

**CONTROLLING DRUG USE AND CRIME
AMONG CALIFORNIA'S DRUG-INVOLVED OFFENDERS:
TESTING, SANCTIONS, AND TREATMENT**

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EXECUTIVE SUMMARY

California suffers from a serious crime problem. The use and sale of cocaine, heroin, and methamphetamine are tightly linked to that problem. More than half of the total volume of those drugs is sold to a relatively small group of heavy users who are also criminally active. To succeed, any approach to drug abuse control must address the behavior of those "hard-core" user/offenders, but current strategies hold out little hope of greatly improving their behavior.

Precisely because they are criminally active, however, members of the hard-core population are usually under the nominal supervision of the criminal justice system. When not in prison, they are on probation or parole. While probationers and parolees are nominally required to abstain from illicit drug use, that requirement is not currently very effective, because severity of punishment is not an adequate substitute for certainty of detection in changing the behavior of drug-involved offenders. Increasing the capacity of the probation and parole systems to discourage hard-drug consumption among hard-core offenders is essential to improving the drug and crime situation in California.

Abstinence from drug use for probationers and parolees ought to be enforced with frequent drug tests and predictable sanctions, with treatment offered or required to those whose repeated failure to abstain under coercion alone shows them to be in need of it.

The benefits of mounting such a program would vastly outstrip its costs, and outstrip the benefits of any other program that could be mounted against drugs and crime using comparable resources. The administrative and political barriers are formidable but perhaps not insurmountable.

BACKGROUND: California's Drug/Crime Problem

Compared to other states, California has high crime and low levels of police protection. Not only do actual property and violent crimes create substantial levels of damage, but actions taken, or not taken, in order to avoid criminal victimization shape patterns of social interaction, residential location, and business activity in ways whose costs are vastly greater than the direct costs to victims of completed crimes.

In common with other states, California faces a growing prison budget, (\$3.8 billion for the current fiscal year) which complicates the state's fiscal problems.

In California as elsewhere, the problem of crime is intimately connected with the expensive and highly addictive illicit drugs, primarily cocaine (including crack), heroin, and methamphetamine.¹ Addicts steal to support their habits. The disorder incident to street drug markets creates conditions that make neighborhoods appear to be receptive locales for property and violent crime. Dealers arm themselves to defend their operations against other dealers, against potential robbers, and against the police: these weapons are then used not only in drug-related disputes but in a variety of interpersonal confrontations, increasing the incentive for those around them to arm themselves or to join gangs for self-protection. The easy money available in retail drug dealing lures large proportions of the young people in some high-poverty urban neighborhoods away from school or licit work into criminal careers, and their lack of education and experience and the criminal histories they develop as dealers then act to exclude them from licit opportunities.

One-third of the California prison population is serving time for drug offenses, and half of all inmates are estimated to suffer from addiction to illicit drugs. Conversely, about three-fifths of all the cocaine and heroin sold in California is sold to a relatively small group (perhaps 200,000 at any one time) of people who are both active property and/or violent offenders and heavy rather than casual drug users.

Current Policies for Dealing with Addict/Offenders

Neither current drug policies nor current correctional policies offer any real hope of substantially reducing drug consumption by user/offenders. The

drug-policy triad of prevention-enforcement-treatment is largely irrelevant. Let's take them in order.

First, prevention. Not only is it obviously futile to prevent what has already occurred, there is no evidence that either school-based or media-based drug-prevention messages have much to say to those who are likely to develop into drug-involved offenders in the future, as opposed to the middle-class kids whose parents' concerns dominate the political side of drug policy. (A focus on preventing drug *dealing*, using some mix of messages to change attitudes and other policies to shrink dealing opportunities, might be more relevant, but that idea is nowhere near the policy agenda.)²

Second, enforcement. By making drugs more expensive and harder to obtain, enforcement can reduce both consumption by current users and the initiation rate. Compared to the hypothetical baselines of either legalization or zero enforcement, prohibition and enforcement have certainly been successful: illicit-market cocaine costs twenty times the price of the licit pharmaceutical product, and much of the population has no easy access to the drug. But the capacity of more enforcement to drive prices higher, or even to prevent continued price declines, is very limited, as the drug law enforcement explosion of the past fifteen years demonstrates. Of all users, the hard-core user/offenders are least likely to find themselves unable to acquire supplies.

Third, treatment. A wide variety of "modalities" has been shown to be effective in reducing drug consumption and criminal activity while the treatment lasts, seemingly regardless of whether entry into treatment is voluntary or coerced.³ But even if there were sufficient treatment slots in programs appropriate to the criminal-justice population, and even if treatment providers were motivated to serve user/offenders rather than other, less refractory, clients, there would remain the problem of recruitment and retention. While some user/offenders want to quit, and even want to quit enough to go through the discomforts of the treatment process, many prefer, or act as if they preferred, cocaine or heroin, as long as they can get it.

In the abstract, there is a good case for expanding treatment capacity, focusing treatment on the user/offender population whose continued drug use imposes such high costs, and using the courts, prisons, and community corrections institutions to force user/offenders to enter, remain in, and comply with treatment. Adding drug treatment to incarceration makes sense, and good in-prison treatment with good post-release follow-up has been shown to reduce recidivism by about one-fifth,⁴ thus more than paying for itself in budget terms alone.

But the unpopularity of user/offenders makes the funding problems difficult if not insoluble; the capacity and willingness of treatment providers to address the needs of this population remain unclear; and the administrative problems of enforcing treatment attendance and compliance through the criminal-justice system are daunting. Starting from the current political situation and the current capacities and practices of the treatment system and the criminal-justice system, it would be fatuous to expect expanded treatment availability to generate large changes in overall drug demand over the next several years.

So much for the repertoire of standard drug policies.

Turning to corrections policies, we see a picture not much brighter. The routine functioning of the of the courts and corrections system does very little to address the substance abuse of those assigned to it, and much of that little is wrong.

Nominally, those on probation (about 300,000 at any one time in California) or parole (about 100,000) are required to abstain from illegal activity, including drug possession, as a condition of their continued liberty. Probation and parole officials have the authority to administer drug tests, and a “dirty” (positive) test constitutes a violation of conditional release and thus grounds for sanctions, including revocation of conditional-release status and thus incarceration or re-incarceration, for a period up to the original nominal sentence.

In practice, however, most parole and (especially) probation offices are under-budgeted and overwhelmed by their caseloads; probation officers in California typically manage caseloads of several hundred offenders.⁵ With a total probation and parole budget of about \$400 million per year, California spends less than \$1000 per probationer and just over \$2000 per parolee. Funds for testing are scarce, and facilities for testing, including both equipment and staff to observe the specimen collection, even more so. If the specimens are sent out for analysis, turnaround time is measured in days. As a result, even special, “intensive supervision” probation efforts rarely test more than once a month, and routine probation tests much less frequently than that. Thus a probationer on intensive supervision who uses cocaine or heroin has less than one chance in ten of being detected on any given occasion of use. (Perversely, marijuana is detectable for up to a month, making it the most likely to be detected.)

The result is widespread use, and therefore high rates of detection even

with infrequent testing. That leaves the community-corrections system in a bind. In California as in most other states, probation and parole officers have no individual power to sanction: they can only refer their wayward “clients” back to the parole board (for parolees) or the court (for probationers) with a recommendation that conditional-release status be revoked and the offender incarcerated or re-incarcerated.

For probationers, the revocation hearing is a full adversarial proceeding; parole revocation is often simpler and usually swifter, but in any case there is a substantial paperwork burden. If the judge or parole board takes any action at all against the offender (by no means assured given the prison-crowding problem) it is likely to be severe: a few months behind bars is typical, and offenders have been sent back to finish multi-year sentences for a single positive marijuana test. Approximately 15,000 persons per year enter California’s prisons for violating their probation or parole terms by continued drug use.

As a result, there are strong incentives, especially in the probation system, not to take every positive test back to the judge. Probationers may be counseled, warned, or referred to treatment providers several times before being (in the perhaps unintentionally graphic jargon term) “violated.” It is hard to fault probation officers for attempting to “jawbone” their charges out of drug use rather than proceeding immediately to drastic measures. But the resulting system could hardly be more perverse in its effects.

An offender who has a strong craving for cocaine or heroin is put in a situation where the probability of detection conditional on one use is rather small, and the probability of punishment conditional on detection is larger, but still unknown and far less than certainty. For a hypothetical rational actor, the cumulative probability of eventually going to, or back to, prison for a period of months would be an ample deterrent: the “expected value” of the punishment is surely greater than the user would willingly pay for the pleasure of a single evening with his favorite drug, and the randomness of the punishment would increase its disutility for anyone appropriately risk-averse. That is to say, the current system would be adequate – though still not optimal – to deter drug use by the sort of people who make and administer the laws.

Those who run afoul of the laws tend to behave differently. Crack-addicted burglars are much less likely to make careful comparisons between current benefits and anticipated future costs. Otherwise they would be neither crack-addicted nor burglars, since neither crack-smoking nor burglary is a positive-expected-utility activity on any reasonable estimate of values and probabilities. The key to fixing the situation is to adapt the penalty structure to

the decision-making styles of the people whose behavior one is trying to influence.

Casual empiricism and results from the psychology and behavioral-economics laboratories alike suggest that delay and uncertainty greatly weaken the effects of punishment, especially for those whose decision-making does not match the rational-actor models of textbook economics. Fitting deterrence regimes to the behavioral styles of hard-core user/offenders thus requires swift and certain, even if relatively mild, punishment rather than the current policy of randomized Draconianism.

Diversion and Drug Courts

Drug diversion and drug courts are the two major categories of special programs that attempt to use the authority of the criminal justice system to reduce drug-taking by offenders.

Drug diversion involves offering a defendant the option of a deferred, suspended, or probationary sentence in lieu of possible incarceration on the condition of receiving drug substance abuse treatment. Diversion programs vary enormously. Some are formal treatment plans administered under the rubric of TASC (an acronym which once stood for “Treatment Alternatives to Street Crime” but now represents “Treatment Alternatives for Special Clients”) a network of specialists who find treatment placements for court-referred clients, monitor their progress, and report back to the court on treatment compliance. Others are as simple as a judge’s demand for “thirty in thirty” (attendance at thirty Twelve-Step meetings in the next thirty days) from someone accused of public intoxication or drunken driving.

In drug courts, the judge acts as the case manager, rather than delegating that responsibility to a TASC provider. Defendants come in frequently to review their treatment compliance and drug-test results, and are praised or rebuked for good or bad conduct by the judge in open court. After a period of months, the defendant is sentenced on the original offense, with the promise that the sentence will reflect his pre-sentencing behavior.

Because they are built around the idea of treatment, many diversion programs and drug courts tend to put as much stress on showing up for treatment sessions as they do on actual desistance from drug use. They vary widely in their use immediate sanctions to enforce compliance. Some rely primarily either (for diversion programs) on the threat of removal from the

program and sentencing on the original charge or (for drug courts) the fact that sentencing is still to come. Many drug court judges hope and believe that praise and reproof from the bench, backed with the judge's reserve powers of incarceration, will serve as sufficiently potent and immediate rewards and punishments without resorting to more material sanctions. Doubtless, they are right with respect to some judges and some offenders.

What drug diversion and drug courts have in common is that participation is voluntary (defendants can, and some do, choose routine sentencing instead) and restricted to defendants whom the court and the prosecution are prepared *not* to incarcerate if the defendants will just clean up their acts. By their nature as "alternatives to incarceration," they cannot apply to those whose crimes have been especially severe. That excludes most violent crimes, and the federal law providing funding for drug courts specifies that defendants admitted to drug-court treatment have no prior violent offenses either. Thus many of the most troublesome offenders, those whose drug consumption it would be most valuable to influence, are excluded from the beginning.

Moreover, budget constraints limit drug-court and diversion populations; there is no mechanism by which the net cost savings they likely generate for the corrections system are recycled into program operations. Budgetary stringency both reinforces the programs' limited scope and creates a strong incentive for limited duration as well.

Typically, supervision under such programs lasts for periods measured in months: small fractions of typical addiction, and criminal, careers. This is not only a budgetary matter; it also derives from the limited leverage prosecutors have over most of the offenders eligible for diversion or drug-court processing. Offenders who refuse to enter these voluntary special programs and choose routine processing instead face relatively short prison or jail stays. In practice, some defendants prefer a short fixed period of incarceration to a longer period of supervision that may lead to incarceration if they backslide. The longer the period of supervision, the greater the temptation to just "do the time" and get it over with. In California, where simple possession of either cocaine or heroin is not only a felony but a "serious" felony that counts as a second or third "strike," the potential leverage of diversion programs in forcing treatment entry and compliance is very large, but limited court and corrections capacity put a cap on the ability of prosecutors to use that potential leverage.

Thus limited scope and limited duration put an upper bound on the potential impact of diversion and drug courts. Making a larger impact could

require a more comprehensive approach, embracing hundreds of thousands, rather than thousands, of offenders and functioning as part of routine probation or parole supervision rather than as a special, voluntary program. Given current constraints on drug treatment budgets, the requisite expansion in scale requires decoupling the testing and sanctions program from treatment, at least to the extent of imposing a requirement of abstinence on all drug-involved offenders, whether or not paid treatment slots are available for them.

Coerced Abstinence

To make a substantial dent in the drug consumption of addict/offenders, we need a system that will extend the supervisory capacities of drug courts and diversion programs to a larger proportion of the offender population and for longer periods. Such an approach would have to be simple enough to be operated successfully by ordinary judges and probation officers, rather than enthusiasts, cheap enough to be feasible from a budgetary standpoint, and sparing of scarce treatment and confinement capacity.

One option would be to substitute, to the maximum feasible extent, testing and automatic sanctions for services and personal attention from the judge. Instead of coerced treatment, this approach might be called “coerced abstinence,” because it aims directly at reduced drug consumption rather than at the intermediate goals of treatment entry, retention, and compliance.

Here’s how such a system might work:

- Probationers and parolees are screened for cocaine, heroin, or methamphetamine use, using a combination of records review and chemical tests.
- Those identified as users, either at the beginning of their terms or by random testing thereafter, are subject to twice-weekly drug tests. They may choose any two days of the week and times of day for their tests, as long as the two chosen times are separated by at least 72 hours. That means that there is effectively no “safe window” for undetected use.
- Every positive test results in a brief (say, two-day) period of incarceration. (The length of the sanction, and whether and how sharply sanctions should increase with repeated violations, is a question best determined by trial and error, and the best answer may vary from place to place.)

- The sanction is applied immediately, and no official has the authority to waive or modify it. (Perhaps employed users with no recent failures should be allowed to defer their confinement until the weekend to avoid the risk of losing their jobs.) The offender is entitled to a hearing only on the question of whether the test result is accurate; the penalty itself is fixed.
- Missed tests count as “dirty.” (Perhaps the sanction should be somewhat greater, to discourage absconding.)
- After some long period (six months?) of no missed or positive tests, or alternatively achievement of some score on a point system, offenders are eligible for less frequent testing. Continued good conduct leads to removal to inactive status, with only random testing.

To operate successfully, such a program will require:

- the capacity to do tests at locations reasonably accessible to those being tested (since they have to appear twice a week);
- on-the-spot test results, both to shrink the time gap between misconduct and sanctions and to reduce the administrative burden of notifying violators and bringing them back for hearings and punishment;
- the capacity for quick-turnaround (within hours) verification tests on demand;
- authority to apply sanctions after an administrative hearing or the availability of an on-call judge who can hear a case immediately;
- confinement spaces for short-term detainees available on demand; and
- the capacity to quickly apprehend those who fail to show up for testing.

None of these should be, in principle, impossible to obtain; but having all of them together, and reliably available, may well lie beyond the realm of practical possibility in many jurisdictions unless extraordinary political force is brought to bear. Thus elected officials will have to make coerced abstinence one of their goals, or it is unlikely to become a reality.

A wide variety of actual programs could be covered by the rubric “coerced abstinence.” Crafting any particular implementation will require the

resolution of several major design issues.

- One important but tricky decision involves what drugs to test for, both at the initial screen and for offenders under active monitoring. There is a strong case for omitting marijuana, at least at the initial screening stage: because it remains detectable for long periods and is widely used, any program that does not exclude it is likely to have a substantial proportion marijuana-only clients. The individual and social benefits from reducing marijuana demand among offenders do not approach the benefits from reducing cocaine, methamphetamine, and heroin demand. On the other hand, once an offender is identified as a cocaine, methamphetamine, or heroin user, it may be the case that continued marijuana use will prove to be a risk factor for backsliding, both because it requires contact with drug sellers and because marijuana intoxication reduces sensitivity to the consequences of actions and thus deterrability. That suggests ignoring marijuana in the preliminary screening, but including it in ongoing monitoring.
- An especially touchy question is whether alcohol should be included. Its very short detection window makes it virtually impossible to detect all alcohol use, but very recent use is detectable in urine. Its legal status reduces the surface justification for forbidding it, but its link to violence (and complementarity with cocaine) create a strong argument for doing so anyway. Alcohol could be another candidate for inclusion in routine testing but exclusion from the preliminary screen.
- The case for an automatic, and therefore necessarily formulaic, sanctions structure is very strong, and such a structure must start out with relatively mild sanctions or the program will collapse of its own weight. But there is no analytic answer to the questions of how to start out and how rapidly, or how far, to increase severity with repeated violations.
- Just as important as the sanctions structure is the reward structure: that rewards shape behavior more powerfully than punishments is a well-established result. Of course, the political problems of rewarding law-breakers for obeying the law are substantial ones, and the best feasible approach may be to use praise and reduced supervision as the primary forms of reward. But collecting an up-front “participation fee” or “fine” that is then returned in small increments for each “clean” test might greatly reduce the failure rate.

- After some period of compliance, both the need to reward desired behavior and simple budget pressures create a strong case for reduced supervision. Such crucial details as the schedule, the nature of the ongoing monitoring, and what to do with those who backslide under reduced supervision need to be resolved.
- Some participants will prove unable or unwilling to reform under punitive pressure alone. For that group, treatment is essential, if only to reduce the burden they put on sanctions capacity. In addition, it is probably true that the availability of treatment, or perhaps even a requirement to accept treatment, would cut down on violation rates. What sort of paid treatment to offer (and how to make use of the Twelve-Step programs), to whom it should be offered, and whether and under what circumstances it should be required, are all open questions.
- The crucial practical details of how to apprehend absconders, and what sort of confinement capacity to maintain for violations, need to be addressed.

Benefits and Costs

The costs and benefits of such programs will depend on details of their implementation, on local conditions, and on the (as yet unknown) behavior of offenders assigned to them. High compliance will translate into great benefits and modest costs, low compliance into the reverse. Only experience, ideally in the form of well-designed experiments, will allow informed judgments about whether, where, and how to put the concept of coerced abstinence into practice.

Still, it is possible to calculate in advance some of the costs and benefits of such programs under specified assumptions about design and results. Those calculations support the idea that coerced abstinence deserves a thorough set of trials.

The catalogue of potential benefits is impressive:

- The primary benefit would be reduced drug abuse (to the extent that substitution is not complete), due not only to the deterrent effect of the sanctions but also to the “tourniquet” effect of interfering with incipient relapses before they can turn into full-fledged “runs” of heavy use. In the District of Columbia Drug Court experiment (see below) coercion outperformed (admittedly not very good) treatment.⁶ That would suggest that successful coercion programs might match the reduction of two-thirds in drug consumption typical of users under treatment.

- If that were right, and if all the high-dose user/offenders were under testing and sanctions, and if they account for 60% of total hard-drug consumption, the result would be a reduction in dealers' revenues of 40%. No other feasible anti-drug program offers any real hope of comparable levels of market shrinkage.
- Smaller markets would have manifold benefits: shrinking access for potential new users, protecting neighborhoods from the side effects of illicit markets (most notably violence), diverting fewer adolescents and young adults away from school or licit work into dealing, and reduced diversion of police effort into drug law enforcement and prison capacity into holding convicted dealers. (Currently, about one-quarter of California's prison cells are occupied by persons serving sentences for drug dealing offenses;⁷ shrinking that number by 40% would allow either a 10% cut in prison spending, for a savings of about \$360 million per year, or increased imprisonment for non-dealing offenses.)⁸
- The direct benefits of reduced consumption are comparably diverse: improved health; improved social functioning (job, family, neighborhood); and reduced crime by the offenders subject to testing and therefore reduced imprisonment demand among a population with a tendency to cycle in and out of confinement. With drug-involved offenders committing about half of all the felonies in big cities,⁹ these potential benefits are great, though it would not be reasonable to expect a shrinkage in crime proportionate to the shrinkage in drug consumption. But if the reduction in overall offending were even half as large as the reduction in drug consumption, and if the sort of drug-involved offenders who would be subject to coerced abstinence account for 40% of the population behind bars for other than drug-dealing offenses, that would be another 13% of total confinement capacity (costing about \$470 million per year) saved, giving California the choice between increased deterrence and incapacitation for other offenders and cuts in prison spending.
- A reliably operating coerced-abstinence system as part of probation and parole would also be expected to change the behavior of judges and parole boards with respect to making confinement decisions. By making probation or parole more meaningful alternatives to incarceration, the coerced-abstinence approach should lead to more use of community corrections in otherwise borderline cases. Instead of having to guess about whether a given drug-involved offender will elect to go straight this time, the decision-

maker can allow the offender to select himself for conditional freedom or confinement by his drug-taking behavior as revealed by the tests.

- Coerced abstinence would also be expected to have beneficial effects on the treatment system. Some of those now referred to treatment by the courts would show themselves capable of abstaining from drug use without treatment, under the steady pressure of testing and sanctions, perhaps with the aid of a Twelve-Step fellowship or similar self-help group. Those in treatment would have increased incentive to succeed, with the pressure coming not from the therapist or the program but from an external force. Those not in treatment who found themselves incapable of complying on their own would have a strong incentive to find treatment, and their repeated failure would bring their treatment need to the attention of the courts and community-corrections authorities, while the cost of their continual short confinement stays would create a financial incentive for the local government to provide it.

The cost picture is somewhat simpler, though still quite speculative until there are some working models to study. The important elements of cost would be testing operations, probation or parole supervision, sanctions and arrest capacity, and treatment, and a cost calculation will require both unit-cost and volume estimates. For unit costs, we can assume:

- Community-corrections officers at \$60,000 per year, including fringe benefits, overhead, and supervision. Police officers at \$100,000 per year, also inclusive.
- Testing at \$5 for a five-drug screen. This is less than most agencies currently pay, but consistent with the current costs in the mass-production DC Pretrial Services Agency and not hard to imagine given the testing volumes that would exist with a full-scale national coerced-abstinence program.
- Confinement costs of \$50/day, less than a typical jail, but consistent with the reduced need for services and security for short-term confinement: roughly the cost of a mediocre motel room.
- Treatment at \$5,000 per year, reflecting a blend of methadone, outpatient drug-free counseling, and therapeutic communities for the most intractable. (Partly a design decision.)

In terms of volume, we assume:

- 10% of the test results will be positive or no-shows. (This should be realistic for early stages of the program, perhaps pessimistic once the reliability of the tests and sanctions has been established in the minds of participants.)
- The average sanction for a violation is 3 days.
- 10% of active cases will be in mandated (paid) treatment, over and above those who would have been in treatment in the absence of the program. (Pure guess, and partly a design decision.)
- One-quarter of the population that originally qualified for active testing will have complied to the point of being moved to some form of low-cost monitoring and not been moved back to active testing as a result of a violation. (Pure guess, and partly a design decision.)
- One probation or parole officer can manage 50 active testing-and-sanctions cases.
- One police officer to chase absconders is needed for each 250 active cases.

On these assumptions, total program costs for a group of 1000 probationers who originally qualified for testing and sanctions, with 750 on active testing at any one time, would be:

15 probation officers @ \$60,000	= \$0.9 million
3 police officers @ \$100,000	= \$0.3 million
750 offenders x 104 tests/yr. = 78,000 tests @ \$10	= \$0.8 million
78,000 tests x 10% x 3 days = 23,400 days @ \$50	= \$1.2 million
750 offenders x 10% = 75 treatment slots @ \$5,000	= \$0.4 million
TOTAL	= \$3.6 million
PER CAPITA	= \$3600 per offender

This estimate of \$3600 per offender per year represents only about one-eighth of the annual cost of a prison cell. The probation or parole department's share (probation salaries plus testing costs) would be \$2100 per offender, a little more than twice the current average cost per client of California's probation or parole supervision.

If such a program were applied to all 400,000 probationers and parolees in California, and if 50% of them were initially identified as frequent users of expensive drugs, then the total annual cost would be roughly 200,000 x \$3600, or \$720 million per year. About half of this would represent additional spending, over and above the cost of routine probation or parole supervision. This amount could be more than offset by reduced correctional expenditures resulting both from reduced criminal activity among those subject to coerced abstinence and from the shrinkage in the drug markets.

Sources of Resistance

Anyone advocating a major change in the way a piece of the public's business is done must confront the public-sector version of the old question, "If yer so derved smart, why ain't ye rich?" If this is such a good idea, why is it not now being pursued? A variety of barriers, conceptual, organizational, and practical, have stood and still stand in the way of developing testing and sanctions into a working piece of administrative machinery.

Conceptually, testing-and-sanctions challenges current understandings both of deterrence and of addiction. It seems hard to conceive that small sanctions would prove effective deterrents to those so signally resistant to the threat of large sanctions. (This resembles the question posed about bottle-deposit laws by the flacks for the beverage industries: "If a \$500 fine doesn't stop a litterbug, what's a 5-cent deposit going to do?" The answer, of course, was that the \$500 fine was largely notional, while the nickel actually gets collected.)

To some, the concept of addiction as a disease process involving loss of voluntary control over drug-taking implies that threats cannot change addictive behavior. This idea is related to the empirically discredited, but still powerful, notion that addiction implies that changes in price have little impact on the quantity purchased (inelastic demand).¹⁰ There is laboratory-animal evidence that addictive demand is sensitive both to "price" (in the form of effort required) and to consequences¹¹ and human experimental evidence that immediate rewards for non-use can substantially improve treatment success among those trying to quit.¹²

Since even pathological behaviors can still be responsive to their consequences, the disease model of addiction does not rule out the possibility that coerced abstinence can succeed. Nonetheless, the notion that addicts are sick and therefore unresponsive to incentives remains a powerful one, and a strong source of resistance to testing-and-sanctions proposals.

In ideological terms, the testing-and-sanctions idea does not, at least at first blush, satisfy either the moralistic/punitive or the compassionate/therapeutic impulses that dominate the current political discourse about drugs, though it has something to offer to each side. That, plus its conceptual complexity, makes it unattractive as a political campaign proposal, except in the masquerade of yet another “get-tough-on-drugs” proposal.

Alongside this lack of popular appeal is active unpopularity with an important interest group: treatment advocates. By no means do all treatment providers dislike coerced abstinence, but it tends to encounter resistance among treatment administrators and advocates on three different grounds. Ideologically, it seems to be in tension with the disease concept of addiction, which is central to treatment providers’ self-understanding and to their claims on public and private resources. In economic terms, coerced abstinence is one more competitor for scarce funds. (Curiously, proponents of drug courts, who might also have been expected to see testing and sanctions as a competitor for funding, have instead been rather friendly toward the idea.) But at a deeper level, those with a strong commitment to drug treatment may reasonably regard testing-and-sanctions as an inferior substitute.

For some drug-involved offenders, removal of drug dependency would allow them to live substantially happier lives. But for many, their drug habits are only a part, and often the smaller part, of their problems. Drug treatment often involves addressing far more than drug problems; this is most evident in the case of Therapeutic Communities, with their holistic attempt to reshape character. From the viewpoint of those most concerned about persons with addictions, testing-and-sanctions threatens to provide much, if not most, of the benefits of treatment from the viewpoint of crime victims and government budgets while providing little in the way of relief to those suffering from addiction.

Nor are the agencies most effected by coerced abstinence, and which will have to do most of the work, necessarily its supporters. Probation departments, usually badly overworked and understaffed, have not in general been aggressive in seeking out new missions and responsibilities. Police are

anything but eager to make warrant service a high priority, though shifts towards community policing and towards holding area commanders responsible for reducing rates of criminal activity may be changing that. Corrections officials are not looking for new business, and especially not for the short-stay clients whose processing in and out takes so much effort.

Moreover, by contrast with ideas such as mandatory sentencing that are virtually self-implementing once legislation is passed, the degree of inter-agency coordination required to make a testing-and-sanctions program a success means that its implementation will require enormous effort on the part of whoever takes on the entrepreneurial role.

Finally, coerced abstinence suffers from two budget mismatches, one of timing and one of level of government. Even if the program turns out to be cost-neutral or better in the long run, there is no denying its immediate costs and immediate demands on scarce confinement capacity. The long-term savings are likely to be dismissed as typical program-advocate pie in the sky. Similarly, it is a rare county executive or sheriff who is eager to spend the county's resources on testing-and-sanctions in order to save the Governor money in the form of reduced prison spending.

Experience

To date no large jurisdiction anywhere in the country has instituted testing and sanctions on the model described above as part of routine probation and parole supervision. Scattered judges have created such programs on their own initiative, and informal reports suggest good results, but there have been no published evaluations, and in any case such pioneer efforts often turn out to rely too heavily on the charismatic characteristics of their founders to be easily portable. There have been four more systematic efforts:

Santa Cruz County instituted aggressive testing of known heroin users on probation in the late 1980s, along with a focused crackdown on street-level dealing. The county reported a 22% reduction in burglaries the following year, when burglaries were slightly up in adjacent comparable counties, but there was no careful examination of the relationship, if any, between the testing and the burglary reduction.

The Multnomah Country (Portland, Oregon) Drug Testing and Evaluation Program looked like a testing-and-sanctions program at the outset, but evolved into merely one more tool in the probation officer's toolkit, with neither

continuity of testing, predictability of sanctions, nor any real program integrity (in terms of which offenders were subject to it and which not). No firm conclusion could be drawn about its performance.

Project Sentry in Lansing, Michigan, has provided mostly short-term testing for drug-involved offenders on probation or pre-sentencing release (about one-third of them felons) over the past 25 years. In the 29,650 specimens collected in the fifteen months ended December 31, 1996, there were 3096 positive tests (where each drug tested for counts as one test). If each positive test represented a different specimen, the positive rate per specimen would have been just over 10%; double-counting for multiple drugs detected from a single specimen would bring that figure down somewhat.¹³

The largest controlled trial to date has been the “sanctions track” of the District of Columbia Drug Court, where defendants randomly assigned to twice-a-week testing with immediate sanctions based on a formula took less drugs than either those mandated to treatment or those assigned to routine drug-court processing (with test results reviewed by a judge and considered at sentencing time). Since the DC drug court is not restricted to drug-defined offenses but includes drug-involved defendants facing a variety of charges, this result may have some application to the broader run of felony and misdemeanor offenders, but the fact that the drug court is a voluntary diversion program limits the inferences that can be drawn about the potential of testing-and-sanctions as an element of routine probation.¹⁴

The “Breaking the Cycle” program in Birmingham, Alabama, now getting under way with federal research funding, is intended to be a full-scale test combining testing and sanctions with treatment. Details of program implementation have yet to be announced, but an elaborate evaluation is planned and some results should be available sometime in 1998.

Experimental Approaches

Two sorts of experiments ought to be done to help define the feasibility and utility of testing-and-sanctions programs: one taking the offender as the unit of analysis, the other taking the jurisdiction. Given the variety of circumstances and possible program implementations, each type of experiment should probably be run in more than one location, and in each case a strong argument can be made for a shakedown period of trial-and-error program development before any formal evaluation starts. Too many promising innovations have run aground on the shoals of single, premature evaluations.

At the individual level, one would want to test the extent to which offenders made subject to a well-implemented testing-and-sanctions program would modify their drug-taking behavior and the effect of those modifications on crime and social functioning.

That same test would provide estimates of failure rates and thus of sanctions demand. At its simplest, an experiment would involve the random assignment of offenders to either business-as-usual processing or testing-and-sanctions. A useful way to complicate such an experiment would be to introduce systematic variation within the testing-and-sanctions condition, to help answer some of the program-design questions.

Jurisdiction-level experiments would be, in effect, pilot implementations, with results compared either to “control” jurisdictions or to historical results. Either basis of comparison brings with it substantial methodological issues, but there are two sets of questions that can be answered only at the jurisdictional level:

- How closely can the actual performance of courts, probation, police, corrections, and treatment organizations approach to the theoretical design of a testing-and-sanctions program?
- What effect would such a program have on the local drug markets? Here the quantities of interest would include the level of dealing activity, the extent of market-related disorder and violence, and the numbers of dealing-related arrests, convictions, and sentences.

Recent developments

During the run-up to the 1996 elections, coerced abstinence was adopted, first as an Administration proposal and then as a law requiring every state to create a program of testing and sanctions for drug-involved offenders as a condition of receiving federal grants to build prisons under the Violent Offender Truth-in-Sentencing (VOTIS) Grant program.

At minimum, California will now have to consider whether and how to make drug testing and sanctions abstinence a part of the criminal-justice process. The state is currently awaiting the issuance of Federal guidelines before formulating its response.

But merely satisfying the terms of the VOTIS grant may not be the

optimal response from the state's viewpoint. A variety of federal officials have expressed interest in mounting demonstration projects on the coerced-abstinence theme, so some federal support might be available for a more aggressive approach. The current approach to drug-involved offenders makes so little sense from any perspective that something almost has to replace it. Perhaps that something will turn out to be some version of coerced abstinence.

Conclusion

A testing-and-sanctions program to enforce the requirement that California's probationers and parolees abstain from the use of expensive illicit drugs, backed up with treatment availability for those who prove unable to comply, represents the single most promising new approach to shrinking crime and drug abuse in California. The potential benefits are very large compared to the costs.

Actually mounting such a program will require overcoming substantial political, legal, and administrative barriers. Federal policies will create some pressure and some incentives to create a "coerced abstinence" program, but leadership at the state level is still necessary. This is an issue for whoever becomes Governor in 1999.

¹ Office of Justice Programs, *1995 Drug Use Forecasting Annual Report on Adult and Juvenile Arrestees* (Washington, D.C.: U.S. Department of Justice, June 1996).

² Mark A.R. Kleiman, "Reducing the Prevalence of Cocaine and Heroin Dealing Among Adolescents," forthcoming in *Valpariso University Law Review*.

³ Carl G. Leukefeld and Frank M. Tims, *Compulsory Treatment of Drug Abuse: Research and Clinical Practice* NIDA Research Monograph 86, National Institute on Drug Abuse. 1994.

⁴ Harry Wexler, Douglas Lipton, and K. Forester, "Outcome Evaluation of a Prison Therapeutic Community for Substance Abuse Treatment," *Criminal Justice Behavior* vol. 17 (no. 1, March 1990), pp. 71-92.

⁵ Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics-1994*, (Department of Justice, 1995), Table 1.71.

⁶ Adele Harrell and Shannon Cavanagh, *Preliminary Results from the evaluation of the D.C. Superior Drug Intervention Program for Drug Felony Defendants* (Washington, D.C.:The Urban Institute).

⁷ Peter Rueter, "Can We Make Prohibition Work Better? Assessing American Drug Policy," University of Maryland, speech delivered in Washington, D.C., February 11, 1997, p. 2. See also, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics-1994*, (Department of Justice, 1995), Tables 6.11 and 6.24.

⁸ Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics-1994*, (Department of Justice, 1995), Table 1.3.

⁹ Office of Justice Programs, *1995 Drug Use Forecasting Annual Report on Adult and Juvenile Arrestees* (Washington, D.C.: U.S. Department of Justice, June 1996).

¹⁰ Jonathan P. Caulkins, "Estimating the Elasticity of Demand for Cocaine and Heroin," (under review), Carnegie Mellon University.

¹¹ Gene M. Heyman, "Resolving Contradictions of Addiction," *Behavioral and Brain Sciences*, vol. 19 (1995).

¹² S.T. Higgins, A.J. Budney, W.K. Bickel, F.E. Foerg, R. Donham, and G.J. Badger, "Incentives Improve Outcome in Outpatient Behavioral Treatment of Cocaine Dependence," *Archives of General Psychiatry*, vol. 51 (1994), pp. 568-576.

¹³ Gallegher, J.J., "Project Sentry Final Program Report," (Lansing, MI:Project Sentry, 1996). See also, "Project Sentry Quarterly Program Report," (Lansing, MI:Project Sentry, 1997).

¹⁴ Adele Harrell and Shannon Cavanagh, *Preliminary Results from the Evaluation of the D.C. Superior Drug Intervention Program for Drug Felony Defendants* (Washington, D.C.:The Urban Institute).