

## DRUG COURTS IN NEW HAMPSHIRE

Presentation, December 2, 2015

Daniel Webster-Batchelder American Inn of Court, Table Four

Drug courts have been part of New Hampshire's judicial landscape for more than ten years, since it was implemented on a pilot basis in Strafford County in 2005. Strafford County Website: *Strafford Drug Court*.<sup>1</sup> There is currently a statewide push to expand the drug court program state wide. WMUR: *Lawmakers propose expanded NH drug court program* (Oct. 13, 2015).<sup>2</sup> Such an expansion certainly seems timely; New Hampshire is in the midst of an epidemic of opioid drug abuse, which is driving crime, incarceration, and overdose deaths. Radio Broadcast, *N.H.'s New Drug Task Force: The Statehouse Takes up Substance Abuse*, The Exchange, New Hampshire Public Radio (Nov. 23, 2015).<sup>3</sup> The General Court's Drug Abuse Taskforce has already drafted legislation that would expand the drug court program into all New Hampshire counties. Legislative Service Request 2016-2695.1.<sup>4</sup> The purpose of our presentation is to explore the mechanics of a drug court program, and to explore the costs and benefits of such programs. We don't expect to finish the debate on drug courts, but hope to inform the Inn and stimulate an important and timely debate.

### **We Do Have a Problem:**

In 2014, there were 321 overdose deaths in New Hampshire; this is despite the 3,275 times that emergency responders administered Narcan at the scene of a drug overdose. Shawne K. Wickham, *1,000 overdose deaths predicted*, New Hampshire Sunday News (May 2, 2015).<sup>5</sup> Though the human toll of the opioid crisis is the most

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<sup>1</sup> Available at <http://www.co.strafford.nh.us/2012-09-24-10-52-34/drug-court> (last visited Nov., 29, 2015).

<sup>2</sup> Available at <http://www.wmur.com/news/lawmakers-propose-25-million-drug-court-program/35811334> (last visited Nov. 29, 2015).

<sup>3</sup> Available at <http://nhpr.org/post/nhs-new-drug-task-force-statehouse-takes-substance-abuse> (last visited Nov. 29, 2015).

<sup>4</sup> Available at: <http://www.gencourt.state.nh.us/jtf/documents/16-2695%201%20-%20Drug%20Courts%20Bradley.pdf> (last visited Nov. 29, 2015).

<sup>5</sup> Available at: <http://www.unionleader.com/article/20150503/NEWS12/150509875/1009/NEWS12&template=mobileart> (last visited Nov. 29, 2015).

visible and disturbing, the crisis impacts our justice system dramatically as well. Fifteen percent of those incarcerated in New Hampshire's prison system as of June 30, 2014, were incarcerated for a drug crime. N.H. Dep't of Corrections 2014 Annual Report at 15. This number probably understates the impact that drug abuse has on our criminal justice system—it is estimated that nearly 80 percent of prisoners nationwide abuse drugs or alcohol, and nearly 60 percent test positive for illicit drugs at arrest. National Association of Drug Court Professionals, *The Facts on Drugs and Crime in America* at 1.<sup>6</sup> Drugs also drive recidivism, with drug crimes accounting for 23.3 percent of the population returned to prison for parole or probation violations. N.H. Dep't of Corrections, *Recidivism in New Hampshire: A Study of Offenders Returned to Prison Within Three Years of their Release, FY2008 Cohort* at 5.<sup>7</sup> Additionally, property crimes and crimes against public order, which combined account for another 48.3 percent of parole and probation violations, frequently are driven by drug addiction and mental illness.

Even discounting the costs that substance abuse imposes on New Hampshire's broader economy (as much as \$176,450,000 in lost productivity in 2010 alone, Polecon Research, *The Corrosive Effects of Alcohol and Drug Misuse on NH's Workforce and Economy* at 4), incarceration is expensive. It costs an average of \$96 per day to incarcerate a prisoner in New Hampshire. Lynne Tuohy, Associated Press, *N.H. Leaders Say Addiction is Driving Crime* (Mar. 1, 2014).<sup>8</sup> This means that incarceration for drug crimes costs New Hampshire approximately \$35,000 per year for each prisoner, to say nothing of the costs of our court system processing and adjudicating such cases.

### **Why Haven't We Done This Already? The Claims Concerning Drug Courts**

The claims made by the National Association of Drug Court Professionals ("NADCP") seem to leave little doubt that "drug courts work." NADCP Website, "Drug Courts Work," available at <http://www.nadcp.org/learn/do-drug-courts-work> (last visited Nov. 29, 2015). The NADCP claims that:

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<sup>6</sup> Available at <http://www.nadcp.org/sites/default/files/nadcp/Facts%20on%20Drug%20Courts%20.pdf> (last visited Nov. 29, 2015).

<sup>7</sup> Available at [https://www.nh.gov/nhdoc/divisions/publicinformation/documents/recidivism\\_study\\_2014.pdf](https://www.nh.gov/nhdoc/divisions/publicinformation/documents/recidivism_study_2014.pdf) (Last visited Nov. 29, 2015).

<sup>8</sup> Available at <https://www.bostonglobe.com/metro/2014/03/01/leaders-say-addiction-driving-crime/tzz0tyxmdUZAfUXNWYRxfJ/story.html> (last visited Nov. 29, 2015).

- 75% of drug court graduates remain arrest-free for at least two years after completing the drug court program;
- That rigorous studies have found that reductions in crime last *at least* three years, and may last as long as 14 years;
- That drug court reduces crime as much as 45 percent more than other sentencing options;
- That for every \$1.00 invested, taxpayers see a savings of \$3.36 in avoided criminal justice costs;
- That studies have shown overall benefits ranging up to \$27 for each \$1.00 invested in drug courts.

Id.

Without adopting all of the claims made by the NADCP, many in our local and state governments and judiciary have echoed the sentiment that drug courts make economic sense. E.g., Ken Borwn and Ted Gatsas, Editorial: *Why Hillsborough County North needs a drug court*, Union Leader (June 20, 2015).<sup>9</sup> One question we would like the Inn to ponder is why, if drug courts make such a large amount of economic sense, they have not been implemented state wide.

### **A Counterpoint—Drug Courts May Not be as Effective as Advertised**

The U.S. Government Accountability Office released an analysis in December, 2011, that comprised a wide-ranging and thorough analysis of data and studies concerning drug courts. The GAO report concludes that drug courts are, indeed, associated with a lower rate of recidivism, drug use and re-arrests. *ADULT DRUG COURTS: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts*, GAO Report to Congressional Committees at 1 (Dec. 2011).<sup>10</sup> However, the effectiveness of the programs analyzed by the GAO was not as eye-popping as the claims made by the NADCP—among other things, the studies concerning drug courts’ effectiveness are limited by insufficient comparison groups and statistical controls. Id. at 13-14. That said, GAO found statistically significant correlations between drug court participation and re-arrest rates, in many cases persisting beyond three years. Id. at 21-22. Effects on subsequent drug use were also favorable, but not always statistically significant. Id. at 23.

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<sup>9</sup> Available at: <http://www.unionleader.com/apps/pbcs.dll/article?AID=/20150621/OPINION02/150629965> (last visited Nov. 29, 2015).

<sup>10</sup> Available at: <http://www.gao.gov/assets/590/586793.pdf> (last visited Nov. 29, 2015).

The net benefit to society is one that the GAO study throws most into question: The GAO found that some programs resulted in a net benefit to society, in dollar terms, in excess of \$47,836—while other drug court programs actually resulted in a net *loss* of as much as \$7,108 per participant. *Id.* at 26.

As the GAO study notes, it is operating with insufficient, and insufficiently controlled data—and it will require significant reporting requirements on program receiving federal grant money for drug courts going forward to refine its analysis—but it seems safe to say that drug courts are not a panacea for the drug crisis in which we find ourselves.

### **Mechanics of Drug Courts in New Hampshire**

We are grateful to Terri Harrington, Assistant County Attorney for Rockingham County, who has agreed to come to our meeting and present on the mechanics of drug court. Her written materials are included in this packet; she will be available to field questions, and will do a far better job than we could describing the operation of our drug courts. Additionally, we are grateful for the participation of Karin Goscinski-Breton, MS, MLADC and Caitlin M. Miftari, MSW, LICSW, MLADC, who will provide their comments on drug court as a treatment option for addiction. We will leave it to the professionals to describe to you how drug courts work!

### **Discussion Points**

Drug courts are a hot-button topic right now. Our goal is to promote discussion among the bench and bar about the policy considerations, research and law concerning this alternative method of adjudication. As time allows, we encourage Inn members to discuss:

- The ethics of drug courts. Drug courts require judges and defense attorneys to step out of their normal roles; in some cases, that can lead to ethical difficulties. *See, e.g.*, National Drug Court Institute, *Ethical Considerations for Judges and Attorneys in Drug Court* (2001). For example, does R. Prof. Cond. 1.1 require more of drug court attorneys than of more traditional defense counsel? Does an attorney in drug court have to familiarize herself with the science of drug addiction and counseling to advise their client concerning participation in drug courts?
- Alternatives to Drug Courts: Should we be tackling drug addiction in the criminal justice system? *See, e.g.*, Margaret Dooley-Sammuli and Nastassia Walsh, Opinion, *No: Claims About Drug Courts Aren't*

*Supported by Research*, Atlanta Journal Constitution (Apr. 11, 2011).<sup>11</sup>  
Drug courts are limited in who they accept, and their effectiveness may fairly be questioned. Should we be devoting our resources to community mental health and addiction treatment instead?

- And finally, would decriminalization of some drug offenses be a better option? The National Association of Criminal Defense Attorneys (NACDL) has suggested that decriminalization of many low-level drug offenses would do more to fight our drug problem than drug courts can. See NADCL: *America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform* (Sept, 2009).<sup>12</sup>

### Further Reading

Beyond the scope of today's discussion, but possibly useful for future exploration, we suggest the following resources:

Constitutional and Other Legal Issues in Drug Court: **a *webliography*** - <http://www.ndcrc.org/content/constitutional-and-other-legal-issues-drug-court>

The Drug Court Judicial Benchbook - [http://www.ndci.org/sites/default/files/nadcp/14146\\_NDCI\\_Benchbook\\_v6.pdf](http://www.ndci.org/sites/default/files/nadcp/14146_NDCI_Benchbook_v6.pdf)

The National Institute of Justice has an extensive amount of information on drug courts, which can be found by navigating from their welcome page: <http://www.nij.gov/topics/courts/drug-courts/pages/welcome.aspx>

United States v. Leitch, Nos. 11–CR–00609 (JG), 11–CR–00457 (JG), 11–CR–00039 (JG), 2013 WL 753445 (E.D.N.Y. Feb 28, 2013).

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<sup>11</sup> Available at: <http://www.ajc.com/news/news/opinion/pro-con-drug-courts-an-effective-alternative-for-o/nQsSs/> (last visited Nov. 29, 2015).

<sup>12</sup> This report is not currently archived on the NACDL website. It is available through a Google search, however: Go to [www.google.com](http://www.google.com), type "NACDL decriminalization" in the search bar, and click on the first result to download a copy of the report.

# SYSTEMS CHANGE

## ADDICTION SCIENCE AND CRIMINAL JUSTICE RESPONSE

# DRUG COURT: Justice and Community Change Strategy as a 5 Point Solution

- Building a More Just Justice System
- ***Not*** a Political Philosophy
- Based on Science and Scientific Data
- Reduces Recidivism
- Saves Money



# Who Created System Change Training?

- Executive Office of the National Drug Control Policy via White House National Drug Control Strategy
- US Office of Justice Programs of the US Department of Justice
- US Bureau of National Statistics                              US Center for Health and Justice
- The National Judicial College                                  Illinois Department of Corrections
- NADCP-National Assoc. of Drug Court Professionals
- New York University, School of Medicine
- University of New Mexico, Center on Alcoholism-Substance Abuse
- University of South Florida Mental Health Institute

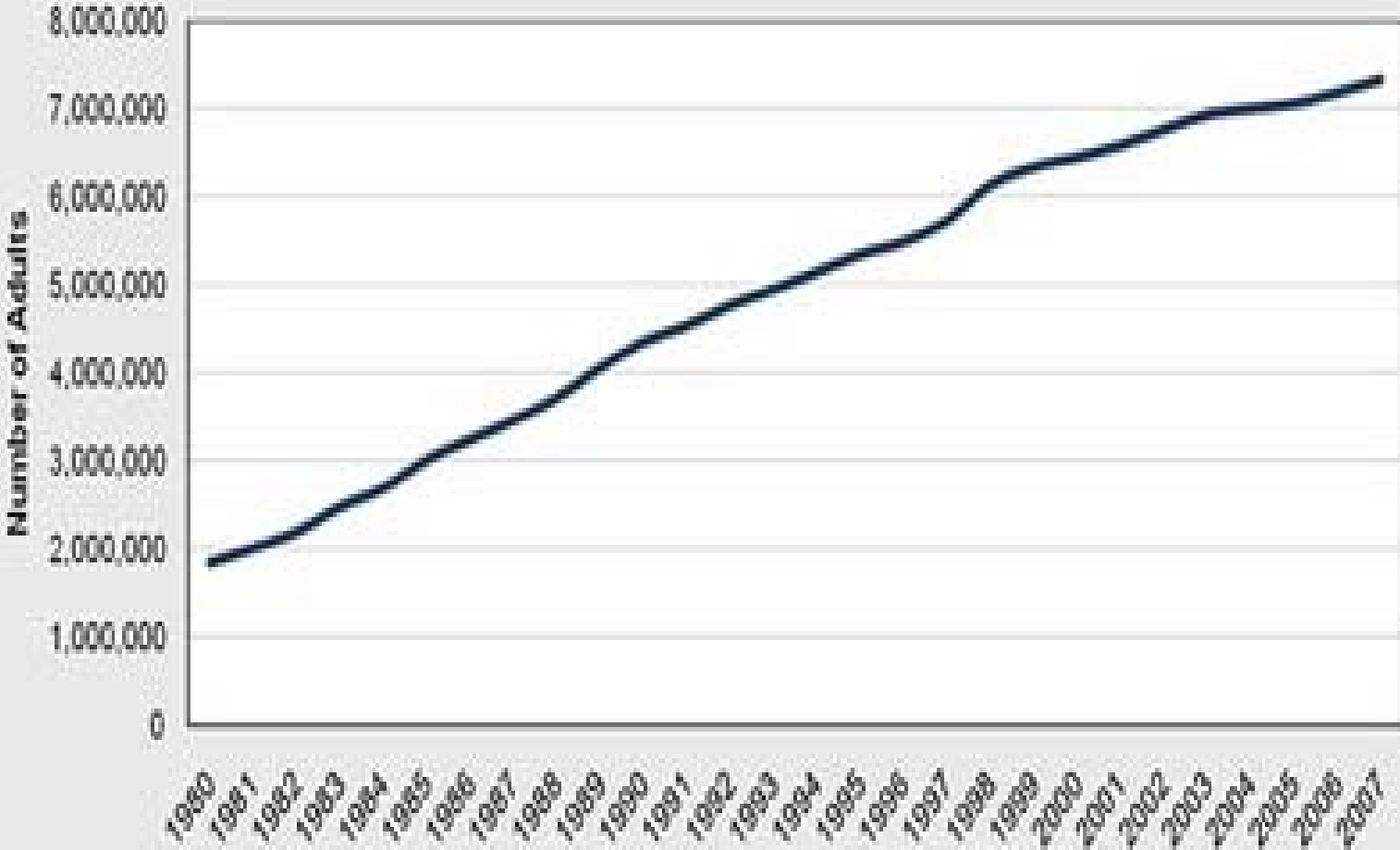


# Cost Savings of Drug Courts

- **FACT:** Nationally, for every \$1.00 invested in Drug Court, taxpayers save as much as \$3.36 in avoided criminal justice costs alone.
- **FACT:** Drug Courts produce cost savings ranging from as little as \$3,000 to as much as \$13,000 per participant. These costs savings reflect reducing in prison cots, reduction in arrest and trial and reduction in victimization.
- **FACT:** Drug Courts have been scientifically proven to be the most cost effective criminal justice strategy.

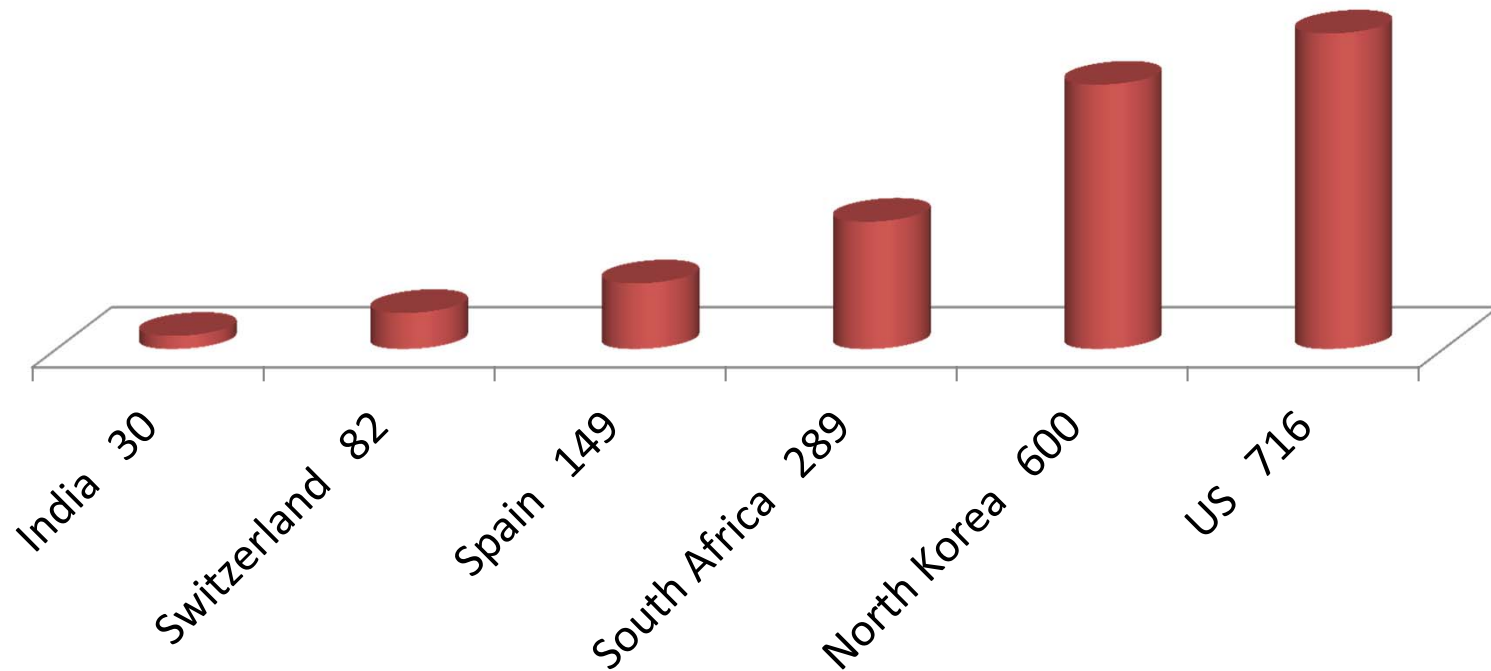
• NADCP National Association of Drug Court Professionals 2015

### Adults in the Prison System

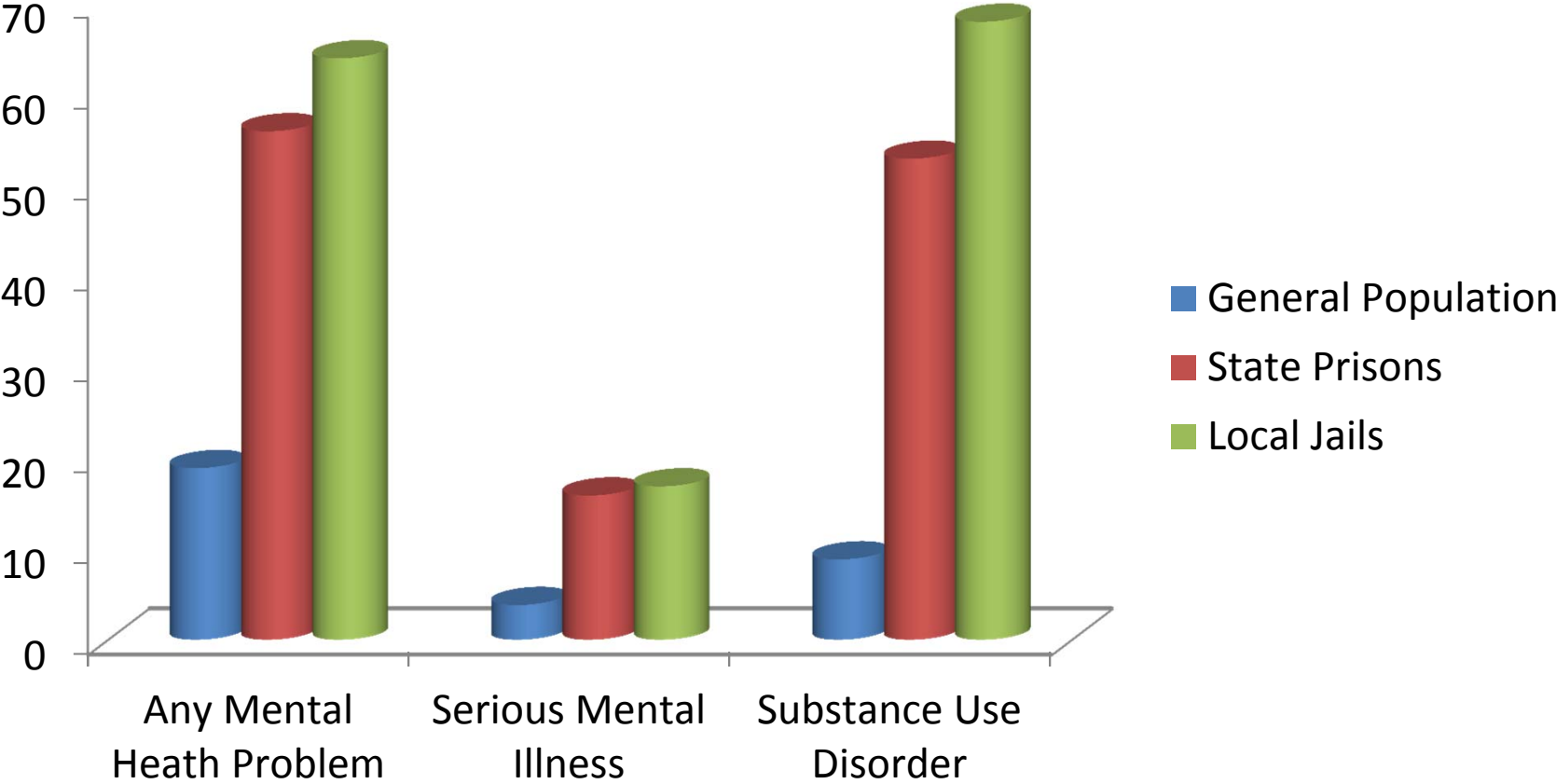


# Context

**US has the highest incarceration rate in the world**  
**Incarceration rate per 100,000 people**

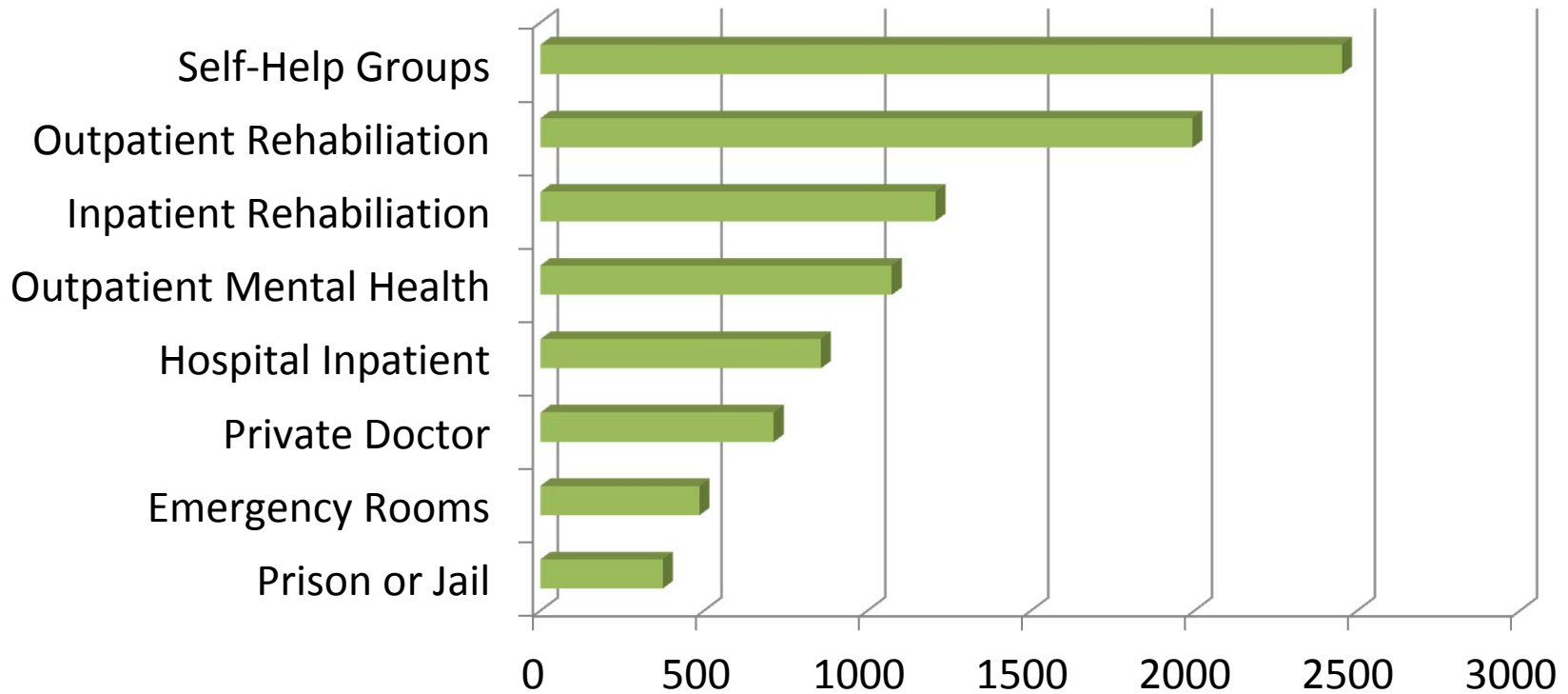


# Driving Factors in Criminal Justice



# Addiction Treatment Within Criminal Justice

Treatment Received in Criminal Justice System Context (2009)



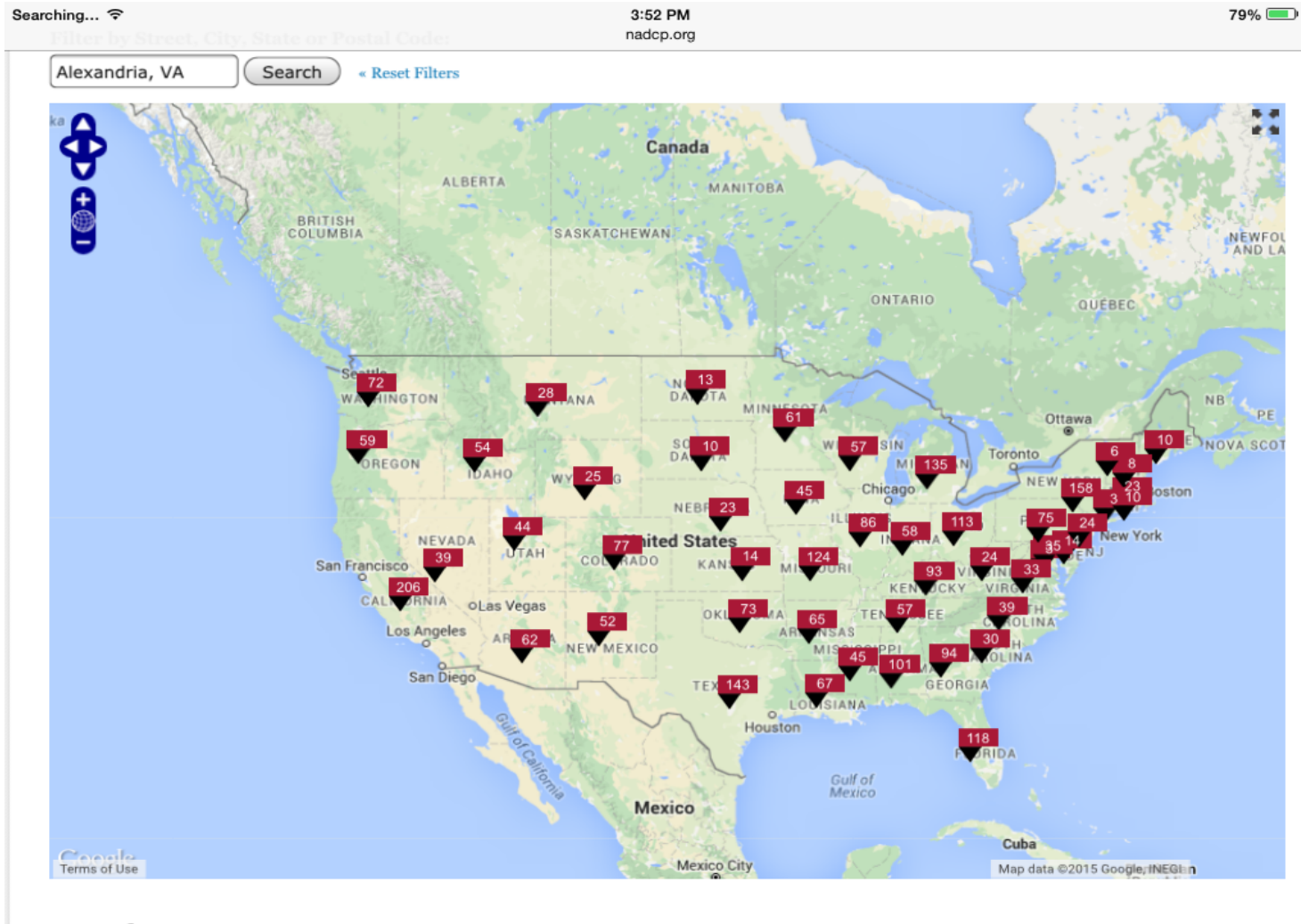
# Drugs & Crime

- 60 % of arrestees for serious offenses used illegal drugs in the past year
- 13.6% of general population used illegal drugs in the past year
- 87% of male arrestees tested positive for at least 1 illegal substance
- 40% of male arrestees tested positive for more than 1 illegal substance

# Understanding Addiction: Education in Systems Change

- Addiction is a brain DISEASE that impacts behavior
- Evidence based treatment that effectively addresses addiction as well as criminal behavior
- How to apply tools developed in from the science in justice decision making rolls- i.e. the creation of Drug Courts

# Map of Drug Court in the US





# Common Myths About Drug Abuse:

- Drug Abuse = Drug Addiction
- Alcohol is Not a Drug
- Addiction is a Moral Weakness
- You Have to Hit Rock Bottom to Recover
- You Have to Want Treatment to be Successful
- Drug Abuse is More Common Among Minorities

# What is NOT Myth:

Successful systems change at the

**INTERSECTION**

of

**JUSTICE,**

**TREATMENT &**

**COMMUNITY**

**Keeps Our Communities Safer**

# Initial Drug Use is A Voluntary Behavior

- Illicit or illegal drug use
- Initially a person takes a drug hoping to change their mood, perception or emotional state
- They are hoping to change their brain



# Sometimes Initial Drug Use is Legal

There is a growing epidemic of individuals becoming addicted to opioids due to prescriptions from doctors to combat pain.

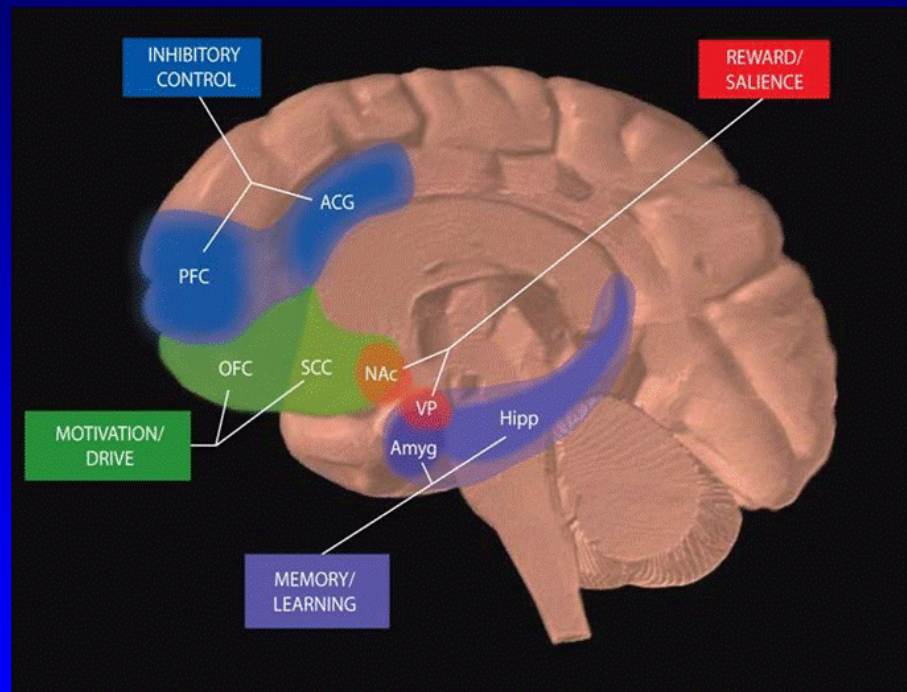
Prescriptions are being written for back pain, surgical pain and dental pain. Once the treating physician refuses to refill an opioid prescription, many turn to illegal opioids for relief from withdrawal symptoms.

# Natural Reinforcers

- **Activation of the reward pathway by addictive drugs**
- **All drugs work in the same area-  
Dopamine Transmitters**
- **Abused substance enhance dopamine activities**
- **Withdrawal is a powerful negative reinforcer of continued drug use**

# Drug Circuits Involved in Abuse and Addiction

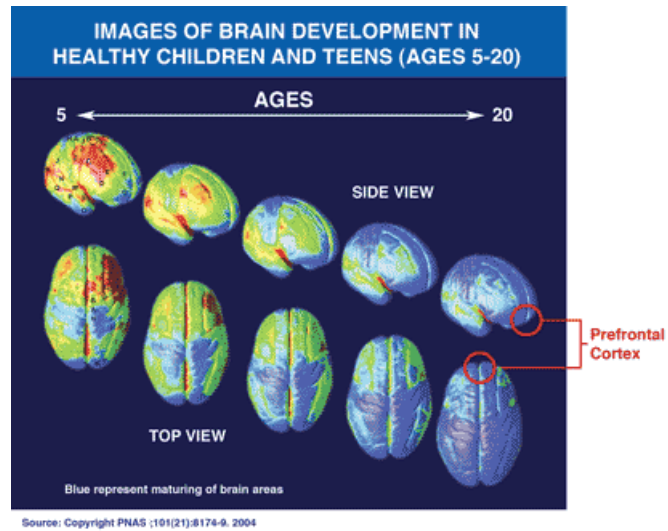
## *Circuits Involved In Drug Abuse and Addiction*



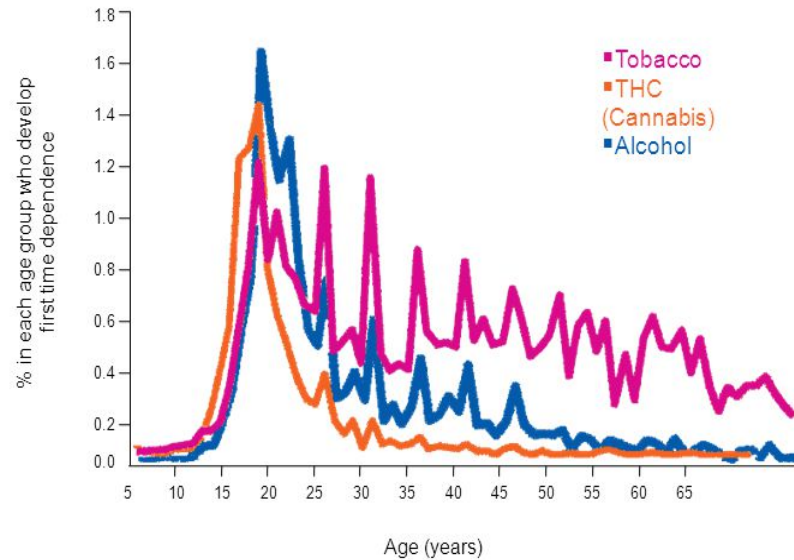
**All of these brain regions must be considered in developing strategies to effectively treat addiction**

NIDA

# Brain Maturation



## Addiction is a Developmental Disease Starts in Adolescence and Childhood

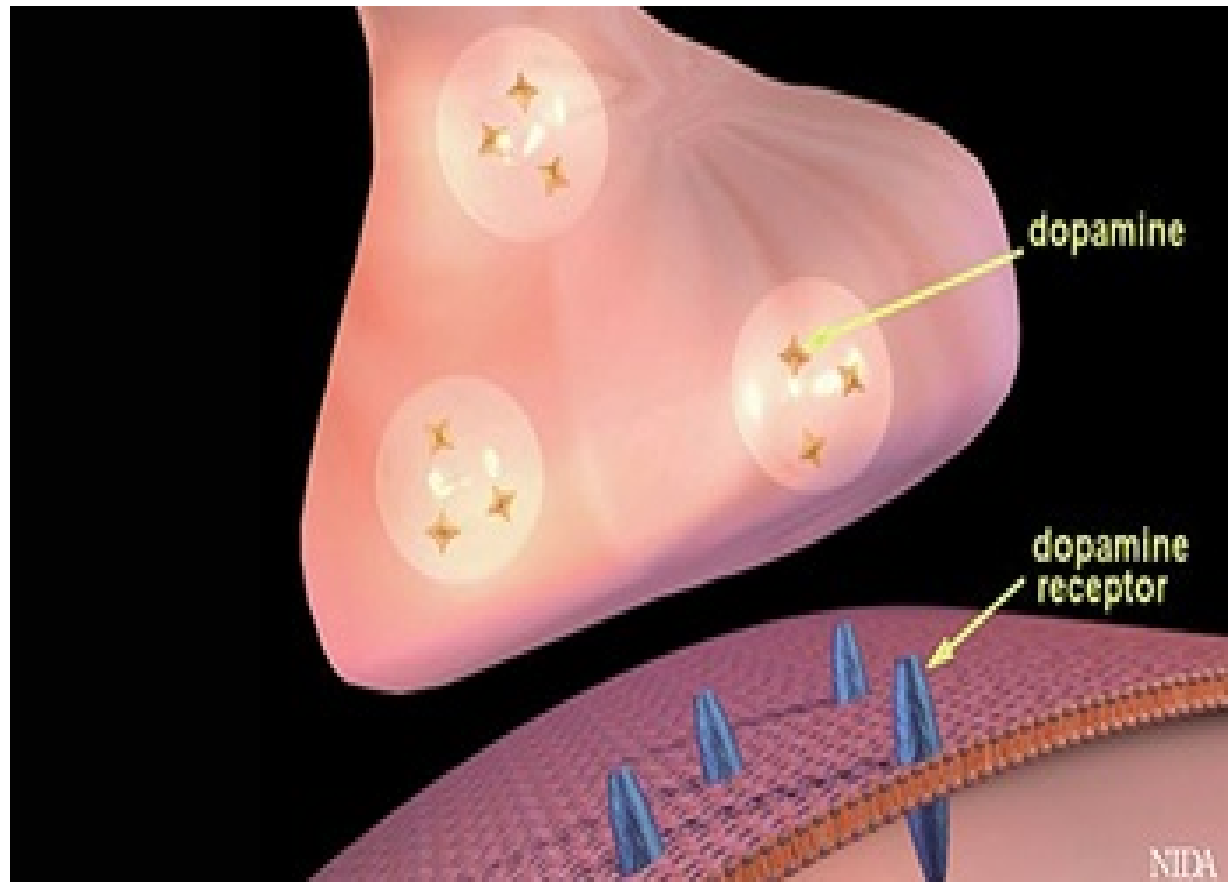


Source: NIAAA National Epidemiologic Survey on Alcohol & Related Conditions, 2003.

**All drugs use peaks in late teens and early 20's**  
**WHEN PREFRONTAL CORTEX IS STILL**  
**DEVELOPING**  
**JUDGMENT IS THE LAST TO DEVELOP!**



# Dopamine Receptors

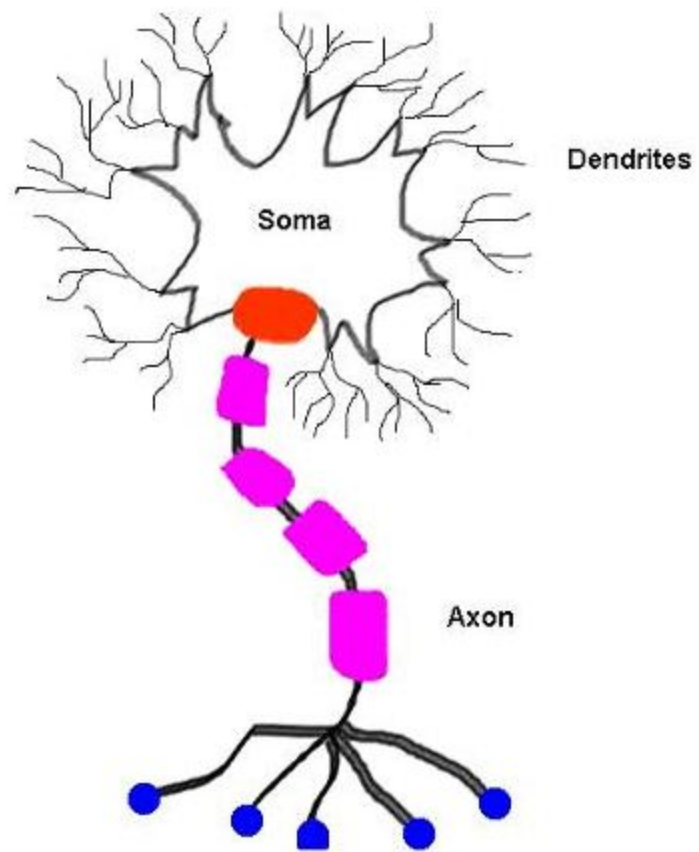


# Fundamental Brain Changes

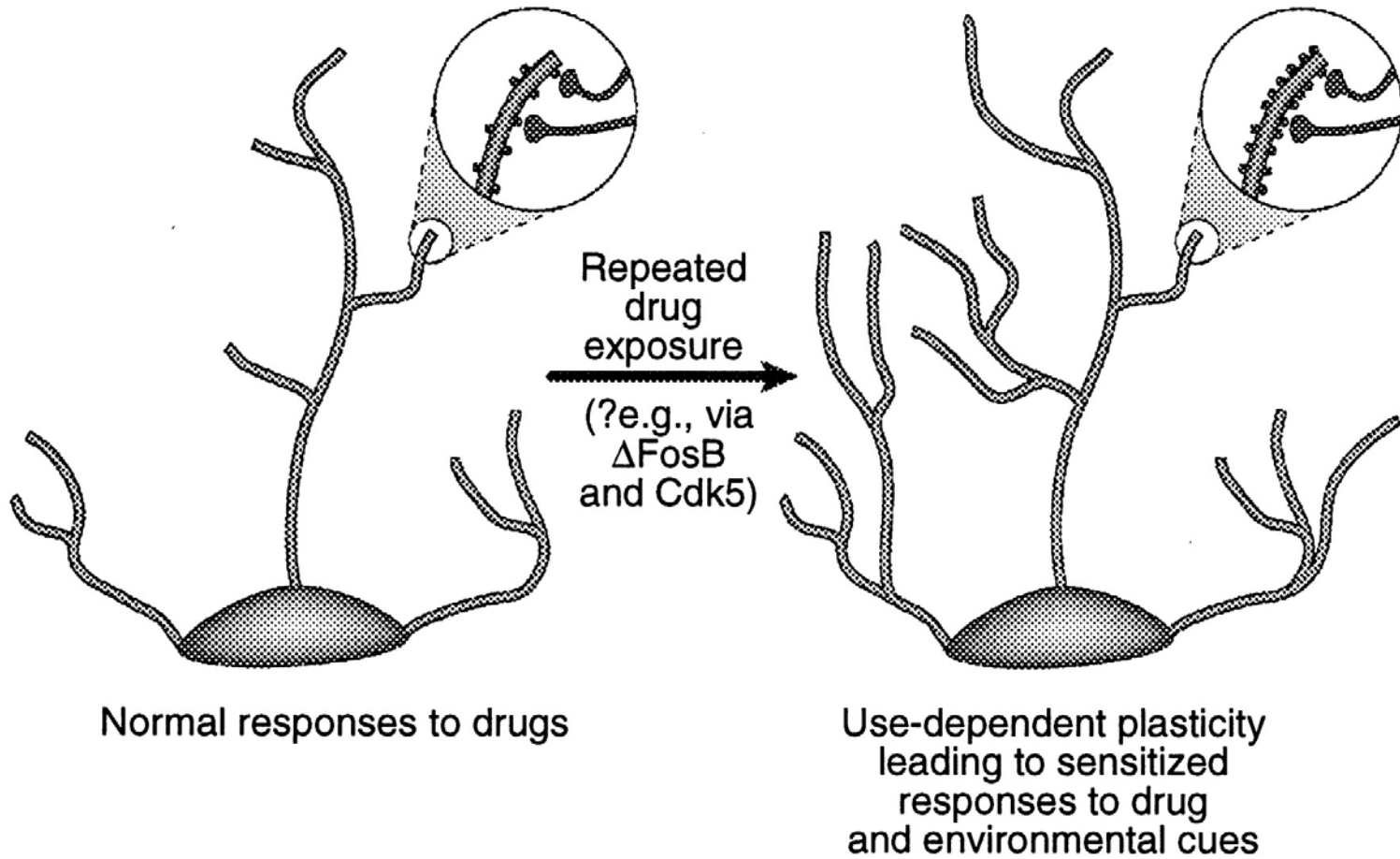
- Science shows that prolonged drug use changes the brain in fundamental ways
- The structural changes are long lasting
- The functional changes are long lasting

# Brains are Rewired

- Drugs usurp brain circuits and motivational priorities
- Brain circuitry is “hijacked” and results in motivational toxicity and compulsive drug use
- Addiction is a biobehavioral disorder
- Brains of addicts are DIFFERENT from the brains of non addicts



Chronic drug intake increased density of dendritic spines and neuronal branching in the nucleus

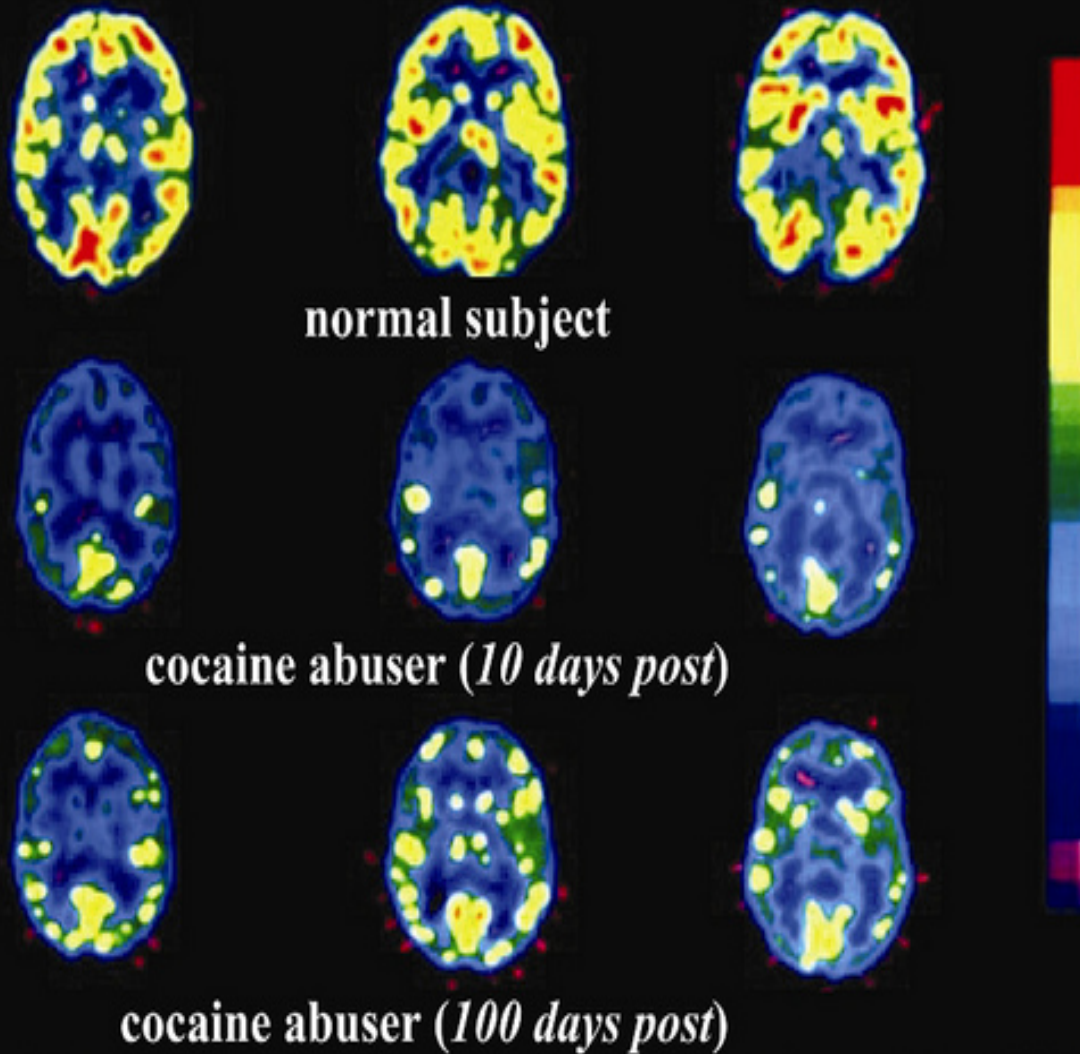


# Addiction is a Brain Disease

- Not *Simply* a Brain Disease
- Expressed as Compulsive Behavior
- Both Developing and Recovering From it Depends Upon Behavior and Social Context

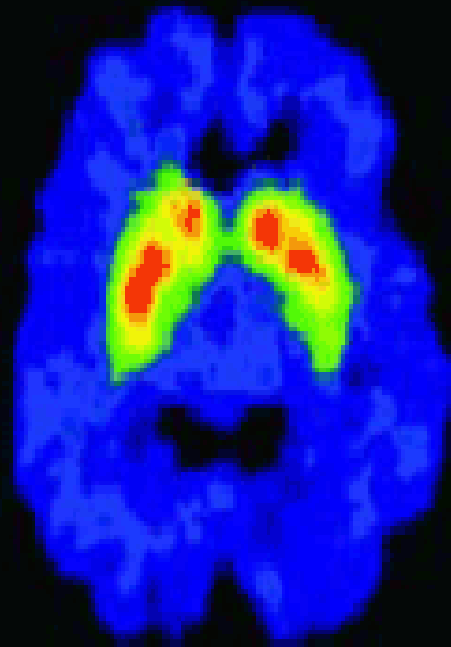


## Cocaine Abuse and Brain Glucose Metabolism

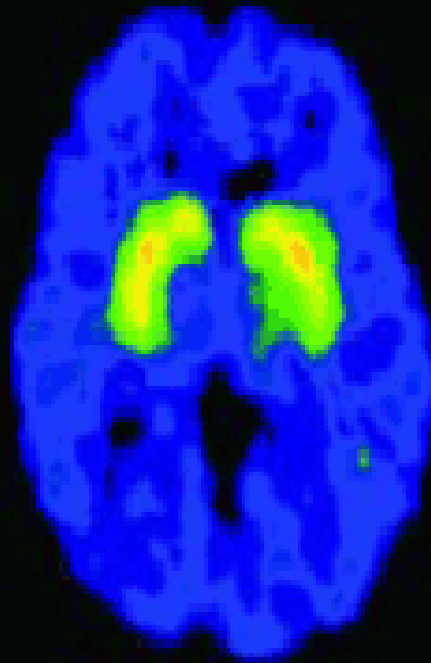


*Volkow, N.D. et al., Synapse, 11, pp. 184-190, 1992; Volkow, N.D. et al., Synapse, 14, pp. 169-177, 1993.*

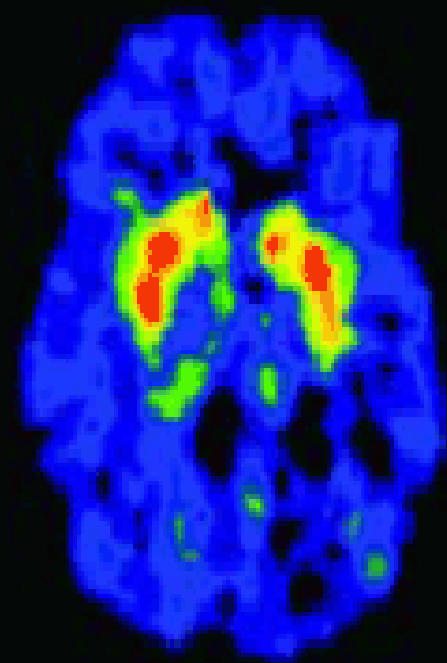
## BRAIN RECOVERY WITH PROLONGED ABSTINENCE



Healthy Person



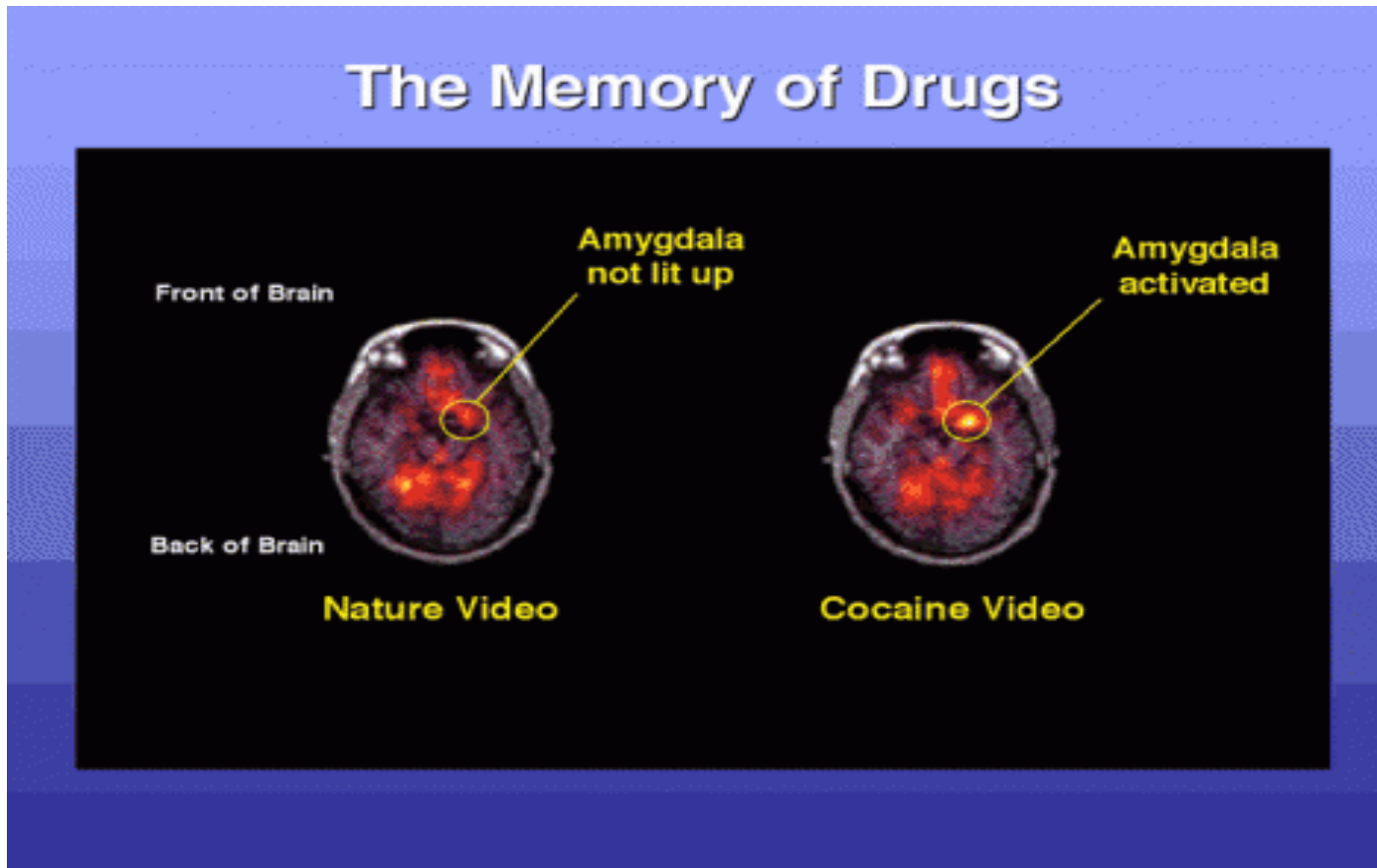
METH Abuser  
1 month abstinence



METH Abuser  
14 months abstinence



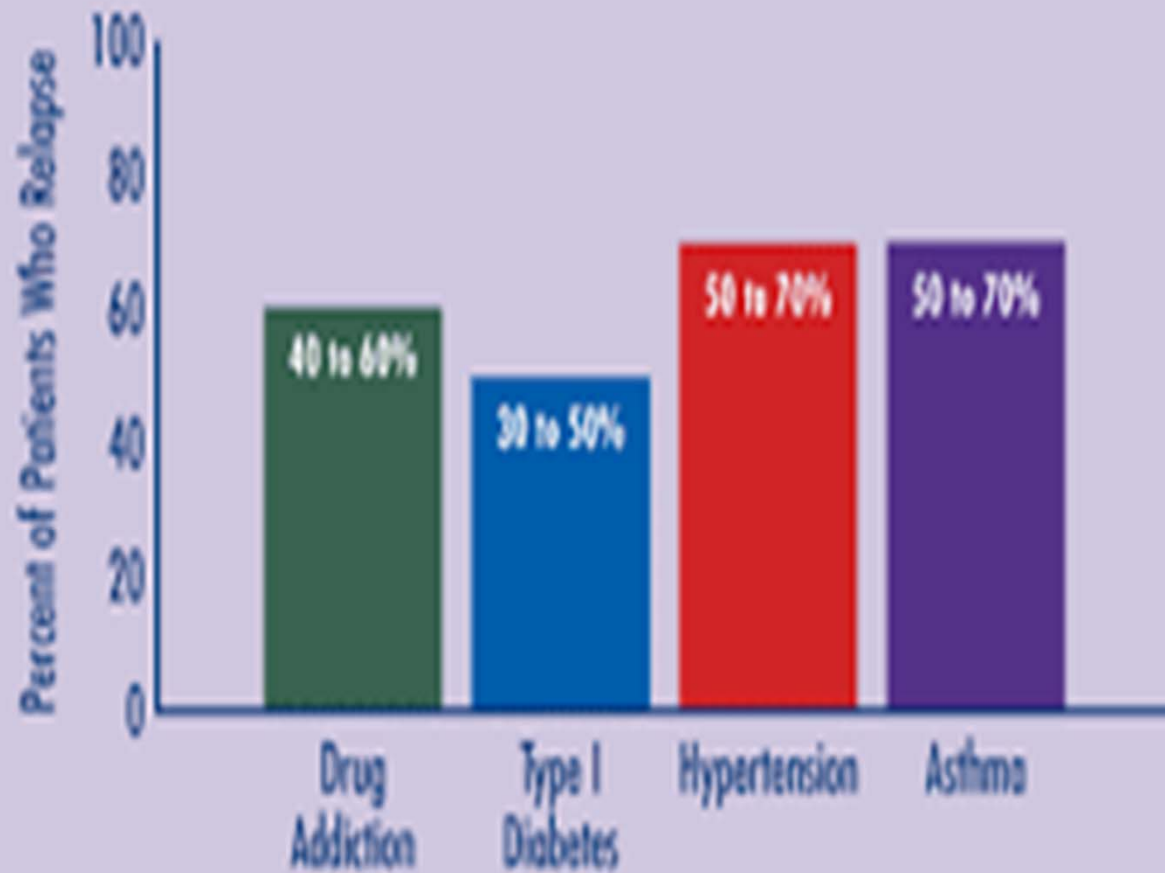
# Memories as critical part of addiction



# HOW TO TREAT

- Medications to block receptors involved in brain circuitry
- Inhibitory control in an addicted brain is reduced and requires intervention
- Fixing must go beyond chemistry

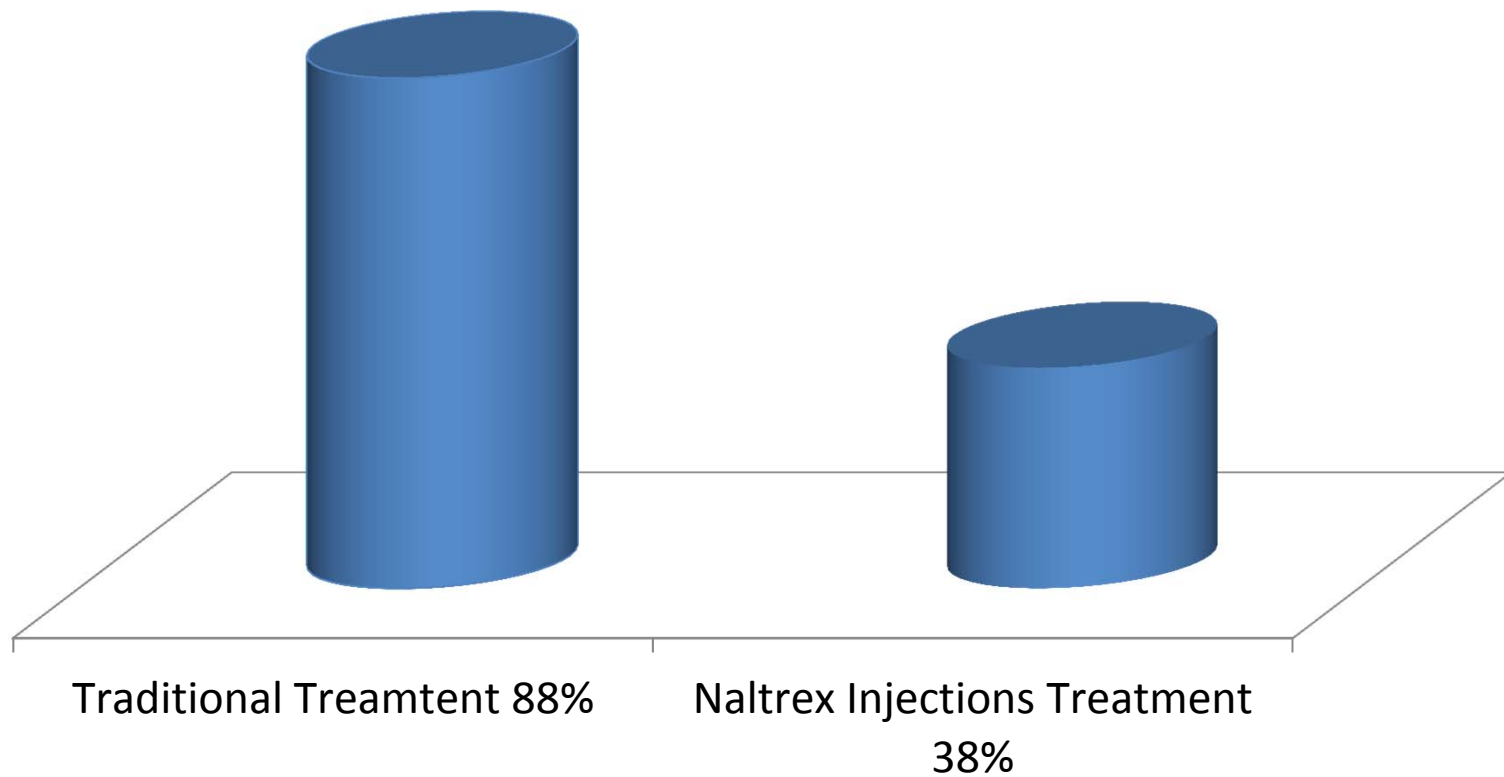
## COMPARISON OF RELAPSE RATES BETWEEN DRUG ADDICTION AND OTHER CHRONIC ILLNESSES

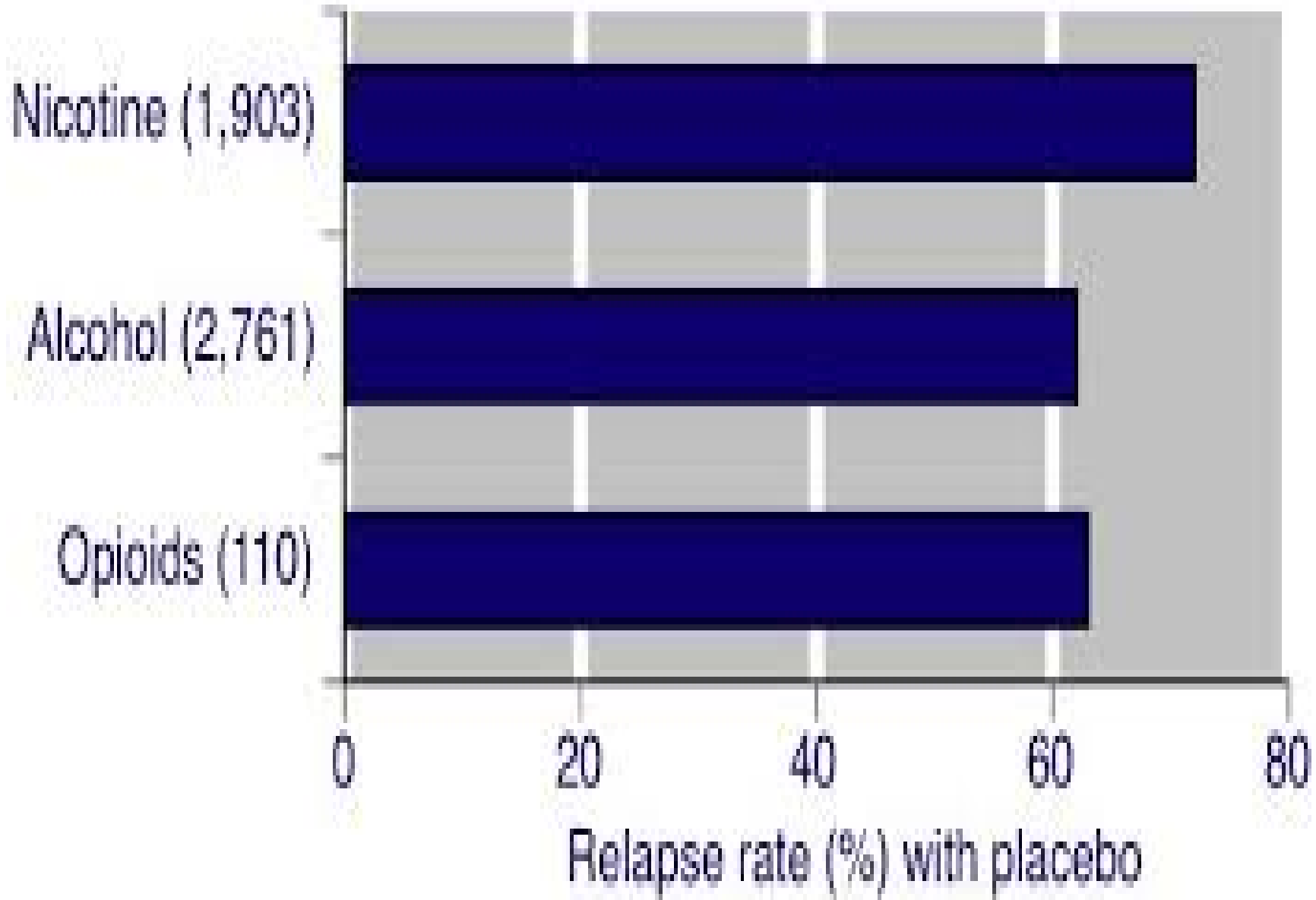


# FDA Approved Opioid Treatment Medications

- **Methadone** Only Available at a Clinic/ Clinic Administered
- **Buprenorphine** Office Based Rx/Self Administered
- **Suboxone (buprenorphine/naloxone)**
- **Oral Naltrexone** Not an Opioid-Non-Addictive
- **Extended-Release Naltrexone (injection)**

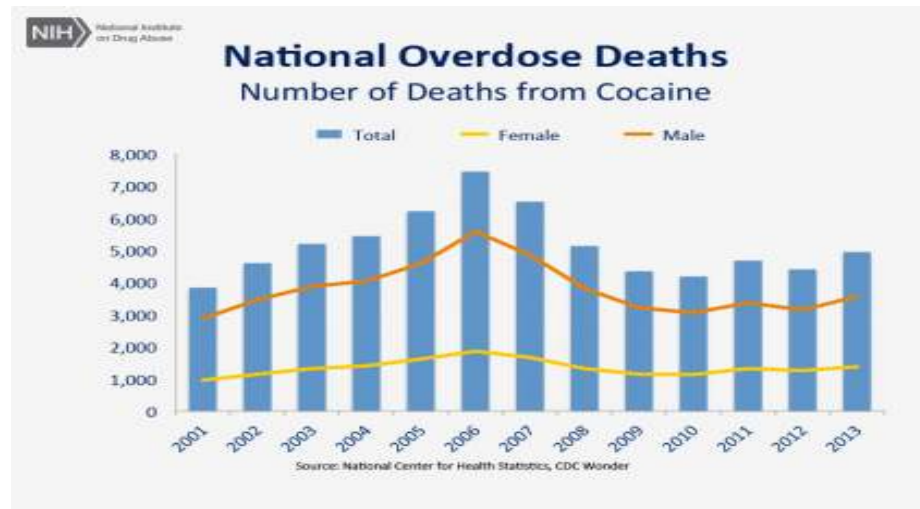
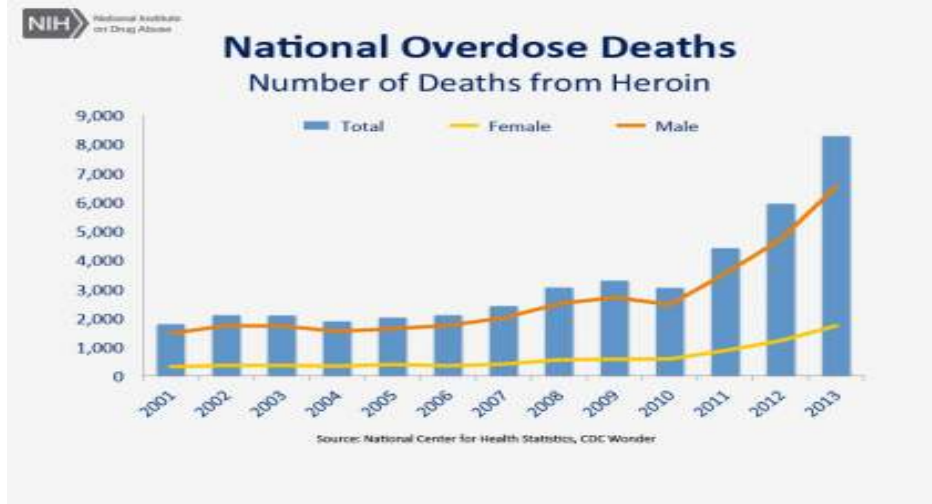
# Naltrexone Injections: Relapse Rate





# Illegal Drug Death Rate Comparison

National Institute of Health

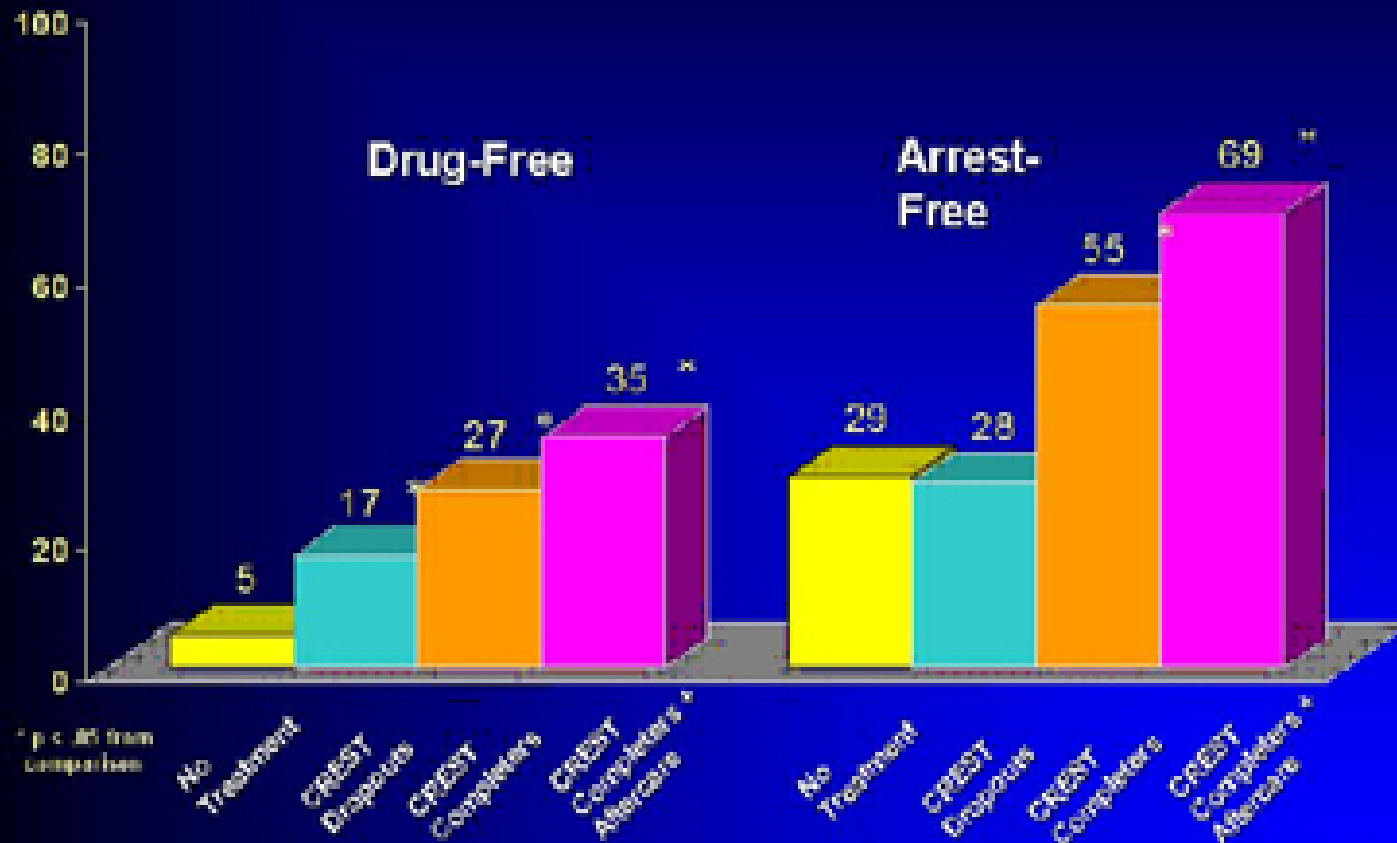


# RECIDIVISM RATES

- Sanctions Alone= 7% **INCREASE** in recidivism
- Inappropriate/Ineffective Treatments- 6% **INCREASE** in recidivism
- Appropriate/Comprehensive Treatments= 30% **REDUCTION** in recidivism



# Treatment Reduces Drug Use and Recidivism



\* p < .05 from comparison

**Delaware Work Release Therapeutic Community (Crest) + Aftercare  
Drug-Free and Arrest-Free 3 Years After Release (N=448)**

# ***WHAT DOESN'T WORK?***

- **Intensive Supervision Alone**
- **Boot Camps**
- **Generic/"One Size Fits All" Case Management**
- **Lengthy Incarceration**

# Rockingham County Drug Court Team

- **Judge** Hon. Marguerite Wageling
- **Prosecution** CA Patricia Conway and ACA Terri Harrington
- **Defense** Deanna Campbell
- **Probation** John Clemons, Chief Exeter Office
- **Law Enforcement** Det. Sgt. Melissa Robles, NHSP Troop A
- **Corrections** Lt. Michael Marriott RCHOC
- **Treatment** Karin Goscinski-Breton and Caitlin Miftari,  
Seacoast Mental Health
- **Case Manager** Ashley Hadam, SCMh

# **Screening and Assessment of Criminal Risk Level**

- **Risk Assessment Tools that calculate a risk of repeat criminal behavior based upon**
  - **Static factors                      Unchangeable**  
**(criminal history)**
  - **Dynamic factors                  Targets of**  
**Interventions to the changeable**  
**factors of the Criminal Justice System**

# Prior Assessment Tools:


ARE YOU DRUNK?

YES

NO

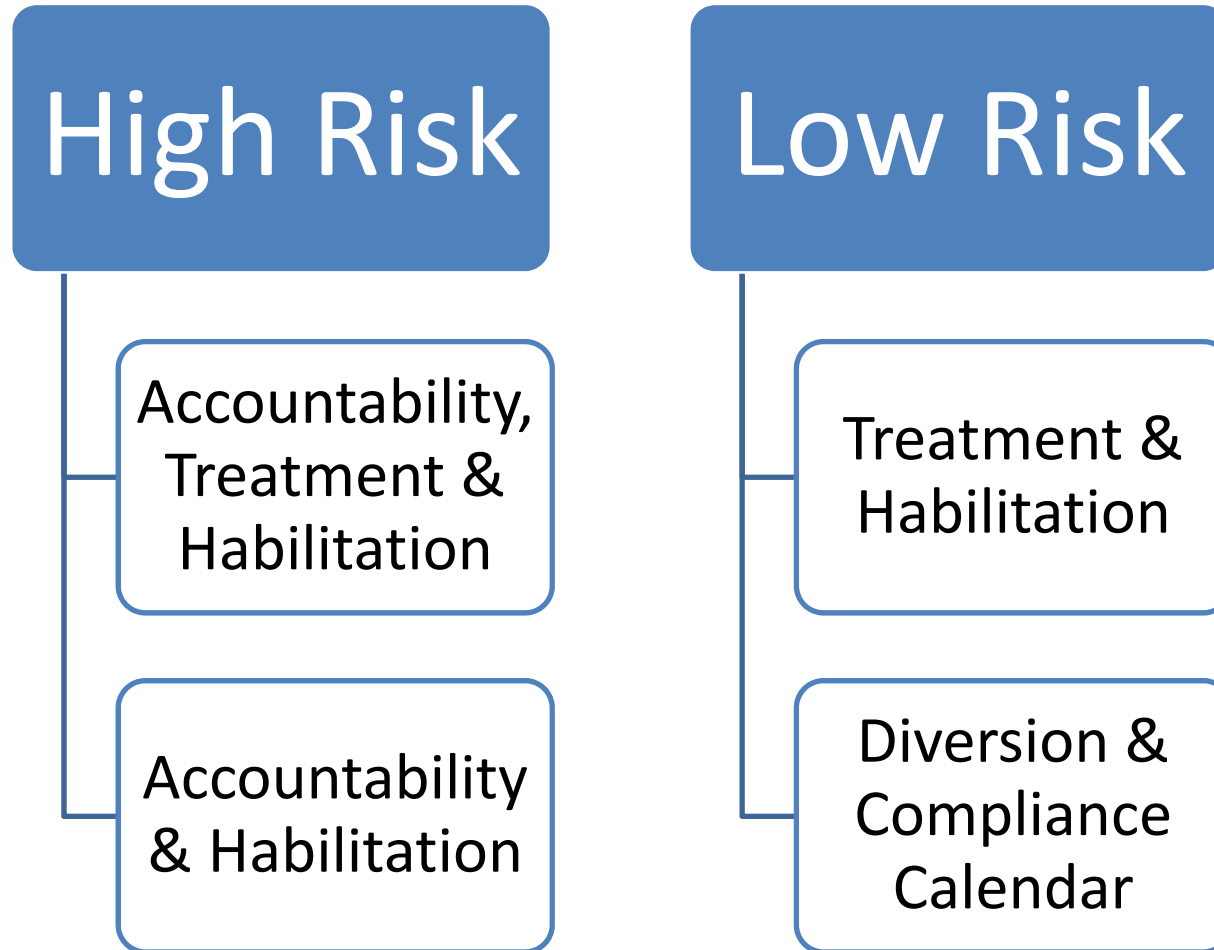
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# Risk Assessment Instruments



Historical Clinical Risk Management (HCR-20)	<ul style="list-style-type: none"><li>• Level of Service Inventory (L-SI-R-SV)</li></ul>
Ohio Risk Assessment (ORAS) *Generally Used In NH*	<ul style="list-style-type: none"><li>• Psychopathy Checklist-Screening Version (PCL-SV)</li></ul>
Risk and Needs Triage (RANT)	<ul style="list-style-type: none"><li>• Violence Risk Scale (VRS)</li></ul>

# Needs & Risk Matrix



# Proximal & Distal Goals

- **Proximal Goals: short term;** what is the offender capable of achieving NOW to move on to long term recovery
  - Shaped by combination of incentives and sanctions
    - Honesty
    - Showing Up for Hearings & Treatment
    - Taking Required Assessments
    - Basic Supervision
    - Drug Testing
- **Distal Goals: long term;** behavioral change
  - Have to address Proximal Goals before Distal Goals can be reached
    - Abstinence
    - Change in Criminal Thinking
    - Stabilization of Mental Health Systems



# Phases to Drug Court

- **Phase I** **3-4 months**  
Proximal Goals                      Show up  
    Be on time  
    Tell the Truth  
  
**Distal Goal is Stabilization**
- **Phase II** **4-6 months**  
Proximal Goals                      Earn 30 day medallion  
**Distal Goal is Short-term Sobriety and Active Engagement**
- **Phase III** **4-6 months**  
Proximal Goal                      Earn 60 day medallion  
    All program fees paid  
**Distal Goal is Longer Term Sobriety and Creation of Long Term Sober Supports**
- **Phase IV** **3 months**  
Proximal Goal                      Maintain sobriety without relapse  
**Distal Goal is Sobriety Without Monitoring**

# Rewards and Sanctions



Reinforce Positive  
Behavior

Consistent,  
Predictable,  
Targeted  
Punishment

# Recovery Over Time

## **1-12 months:**

More clean and sober friends  
Less illegal activity  
Less homelessness and violence  
Less drug use by others at home and  
with social peers

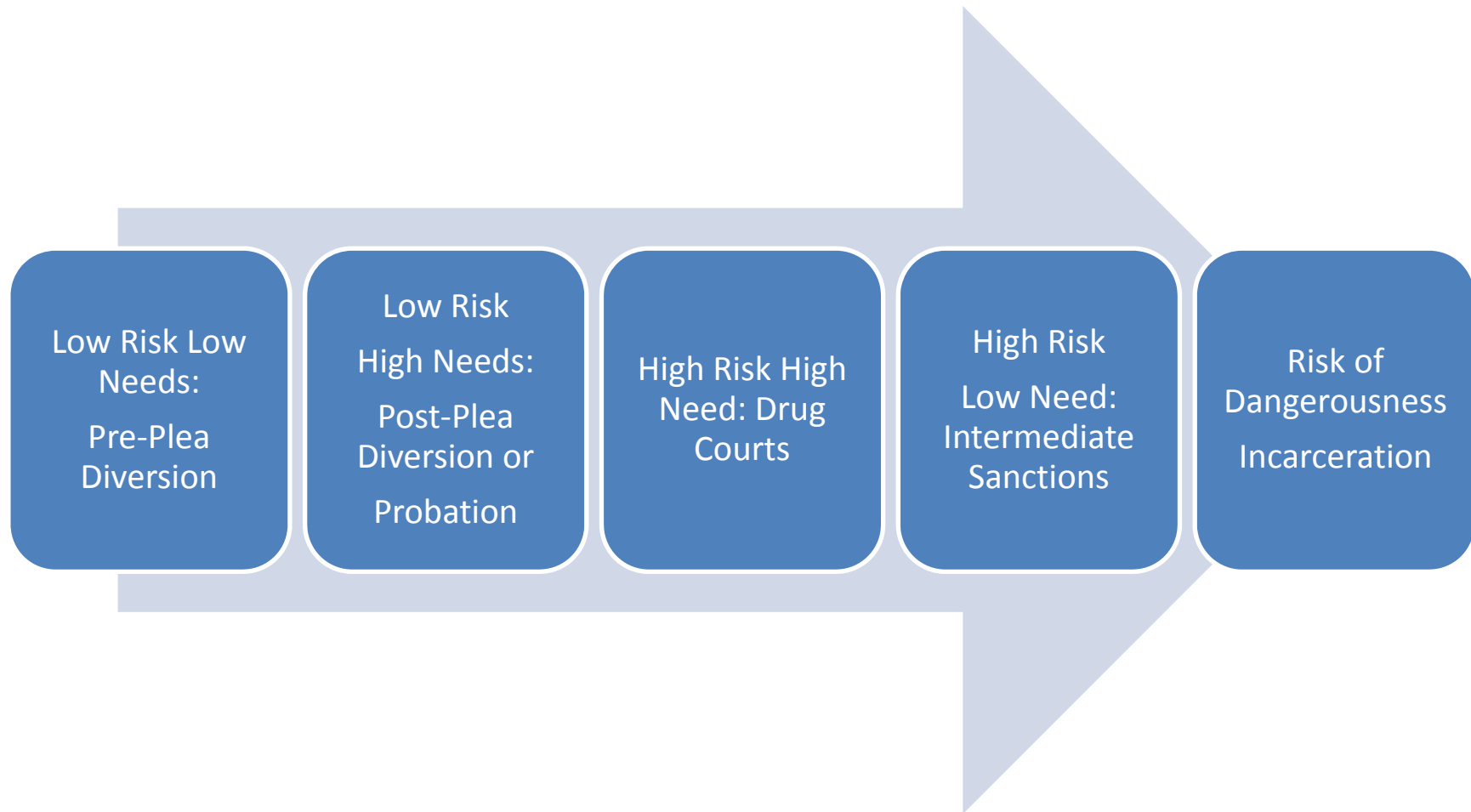
## **1-3 Years:**

Virtual elimination of illegal activity  
Better housing and living situation  
Increasing employment and income

## **4-7 Years:**

More social and spiritual growth  
Better mental health  
Housing and Living situation continues to improve  
Dramatic rise in employment and income  
Dramatic drop of those living below the poverty line

# DISPOSTIONAL CONTINUUM



# Principal #1

- Building a more just justice system in foundational



- reduction in crime is the goal
- cost savings are important
- inclusive view of community and its stakeholders

## Principal #2

- Every part of the system (justice, substance abuse treatment, mental health, greater community) has an important **role to play together**
  - The change is systemic in nature and requires a systems approach to change that can be scaled to uniquely fit the size of any jurisdiction
  - Justice leaders are expected to use their convening authority to initiate systems change and ensure collaboration

## Principle #3

- No one should go further into the justice system than necessary
  - Provide interventions as early as possible including prior to justice system contacts
  - The community may be the best place to treat substance use and mental health issues
  - Again, not a political philosophy but a practical consideration of criminal justice

# Principle #4

- Recovery from drug use reduces crime
  - See every person in the criminal justice system as a potential candidate for substance abuse and mental health intervention
  - Justice system interventions must align with the chronic nature of the addiction based science and research
  - Early screening protects limited resources
  - Assessment drives service-match risk and needs , apply appropriate Responsivity



# Principle #5

- Metrics/Data are integral to a more just justice system
  - Start by agreeing on shared outcomes that work for justice, treatment, and community systems mutually
  - Hold partners accountable for shared outcomes
    - Evaluate efforts for systems impact

# 2015 Rockingham County Drug Court Graduate

- Long Criminal History- Prison Bound
- Heroin Addicted
- Graduated from Program
- Primary Parent for first time in 7 years
- Obtained CDL License
- Obtained Full Time Employment
- Sustained Sobriety