

## **Recidivism Among Drug Offenders: The Impacts of Drug Courts and Prop 36**

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*The United States' criminal justice system is marked by a damaging cycle of drug offender recidivism where people are reconvicted but not treated for their addiction and substance use disorders. The effects of approaches such as the U.S. "War on Drugs" are still experienced today as drug offenders have limited opportunities to receive treatment and experience racial disparities and negative environments that promote their drug use. Labeling theory and social control theory assist in explaining the existence and persistence of drug offender recidivism and guide policy demands that attempt to resolve it. Drug courts and policy modifications like Proposition 36 to the Three Strikes Law are policy implications that make a difference for drug offenders, but they still present certain challenges.*

The problem of drug abuse in the United States has been addressed by the U.S. government in various ways over the last several decades, yet the issue remains a prevalent concern for many people. The opioid epidemic alone has caused around 50,000 deaths and led to millions of citizens having opioid use disorders (Zhang et al., 2022). There is also controversy over how people who use drugs are treated in the U.S. criminal justice system. Drug users have been found to come into greater contact with the system than most groups (Jamin et al., 2021). When they leave the system, usually after finishing a period of incarceration,<sup>1</sup> they have not been rehabilitated for their drug use and have not received help from the medical system. As a result, drug offenders' mortality rates from overdoses and other drug-related deaths are high (Jamin et al., 2021). Drug offenders in prison may become more addicted; research shows that drugs frequently move in and out of prisons, exposing inmates to limited options of hard drugs (Watson, 2016). Sharing needles becomes a common activity with such limited access, while

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<sup>1</sup> Incarceration, also termed incapacitation, is the imprisonment of criminals to prevent them from committing more crimes and harming the community. This form of punishment is the main outcome for U.S. drug offenders through the government's "tough on crime" perspective. The focus on incarceration often means that drug users are abandoned by the system and institutions, their addictions are left untreated, and they are unprepared to re-enter society.

increased securitized search procedures often lead to a decline in visitors and negative consequences for prisoners' social well-being. Imprisonment can also lead to repeat offenses and incarceration for drug offenders (Mitchell et al., 2017).

Increases in the U.S. prison population are partly caused by the influx of drug offenders entering the criminal justice system, with Black men being the most disproportionately targeted (Rowell, 2012). A catalyst of this problem has been the "War on Drugs," which put Black people in prison at higher rates than white people despite similar rates of drug use (Nicosia et al., 2017). Under this initiative, drug penalties included harsh and often mandatory sentences. Numerous factors contribute to racial disparities related to drug prosecution, including one's criminal history, increased policing, and lower access to wealth, employment, housing, and education – which all leads to reduced life chances and access to quality legal representation (Nicosia et al., 2017). There are many factors that explain why racial disparities exist in drug offending, but a lack of resources for addressing drug use is partly what causes recidivism to be experienced across racial and ethnic demographics.

This paper focuses on the issue of drug offender recidivism – the tendency of a convicted criminal to reoffend. The U.S. criminal justice system perpetuates a damaging cycle of drug offender recidivism that is marked by racial inequities and centers on punishment rather than treating people for addiction and health disorders. The effects of initiatives such as the "War on Drugs" continue to be felt by drug offenders who face limited opportunities to access treatment, experience racial disparities, and are challenged to survive in negative environments that promote their continued drug use. Theories such as "labeling theory" and "social control theory" help explain the existence and persistence of drug offender recidivism, while initiatives such as the use of drug courts and California's Proposition 36 offer lessons for enacting change.

### **Race and Drug Offender Recidivism in the United States**

Research highlights racial disparities related to U.S. drug offenses. For instance, researchers collected quantitative data on Black and white males' criminal records from 1995 to 2005 from California's Automated Criminal History System – that is, right before harsher penalties were imposed as part of California's controversial "Three Strikes Law" (Nicosia et al., 2017). They investigated the drug offenders' outcome (prison, drug treatment, etc.), case characteristics, criminal history, demographics, and time and location. They found that while both Black and white men had declined rates of prison sentences, Black men were 17% more likely to be sentenced to prison compared to similarly situated white men. It is important to note that the reduced racial disparities between Black and white men from

2010 to 2013 may be due to the nationwide effort to reduce prison overcrowding (Nicosia et al., 2017). Black men were also 43% less likely to be sentenced to drug treatment, despite new state laws improving overall access to it (Nicosia et al., 2017). The severity of the crime and the criminal record had an influence on the length of prison sentence, but research shows that there are other variables that create the sentencing differences between Black and white people (Nicosia et al., 2017).

Another study surveyed and interviewed 134 Black males from a maximum-security correctional facility about their socio-demographics, probation and parole status, drug history, and drug use in prison (Rowell et al., 2012). Researchers found drug use still occurs in prison (25% of participants claimed to use drugs during incarceration). If they had a history of extensive drug use before entering prison, or if their prison sentence was lengthy, the more likely it became that they used drugs in prison (Rowell et al., 2012). If the participant was actively on parole or probation at the time of the arrest, they were less likely to use drugs while in prison (Rowell et al., 2012). Based on prior evidence, drug treatment programs within prisons would have the positive effects of reducing drug use, offender misconduct, and involvement in illegal activities upon release (Rowell et al., 2012).

### **Theoretical Approaches**

Labeling theory and social control theory help explain the existence and persistence of drug offender recidivism. “Labeling theory” predicts that once a person is labelled for their deviant behaviors, they embody the label because that is how society views them. Drug users, for example, may cycle through criminal activity because that is what is expected of them. Drugs are highly stigmatized from U.S. initiatives like the War on Drugs – an ongoing government initiative that began in the 1970s and aims to stop illegal drug use and distribution by dramatically increasing prison sentences for both drug dealers and users (History, 2019) – creating moral panic for citizens (Nicosia et al., 2017). Labeling theory notes that inequality in society takes small deviances and amplifies them into criminal attributes. It acknowledges the historical context of drug use and considers how policies and institutions are built around the labels that permeate U.S. society. Once these labels are institutionalized, they are difficult to reverse; for instance, prisons and courts deal with drug users as criminals rather than people facing addiction and illness. These people do not receive the treatment they need to get better because their futures are intertwined with stereotypes about drug users and “criminals” in general.

According to labeling theory, racial disparities persist when moral entrepreneurs create a perceived threat of race-based crime and direct social control toward specific racial communities. An example of this is imposing severe criminal penalties for crack use and sale compared to cocaine;

cocaine has been traditionally used more by white Americans and crack by Black Americans, but they are essentially the same drug (Mitchell, 2009). By placing heavier penalties on crack, the U.S. criminal justice system labeled crack (and Black users) as more destructive and threatening than cocaine (and white users). Labeling theory is also apparent in the evolving criminalization of marijuana being used to control minority groups and disrupt their communities, which has perpetuated stigmas for decades (TruTV, 2016). The labeling of racial groups as threatening enables law enforcement to go after low level drug offenders by focusing on racial differences and stereotypes related to drug usage (Mitchell, 2009).

Another relevant theory is “social control theory,” which predicts that frustration towards one’s own social injustices motivates delinquency and diminishes social bonds, thus further motivating someone to violate group norms (Unlu et al., 2021). Social bonds that can be destroyed are attachment to people, commitment to obligations and goals, involvement in social activities, and common beliefs shared in the community. The abandonment of one’s bonds stems from perceived social injustice that prevents someone from achieving positively valued goals. Policies that disproportionately effect a racial group, like the War on Drugs, limit a person’s ability to thrive in the same way as others (Nicosia et al., 2017). From the social control perspective, convicted drug offenders are taken away from positively valued goals (such as supporting their family through work) and are worse-off in society after they are released from prison. This all may lead to greater frustration and drug dependency in response to such social strains, especially if they react negatively to pressures to correct their lifestyles and align with group values.

### **Responding to Recidivism**

Two existing responses to recidivism offer possibilities for future progress and policy change: Drug courts and California’s Proposition 36. First, Drug courts have been used to combat drug offender recidivism since 1989. Originating in Miami, Florida, they have spread throughout the country and now number a few thousand across the United States (Gallagher et al., 2020). This bipartisan approach is unique because it satisfies the needs of offenders, the courts, and the community. They are frequently viewed as a cost-efficient way to engage community leaders, rehabilitate drug offenders, and avoid future overdoses and incarceration. Looking at drug courts from the perspective of labeling theory, the goal is to change the self- and social labels of participants. Second, The Substance Abuse and Crime Prevention Act of 2000, more commonly referred to as California Proposition 36 (or Prop 36), was passed by California voters in 2000. It mandates drug treatment sentences rather than jail time for certain qualifying offenses and defendants (Eisner Gorin LLP, n.d.). Research suggests that Prop 36

reduces drug offenses and recidivism while saving the state money. As other U.S. states implement or consider similar programs, this policy is worth exploring with an eye toward national implementation.

### *Drug Courts*

Drug courts focus on people charged with drug offenses who have substance use disorders or are determined by the justice system to have a higher likelihood of reoffending and aim to keep offenders clean from drug use once they are released. Drug courts have short, medium, and long-term goals centered on keeping offenders invested in the treatment process. These courts strive to give people a more positive experience of the criminal justice system by connecting them to supportive outside organizations, utilizing frequent drug testing, providing incentives, and increasing communication between participants and judges (Gallagher et al., 2020). Judges and attorneys play central roles in creating drug court opportunities, and drug court teams (which consist of community organization leaders such as medical and mental health professionals) report progress directly to the judge (Gallagher et al., 2020). Police officers routinely check up on participants at their homes, while employers and/or educators help ensure participation (Gallagher et al., 2020).

Drug courts are made available to qualifying participants after they have made a plea agreement and been sentenced, offering an alternative to their original prison sentence. If the participant agrees to the comprehensive and tough program, they will receive a lower or more lenient sentence upon completion. If they refuse or fail to complete the program, they are given their original sentence (Rivier, 2021). Initially, participants sign the drug court contract and then share stories with the judge about their addiction identities (Rivier et al., 2021). The program consists of required phases that include stabilization, intensive treatment, and transition. Participants meet regularly with the judge to share their progress in the program through essay writing, treatment evaluation, community service, self-help groups, celebrating accomplishments in employment and education, and other milestones (Rivier et al., 2021). Noncompliance leads to penalties that require extra commitment to the program, with excessive negative behavior leading to expulsion. Drug court programs take around one to two years to complete (Rivier et al., 2021).

Individuals who pass the program have been shown to reoffend at a lower rate than individuals who underwent probation or failed drug court. Factors that increase success include educational and occupation opportunities, medical care, and mental health treatment (Gallagher et al., 2020). Although many potential participants do not complete the drug court program, those who are enrolled for at least 15 months are 63% more likely to complete the program and five times more likely to be reunited with

their children in family drug courts (Logsdon et al., 2021). While the cost of the program is approximately \$187,000, it saves at least \$168,000 overall for the state (Logsdon et al., 2021). Notably, however, data shows that juvenile drug courts do not have similar impacts on lowering recidivism (Sullivan et al., 2016). Other demographic variables change the program's effectiveness, too; lower recidivism was more prominent among women, older individuals, minorities, and those with serious criminal records (Brown, 2011).

Research from across the United States illustrates the potential positive impacts of drug courts. Participants of a drug court in Dane County, Wisconsin, were less likely to commit a new crime than those who did not go through the program (Brown, 2011). Even those in the program who did repeat an offense (on average of 614 days after end of program) experienced a lower sentence than the other group (on average of 463 days after end of sentence). A qualitative study from a drug court in central Florida found that one-fifth of participants stopped using drugs and a majority decreased their substance use (Francis & Abel, 2014). Additional evidence reveals that these participants received other benefits, like learning about their addictions and becoming motivated to continue school or get a job. Notably, one big issue for non-completers was the financial cost of drug treatment, such as having to come in multiple times a week to get a drug test (Francis & Abel, 2014).

However, drug courts come with limitations involving racial disparity and inattention to mental health challenges. Research highlights that white offenders are more likely to receive drug treatment, for instance. Drug courts are more effective for individuals with criminal histories and higher risks of reoffending, yet white offenders with no criminal history are accepted into court programs at much higher rates than nonwhites (Gallagher et al., 2020). (Researchers attribute this to the fact that criminal histories that include a prior felony conviction might disqualify participants from drug court. This is problematic because those with a high risk of re-offending would likely benefit more from program participation; Gallagher et al., 2020.) Another limitation includes the accuracy with which the program treats individuals for their needs. Some participants noted that their mental illness was not appropriately treated, which led to their failure in the program (Gallagher et al., 2018).

### *California's Proposition 36*

Another approach to resolving the issue of drug offender recidivism is modifying mandatory sentencing laws to incorporate possibilities for drug treatment and rehabilitation. This policy was implemented in 2001 in California with the goal of diminishing racial disparities in drug offender sentencing. It focused on nonviolent drug offenders, thereby leveraging incarceration against violent

offenders, reducing drug-related crimes to keep the public safe, and improving public health (Nicosia et al., 2017). Since then, some states have adopted similarly intentioned policies. Under California's Proposition 36, any adult on their first- or second-time drug offense receives drug treatment along with probation instead of incarceration or probation alone. This intervention can reduce the recidivism rate because it tackles the root causes of criminality and prevents further offenses. Instead of the severe punishments that the mandatory sentencing embodies, this approach aims to rehabilitate offenders. Drug treatment emphasizes the power of labels and works with patients to articulate new labels for themselves. It also leads to positive social and behavioral changes that are deemed acceptable in the community and diminishes the odds of reoffending, whereas incarceration would reinforce negative labels once outside of prison.

Research shows that this policy has been effective in increasing the use of drug treatment for those involved in the criminal justice system. Proposition 36 created a 19% increase in odds for diversion for Black people compared to white people, but Black offenders still had a lower chance of receiving drug treatment or completing drug treatment programs overall. Therefore, racial disparity still exists despite positive policy changes (Nicosia et al., 2017). Still, Proposition 36 significantly decreased the likelihood of prison and jail sentences for all drug offenders (Nicosia et al., 2017). Of 50,000 Prop 36 participants in California drug treatment programs, 32-41% completed drug treatment with a lowered rate of re-arrest within a one-year span upon completion (Urada et al., 2011). Notably, this policy is also financially beneficial because although it costs \$120 million annually, it saves \$2.50 for every dollar spent on the program and saves \$4 for every dollar spent on those who complete the program (Nicosia et al., 2017; Urada et al., 2011). This is intended to save taxpayers \$1.5 billion over a five-year span (Auerhahn, 2004).

Despite these positive points, Proposition 36's success has been limited in a few ways. As noted, there is still a racial disparity for drug offenders that needs to be addressed, and it only somewhat limits the growth of the drug offender population (Auerhahn, 2004). It is also worth noting that that drug courts were previously implemented in California and led to a decline of drug offenders in prison, so it is difficult to measure what impacts stem from Prop 36 and which can be attributed to the courts (Gallagher et al., 2020).

## **Conclusions**

Approaches such as drug courts and California's Proposition 36 move the criminal justice system in the right direction toward reducing drug offender recidivism. Both options offer an alternative to

incarceration, and they have produced positive results for lowered recidivism rates among drug offenders. Indeed, we know that drug offenders in prison are likely to be reconvicted unless drug treatment accompanies their sentence (Mitchell et al., 2017). Based on my research, I favor drug courts because they help limit the prison population growth by placing people into treatment programs rather than prison cells and promote collective efficacy by incorporating community institutions to assist the criminal justice system. They also place drug offenders in an environment where they are surrounded by opportunity rather than being in prison, where they are separated from their family and communities and are at higher risk for drug use and overdose (Mitchell et al., 2017). Yet both approaches are valuable because they utilize drug treatment and address root causes of crime and incarceration.

While drug courts and Prop 36 are useful, there is room for improvement. Stakeholders should consistently reevaluate these policies to ensure that everyone has access to the help they need, and these actions must be collaborative and transparent. Current problems, such as racial disparities that persist in accessing treatment, must be addressed. These approaches should also be combined with other practices, such as addressing security gaps in prisons that allow drugs and needles to be smuggled in. Since many people overdose after being released from prison, it is also important that support systems are in place for the first few months after re-entering society; there should not be a gap in access to resources and social connections after incarceration ends.

The problem of drug offender recidivism needs our utmost attention because it is damaging our communities in significant and complex ways. It is not an easy fix and will take time and a collective effort to resolve this issue. The movement to rehabilitate drug offenders goes beyond the criminal justice system and it represents a shifting belief in society where we address the root causes of our social problems.

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