

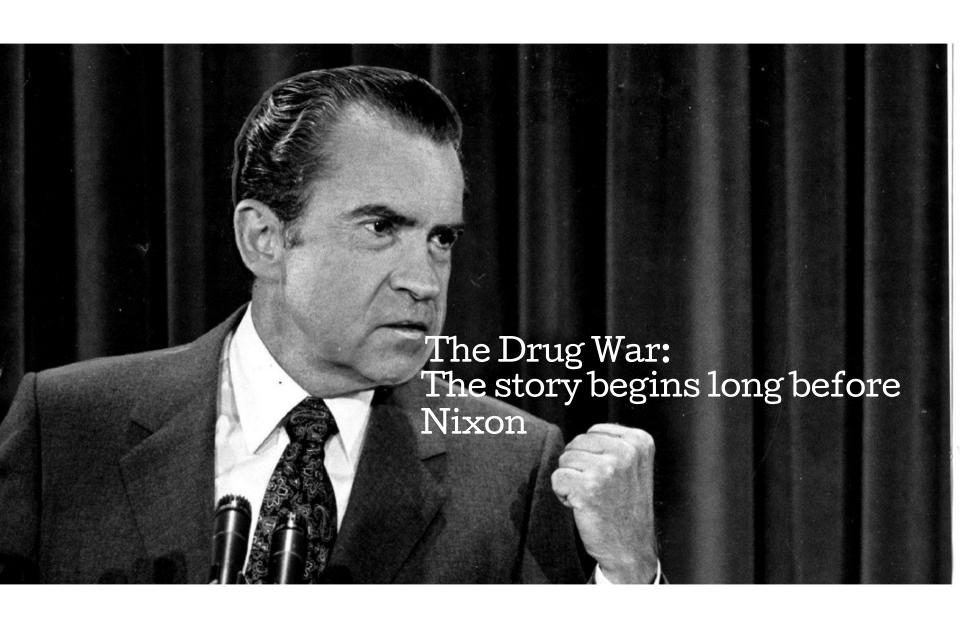
Language is important!

<u>NO!</u>

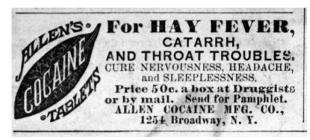
- Substance Abuse
- Clean vs. Dirty
- Passed vs. Failed
- Drug of "Choice"
- Addict, Junkie, Drunk

YES!

- Substance Use Disorder Substance <u>misuse</u>
- Positive vs. Negative
- Drug of addiction
- A person...
 - with a substance use disorder
 - who uses
 - who is addicted















m. J. Ph.]

December, 1901

BAYER Pharmaceutical Products HEROIN—HYDROCHLORIDE

is pre-eminently adapted for the manufacture of cough elixirs, cough balsams, cough drops, cough lowerpes, and cough medicines of any kind. Price in 1 oz. packages, \$4.85 per ounce; less in larger quantities. The efficient dose being very small (1-48 to 1-24 gr.), it is

The Cheapest Specific for the Relief of Coughs

(In bronchitis, phthisis, whooping cough, etc., etc.)

WRITE FOR LITERATURE TO

FARBENFABRIKEN OF ELBERFELD COMPANY

O. Box 2160

40 Stone Street, NEW YORK





Racism fueled prohibition laws.

- Opium = Chinese
- Cocaine "Negroes"
- Alcohol = urban immigrants (Catholics)
- Heroin = urban immigrants
- Marijuana = Mexicans

NEGRO COCAINE "FIENDS" ARE A NEW SOUTHERN MENACE

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Murder and Insanity Increasing Among Lower Class Blacks Because They Have Taken to "Sniffing" Since Deprived of Whisky by Prohibition.

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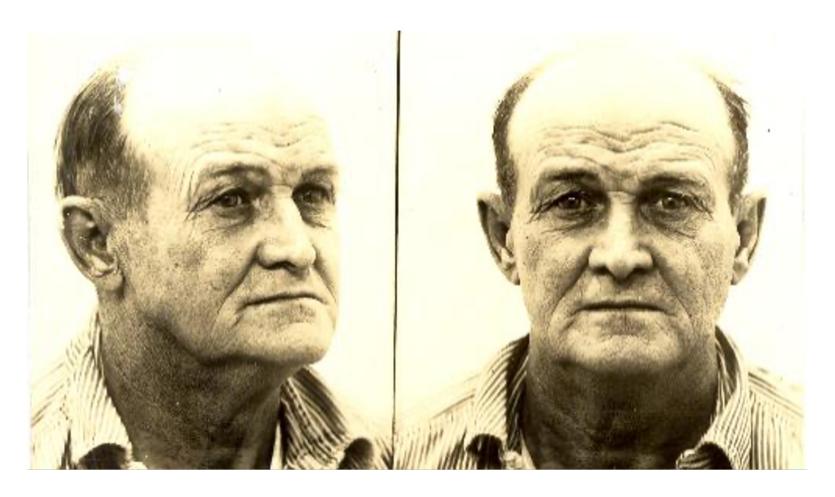
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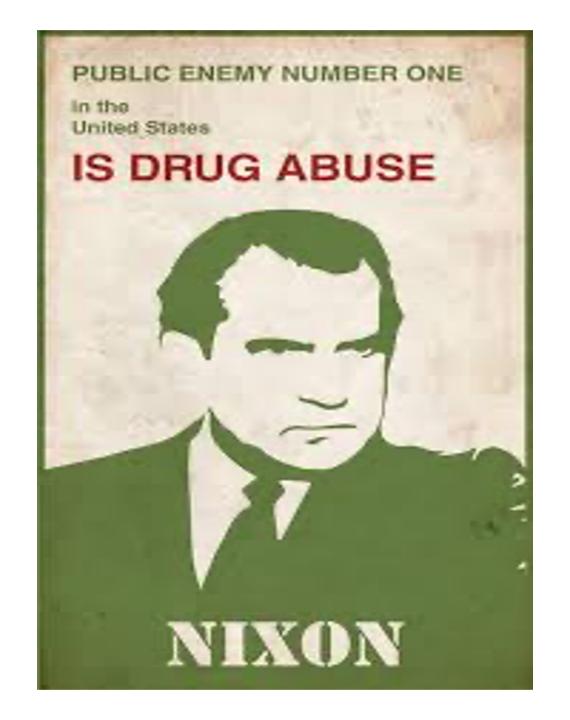
Mystery of the Strange Mexican Weed

American and Mexican Authorities Seek to Curb Growing Use of Dread Marihuana Druy That Stirs Its Victims to Atrocious Deeds of Violence

Marihuana Tax Act of 1937



Samuel R. Caldwell – first person convicted. Sentenced to four years hard labor in prison and \$1,000 fine for selling 2-3 joints.



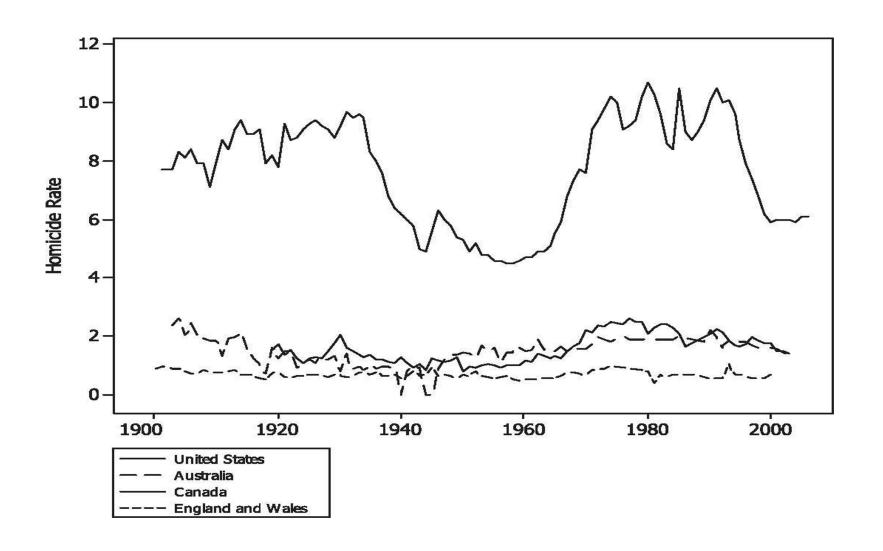
JUST SAY

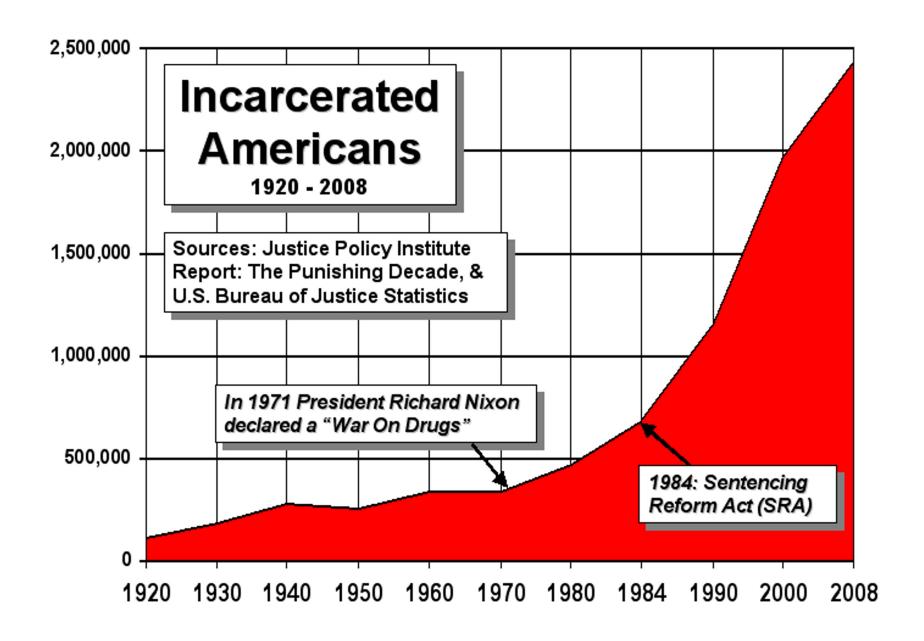
TRILLIONS \$\$\$\$ CRIMINALIZING ILLICIT DRUGS

MASS INCARCERATION

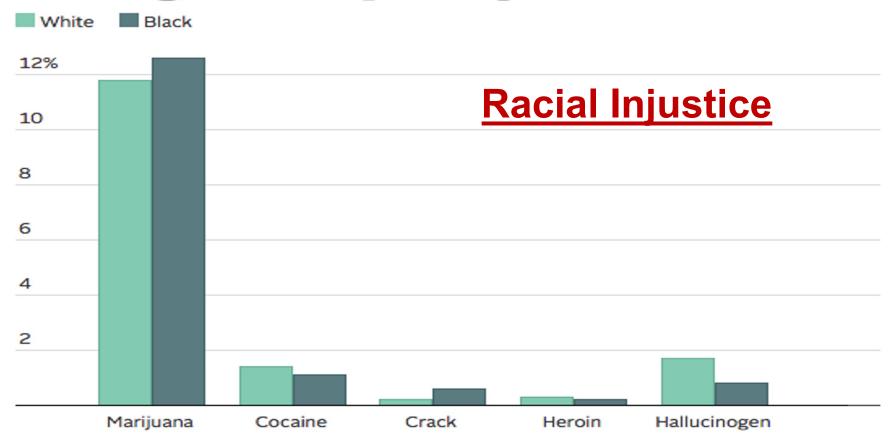
VIOLENCE & COLLATERAL CRIME

Homicide Rates in the U.S, 1900-2006



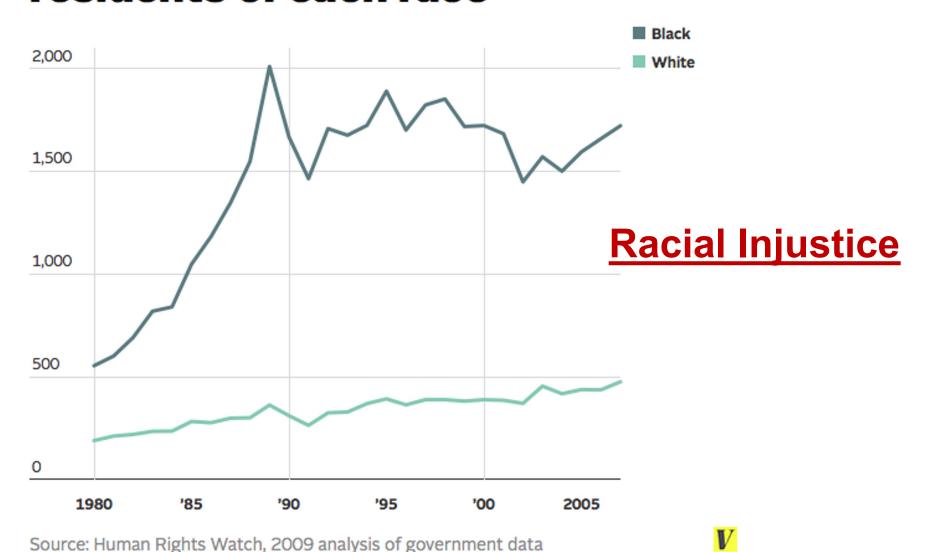


Percent of population who used a drug in the past year





US drug arrest rates, per 100,000 residents of each race



What is ADDICTION (i.e. Severe Substance Use Disorder)?

Intense cravings and compulsive use that continues despite negative consequences.

Physical and mental tolerance that drive the person to use the drug of addiction as if life depends upon it.

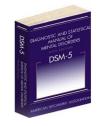
Diagnostic and Statistical Manual of Mental Disorders, 5th Ed. (DSM 5)

Substance Use Disorder (SUD) is... (p. 483):

- a "cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems."
- "An important characteristic of substance use disorders is an underlying change in brain circuits that may persist beyond detoxification, particularly in individuals with severe disorders."
- "The behavioral effects of these brain changes may be exhibited in the repeated relapses and intense drug cravings when the individuals are exposed to drug-related stimuli..."

SUDs are separated by classes of drugs in the DSM 5

- Opioid Use Disorder
- Alcohol Use Disorder
- Cannabis Use Disorder
- Hallucinogen-Related Disorders (e.g. mescaline, MDMA)
- Inhalants Use Disorders
- <u>Sedative-</u>, <u>Hypnotic-</u>, or <u>Anxiolytic-</u>Related Disorders (e.g. benzodiazepines)
- <u>Stimulant</u> Use Disorders (e.g. cocaine, amphetamines, methamphetamine)
- Tobacco Use Disorder
- <u>Caffeine</u> Use Disorder



A problematic pattern of use = significant <u>impairment</u> or <u>distress</u>. <u>At least two</u> of the following, occurring <u>within a 12-month period</u>.



- Substance taken in larger amounts or over a longer period than was intended.
- 2. Persistent desire or unsuccessful efforts to cut down or control use.
- 3. A great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
- 4. Craving, or a strong desire or urge to use.
- 5. Recurrent use resulting in failure to fulfill major role obligations at work, school, or home.

- 6. Continued use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of opioids.
- 7. Important social, occupational, or recreational activities are given up reduced because of use.
- 8. Recurrent use in situations in which it is physically hazardous.
- 9. Continued use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.
- 10. Tolerance
- 11. Withdrawal

2016 Surgeon General Report

www.addiction.surgeongeneral.gov



"Scientific breakthroughs have revolutionized the understanding of substance use disorders. For example, severe substance use disorders, commonly called *addictions*, were once viewed largely as a moral failing or character flaw, but are now understood to be chronic illnesses characterized by clinically significant impairments in health, social function, and voluntary control over substance use." P. 2-1.

MEDICAL CONSENSUS

<u>Surgeon General</u>: "[a]ddiction...[is] a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use, despite harmful consequences."

<u>American Medical Association</u>: "addiction is a chronic disease and must be treated as such."

<u>American Society of Addiction Medicine</u>: "chronic disease of brain reward, motivation, memory and related circuitry....Like other chronic diseases, addiction often involves cycles of relapse and remission."

<u>American Psychiatric Association</u>: "Addiction is a complex condition, a brain disease that is manifested by compulsive substance use despite harmful consequences. . . . Changes in the brain's wiring are what cause people to have intense cravings for the drug and make it hard to stop using."

<u>World Health Organization</u>: "substance dependence is as much a disorder of the brain as any other neurological or psychiatric illness. . . . [T]he motivation to use psychoactive substances can be strongly activated by stimuli (environments, people, objects) associated with substance use, causing the desire or craving that can overwhelm people and cause relapse to substance use, even after long periods of abstinence."

Drug-testing is humiliating and degrading



See Massachusetts Department of Public Health, Bureau of Substance Abuse Services, Practice Guidance: Drug Screening as a Treatment Tool 1, 4 (2013).

- Courts and state agencies should be "educate[d]...about the limitations of drug screens" for treating SUD.
- "[A] positive drug screen may not be the sole basis for any treatment decision." <u>Id</u>. at 3.
- "best practices" call for urine specimens to be collected "in ways that preserve dignity of individuals" and are "sensitive to trauma."
- Drug screening should be done by providers as part of treatment and administered with dignity.

Other Mental Disorders



Genetics

Early Use

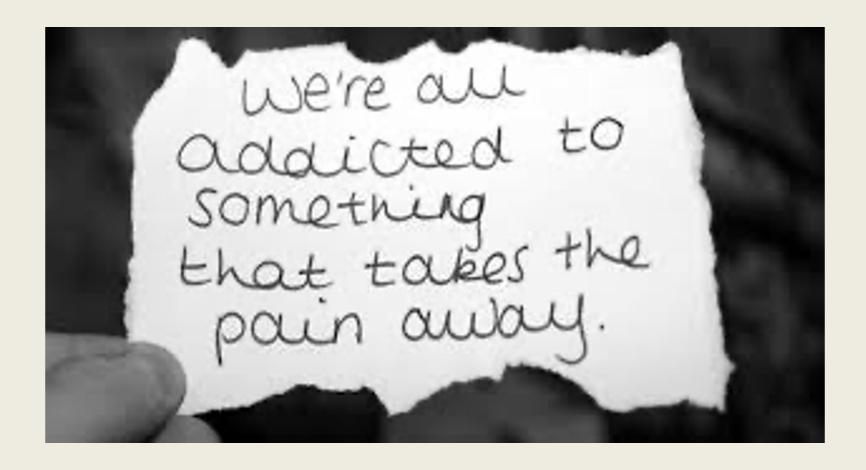
RISK FACTORS **TRAUMA**

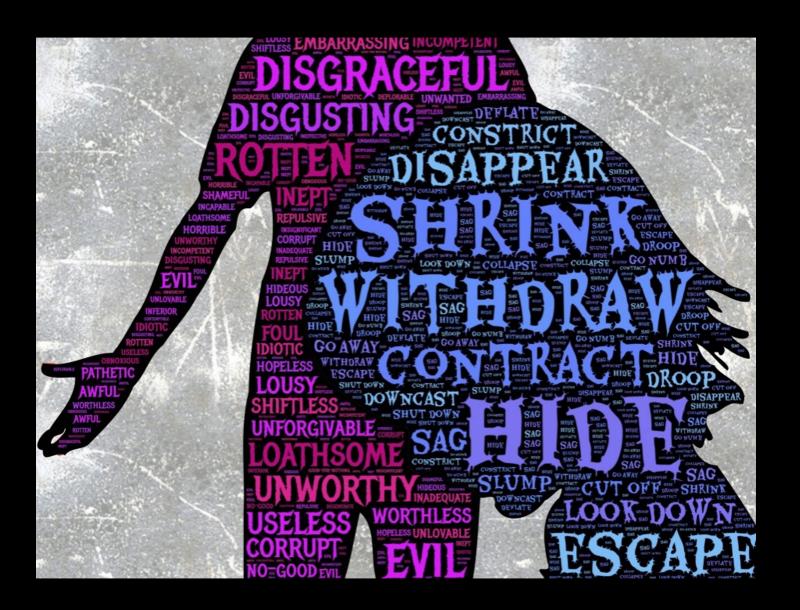
Environment

Social risk factors

PEOPLE WHO HAVE EXPERIENCED TRAUMA ARE: 4 Times More Likely To Become An Alcoholic 4 Times More Likely To Develop A Sexually Transmitted Diseasé DEVELOP STD 15 Times More Likely To Commit Suicide 4 Times More Likely To Inject Drugs INJECT DRUGS SMOKING 2.5 Times More Likely To Smoke Tobacco DEPRESSIO 3 Times More Likely To Use Antidepressant Medication 3 Times More Likely To Have Serious Job Problems 3 Times More Likely To Be Absent From Work 3 Times More Likely To Experience Depression

Trauma's Effect on the Brain: An Overview for Educators In Mears, C. L., Reclaiming School in the Aftermath of Trauma: Advice Based on Experience. Palgrave Macmillan, 2012





HIJACKING THE BRAIN

New research suggests that the brain's reward system has different mechanisms for craving and pleasure. Craving is driven by the neurotransmitter dopamine. Pleasure is stimulated by other neurotransmitters in "hedonic hot spots." When the craving circuitry overwhelms the pleasure hot spots, addiction occurs, leading people to pursue a behavior or drug despite the consequences.

PATHWAYS TO CRAVING Desire is triggered when dopamine, which originates near the top of the brain stem, travels through neural pathways to act on the brain. Drugs increase the flow of dopamine.

Ventral tegmental area (VTA) – Dopamine is produced here and flows outward along neurons distributed throughout the brain's reward system.

Basic visceral sensations and reactions to pleasure, such as smiling, originate

from this hot spot.

Ventral pallidum

Animal experiments show that damaging this hot spot can turn something that once gave

pleasure into a source of disgust.

Dorsal striatum

Neurons here help form habits by identifying enjoyable patterns, such as the anticipation of buying drugs.

Prefrontal cortex

The amino acid glutamate, produced here, interacts with dopamine to spark visualizations that cue cravings.

Amygdala

Neurons here are stimulated by learned emotional responses, such as memories of cravings and pleasure.

rbitofrontal cortex

This hot spot gives a sense of gratification but is also the first to shut down if a person has indulged too much.

ucleus accumbens

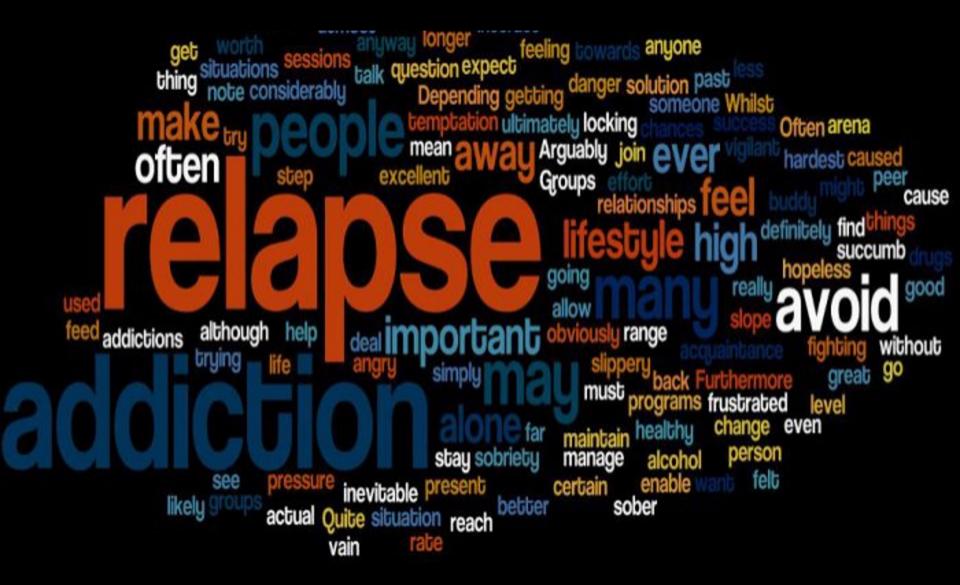
A hot spot within this key part of the craving circuitry amplifies the response to pleasure.

PLEASURE HOT SPOTS

A system of small hedonic hot spots, unrelated to dopamine, provides temporary sensations of pleasure and forms a feedback loop with the reward system that controls desire.

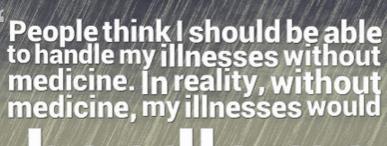
A person struggling with drug addiction typically ingests multiple times daily in a desperate effort to feel normal and stave off withdrawal.

Using an opioid when addicted is required to feel stable and normal.



Components of Comprehensive Addiction Treatment

- Individual counseling with a licensed clinician trained in addiction
- > Evidence based-therapies: CBT, MET, DBT, EMDR, ACT
- Medications for Opioid Use Disorder (MOUD): methadone buprenorphine (suboxone), naltrexone (vivitrol)
- Case Management: homelessness, unemployment, cooccurring disorders
- Mutual peer support: 12-step, recovery coaches, SMART Recovery)
- > Family therapy: CRAFT, Learn2Cope, Al-Anon



handle me.

— Sarah Ceasar

Medication Stigma

Rebuild the Brain's Broken Dopamine System

- Positive relationships (e.g., restoring relationships, falling in love, or having a pet)
- Exercise (physical movement)
- Mental health treatment
- Medications
- Constructive activities (e.g., working or going to school)
- > Sense of purpose (e.g., investment in a community or a cause)
- Accountability
- Self-respect
- > Adult brain

Recovery is not one size fits all.

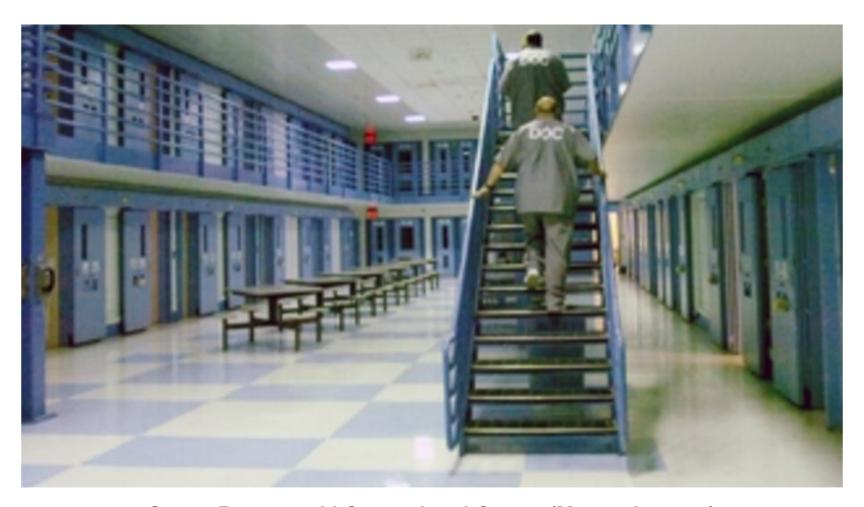








3)



Souza-Baranowski Correctional Center (Massachusetts)



Souza-Baranowski Correctional Center (Massachusetts)

"Recreation deck"



San Quentin (California) "Therapeutic Modules"



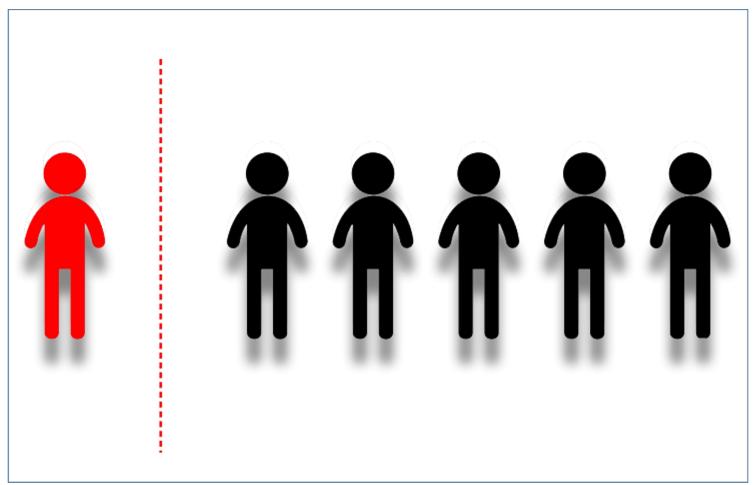
Federal Bureau of Prison, RDAP ("Residential Drug Abuse Program")

DRUG COURT









"Consequences of Addiction Stigma," The Dianova Network, 2/07/18



"She Went to Jail for a Drug Relapse. Tough Love or Too Harsh?"
The New York Times, June 4, 2018

Argument I (Federal 8th Amendment) Robinson v. California & Powell v. Texas

Eldred suffers from severe substance use disorder, a chronic brain disease marked by compulsive use of a substance despite negative consequences. By ordering Eldred to be "remain drug free" and then jailing her for noncompliance, the District Court violates her substantive constitutional right under Robinson v. California, 370 U.S. 660 (1962), not to be punished for a status offense, i.e., for being an individual with a chronic medical condition not in remission.

Argument II (State) Henry & Canadyan

Eldred's use of fentanyl was a symptom of active opioid use disorder, which left her powerless* to exert control over the compulsion to use opioids, despite negative consequences. The finding that Eldred "failed to comply" with the condition that she "remain drug free" while on probation must therefore be set aside, because there was no evidence that noncompliance with that condition was "wilful."

^{*}If I could do-over, I would change "left her powerless" to "severely interfered with her ability."

Another way of saying it...

- Relapse is a <u>symptom</u> of SUD.
- For the person who suffers from SUD, a courtorder to be "drug free" while on probation is effectively a court-order to be in <u>remission</u> or <u>cured</u> of one's addiction.
- Because of what we now know about this extremely complex disorder, it is both <u>legally</u> <u>correct</u> and <u>good court policy</u> to order treatment as a condition of probation.
- While a court may legally mandate that a probationer adhere to treatment, it cannot order a medical outcome.

Eldred does NOT argue!

- Drug testing is illegal.
- It is illegal to order EVERY probationer to be drug-free → Eldred's argument applies to people who suffer from SUD.
- Criminal acts are excused because of SUD *
- * However, arguably Eldred's reasoning applies to simple drug possession.

Robinson v. California, 370 U.S. 660 (1962)

- California statute made it a crime for a person to be "addicted to the use of narcotics." Id. at 660.
- A jury convicted Robinson based on evidence of <u>needle marks on his arms</u> and <u>his admission</u> that he had used narcotics in the past.

U.S. Supreme Court held:

- By making it a crime to be "addicted to the use of narcotics"—even if the person had not touched a drug, the statute punished a **status offense** (i.e., the "chronic condition'... of being 'addicted to the use of narcotics") and thus unconstitutionally exposed an individual bearing this status (of addiction) to "arrest at any time before he reforms." Id. at 662, 663, 665-666.
- "It is unlikely that any State...would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. [I]n light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." Id. 666.
- "Even one day in prison would be cruel and unusual punishment for the 'crime' of a common cold." Id. 667.
- "If addicts can be punished for their addiction, then the insane can also be punished for their insanity. Each has a disease and each must be treated as a sick person." [Id. at 674 (Douglas, J., concurring)].

Powell v. Texas, 392 U.S. 514 (1968)

- Powell was found guilty of being drunk in public in violation of a Texas statute prohibiting such conduct.
- Plurality opinion by Justice Thurgood Marshall:
 - "[S]ince appellant was convicted, <u>not</u> for being a chronic alcoholic, but for being in public while drunk on a particular occasion[,]" the instant case does not fall within <u>Robinson</u>'s holding because Texas did not seek to punish appellant's status but rather his public behavior. <u>Id</u>. 532.
 - "[T]here is no agreement among members of the medical profession about what it means to say that 'alcoholism' is a 'disease.' " <u>ld</u>. 522.
 - "We are unable to conclude, on the state of this record or on the current state of medical knowledge, that chronic alcoholics in general, and [appellant] in particular, suffer from such an irresistible compulsion to drink and to get drunk in public that they are utterly unable to control their performance of either or both of these acts and thus cannot be deterred at all from public intoxication." <u>Id</u>. 535.
- Four dissenting justices: for the alcohol-addicted Powell, punishing him for being drunk in public was still punishing him for being ill in violation of Robinson.
- <u>Justice White concurred</u>, <u>but</u> opined that while Powell was unable to change the fact that he had a compulsion to drink, J. While was not persuaded that Powell could not have avoided drinking in public.

Commonwealth v. Henry, 476 Mass. 117 (2016).

- Defendant ordered to pay restitution that she could not afford due to poverty.
- "A defendant can be found in violation of a probationary condition only where the violation was wilful." <u>Id</u>. at 121.
- Burdening a defendant with the risk of a probation violation by ordering payment of an "amount [of money] that the defendant cannot afford to pay simply dooms the defendant to noncompliance," in "violat[ion of] the fundamental principle that a criminal defendant should not face additional punishment solely because of his or her poverty." Id. at 122-123.

Commonwealth v. Canadyan, 458 Mass. 574 (2010).

- Defendant ordered to where GPS, but could not because he was homeless and the shelter did not have the technology required to operate the GPS.
- Defendant in good faith explored other living arrangements.
- A probationer may not be found in violation where "a justifiable excuse for any violation" is shown. <u>Id</u>. at 578.
- SJC set aside violation where "undisputed evidence" demonstrated that failure to comply "was through no fault" of the defendant. <u>Id</u>. at 578.

We lost, BUT...

The argument remains a live issue because the SJC declined to address the question of law we presented.

IN SUMMARY! We need to rethink punishment for drug use/relapse.

- Relapse is a <u>symptom</u>.
- A court-order or requirement by social service agency to be "drug free" is effectively a court-order to be in <u>remission</u> or <u>cured</u> of one's addiction.
- Because of what we now know about this extremely complex disorder, it
 is both <u>legally correct</u> and <u>good policy</u> to order treatment and monitor
 behavior (law-breaking, harm to children).
- While a court may legally mandate that a probationer or parent adhere to treatment, it cannot order a medical outcome.
- Our policies should foster and facilitate AUTHENTIC and HONEST treatment with providers.

"Eldred" Legislation

An Act Relative to Treatment, Not Imprisonment

S.982 – Senator Cindy Friedman

H.1391 – Representative Ruth Balser

Judges may order a defendant to participate in treatment but are prohibited from imposing incarceration if relapse is the only infraction and the defendant is otherwise engaged in treatment.



Commonwealth v. Plasse 481 Mass. 199 (2019)

Issue presented

Whether, or to what extent, a judge may consider an offender's rehabilitative needs, including factors associated with eligibility for a Department of Correction program, in determining the term of a sentence.

In other words ... Is it lawful to incarcerate a defendant for the purpose of jail "treatment"?

Commonwealth v. Plasse 481 Mass. 199 (2019)

...we emphasize that, while we discern no abuse of discretion in this case, it is because of the unusual context in which the challenged sentence was made...had the constellation of circumstances been otherwise, so might the result.

Fn. 12. By way of example, even if an imposed sentence is within the statutory limits and thus legal, we would not be sanguine about sentencing practices for the same underlying crime if, following the substance-abuse-related revocation of probation, the imposed sentence were harsher than it would have been following the revocation of probation due to other causes. Moreover, when determining the length of a committed sentence, a judge's consideration of the time requirements of a rehabilitation program *that the defendant has not voluntarily requested*, but that the judge mandates, is a practice fraught with peril and generally best avoided.

If punishing people for addiction and relapse worked, we would have a cured nation.



WORKING WITH CLIENTS



You can make a difference.