

FACES & VOICES OF RECOVERY

Policy Position Paper on Criminal Justice Recovery Advocacy

INTRODUCTION

Faces & Voices of Recovery is the leading national organization mobilizing and organizing people in recovery, families, friends and allies to achieve a just response to addiction as a public health crisis. Faces & Voices affirms that the over 23 million Americans in recovery from addiction to alcohol and other drugs share with all Americans the rights declared in the nation's founding Bill of Rights. Of these first ten amendments to the Constitution, fully five deal with rights under criminal justice proceedings and procedures. In its Recovery Bill of Rights, Faces & Voices of Recovery states its position in clear and simple terms:

We have the right to treatment and recovery support in the criminal justice system and to regain our place and rights in society once we have served our sentence.

Many individuals in recovery who have been formerly incarcerated face legal barriers and discrimination when seeking entitlements, services, and employment. Employers are increasingly dependent upon conducting criminal background checks and excluding from consideration individuals who have been arrested and or convicted of misdemeanor and felony crimes. The large proportion of persons with addiction histories who are seeking recovery are often caught in this web, with barriers frequently extending to various other life domains such as housing, employment, education, transportation, and healthcare.

The neurobiology of addictive disorders is clouded by the criminal behaviors associated with them, and the competing values of wellness versus public safety lie at the core of this dilemma. While recovery advocates may see beneath the compulsive behaviors that result in criminality, the public safety risks associated with addiction are a reality. Legal experts concede our overburdened prison system is driven by the failed War on Drugs, and the costs of inadequate addiction treatment and recovery supports results in an ever growing criminal justice population, crippling state and federal budgets. The vast majority of federal and state substance use-related spending – 96% or \$357.4 billion – is spent dealing with the effects of untreated addiction, while only 2% goes to prevention and treatment. Next to health care, the second largest area of substance-related federal and state burden spending is the justice system (13.1 percent)ⁱ.

Few would argue that sustained recovery improves public safety and decreases criminal justice costs, yet because of ineffective policy and practice, local, state, and federal budgets are being increasingly burdened while people aren't getting the help they need to recover and get their lives back on track. Federal policy still supports supply reduction (law enforcement, incarceration) over demand reduction (prevention, treatment) by a 60:40 percent funding split over the past three years.ⁱ While this funding trend continues, discriminatory barriers continue to keep people with a criminal justice history from jobs and housing.

The purpose of this paper is to offer a succinct and informative perspective for policy makers and the public as we move into a new service delivery landscape, with the underlying premise that increased access to treatment and recovery supports is a wise investment. It pays to get people help before they encounter the criminal justice system. There's a 1:7 cost benefit ratio for every dollar invested in treatment reducing other health, social services, criminal justice, and productivity costs.ⁱⁱ It is also an investment in improved public safety, offering greater capacity for restorative justice. At no time are sustained community-based recovery supports more critical than when someone is being released from prison. Even when a person receives treatment while incarcerated, unless they are able to sustain their recovery for at least six months when they return to the community, recidivism rates do not improve. In those cases, over a third of these former incarcerated individuals have been able to remain in the community without re-incarceration.ⁱⁱⁱ

A host of systemic barriers stand in our and in the way of people seeking or with sustained recovery. Public opinion and discriminatory laws surrounding addiction and recovery are amplified for someone with a criminal background. People with a felony record, despite successfully completing the terms of their sentence, face a life-long ineligibility for benefits that may help them achieve self-sufficiency. Denied such opportunities, they are at greater risk of relapse, from addiction and criminality combined.

Finally though, this paper offers hope and suggests how we may take fullest advantage of this unique time in history. As access to treatment and recovery support expands through the Affordable Care Act (ACA) and discriminatory health policies are challenged as a result of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act, there will be far greater opportunities for delivering community-based recovery supports. To take advantage of these opportunities and to reduce discriminatory barriers requires recovery advocacy at all levels: federal, state, and local. This paper offers examples and suggestions of how recovery advocates can play a key role in affecting policy.

BACKGROUND

Our nation's attitudes about whether to treat people with alcohol and other drug problems (substance use disorders) in the health or criminal justice systems remain perpetually on the fence. The Affordable Care Act offers hope that the balance will shift. The adoption of Drug Courts, with over 2,500 in the US, has been one strategy to offer non-violent drug offenders an

opportunity to get help. About 120,000 individuals will receive services and supports, keeping the out of jail and prison and helping them reclaim their lives.

The U.S. now has over 2,300,000 inmates in its state and federal prisons. Our entire correctional population, including those on probation and parole, is well over 7,000,000. The high percentage of incarcerated persons who were convicted of low level, non-violent drug offenses is well-documented, ranging between 65 – 80% depending on whether individuals are incarcerated in jail or prison.

A corollary of these sentencing practices is that persons returning from incarceration are in great need of treatment and recovery support. Three quarters of those returning from prison have a history of substance use disorders. Over 70 percent of prisoners with serious mental illnesses also have a substance use disorder.^{iv} In 2004, 53 percent of state and 45 percent of federal prisoners met *Diagnostic and Statistical Manual for Mental Disorders* (DSM) criteria for drug abuse or dependence. Nearly a third of state and a quarter of federal prisoners committed their offense under the influence of drugs. Among state prisoners who were dependent on or abusing drugs, 53 percent had at least three prior sentences to probation or incarceration, compared to 32 percent of other inmates.^v At the time of their arrest, drug dependent or abusing state prisoners (48 percent) were also more likely than other inmates (37 percent) to have been on probation or parole supervision.^{vi} Only 7 percent to 17 percent of prisoners who meet DSM criteria for alcohol/drug dependence or abuse receive treatment in jail or prison.^{vii}

According to Dr. Nora Volkow, Director, National Institute on Drug Abuse, “When we criminalize a drug addict, nobody wins.”^{viii} To further paraphrase Dr. Volkow, providing no treatment or recovery support while addicts are in jail, or providing treatment only while in jail, will yield limited results. Failure to continue to provide treatment and recovery support as individuals transition to the community would further compromise their progress in recovery, with the almost inevitable negative outcomes of relapse and recidivism. The burden of our drug criminalization strategies has fallen heavily on minority communities. Sentencing disparities, public misperceptions and political rhetoric provide ample evidence that our society’s response to drug problems often results in a disparate impact on people of color.^{ix}

BARRIERS TO RECOVERY

There are a host of barriers confronting people who are sustaining their recovery but have criminal records that prevent them from obtaining the bare necessities as well as fully participating as citizens. Without access to food, shelter, healthcare, driver’s licenses, employment and education, these barriers set people up to fail. These barriers include labor laws that prohibit an individual’s right to fair opportunities, regardless of their success in sustaining recovery. Once a felon, always a felon. Indeed, people also feel this discriminatory bar when they have simply been arrested but never convicted of a crime.

A recent wave of federal litigation has made clear that blanket screening policies are unfair and unlawful. Under Title VII of the Civil Rights Act of 1964, discrimination in employment based on race, gender, national origin, and other protected categories is prohibited, whether intentional or not. In 1987, the Equal Employment Opportunity Commission specifically stated that barring people from employment based on their criminal records disproportionately excludes African Americans and Latinos because they are overrepresented in the criminal justice system. In contrast with the blanket screening barriers documented in the report, Title VII requires employers to take into account the specific job responsibilities and the nature of the individual's record.^x

Workers like Darrell Langdon have felt the impact of no-hire policies. After struggling with addiction in his youth, Mr. Langdon has been sober for more than 20 years, and, now 52, has raised two sons as a single father. Although he has moved forward, his 25-year-old felony conviction for possession of cocaine remains. After working as a boiler room fireman in the Chicago Public Schools (CPS) and then as a mortgage broker, Mr. Langdon applied to be a boiler room engineer in the schools. Despite a clean record for more than two decades and prior experience in the schools, he was rejected for the job because of his conviction. After Mr. Langdon's case garnered publicity, CPS reversed its position and hired him for the position.

Prohibitions also exist to an individual's opportunity to be supported through public housing, from receiving financial aid to attend college or a trade school, or getting an occupational license.

PUBLIC OPINION

When framed as an example of recovery rights versus discrimination the public supports changes to remove legal barriers for people in recovery seeking services. For example, a 2004 survey, Faces of Recovery, conducted by Peter D. Hart Research Associates found that:

When it comes to students with drug convictions being banned from receiving federal financial aid to pay for college, a similarly high proportion (67%) believe that this should be changed, including 49% who feel strongly about the need for change. By 63% to 28%, the public supports changing the law that bans students who have been arrested for drug possession from receiving student loans and other forms of financial aid. Rather than seeing a deterrent against drug possession, the vast majority views this policy as a deterrent against people who are now making the right decisions and trying to turn their life around.^{xii}

It would seem that in 2013 individuals in, seeking or in need of recovery have some of their rights abrogated by virtue of their past drug and alcohol addiction. Faces & Voices of Recovery is concerned about the unfairness of this situation and urges recovery advocates everywhere to advocate for an end to the criminalization of addiction and unfair treatment of people in, seeking or in need of recovery who are caught up in the criminal justice system.

OUR MISSION: Faces & Voices of Recovery is dedicated to organizing and mobilizing the over 20 million Americans in recovery from addiction to alcohol and other drugs, our families, friends and allies into recovery community organizations and networks, to promote the right and resources to recover through advocacy, education and demonstrating the power and proof of long-term recovery.

Adopted by Faces & Voices of Recovery's board of directors on March 12, 2013. This is the second in a series of Policy Position papers under development by Faces & Voices of Recovery.

ⁱ White House Office of National Drug Control Policy, *FY 2013 Budget and Performance Summary*, Companion to the Companion to the National Drug Control Strategy (April 2012).

ⁱⁱ Harwood, et al. *Cost Effectiveness and Cost Benefit of Substance Abuse Treatment: Literature Review and Annotated Bibliography*, National Center on Substance Abuse and Addiction. New York, NY. Available at <http://www.docstoc.com/docs/2983678/Cost-Effectiveness-and-Cost-Benefit-Analysis-of-Substance-Abuse>

ⁱⁱⁱ California Department of Corrections and Rehabilitation, Research Institute, *2011 Adult Institutions Outcomes Evaluation Report*, November 23, 2011.

^{iv} Hammett, T., C. Roberts, & S. Kennedy, "Health-Related Issues in Prisoner Reentry." *Crime & Delinquency* 47, no. 3 (2001): 390-409.

^v Karberg, J.C. & D.J. James. *Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002*. NCJ 209588. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 2005.

^{vi} Mumola, C.J. & J.C. Karberg, *Drug Use and Dependence, State and Federal Prisoners, 2004*. NCJ 213530. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. Available at bjs.ojp.usdoj.gov/content/pub/pdf/dudsfp04.pdf.

^{vii} National Institute on Drug Abuse, *Treating Offenders with Drug Problems: Integrating Public Health and Public Safety* (May 2011). Available at www.drugabuse.gov/publications/topics-in-brief/treating-offenders-drug-problems-integrating-public-health-public-safety

^{viii} Volkow, Nora, *Why Addicts Shouldn't Be Criminalized*, Recorded interview, November 6, 2009. Available at <http://bigthink.com/ideas/17410>

^{ix} Kerby, Sophia, *The Top 10 Most Startling Facts About People of Color and Criminal Justice in the United States: A Look at the Racial Disparities Inherent in Our Nation's Criminal-Justice System*, Center for American Progress (2012). Available at <http://www.americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/>

^x Rodriguez, Michelle, and Emsellem, Maurice, *65 Million 'Need Not Apply': The Case for Reforming Criminal Background Checks for Employment*, National Employment Law Project, 2011.

^{xii} Peter D. Hart Research Associates and Robert M. Teeter's Coldwater Corporation, April 19-22, 2014 survey of the general public for Faces & Voices of Recovery. Available at http://facesandvoicesofrecovery.org/resources/public_opinion.php.