

The ABC's of SUDs (Substance Use Disorders) for Prosecutors

By Susan Broderick¹

INTRODUCTION

Our nation is in the midst of the worst addiction crisis in its history. The Center for Disease Control's most recent report revealed that the rate of drug overdose deaths has increased 137% since 2000, including a 200% increase involving opioids (opioid pain relievers and heroin -- CDC 2015). Along with the more characteristic problems attributable to alcohol, cocaine, methamphetamine and other drugs, substance use disorders (SUDs) pose enormous threats to public safety.

The connection between substance use and crime is well documented. Substance use can lead to criminal behavior both directly (e.g., possession and sales of illicit substances) and indirectly (e.g., thefts to purchase drugs, vehicle accidents/DUIs, assaults and homicides). In fact, the justice system is the largest source of referrals to SUD treatment comprising approximately 50% of referrals nationally. With a substantial proportion of crime and public safety concerns driven by the compulsive addictive behaviors that characterize SUD, stakeholders in the justice system can and must play a critical role in helping to respond to and alleviate the SUD-crime cycle.

While there has been increased attention to criminal justice reform over the past several years, often overlooked in these discussions is a comprehensive understanding of addiction. If we are serious about reforming the criminal justice system, it is imperative that stakeholders realize the chronic nature of this condition. This means expanding the conversation beyond the concept of treatment. In order to effectively respond to this crisis, it is imperative that we

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increase awareness of what works in terms of prevention, early intervention and of course, the concept of recovery. As researcher William White has lamented, "we could fill libraries with what we know about addiction, yet the concept of recovery still remains a mystery for most people". This is especially true in regard to professionals in the justice system, since these are not topics covered in law schools.

Understanding the Science of Addiction and Recovery

Over the past twenty years, there have been significant advances in the science surrounding addiction and recovery. Studies have confirmed that addiction is a chronic, yet preventable and treatable disease. Neuroscience, epidemiologic evidence, clinical knowledge, and the lived experiences of millions of people indicate the course of substance use disorders (SUDs) tends to be chronic, rather than acute, requiring recovery support services that can help sustain initial remission following medical detoxification and stabilization (Kelly and White, 2011).

This chronic relapsing nature of alcohol and other drug use disorders has given rise to models of continuing care that are analogous to the long-term disease management models seen in the treatment of other illnesses, such as diabetes and hypertension. Research from the National Institute on Drug Abuse (NIDA) has also confirmed that while there is a genetic component to addiction, an individual's environment also plays an essential role in onset, and is even more important in recovery.

A critical component of recovery is finding and sustaining environments that can serve to build resilience and recovery skills to prevent against relapse. As noted by NIDA Director, Nora Volkov, one of the most critical ways to prevent relapse and support recovery is by providing "alternative reinforcers" – things a person enjoys doing that replace activities which are connected to compulsive drug-taking. This lessens the chance of relapsing into drug taking (NIDA report, October 2015).

Addiction in the Criminal Justice System

The National Institute on Drug Abuse (NIDA) has defined "addiction" as the shift from controlled use to compulsive use, with loss of control over intake despite adverse consequences. An arrest and/or referral to the justice system is an "adverse consequence" for many with addiction issues. Paradoxically, the unique leverage of the justice system can actually serve as a unique window of opportunity and a catalyzing force for positive change. Exposure to potential consequences can serve as the motivational fulcrum that facilitates treatment access, retention and improve rates of remission and decrease relapse and re-arrest over the long-term (Kelly, Finney, Moos, 2005).

Over the last several years, the “tough on crime” policies have given way to more rehabilitative approaches in many jurisdictions. There is a growing commitment from prosecutors to include validated treatment responses to reduce recidivism and support long-term positive health outcomes. This understanding has contributed to a shift in policies in the justice field, blending both public health and public safety philosophies accomplished by looking at the points along the justice continuum as opportunities to intervene and turn lives around.

The Role of the Prosecutor in Preventing Addiction and Promoting Recovery

The role of the prosecutor is arguably one of the most powerful in the entire justice system. As the gatekeeper to the system, prosecutors make initial charging decisions and determinations that are critical to the outcome of every case. While prosecutors have traditionally focused their attention on reducing the supply of drugs through targeting traffickers and dealers, today prosecutors recognize that by addressing addiction issues they can also significantly contribute to reducing the demand for drugs. Given this more expansive role, it is imperative that prosecutors understand the true nature of addiction and how to best respond to those cases in which drugs or alcohol have played a role. With a better understanding of the preventable, yet chronic nature of substance use disorders, well-trained and knowledgeable prosecutors can develop innovative and pragmatic programs that will save lives and protect communities.

In terms of prevention and early intervention, prosecutors can play a critical role, especially through using their role as community leaders. While potentially fatal, addiction is also preventable. Given what we know about the developing adolescent brain, prosecutors can be out in their communities educating parents and youth about the tremendous ramifications of early use. In Ocean County, New Jersey, the DA’s office hosts a series of “Prosecutors Forums” in which they bring parents, teachers and students together to educate them about the dangers of substance use, especially with regard to opioid overdoses.

Diversion programs often serve as an effective method of early intervention and can connect offenders with community peer and other recovery support services that promote recovery and prevent recidivism. One example is Phoenix Multisport (Phoenix MS), which has been used by the Boulder and Denver DA’s offices in both diversion and probation programs. Phoenix MS provides long-term, healthy activities within a recovery-supportive social network that promote strength and resilience. Within this supportive recovery environment, members learn not only how to live a sober life one day at a time, but how to thrive in sobriety.

The growth of drug courts is another example of how the justice system is responding to the crisis of addiction through a treatment model. Though this is

an encouraging and important step, drug courts are only as good as the treatment they provide. If those making referrals are not properly trained on the key components of effective prevention, early intervention, treatment and recovery strategies, these referrals can be a waste of time and expensive resources. In some jurisdictions, decisions and referrals are based solely on the criminal charges, such as drug possession, without a full understanding of the needs of the offender. Individuals who enter the justice system are diverse and treatment must be tailored to the individual characteristics of each offender. Referral decisions should be based on the results of validated screening and assessment instruments.

For those offenders who are determined to be in need of treatment, some drug court policies and practices sometimes take a short-term view of the problem and measure success primarily on the completion of treatment. An episodic or 28- day application of behavioral health treatment currently does little to address the chronic nature of these conditions. In fact, holding graduation ceremonies for someone with a chronic condition can be a recipe for disaster, giving them false assurance that they have “graduated” from any further need for treatment. Without linkage to ongoing recovery support, short-term treatment does little from either a public health or public safety perspective. For many, the first day out of drug treatment is really just beginning. It is also the time that most people are vulnerable to relapse and why recovery support is not just a good idea, it’s a necessity.

Of course, the severity of the charge will always play a pivotal role in determining dispositions for substance-involved offenders. Those offenders charged with serious and/or violent offenses may often face incarceration and thus working with prison officials to incorporate policies and practices that address and promote long-term solutions can reduce recidivism and enhance resiliency of the individual in the long run. Sending someone to prison for several years is not treatment, it is basically forced abstinence that will result in relapse and probably overdose upon return to the communities. Prosecutors must strive to ensure that the time spent in correctional facilities is used constructively, as an opportunity to actually “correct” behavior. Making treatment and recovery support specific conditions of any jail or prison sentence is a way to make that happen.

The re-entry period, when offenders are leaving incarceration and returning to society, is also a critical time for offenders who are dependent upon drugs or alcohol. Making recovery support available upon an offender's return to society is a way to minimize both recidivism and relapse. A 2012 study from Virginia confirmed that working with inmates while they are incarcerated and throughout their re-entry back into the community can both reduce recidivism and save taxpayer money. The Richmond city jail program participated in a study where some of the inmates were assigned to a faith-based recovery program, while other inmates were put in a program that did not include recovery support following release. The numbers were impressive – those who participated in

Kingdom Life Ministries (“KLM”) had an 18 percent lower recidivism rate and the program saved taxpayers nearly 7 million dollars over a three and a half year study period. See www.sarahscarborough.com/research

MOVING FORWARD

Fortunately, over the past fifteen years there have been significant strides in the addiction recovery movement in the United States. The momentum has been so profound in fact, that the concept of recovery from addiction has been embraced and formalized within state and national policies and practices and this tremendous momentum has led to a “recovery revolution” of sorts. In 2010, the White House Office of National Drug Control Policy (ONDCP) established a “Recovery Branch” – the first ONDCP office devoted to supporting Americans in recovery. In 2013, Harvard University launched the “Recovery Research Institute” and many of those in long-term recovery are also sharing their stories in public forums, through such organizations as “Faces and Voices of Recovery,” “Young People in Recovery,” and the recently established “Fighting Addiction.” The documentary film “The Anonymous People,” features famous and ‘everyday’ Americans finally coming out of the “closet” about their long-term recovery from addiction and offering help and hope to those still suffering. And last year the United States Surgeon General issued “Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs and Health”. See <https://addiction.surgeongeneral.gov>.

This growing movement is a long time coming given that studies have estimated the recovery community in the U.S. alone is at 23.5 million people. In October 2015, thousands gathered for an inaugural rally on the National Mall in Washington DC to recognize and voice the need for more addiction prevention and treatment services and to make it known that recovery is a reality for millions of Americans.

Perhaps most importantly, these advances are finally breaking down the mystery surrounding recovery from addiction. Because of this stigma and shame, many have been too frightened to seek help and unfortunately, it is not until their addiction gets them into trouble with the justice system that it is brought to light. Imagine the effect on public safety if people addressed these issues before getting involved with the legal system.

We stand at a pivotal moment in time. Every day, there are hundreds of lives being lost to addiction. The only silver lining of the opioid crisis is that people are finally recognizing that addiction is complex and multi-faceted issue requiring a comprehensive response. Given the tremendous role of the prosecutor and the fact that the points along the justice continuum can be

opportunities to intervene and turn lives around, they can and must expand the conversation in their communities.

Prevention and early intervention are critical along with the realization that what happens *after* treatment is just as important as the treatment itself. While the concept of recovery is relatively new to the field of criminal justice, it is arguably one of the most effective strategies to reduce recidivism. Preventing relapse for those involved in the justice systems is not only key to preventing reoffending, it is an important way to transform and saves lives. It's not being soft on crime, it's being smart on crime and it is time to make it a priority.