.

Summary

Our review identified substantial debate in the scientific literature regarding the ethics and effectiveness of coercive (sanction-based) approaches to drug-related offenses. The therapeutic jurisprudence literature which largely encompassed review of drug and mental health courts, views coercion allowable to the degree that it

reduces recidivism. However, reviews of the quality of drug court implementation suggests poor implementation presents active risks to client recovery and well-being. Further, drug courts tend to sanction individuals more often than usual probation, which likely violates ethical guidelines for non-coercive treatment. Harm reduction approaches cite police-based diversion as effective approaches to reducing client recidivism and following principles of “least restrictive” treatment and the “perception of voluntariness” emerged as promising principles for ethical and effective drug policy. Overall, the literature suggests individual jurisdictions

1. Should be thoughtful about increasing the perceived voluntariness of treatment options,
2. Increase the use of rewards over sanctions, and
3. Provide the least restrictive treatment option proportionate to the client’s level of harm to others.

Methods

Topic(s) of Interest

Alternatives to abstinence-only probation for those with SUD with focus on reducing violations

Exclusion/Inclusion Criteria

Exclude books and book chapters

Include only articles in last 10 years

Adult probation only

Search terms

Search #1:

therapeutic jurisprudence review systematic narrative meta

Search #2:

harm reduction or human rights and courts or offenders and review

Search 3

drug or substance and contingency or incentives and court or offenders or probation or parole or sanctions and review

PRISMA Diagram

