



# PROBLEM *CREATING* COURTS

July 2022

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## ACKNOWLEDGEMENTS

This resource was developed by Rachel Foran and Eli Hadley, in conversation with Zohra Ahmed, Emmanuel Andre, Monica Cosby, Premal Dharia, Savannah Felix, Sharlyn Grace, Katy Naples-Mitchell, Jocelyn Simonson, and Amanda Woog. Sincere thanks to Millie Price for extensive research and citations support. Thanks to Puck Lo, Christine Mitchell from the End Police Violence Collective, Aliza Cohen and Allie Mikolanis from Drug Policy Alliance, Nadja Eisenberg-Guyot, and Andrea J. Ritchie for reviewing and providing critical feedback.

This resource is part of the [Beyond Courts: Defund and Divest](#) digital resource hub

Resource designed by [OORI Studio](#)



# INTRODUCTION

Diversion programs are often portrayed as deals, bargains, and alternatives to punishment that benefit the person charged with the crime. They are described as progressive reforms, as “off ramps” from the traditional legal system. Many diversion programs are operated in partnership with nonprofits, hospitals, treatment centers, or community based organizations – their connection to community-based organizations can make them appear benign, if not positive. **However, offering treatment, counseling, or job training through the criminal punishment system is not the same as providing these resources directly in the community, outside of the court system. Access to care, housing, treatment and resources should never come at the cost of an arrest or prosecution.** Rather than offer a community much-needed resources, diversion courts and programs create coercive, burdensome requirements that trap people further in cycles of criminalization and punishment. They do not meaningfully address the deep social problems (such as poverty, racism, houselessness, drug prohibition, an unsafe or unregulated drug supply, and so on) that make individuals vulnerable to criminalization. Instead of structural reform that fulfills our collective responsibility to meet individual and community needs, these diversion programs offload that responsibility onto criminalized people, their families, and communities, a process sociologist Reuban Miller calls carceral devolution.<sup>1</sup>

**A NOTE ABOUT “CRIME”:** Criminal laws, procedures, and the courts have served as tools to organize society, and to designate some people and some practices as criminal, and therefore not worthy of care, attention, and dignity. We’re taught that crime is equivalent to harm, but actually those categories are not the same. Not all crimes are harmful and not all harms are criminalized.<sup>2</sup> People in power have changed categories of what counts as a “crime” over time, not to protect vulnerable people in society as they have claimed, but to advance their own power and property interests and to prevent Black, Indigenous, and other marginalized people and communities from building power and accessing wealth and resources. And when harm is treated as a crime, it exacerbates rather than solves the root causes of the harm.<sup>3</sup>

1 Miller, Reuben Jonathan. “Devolving the Carceral State: Race, Prisoner Reentry, and the Micro-Politics of Urban Poverty Management.” *Punishment & Society* 16, no. 3 (2014): 305–35. <https://doi.org/10.1177/1462474514527487>.

2 Ritchie, Andrea J., and Jared Knowles. “Cops Don’t Stop Violence.” *Interrupting Criminalization*. Accessed June 22, 2022. <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/60ff3d8f0a0ef6473fbb6d/bb/1627340186125/Cops+Don%27t+Stop+Violence>; Ritchie, Beth E. and Andrea J. Ritchie, *The Crisis of Criminalization: A Call for A Comprehensive Response*, *Interrupting Criminalization* (2017).

3 “Frequently Asked Questions.” *Beyond Criminal Courts*. Accessed June 22, 2022. <https://beyondcourts.org/en/learn/faq>.



**What do we mean by diversion?** Diversion refers to any formal procedural intervention, led or facilitated by state actors (specifically police, prosecutors, probation/pretrial services, or judges), that temporarily and conditionally redirects a person's path through the criminal process away from arrest, jail, charges, or conviction in exchange for participation and successful completion of some kind of program or requirements (such as anger management classes, mental health or drug "treatment," restorative justice circles, community service, or counseling). Diversion programs led by prosecutors and by judges (the latter referred to as specialty courts or "problem solving" courts) are two of the most common, and popular, kinds of diversion; in the United States alone, there are currently at least 121 prosecutor-led diversion programs<sup>4</sup> and over 4,000 specialty courts.<sup>5</sup>

The major difference between the two is that prosecutor-led diversion programs are created, designed, monitored, and controlled by prosecutors, without the involvement of other court actors, including defense attorneys, whereas specialty courts (such as drug courts, mental health courts, veterans courts, trafficking courts, and so on) often require prosecutor approval over whose case can be "diverted" through the diversion court program, but otherwise are under the complete control of judges. This means that in both, the prosecutor or judge respectively has the power to decide the diversion program's eligibility criteria, to impose restrictions, to monitor progress, and to decide what constitutes the program participants' failures or successes. While defense attorneys are often consulted in the formation of these programs, their power is limited to advocating on behalf of their clients to be accepted into the program - in some places, a defense attorney cannot even prevent their client from being evaluated for the program even if they do not want to participate in it. Ultimately the judge and/or prosecutor make the decisions and set the terms. Depending on the jurisdiction, prosecutor-led diversion can be offered pre- or post-charging, as well as post-plea, while most (but not all) specialty courts are only offered post-plea.

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4 Lowry, Michela, and Ashmini Kerodal. "Prosecutor Led Diversion: A National Survey," March 2019. [https://www.courtinnovation.org/sites/default/files/media/document/2019/prosecutor-led\\_diversion.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2019/prosecutor-led_diversion.pdf).

5 Collins, Erin R. "The Problem of Problem-Solving Courts." *U.C. Davis Law Review* 54 (November 22, 2019): 1573-1629. <https://doi.org/10.2139/ssrn.3492003>.

Prosecutor-led diversion programs and specialty courts are just two examples of carceral devolution. It is not a coincidence that these diversion programs started proliferating in the United States in the late 1960s, as support for deinstitutionalization and decarceration grew, and as neoliberal policies,<sup>6</sup> described by Ruth Wilson Gilmore as “organized abandonment,”<sup>7</sup> proliferated. As Gilmore contends, mass incarceration and devolution are trends that go hand-in-hand.<sup>8</sup> Diversion programs and specialty courts allowed the state to say it was taking action to curb incarceration, while simultaneously transferring the responsibility of social welfare from the government onto private, for-profit companies, and nonprofit agencies. Diversion programs and specialty courts have only become more popular over the last two decades amidst both the wreckage of over 40 years of state and capital divestment, as well as a growing bipartisan consensus to “end mass incarceration.”

As it becomes less popular to put people in cages (for moral, but also financial, reasons), the legal system is imposing new forms of social control under the guise of coerced treatment, care or services. As geographer Brett Story explains, carceral devolution “is how the carceral state is restructuring itself in the face of its legitimacy crisis.”<sup>9</sup> Diversion programs are not in opposition to the carceral state; in fact, they are a part of the state’s adaptive work to continuously legitimize itself, and are then used as a justification to increase funding to the legal system to fortify the system even more. Diversion programs can, and most often do, become a pathway to incarceration – imposing burdensome conditions of surveillance and control that people can’t meet, and which are often punishable by incarceration.<sup>10</sup> The only kind of diversion these programs actually succeed at is diverting people’s attention from the systemic problems they attempt to bandaid over.

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6 Andrea J. Ritchie and Black Lives Matter Chicago, *Epicenter Chicago: Reclaiming a City from Neoliberalism*, Political Research Associates (2019); Metcalf, Stephen. “Neoliberalism: The Idea That Swallowed the World.” *The Guardian*. Guardian News and Media, August 18, 2017. <https://www.theguardian.com/news/2017/aug/18/neoliberalism-the-idea-that-changed-the-world>.

7 Goodman, Amy. “The Case for Prison Abolition: Ruth Wilson Gilmore on COVID-19, Racial Capitalism & Decarceration.” *Democracy Now!*, May 5, 2020. [https://www.democracynow.org/2020/5/5/ruth\\_wilson\\_gilmore\\_abolition\\_coronavirus](https://www.democracynow.org/2020/5/5/ruth_wilson_gilmore_abolition_coronavirus).

8 Gilmore, Ruth Wilson. “The Problem with Innocence.” *Inquest*, May 12, 2022. <https://inquest.org/ruth-wilson-gilmore-the-problem-with-innocence>.

9 Story, Brett. *Prison Land: Mapping Carceral Power Across Neoliberal America*. Minneapolis, MN: University of Minnesota Press, 2019.

10 This is to say nothing of the fact that many people spend time in jail prior to their diversion. In a sense, almost everyone in diversion spends some time incarcerated, even if “just” during booking and waiting for arraignment. Wang, Leah, and Katie Rose Quandt. “Building Exits off the Highway to Mass Incarceration: Diversion Programs Explained.” *Prison Policy Initiative*, July 20, 2021. <https://www.prisonpolicy.org/reports/diversion.html>.

To support abolitionist organizers fighting the creation, continuation, or expansion of prosecutor-led diversion programs and specialty courts - specifically in the name of reform - we have created data-supported talking points to push back on some of the most popular iterations of these programs: **drug courts, mental health courts, trafficking courts, and restorative justice diversion programs.** While all of these programs share some core features that we distill below, each has specificities that deserve close scrutiny. After discussing their similarities, we offer a compilation of news reporting, academic articles, peer reviewed studies, first hand testimonials, and takeaways on each specific program for you to use in your communities and organizing.

We have also compiled data-supported talking points for the investments that are proven to create health and safety: **supportive and affordable housing, healthy food, clean water and air, high quality education, guaranteed basic income, well-paying employment, affordable and accessible community-based healthcare, and community-based drug treatment and harm reduction services.** The solutions are not out of reach; we just need to fight for them and not accept reformist solutions that perpetuate and further criminalization and social control.



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**DIVERSION IS  
SOCIAL  
CONTROL**





# DIVERSION IS SOCIAL CONTROL

For abolitionists, the fact that prosecutor-led diversion programs and specialty courts maintain and entrench the legitimacy of the carceral state is just one reason to oppose them. In addition, these programs: 1) extend the scope of the criminal punishment system into the community; 2) widen the net of people under carceral control; 3) increase the power, resources, and reach of prosecutors and judges (and the criminal punishment system more broadly); 4) further neoliberal logics of individual responsibility that uphold the criminal punishment system; and 5) are more concerned with control and submission than health and well-being. Diversion programs deprive people of self-determination through a logic of white paternalistic “care through control.” Given the racial demographics of the people targeted by the carceral system, this kind of paternalism evokes the country’s long tradition of racial subordination, dating back to chattel slavery.<sup>11</sup> Advocates of diversion programs have an explicit approach of white saviorism, framing the programs and their intervention into and control of people’s lives as “help” that participants must be grateful for.

*Diversion programs extend the scope of the criminal punishment system into the community.* In 1979, sociologist Stanley Cohen cautioned that the creation of so-called community alternatives would only further blur the boundaries between prison and community. Four decades ago, he wrote, “Programs reproduce rules (for example about security, curfew, permitted visitors, drugs) which are close to that of the institution itself. Indeed it becomes difficult to distinguish a very “open” prison (with liberal provision for work release, home release, outside education) from a very “closed” halfway house.”<sup>12</sup>

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11 Eisenberg-Guyot, Nadja (2022). “Refusing Rehabilitation: Outlaw Epistemologies and the Carceral-Therapeutic State in NYC.” [Doctoral Dissertation, Graduate Center of the City University of New York]. ProQuest Dissertations Publishing; Fields, Barbara J. “The Heartless Paternalism of the Slaveholder.” The Washington Post, August 29, 1982. <https://www.washingtonpost.com/archive/entertainment/books/1982/08/29/the-heartless-paternalism-of-the-slaveholder/6cb8ca39-0efa-4861-913c-bfe5df9d38e5>. The paternalistic logic undergirding many traditional court dynamics is taken to even bigger extremes in diversion court settings, and has its direct roots in the slavery and colonization that the United States was founded on.

12 Cohen, Stanley. “The Punitive City: Notes on the Dispersal of Social Control.” *Contemporary Crises* 3, no. 4 (October 1979): 339–63. <https://doi.org/10.1007/bf00729115>.

Instead of being an off-ramp to prosecution and incarceration, diversion programs just punish people in a different setting, while retaining the same qualities of regular prosecution (controlling movement, regular check-ins, using incarceration as a constant threat). The people who administer the programs – whether doctors, social workers, or non-profit staff – must take on the coercive roles alongside police, guards, and probation officers. Diversion programs thereby conscript community actors into monitoring and policing people who are criminalized. The programs continue the functions of prosecution and the prison, while purporting to be a replacement. They extend the scope of the criminal punishment system into communities and onto community-based organizations and actors.

*Diversion programs widen the net of people under carceral control.* **Police always have the power to choose not to arrest someone and divert them from the system entirely - and often exercise that power for particular people and communities. Prosecutors have always had the option to choose to not prosecute a case and divert someone away from the system entirely. Judges have always had the option to dismiss people's cases through various legal vehicles.** By contrast, formal diversion programs do not divert people away from the system but actually *further into* the system, by keeping people subject to the system's carceral control – just in a programmatic or “treatment”-based setting. Diversion programs also do not prevent the violence of policing, nor undermine the legitimacy of the police; indeed, diversion requires policing. In most specialty courts and prosecutor-led diversion programs, the people who are eligible are charged with what political scientist Marie Gottschalk calls non, non, nons (“non-serious, nonviolent, non-sex-related” offenses).<sup>13</sup> These charges include loitering, trespassing, drug possession, and other charges that many would agree should be outright dismissed or never brought in the first place or used to justify an arrest. Instead, formal diversion programs provide an avenue to keep people charged with these offenses in the clutches of the system, under the guise of treatment or rehabilitative programs, thereby widening the net of people under carceral control. And equally problematic, diversion programs legitimize the incarceration of the “non-deserving.” **They are an obstacle to what is really needed: complete decriminalization.**

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<sup>13</sup> Gottschalk, Marie. “Raze the Carceral State.” *Dissent Magazine*, November 24, 2015. <https://www.dissentmagazine.org/article/criminal-justice-reform-minimum-sentencing-mass-incarceration>.

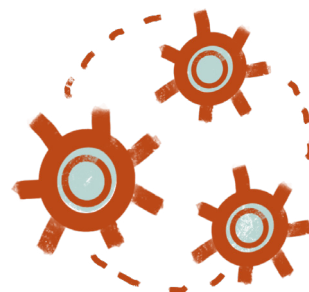
*Diversion programs increase the power, resources, and reach of the criminal punishment system. As law professor Erin Collins has pointed out, problem-solving courts primarily serve to enlarge the power of judges and prosecutors and to expand the scope and control of the criminal punishment system, at the expense of their purported “treatment” goals.<sup>14</sup> The purpose of a court is to prosecute someone for participating in a criminalized activity; diversion programs and specialty courts shift that into something larger as they prosecute and criminalize people based on who they are or the circumstances of poverty, drug use, or mental health they find themselves in. This kind of court makes it socially acceptable, as a matter of principle, to treat people whose identity is criminalized (i.e. they use drugs, they are a veteran, they are houseless) as proper subjects for the court to control and manage. Through these programs, prosecutors and judges are given the authority to make decisions and deliver consequences for behaviors that are not necessarily illegal, all in the name of supposed recovery or rehabilitation.*

It’s important to note that, despite authorities’ insistence otherwise, the traditional legal system imposes consequences for behaviors that are not explicitly illegal all the time - for example, there is nothing technically illegal or punishable about not having a job, but prosecutors may offer a better plea deal to someone who is employed rather than to someone who is unemployed. Or they will offer a reduced sentence to someone because they’re in a treatment program and refuse to offer a reduced sentence to someone who isn’t interested in enrolling in a treatment program. **But diversion courts often attempt to regulate people’s behavior in more extreme ways than traditional courts, thus extending the scope of the state’s criminalization apparatus.**

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<sup>14</sup> Collins, Erin R. “The Problem of Problem-Solving Courts.” *U.C. Davis Law Review* 54 (November 22, 2019): 1573–1629. <https://doi.org/10.2139/ssrn.3492003>.

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For example, diversion programs can and do impose consequences for someone being late to a therapy appointment or losing their job in a way that traditional courts (outside of imposing violations of conditions of probation or parole) may not. Diversion programs also give individuals without medical or healthcare expertise (i.e. prosecutors and judges) authority to engage in medical decision making.<sup>15</sup> The power creep of these diversion programs and specialty courts is extreme and ever-snowballing in this era of bipartisan carceral humanism.<sup>16</sup>

The power creep extends to the increase in resources diverted to the criminal punishment system to administer these programs. Many prosecutors, and especially so-called “progressive prosecutors,” request budget increases to start and run diversion programs.<sup>17</sup> Service providers and non-profits are contracted by the courts, prosecutors’ office, or government to hire staff and run these programs. These programs provide further justification for enlarging the resources, and therefore the power, of the prison industrial complex.

*Diversion programs further neoliberal logics of individual responsibility.* The logic that undergirds diversion programs (whether prosecutor-led or specialty courts) is one of individual responsibility.<sup>18</sup> A person who has been arrested is filtered into a diversion program because of conclusions made by prosecutors or judges about who they are or their alleged behavior (whether drug use, involvement in the sex trades, mental health, homelessness, status as a young person or veteran, etc.). The purported goal of the program is for the person to resolve these underlying “issues” through their participation in the program.

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15 Most, if not all, drug courts and mental health courts task judges with making medical decisions as a fact of their existence and routine operation. Boldt, Richard C. “Rehabilitative Punishment and the Drug Treatment Court Movement.” *Washington University Law Quarterly* 76, no. 4 (1998): 1205–1306; McCoy, Candace, Wolf Heydebrand, and Rekha Mirchandani. “The Problem With Problem-Solving Justice: Coercion vs. Democratic Deliberation.” *Restorative Justice* 3, no. 2 (October 14, 2015): 159–87. <https://doi.org/10.1080/20504721.2015.1069085>. For one specific example of a drug court in Massachusetts, see Herz, Mark. “Mass. Drug Courts Settle with US Attorney’s Office over Interfering with Treatment.” GBH, March 25, 2022. <https://www.wgbh.org/news/local-news/2022/03/25/mass-drug-courts-settle-with-us-attorneys-office-over-interfering-with-treatment>.

16 Kilgore, James. “Repackaging Mass Incarceration.” *Prison Legal News*, November 8, 2014. <https://www.prisonlegalnews.org/news/2014/nov/8/repackaging-mass-incarceration>.

17 Pishko, Jessica. “How a Criminal Justice Reform Became an Enrichment Scheme.” Pulitzer Center, July 15, 2019. <https://pulitzercenter.org/stories/how-criminal-justice-reform-became-enrichment-scheme>; “No Such Thing as ‘Progressive Prosecutors.’” *Beyond Criminal Courts*. Accessed June 22, 2022. <https://beyondcourts.org/en/learn/no-such-thing-progressive-prosecutors>.

18 Andrea J. Ritchie and Black Lives Matter Chicago, *Epicenter Chicago: Reclaiming a City from Neoliberalism*, Political Research Associates (2019).



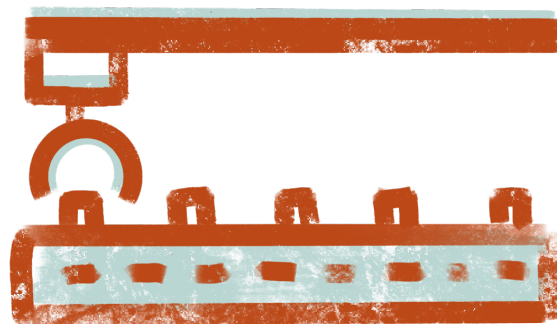
The focus is entirely on the person's character and behavior, not on the structural conditions, systems, institutions, or economies that organize their communities and lives, such as racism, patriarchy, poverty, and organized state and capital abandonment, as well as criminalization itself. This neoliberal logic of individual responsibility is the same logic that upholds the criminal punishment system - behaviors classified as crime are depicted as the result of bad decisions by deviant people who deserve to be punished, not as the result of chronic structural divestment and oppression. Ironically, this all also exposes how fundamentally these programs have an inconsistent logic: they are trying to impose "individual accountability" for behaviors that these programs admit may not have been willful, but instead are at least in part due to structural or broader social forces, such as poverty.

*Diversion programs are more concerned with control and submission than health and well-being.* Finally, studies have shown<sup>19</sup> that judges and prosecutors reject interventions or treatment options that better address underlying criminalized health concerns if they also result in the diminishment of judicial power or control. As sociologist Rebecca Tiger has written, "Drug court advocates are motivated both by the desire to keep [people who use drugs] out of prison but also by the desire to keep them under the supervision of the courts and have argued, in journal articles and editorials, strenuously against criminal justice reforms that seek to minimize the criminal justice system's control over illicit drug users and/or permit people to access treatment without judicial monitoring and oversight."<sup>20</sup>

19 Collins, Erin R. "The Problem of Problem-Solving Courts." *UC Davis Law Review* 54 (November 22, 2019): 1573-1629. <https://doi.org/10.2139/ssrn.3492003>.

20 Tiger, Rebecca. "Drug Courts and the Logic of Coerced Treatment." *Sociological Forum* 26, no. 1 (2011): 169-82. <https://doi.org/10.1111/j.1573-7861.2010.01229.x>.

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Fundamentally, these programs are rooted in mistrust and suspicion of people accused of crimes. These programs communicate that people who are accused of crimes cannot be trusted to take care of themselves if given the resources.<sup>21</sup> But there is little evidence to support this paternalistic and harmful claim. **We know that providing voluntary, free/affordable, and accessible resources and services (like housing, healthcare, harm reduction resources, drug treatment, counseling and mental health treatment) directly in the community are better for people's health and well-being.**<sup>22</sup> Again and again, the research confirms that individual and community health and wellbeing is best understood structurally.<sup>23</sup> This depends less on individual behavior and more on the social determinants of health, which require significant investment in public goods to guarantee nourishing food, clean water and air, affordable accessible housing, a basic income, and quality, accessible education, jobs, health care.

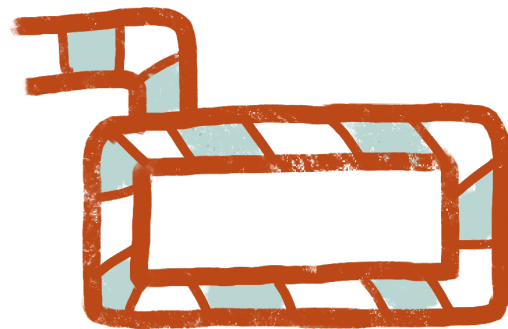
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21 Eisenberg-Guyot, Nadja (2022). "Refusing Rehabilitation: Outlaw Epistemologies and the Carceral-Therapeutic State in NYC." [Doctoral Dissertation, Graduate Center of the City University of New York]. ProQuest Dissertations Publishing.

22 "Advancing Public Health Interventions to Address the Harms of the Carceral System." American Public Health Association, October 26, 2021. <https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2022/01/07/Advancing-Public-Health-Interventions-to-Address-the-Harms-of-the-Carceral-System>.

23 Braveman, P., & Gottlieb, L. (2014). The Social Determinants of Health: It's Time to Consider the Causes of the Causes. Public Health Reports, 129(2), 19–31. <https://doi.org/10.1177/00333549141291s206>.

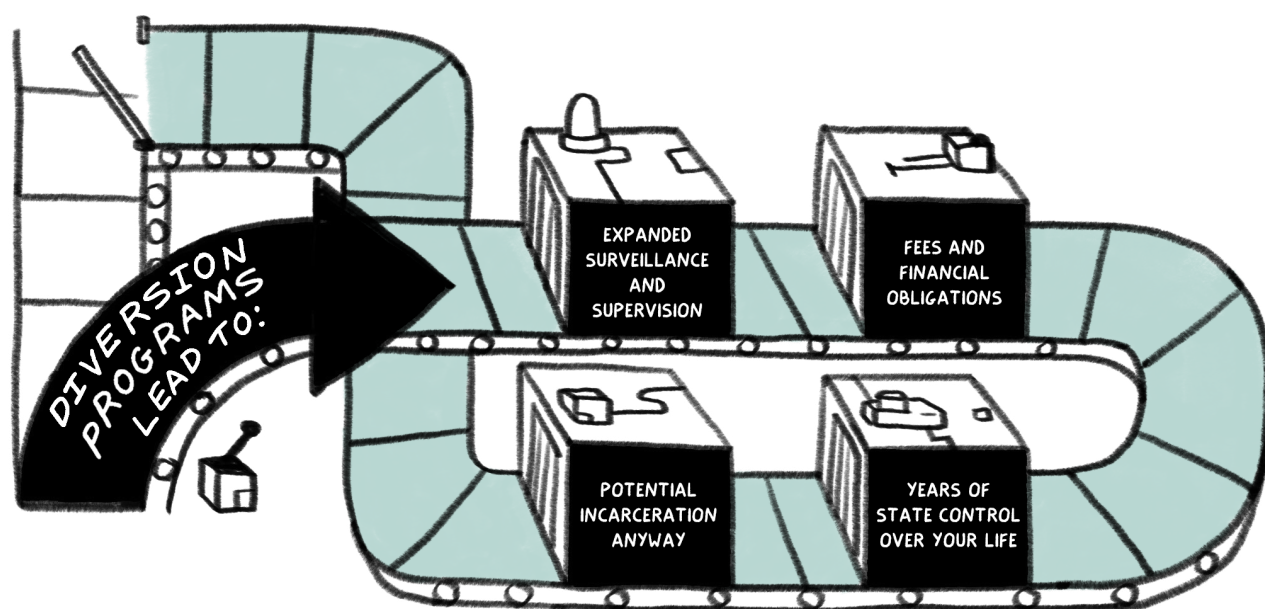
Again and again, the  
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While these arguments may be convincing to abolitionists who are already working to lessen the size, scope, and power of the prison industrial complex, they may be less persuasive for people who are opposed to mass incarceration, but not necessarily to incarceration, policing, and supervision altogether. Below we have compiled data-supported talking points to push back on some of the most popular iterations of diversion programs, as well as to bolster arguments for the life-giving, health-creating investments directly in our communities. As Stanley Cohen wrote in 1979, “The machine might in some respects be getting softer, but it is not getting smaller.”<sup>24</sup> We hope these talking points can support your organizing to destroy the machine entirely, and build a new world where everyone has what they need to be healthy, safe and to thrive.

For organizers looking to use these talking points in your communities, in addition to referencing the sources below, we also recommend you do research on the specialty courts and diversion programs in your specific places to be armed with local knowledge.

24 Cohen, Stanley. “The Punitive City: Notes on the Dispersal of Social Control.” *Contemporary Crises* 3, no. 4 (October 1979): 339–63. <https://doi.org/10.1007/bf00729115>.



# DRUG COURTS

**#1 Coerced “treatment” under the threat of incarceration is carceral, punitive, a form of torture, ineffective, and inhumane:** Most, if not all, drug courts require “successful completion of treatment” as a requirement to avoid further prosecution or incarceration. This often means mandated abstinence from drugs - and often compliance with additional conditions like abstaining from alcohol and staying away from certain neighborhoods, people or places. Some people don’t want to stop drug use altogether, and even for people who are seeking total abstinence, return to use is a common and natural part of recovery.<sup>25</sup> Involuntary drug treatment has not been proven to work or to be effective, and studies note that they create additional harms.<sup>26</sup> It is impossible for someone to voluntarily choose treatment when the only other choice is incarceration. Additionally, an arrest itself creates trauma.<sup>27</sup> Then, if people going through drug court test positive for drugs while enrolled or if they miss or are late for appointments, they are further punished. The drug court process can lengthen the time they are under criminal punishment system surveillance and can impose additional burdensome requirements. Many treatment programs are not accessible to pregnant and parenting people, force trans and gender nonconforming people to participate in programs based on the gender assigned at birth, and actively promote

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25 “Prop. 36 Advocates to Educate Californians About Treatment During National Alcohol & Drug Addiction Recovery Month.” Drug Policy Alliance, August 30, 2001. <https://drugpolicy.org/news/2001/08/prop-36-advocates-educate-californians-about-treatment-during-national-alcohol-drug-add>.

26 Klag, Stefanie, Frances O’Callaghan, and Peter Creed. “The Use of Legal Coercion in the Treatment of Substance Abusers: An Overview and Critical Analysis of Thirty Years of Research.” *Substance Use & Misuse* 40, no. 12 (February 2005): 1777–95. <https://doi.org/10.1080/10826080500260891>; Szalavitz, Maia. “Why Forced Addiction Treatment Fails.” *The New York Times*, April 30, 2022. <https://www.nytimes.com/2022/04/30/opinion/forced-addiction-treatment.html>; Werb, D., A. Kamarulzaman, M.C. Meacham, C. Rafful, B. Fischer, S.A. Strathdee, and E. Wood. “The Effectiveness of Compulsory Drug Treatment: A Systematic Review.” *International Journal of Drug Policy* 28 (2016): 1–9. <https://doi.org/10.1016/j.drugpo.2015.12.005>.

27 Harriman, Pat. “Being Arrested Takes Toll on Mental Health, Study Finds.” UCI News, February 18, 2020. <https://news.uci.edu/2017/08/25/being-arrested-takes-mental-health-toll-uci-researchers-find/>; Sugie, Naomi F., and Kristin Turney. “Beyond Incarceration: Criminal Justice Contact and Mental Health.” *American Sociological Review* 82, no. 4 (July 24, 2017): 719–43. <https://doi.org/10.1177/0003122417713188>.



transphobia and homophobia.<sup>28</sup> Failure to comply to the court's satisfaction can result in jail time (which does not improve drug use or treatment outcomes, and can be deadly because of forced detox<sup>29</sup>). Or, the drug court can even remove the person from drug court entirely, and send their case back to regular court.<sup>30</sup>

**#2 Drug courts attract sub-par “treatment” providers:** Treatment providers often provide little to no medical training for their staff, who often lack expertise or a basic understanding of addiction.<sup>31</sup> Part of the reason for the lack of quality treatment providers is that there often is not accreditation, credentialing, licensing, training, state or federal requirements for court-based treatment providers. Additionally, providers who are part of a given community and care about consent and self-determination are not always the same providers who participate in these programs.<sup>32</sup> This is often because it is hard to provide quality treatment while also reporting back to, and relying on referrals from, the criminal punishment system. There is often a difference between the providers who receive institutional contracts, versus the individual clinicians who respect their client's humanity and self-determination in how they provide services, treatment, or care.<sup>33</sup>

28 Meinhofer, Angélica and Jesse M. Hinde. “Substance use disorder treatment services for pregnant and postpartum women in residential and outpatient settings.” *Journal of Substance Abuse Treatment* 110 \*March 2020): 9-17. <https://doi.org/10.1016/j.jsat.2019.12.005>; Lyons T, Shannon K, Pierre L, et al. “A qualitative study of transgender individuals' experiences in residential addiction treatment settings: Stigma and inclusivity.” *Subst Abuse Treat Prev Policy* 10: 17 (2015).

29 Brown, R. T., Allison, P. A., & Nieto, F. J. (2011). Impact of jail sanctions during drug court participation upon substance abuse treatment completion. *Addiction*, 106(1), 135–142; Humenik, A. M., et al. (2020). Investigating Mental Health Implications for Drug Court Participants. *International Journal of Offender Therapy and Comparative Criminology*, 65(9), pp. 1076-1096; Joudrey, P. J., et al. (2019). A conceptual model for understanding post-release opioid-related overdose risk. *Addiction Science & Clinical Practice*, 14(17).

30 “Neither Justice nor Treatment: Drug Courts in the United States,” June 2017. [https://phr.org/wp-content/uploads/2017/06/phr\\_drugcourts\\_report\\_singlepages.pdf](https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf).

31 Anspach, Donald F. and Andrew S. Ferguson. “Assessing the Efficacy of Treatment Modalities in the Context of Adult Drug Courts, Final Report.” National Institute of Justice, April 2003. <https://nij.ojp.gov/library/publications/assessing-efficacy-treatment-modalities-context-adult-drug-courts-final-report>; “Neither Justice nor Treatment: Drug Courts in the United States,” June 2017. [https://phr.org/wp-content/uploads/2017/06/phr\\_drugcourts\\_report\\_singlepages.pdf](https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf).

32 Gordon, Sara. “The Use and Abuse of Mutual-Support Programs in Drug Courts.” *University of Illinois Law Review*, August 7, 2017, 1503–44; Kearley, Brook W. “Long Term Effects of Drug Court Participation: Evidence from a 15 Year Follow up of a Randomized Controlled Trial,” September 2017. <https://www.ojp.gov/pdffiles1/nij/grants/251117.pdf>.

33 Angelotta, Cara, Carol J. Weiss, John W. Angelotta, and Richard A. Friedman. “A Moral or Medical Problem? The Relationship Between Legal Penalties and Treatment Practices for Opioid Use Disorders in Pregnant Women.” *Women's Health Issues* 26, no. 6 (2016): 595–601. <https://doi.org/10.1016/j.whi.2016.09.002>.

**#3 Drug courts widen the net of carceral control through increased surveillance of participants:** People in drug court are under a microscope and are often required to report the details of their schedules and lives beyond treatment. Drug courts often control who people can interact with and where they can go, which cuts people off from their important social networks and services, especially other people who use drugs and harm reduction resources. Often, entering into a drug court requires you to waive your right to confidential treatment.<sup>34</sup> Many times a person's therapist is on their drug court treatment team, meaning that everything they say in therapy is no longer confidential, eroding trust, adversely affecting the provider-client relationship, which would otherwise likely be the most helpful part of the program for the clients.<sup>35</sup>

**#4 Drug courts impose punitive requirements that make people's lives harder and add more stress:** Burdensome and frequent court check-ins, appointments, drug tests, and sessions force people to choose between completing drug court and doing the other things they need to do to survive and thrive, such as work or take care of their children.<sup>36</sup> The magnitude of the burdens drug courts impose cannot be overstated. Other examples of requirements include: having to call drug court every morning, having to drop everything for a random drug test, the need to show up exactly on time, having to drive hours to drug court if in a rural area, curfews, mandatory attendance at 12-step meetings, mandatory attendance at self-help groups, paying court fees, having stable housing, job, and transportation, breaking off relationships, and not being able to see kids. These requirements deny people the ability to self-determine their lives, which should be an inherent part of effective support or treatment of any kind.<sup>37</sup>

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34 Grain. "Why Drug Courts Are Not the Answer." ACLU of Maine, March 19, 2014. <https://www.aclumaine.org/en/news/why-drug-courts-are-not-answer>.

35 Gallagher, J. R., Nordberg A., & Lefebvre, E. (2016). Improving Graduation Rates in Drug Court: A Qualitative Study of Participants' Lived Experiences. *Criminology & Criminal Justice*, 17(4), pp. 468–484. Coyler, C. J. (2007). Innovation and Discretion: The Drug Court as a People-Processing Institution. *Criminal Justice Policy Review*, 18(3).

36 Wolfer, Loreen. "Graduates Speak: A Qualitative Exploration of Drug Court Graduates' Views of the Strengths and Weaknesses of the Program." *Contemporary Drug Problems* 33, no. 2 (2006): 303–20. <https://doi.org/10.1177/009145090603300206>.

37 Schenwar, Maya and Victoria Law. *Prison By Any Other Name: The Harmful Consequences of Popular Reforms*. New York, NY: The New Press, 2021; "International Covenant on Economic Social and Cultural Rights," adopted on December 16, 1966, United Nations Treaty Series Online, art. 12, <https://www.ohchr.org/sites/default/files/cescr.pdf>; Schept, Judah Nathan. *Progressive Punishment: Job Loss, Jail Growth, and the Neoliberal Logic of Carceral Expansion*. New York, NY: New York University Press, 2016.

**#5 Drug courts often leave people saddled with criminal records:** Because people often have to plead guilty to enter drug court, many drug court participants are left saddled with criminal records that often act as lifetime barriers to many aspects of social, economic, and political life. The consequences of a conviction can include denial or loss of child custody, voting rights, employment, business loans, licensing, student aid, public housing, other public assistance, and can result in deportation.<sup>38</sup> If participants are eligible to apply to expunge their guilty conviction after participating in drug court, most do not. One study in Delaware found that roughly 80% of misdemeanor drug court participants did not apply for record expungement after graduating their drug court program, even though they were eligible to do so.<sup>39</sup>

**#6 Most people with drug offenses are excluded from drug court:** Most drug courts are only an option for a small percentage of people with drug offenses. Government funding and legislation often exclude people charged with “violent” or “serious” charges; many jurisdictions also exclude people with past convictions for “violent” crimes or criminal records altogether, and yet others have additional eligibility requirements that exclude even more people.<sup>40</sup> The absence of programs for pregnant, parenting, trans and queer people and undocumented migrants effectively excludes these populations as well. Instead of simply ending prosecution of people for low-level drug offenses, drug courts entangle people with low-level offenses further within the system.<sup>41</sup> And because prosecutors determine a person’s charge, they also determine whether a person can participate in a drug court program in the first place.

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38 Festinger, David S., David S. DeMatteo, Douglas B. Marlowe, and Patricia A. Lee. “Expungement of Arrest Records in Drug Court: Do Clients Know What They’re Missing?” *Drug Court Review* 5, no. 1 (2005): 1–21; “The Drug War and Mass Deportation,” February 9, 2016. [https://drugpolicy.org/sites/default/files/DPA%20Fact%20Sheet\\_The%20Drug%20War%20and%20Mass%20Deportation\\_%28Feb.%202016%29.pdf](https://drugpolicy.org/sites/default/files/DPA%20Fact%20Sheet_The%20Drug%20War%20and%20Mass%20Deportation_%28Feb.%202016%29.pdf).

39 Festinger, David S., David S. DeMatteo, Douglas B. Marlowe, and Patricia A. Lee. “Expungement of Arrest Records in Drug Court: Do Clients Know What They’re Missing?” *Drug Court Review* 5, no. 1 (2005): 1–21.

40 Sevigny, Eric L., Harold A. Pollack, and Peter Reuter. “Can Drug Courts Help to Reduce Prison and Jail Populations?” *The ANNALS of the American Academy of Political and Social Science* 647, no. 1 (April 5, 2013): 190–212. <https://doi.org/10.1177/0002716213476258>; “Neither Justice nor Treatment: Drug Courts in the United States,” June 2017. [https://phr.org/wp-content/uploads/2017/06/phr\\_drugcourts\\_report\\_singlepages.pdf](https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf).

41 Dickey, W. J. “Low-Level Drug Offenders: Lessons from the Drug Courts.” Office of Justice Programs, 1994. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/low-level-drug-offenders-lessons-drug-courts>.

**#7 Some drug courts exclude or prohibit anybody from taking medication for opioid use disorder<sup>42</sup>:** Medications such as methadone and buprenorphine, also known as medications for addiction treatment (MAT) or opioid agonist therapy, have long been recognized to be the gold standard for reducing opioid drug use and overdose deaths.<sup>43</sup> For drug courts that do allow clients to take MAT, they often only offer clients the option of taking naltrexone, known by the brand name Vivitrol, which is often experienced as more punitive and coercive. However, some drug courts will require a person to stop taking those medications in order to participate, forcing participants to choose between life-saving medication and entering diversion.<sup>44</sup>

**#8 Some U.S. drug courts further exclude people by “cherry picking” participants most likely to “succeed”:** Drug courts often focus on people who aren’t seeking treatment, and people who would do just as well or better in less-expensive treatment provided outside of the court system - or do not require or desire treatment at all.<sup>45</sup> The Urban Institute’s Justice Policy Center estimated that of the 1.5 million people arrested for a drug offense who are at risk of substance abuse or dependence, just over 109,900—about 7 percent—met current eligibility requirements for drug court.<sup>46</sup> Additionally, many drug courts, especially those that receive federal funding,<sup>47</sup> do not accept people with “violent” charges, or with any criminal history.<sup>48</sup>

42 Beletsky, Leo, Lindsay LaSalle, Michelle Newman, Janine Paré, James Tam, and Alyssa Tochka. “Fatal Re-Entry: Legal and Programmatic Opportunities to Curb Opioid Overdose Among Individuals Newly Released from Incarceration.” *Northeastern University Law Journal* 7, no. 1 (July 1, 2015): 155–215.

43 Maremmani, Icro, and Gilberto Gerra. “Buprenorphine-Based Regimens and Methadone for the Medical Management of Opioid Dependence: Selecting the Appropriate Drug for Treatment.” *The American Journal on Addictions* 19, no. 6 (September 21, 2010): 557–68. <https://doi.org/10.1111/j.1521-0391.2010.00086.x>; “Medication-Assisted Treatment.” Drug Policy Alliance. Accessed June 22, 2022. <https://drugpolicy.org/issues/MAT>.

44 Szalavitz, Maia. “How America Overdosed on Drug Courts.” *Pacific Standard*, May 18, 2015. <https://psmag.com/news/how-america-overdosed-on-drug-courts>.

45 Wolf, Robert V. “Race, Bias, and Problem-Solving Courts.” *National Black Law Journal*, July 12, 2009, 27–52; “Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities,” March 2011. [https://justicepolicy.org/wp-content/uploads/2022/02/addicted\\_to\\_courts\\_final.pdf](https://justicepolicy.org/wp-content/uploads/2022/02/addicted_to_courts_final.pdf).

46 Bhati, A.S., J.K. Roman, and A. Chalfin, “To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders,” Urban Institute, Justice Policy Center, 2008. [www.urban.org/UploadedPDF/411645\\_treatment\\_offenders.pdf](http://www.urban.org/UploadedPDF/411645_treatment_offenders.pdf).

47 BJA Programs, Drug Court Discretionary Grant Program, [www.ojp.usdoj.gov/BJA/grant/drugcourts.html](http://www.ojp.usdoj.gov/BJA/grant/drugcourts.html). Accessed July 7, 2022.

48 Wolf, Robert V. “Race, Bias, and Problem-Solving Courts.” *National Black Law Journal*, July 12, 2009.



**#9 Drug courts can be associated with increases in the number of people prosecuted for drug cases:** In some places, drug courts have led to more people being arrested and prosecuted for drug crimes following the establishment of drug courts in multiple jurisdictions.<sup>49</sup> For example, a Denver court found that the number of people prosecuted for drug cases increased three times in the two years following implementation of a drug court.<sup>50</sup>

**#10 Drug courts do not necessarily reduce incarceration:** Because drug courts require a guilty plea to participate, entering into a drug court cuts off the person's ability to obtain evidence they are entitled to from the prosecution in their case, to enter into a plea bargain, or fight their case at trial.<sup>51</sup> Because drug courts impose jail sanctions for recurrence of drug use or violations of drug court rules, participants often end up serving more time behind bars than when cases are handled by conventional courts.<sup>52</sup> Drug courts also don't reduce incarceration because, as discussed above, they admit only people who wouldn't have received lengthy prison or jail sentences in the first place.<sup>53</sup> Additionally, drug courts legitimate incarceration for those who are excluded from the program and they often incarcerate people who do not complete the drug court program, sometimes for longer than if the person had not opted into drug court in the first place.

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49 "Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities," March 2011. [https://justicepolicy.org/wp-content/uploads/2022/02/addicted\\_to\\_courts\\_final.pdf](https://justicepolicy.org/wp-content/uploads/2022/02/addicted_to_courts_final.pdf); Hoffman, Morris B. "The Drug Court Scandal." *North Carolina Law Review* 78, no. 5 (June 1, 2000): 1437-1534.

50 "Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities," March 2011, 16, [https://justicepolicy.org/wp-content/uploads/2022/02/addicted\\_to\\_courts\\_final.pdf](https://justicepolicy.org/wp-content/uploads/2022/02/addicted_to_courts_final.pdf); Morris B. Hoffman, "The Drug Court Scandal," *North Carolina Law Review* 78, no. 5 (June 1, 2000): pp. 1437-1534, 1504.

51 "Kerwin Kaye on How Drug Courts Coerce, Control, and Continue to Harm Communities in Need." Episode. *Drug Policy Alliance*, no. 35, June 10, 2020.

52 Sevigny, Eric L., Brian K. Fuleihan, and Frank V. Ferdik. "Do Drug Courts Reduce the Use of Incarceration?: A Meta-Analysis." *Journal of Criminal Justice* 41, no. 6 (November 2013): 416-25. <https://doi.org/10.1016/j.jcrimjus.2013.06.005>.

53 Sevigny, Eric L., Harold A. Pollack, and Peter Reuter. "Can Drug Courts Help to Reduce Prison and Jail Populations?" *The ANNALS of the American Academy of Political and Social Science* 647, no. 1 (April 5, 2013): 190-212. <https://doi.org/10.1177/0002716213476258>; Gottfredson, Denise C., and M. Lyn Exum. "The Baltimore City Drug Treatment Court: One-Year Results from a Randomized Study." *Journal of Research in Crime and Delinquency* 39, no. 3 (August 2002): 337-56. <https://doi.org/10.1177/002242780203900304>.

**#11 Drug courts do not save money:** Drug courts absorb money that could otherwise have been spent on community-based treatment and harm reduction efforts (such as supervised consumption services, syringe access, and voluntary, low-threshold accessible harm reduction and treatment services) that actually promote the health and well-being of people who use drugs in our communities.<sup>54</sup> Decriminalization would, however, result in substantial cost savings and money saved could be redirected to harm reduction efforts and reparations to the communities most devastated by the war on drugs.<sup>55</sup>

**#12 Drug courts exacerbate racial inequalities:** Due to the insidious racism that upholds and extends throughout the criminal punishment system, people of color are less likely to successfully complete drug court, less likely to successfully graduate from drug court, and more likely to receive a punitive sanction for a drug court violation.<sup>56</sup> For example, one study found that drug court implementation was associated with substantial increases in arrests of Black, but not white residents, and that the uptick in drug arrests of Black residents was “greater than what would be expected if a city increased its police force by 10%.”<sup>57</sup>

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54 “Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities,” March 2011. [https://justicepolicy.org/wp-content/uploads/2022/02/addicted\\_to\\_courts\\_final.pdf](https://justicepolicy.org/wp-content/uploads/2022/02/addicted_to_courts_final.pdf).

55 Naples, Michele I. “Estimating the Savings from Decriminalizing Drug Consumption: The Case of New Jersey.” *Rutgers Journal of Law and Public Policy* 19, no. 2 (2022): 353–423.

56 “The Drug War, Mass Incarceration and Race.” Drug Policy Alliance, January 25, 2018. <https://drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish>; Howard, Daniel. “Race, Neighborhood, and Drug Court Graduation.” *Justice Quarterly* 33, no. 1 (April 16, 2014): 159–84. <https://doi.org/10.1080/07418825.2014.908938>.

57 Lilley, David R., Kristen DeVall, and Kasey Tucker-Gail. “Drug Courts and Arrest for Substance Possession: Was the African American Community Differentially Impacted?” *Crime & Delinquency* 65, no. 3 (July 26, 2018): 352–74. <https://doi.org/10.1177/0011128718789856>.

**#13 Drug courts increase the stigmatization of drug use, further harming drug users:** Inherent to drug courts is the idea that drug use is a problem that must be corrected, and that it is drug use, not drug prohibition or criminalization, that is the “cause” of individual and community issues.<sup>58</sup> This harms people who use drugs.<sup>59</sup>

**#14 Drug courts set people up for failure because the mandates of the criminal punishment system are incompatible with the health, medical, social, and emotional needs of people who use drugs:** Drug use occurs along a spectrum and is not by definition chaotic or harmful. Many people mandated to drug courts don’t actually want or need treatment.<sup>60</sup> There are numerous pathways to recovery or reduced use for people who want that. For some that means treatment, but for many, it means something else. The majority of people will manage their substance use without seeking professional help. For people who do want treatment, it should always be voluntary.<sup>61</sup>

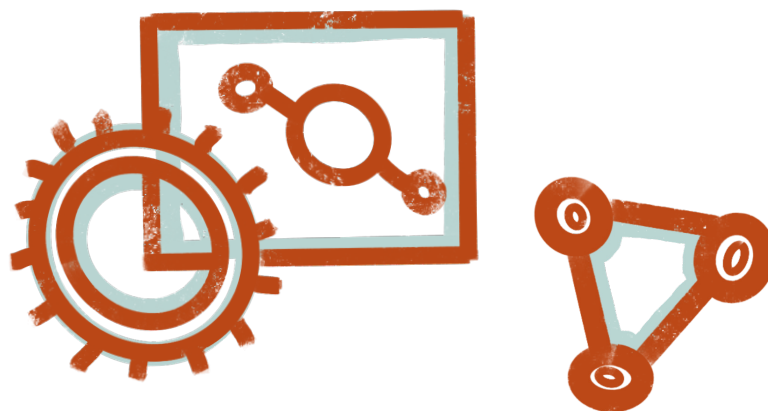
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58 Eisenberg-Guyot, Nadja (2022). “Refusing Rehabilitation: Outlaw Epistemologies and the Carceral-Therapeutic State in NYC.” [Doctoral Dissertation, Graduate Center of the City University of New York]. ProQuest Dissertations Publishing.

59 “Medicine and Its Objects.” Julian Thompson Presents on Risk and Surveillance in Mental Health Courts. University of Chicago, January 26, 2018. <https://voices.uchicago.edu/medicine/2018/01/26/julian-thompson-presents-on-risk-and-surveillance-in-mental-health-courts/>; Tiger, Rebecca. *Judging Addicts: Drug Courts and Coercion in the Justice System*. New York, NY: New York University Press, 2013.

60 “Substance Use Disorder Treatment.” Drug Policy Alliance. Accessed June 22, 2022. <https://drugpolicy.org/issues/SUD-treatment>.

61 “Substance Use Disorder Treatment.” Drug Policy Alliance. Accessed June 22, 2022. <https://drugpolicy.org/issues/SUD-treatment>.



## RESOURCES FOR MORE INFORMATION

- [Drug Courts Are Not The Answer](#) by Drug Policy Alliance (2011)
- [Neither Justice Nor Treatment: Drug Courts in the US](#) by Physicians for Human Rights (2017)
- [Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities](#) by Justice Policy Institute
- [Enforcing Freedom: Drug Courts, Therapeutic Communities, and the Intimacies of the State](#) by Kerwin Kaye (2019)
- [Judging Addicts: Drug Courts and Coercion in the Justice System](#) by Rebecca Tiger (2012)
- [RX Appalachia: Stories of Treatment and Survival in Rural Kentucky](#) by Lesly-Marie Buer (2020)



# MENTAL HEALTH COURTS

# #1

**Coerced “treatment” under the threat of incarceration is carceral, a form of torture, and inhumane<sup>62</sup>:** A successful therapeutic relationship cannot exist in the context of coercion - it *requires* trust and confidentiality, neither of which is possible in a mandated setting.<sup>63</sup> An arrest itself is a traumatic experience. Then, people in mental health courts are punished if they miss or are late for appointments or are otherwise found to not have “complied” sufficiently.<sup>64</sup> The length of time they are under control of the mental health court may be extended, additional burdensome requirements may be added; they may be sanctioned with jail time, or removed from mental health court and then incarcerated. Mental health courts may force people to stay with specific providers or treatments that do not work for them or are even harmful for them, for as long as a judge requires it.<sup>65</sup> Most if not all mental health courts require “successful completion of treatment” before being released from the control of mental health court.

62 Ryan, Sarah, and Darius Whelan. "Diversion of Offenders with Mental Disorders: Mental Health Courts." *Web Journal of Current Legal Issues*, no. 1 (February 24, 2012).

63 Lessard Deschênes, Clara, and Marie Hélène Goulet. "The Therapeutic Relationship in the Context of Involuntary Treatment Orders: The Perspective of Nurses and Patients." *Journal of Psychiatric and Mental Health Nursing* 29, no. 2 (September 22, 2021): 287–96. <https://doi.org/10.1111/jpm.12800>; James-Townes, Lori. "Why Social Workers Cannot Work with Police." *Slate Magazine*, August 11, 2020. <https://slate.com/news-and-politics/2020/08/social-workers-police-collaborate.html>; "International Covenant on Economic Social and Cultural Rights," adopted on December 16, 1966, United Nations Treaty Series Online, art. 12, <https://www.ohchr.org/sites/default/files/cescr.pdf>.

64 Almqvist, Lauren, and Elizabeth Dodd. "Mental Health Courts: A Guide to Research-Informed Policy and Practice," 2009. [https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental\\_Health\\_Court\\_Research\\_Guide.pdf](https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental_Health_Court_Research_Guide.pdf); "Mental Health Court FAQs." Accessed June 19, 2022. <https://www.namiut.org/images/Criminal%20Justice/Criminal%20Justice%20FAQ%20-%208-15-16.pdf>.

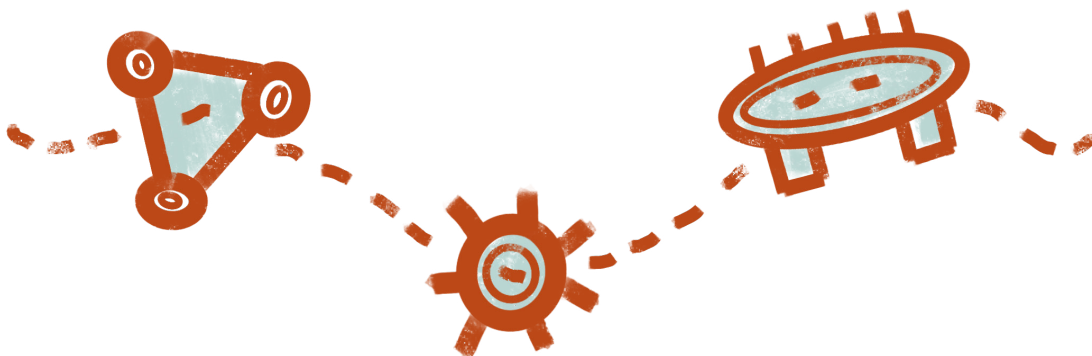
65 Seltzer, Tammy. "Mental Health Courts: A Misguided Attempt to Address the Criminal Justice System's Unfair Treatment of People with Mental Illnesses." *Psychology, Public Policy, and Law* 11, no. 4 (2005): 570–86. <https://doi.org/10.1037/1076-8971.11.4.570>.

**#2 Mental health courts attract sub-par “treatment” providers:** Providers who are part of a given community and care about consent and self-determination are not always the providers who agree to staff these programs.<sup>66</sup> This is often because it is hard to provide quality treatment while also reporting back to, and relying on referrals from, the criminal punishment system. Therefore, there is often a difference between the providers who receive institutional contracts versus the individual clinicians who actually provide therapy, counseling, or other mental health care rooted in the ethics of respect, consent, and self-determination.

**#3 Mental health courts widen the net of carceral control through increased surveillance of participants:** People in mental health courts are under a microscope and are often required to report the details of their schedules and lives beyond treatment. Most mental health courts require people to waive their HIPAA and other medical privacy rights as a condition of entry into the program so that their treatment notes, including often very vulnerable and personal details of their lives, can be shared with system actors—judges, prosecutors, defense attorneys, and other court workers—at any time.<sup>67</sup>

66 Seltzer, Tammy. “Mental Health Courts: A Misguided Attempt to Address the Criminal Justice System’s Unfair Treatment of People with Mental Illnesses.” *Psychology, Public Policy, and Law* 11, no. 4 (2005): 570–86. <https://doi.org/10.1037/1076-8971.11.4.570>.

67 Petrila, John, and Hallie Fader-Towe. “Information Sharing in Criminal Justice-Mental Health Collaborations: Working with HIPAA and Other Privacy Laws,” 2010. [https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG\\_CJMH\\_Info\\_Sharing.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG_CJMH_Info_Sharing.pdf).



**#4 Mental health courts impose punitive requirements that make people's lives harder and add more stress:** Burdensome and frequent court check-ins, appointments, and sessions force people to choose between completing mental health court and doing the other things they need to do to survive and thrive.<sup>68</sup> Involuntary and coerced treatment denies people self-determination and autonomy, which should be a priority for support of any kind.<sup>69</sup> Many mental health courts keep people under carceral control much longer than they would have if their case hadn't been "diverted."<sup>70</sup>

**#5 Mental health courts often leave people saddled with criminal records:** Because people often have to plead guilty to enter mental health court, especially when they're entering for a felony-level case, participants are often left saddled with criminal records that can act as lifetime barriers to many aspects of social, economic, and political life.<sup>71</sup> The consequences of a conviction can include denial or loss of child custody, voting rights, employment, business loans, licensing, student aid, public housing, other public assistance, and can result in deportation.

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68 "The Role of Mental Health Courts in System Reform." Bazelon Center for Mental Health. Accessed June 19, 2022. <http://www.bazelon.org/wp-content/uploads/2018/03/Role-of-Mental-Health-Courts.pdf>.

69 Seltzer, Tammy. "Mental Health Courts: A Misguided Attempt to Address the Criminal Justice System's Unfair Treatment of People with Mental Illnesses." *Psychology, Public Policy, and Law* 11, no. 4 (2005): 570–86. <https://doi.org/10.1037/1076-8971.11.4.570>; Redlich, Allison D., Steven Hoover, Alicia Summers, and Henry J. Steadman. "Enrollment in Mental Health Courts: Voluntariness, Knowingness, and Adjudicative Competence." *Law and Human Behavior* 34, no. 2 (2010): 91–104. <https://doi.org/10.1007/s10979-008-9170-8>.

70 "The Role of Mental Health Courts in System Reform." Bazelon Center for Mental Health. Accessed June 19, 2022. <http://www.bazelon.org/wp-content/uploads/2018/03/Role-of-Mental-Health-Courts.pdf>.

71 Almquist, Lauren, and Elizabeth Dodd. "Mental Health Courts: A Guide to Research-Informed Policy and Practice," 2009. [https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental\\_Health\\_Court\\_Research\\_Guide.pdf](https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental_Health_Court_Research_Guide.pdf); Fabris, Erick. *Tranquil Prisons: Chemical Incarceration under Community Treatment Orders*. Toronto, Can.: University of Toronto Press, 2011.

**#6 Many kinds of charges and diagnoses are excluded from mental health courts:** Many mental health courts are only an option for a small percentage of people. Some mental health courts only allow misdemeanor or so-called “non-violent” charges. Even courts that accept people with felony or so-called “violent” charges do not accept everyone.<sup>72</sup> Instead of simply not prosecuting people for these charges, mental health courts entangle people with low-level offenses further within the system, sometimes for much longer than if the case had been adjudicated in regular court.<sup>73</sup> Most mental health courts require a prior diagnosis or an invasive psychiatric evaluation - even when someone has a prior diagnosis<sup>74</sup> - and many mental health courts exclude people with certain diagnoses.<sup>75</sup>

**#7 Mental health courts do not necessarily reduce incarceration for the people who enter mental health court:** Because mental health courts usually require a guilty plea in order to participate, entering into a mental health court cuts off the person’s ability to get evidence from the prosecution, be offered a plea bargain, or fight their case at trial.<sup>76</sup> And, because many mental health courts impose jail time for “non-compliance,” participants can still end up serving more time behind bars, and even when they are “compliant” can end up spending more time under court supervision than if they had gone through traditional court.<sup>77</sup>

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72 Almquist, Lauren, and Elizabeth Dodd. “Mental Health Courts: A Guide to Research-Informed Policy and Practice,” 2009. [https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental\\_Health\\_Court\\_Research\\_Guide.pdf](https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental_Health_Court_Research_Guide.pdf).

73 Martinson, Sarah. “Alternative Courts Not a Catch-All Fix for Mental Illness Crisis.” *Law 360*, March 7, 2021. <https://www.law360.com/articles/1356267/alternative-courts-not-a-catch-all-fix-for-mental-illness-crisis>.

74 Wolff, Nancy, Nicole Fabrikant, and Steven Belenko. “Mental Health Courts and Their Selection Processes: Modeling Variation for Consistency.” *Law and Human Behavior* 35, no. 5 (2011): 402–12. <https://doi.org/10.1007/s10979-010-9250-4>.

75 “Mental Health Court FAQs.” Accessed June 19, 2022. <https://www.namiut.org/images/Criminal%20Justice/Criminal%20Justice%20FAQ%20-%208-15-16.pdf>.

76 “Kerwin Kaye on How Drug Courts Coerce, Control, and Continue to Harm Communities in Need.” Episode. *Drug Policy Alliance*, no. 35, June 10, 2020.

77 Almquist, Lauren, and Elizabeth Dodd. “Mental Health Courts: A Guide to Research-Informed Policy and Practice,” 2009. [https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental\\_Health\\_Court\\_Research\\_Guide.pdf](https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental_Health_Court_Research_Guide.pdf); Johnston, E. Lea, and Conor P. Flynn. “Mental Health Courts and Sentencing Disparities.” *Villanova Law Review* 62, no. 4 (November 1, 2017): 685–745.

**#8 Mental health courts do not “save money”:** Mental health courts absorb money that could otherwise have been spent on community-based mental wellness resources that actually support people who identify - or are labeled without consent - as mentally ill, disabled, mad and/or neurodivergent. In other words, mental health courts are often used to justify continued lack of funding for real, community-based resources.<sup>78</sup>

**#9 Mental health courts exacerbate racial inequalities:** Due to the insidious racism that upholds and extends throughout the criminal punishment system, people of color are less likely to be admitted to mental health court, less likely to successfully graduate from mental health court, and more likely to receive a punitive sanction for a mental health court violation.<sup>79</sup>

**#10 Mental health courts increase the stigmatization of mental illness and perpetuate the white supremacist “biological model” of mental illness, further harming people with mental health needs and concerns:** Mental health courts operate under the logic that what is called “mental illness” is a problem that needs fixing. Mental health courts presume that people’s mental health needs and concerns - rather than the state - are the “cause” of criminalization and that a very narrow range of violent “treatment” options are the solution.<sup>80</sup>

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78 “Position Statement 53: Mental Health Courts.” Mental Health America, June 13, 2019. <https://www.mhanational.org/issues/position-statement-53-mental-health-courts>; Seltzer, Tammy. “Mental Health Courts: A Misguided Attempt to Address the Criminal Justice System’s Unfair Treatment of People with Mental Illnesses.” *Psychology, Public Policy, and Law* 11, no. 4 (2005): 570–86. <https://doi.org/10.1037/1076-8971.11.4.570>.

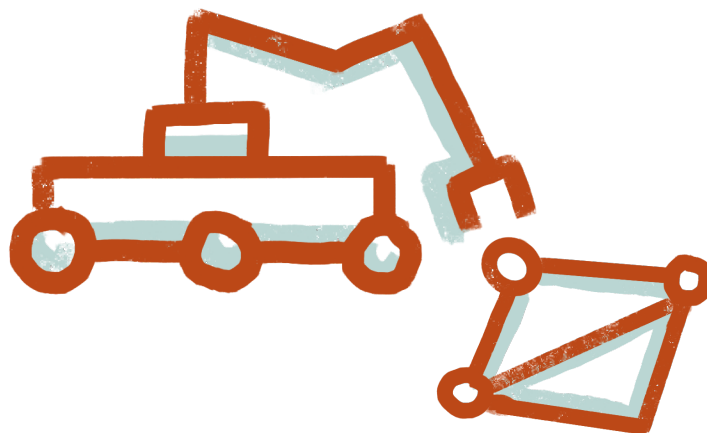
79 Dirks-Linhorst, P. Ann, David Kondrat, Donald M. Linhorst, and Nicole Morani. “Factors Associated with Mental Health Court Nonparticipation and Negative Termination.” *Justice Quarterly* 30, no. 4 (2011): 681–710. <https://doi.org/10.1080/07418825.2011.615756>; Steadman, Henry J., Allison D. Redlich, Patricia Griffin, John Petrila, and John Monahan. “From Referral to Disposition: Case Processing in Seven Mental Health Courts.” *Behavioral Sciences & the Law* 23, no. 2 (2005): 215–26. <https://doi.org/10.1002/bsl.641>; Ray, Bradley, and Cindy Brooks Dollar. “Examining Mental Health Court Completion: A Focal Concerns Perspective.” *The Sociological Quarterly* 54, no. 4 (2013): 647–69. <https://doi.org/10.1111/tsq.12032>.

80 Erin R. Collins, “The Problem of Problem-Solving Courts,” *UC Davis Law Review* 54 (November 22, 2019): pp. 1573–1629, <https://doi.org/10.2139/ssrn.3492003.1617>; Seltzer, Tammy. “Mental Health Courts: A Misguided Attempt to Address the Criminal Justice System’s Unfair Treatment of People with Mental Illnesses.” *Psychology, Public Policy, and Law* 11, no. 4 (2005): 570–86. <https://doi.org/10.1037/1076-8971.11.4.570>.



## RESOURCES FOR MORE INFORMATION

- [Analyzing the Relationship between Mental Health Courts and the Prison Industrial Complex](#) by Helen Zhou and Elizabeth B. Ford (2021)
- [Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law](#) by Allegra M. McLeod (2012)
- [The Problem of Problem-Solving Courts](#) by Erin Collins (2021)



# TRAFFICKING COURTS

#1

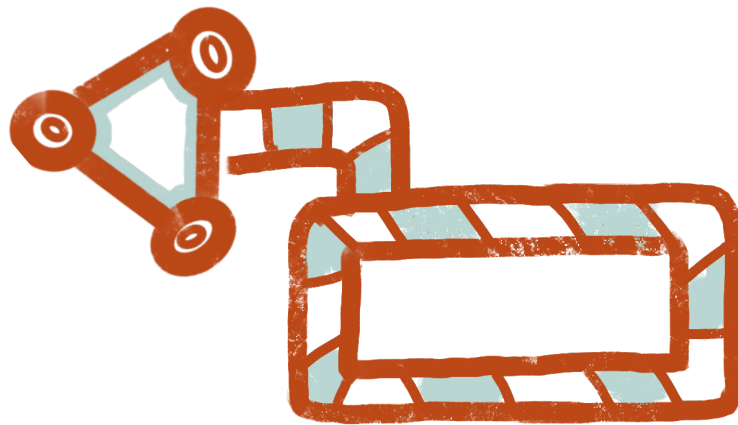
**The criminalization of prostitution - in which trafficking courts play a key role (see below) - harms ALL people in the sex trades:** People are involved in the sex trades for a variety of reasons related to choice, circumstance, or coercion. The underlying premise of trafficking courts is to: 1) conflate all involvement as coerced, and 2) promote arrest and prosecution as the way to “save” people from trafficking. The criminalization of prostitution and aspects of the sex trade harms all people involved, including people who identify as being trafficked.<sup>81</sup> As Red Canary Song, a transnational grassroots collective of Asian and migrant sex workers and allies explains, “criminalization ... is the root of trafficking.”<sup>82</sup> Preventing trafficking in the sex trades requires addressing the different forms of marginalization that create vulnerable communities.<sup>83</sup> Decriminalization - and shutting down trafficking courts - is necessary to end trafficking.<sup>84</sup>

81 “The Harmful Consequences of Sex Work Criminalization on Health and Rights.” Yale Law School, June 2020. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences\\_of\\_criminalization\\_v2.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences_of_criminalization_v2.pdf).

82 Grant, Melissa Gira. “Human Trafficking Courts Are Not a Criminal Justice ‘Innovation.’” The New Republic, January 7, 2020. <https://newrepublic.com/article/156135/human-trafficking-courts-not-criminal-justice-innovation>.

83 Albright, Erin, and Kate D’Adamo. “Decreasing Human Trafficking Through Sex Work Decriminalization.” *AMA Journal of Ethics* 19, no. 1 (2017): 122–26. <https://doi.org/10.1001/journalofethics.2017.19.1.sect2-1701>.

84 “Why Sex Work Should Be Decriminalized.” Human Rights Watch, August 7, 2017. <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>.



**#2 Coerced “services” under the threat of incarceration are ineffective, violent and inhumane<sup>85</sup>:** First, an arrest itself creates trauma. Second, mandated services offered through trafficking courts are not services that people ask for or need, such as support healing from police violence or criminalization, or rent money.<sup>86</sup> Instead, most trafficking court services consist of coerced therapy or counseling that is inherently whorephobic with the goal of paternalistically “helping” people leave the sex trades – regardless of whether they want to leave.<sup>87</sup> Even “service providers” a person might find helpful are mandated to report to the court. Because of that, counseling services that are mandated by trafficking courts are incompatible with practices of confidentiality, trust and privacy that are fundamental to healthy therapeutic relationships.<sup>88</sup> Instead, the mandated counseling that trafficking courts impose is often traumatizing and stigmatizing.<sup>89</sup>

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85 Sarah Ryan and Darius Whelan, “Diversion of Offenders with Mental Disorders: Mental Health Courts,” *Web Journal of Current Legal Issues*, no. 1 (February 24, 2012), 11.

86 Sharp, Sonja. “The War on Human Trafficking Looks a Lot Like the War on Sex Work.” VICE, July 10, 2017. <https://www.vice.com/en/article/zmv3je/the-war-on-human-trafficking-looks-a-lot-like-the-war-on-sex-work>; Kendis, Becca. “Human Trafficking and Prostitution Courts: Problem Solving or Problematic?” *Case Western Reserve Law Review* 69, no. 3 (2019): 805–39; Grant, Melissa Gira. “Human Trafficking Courts Are Not a Criminal Justice ‘Innovation.’” *The New Republic*, January 7, 2020. <https://newrepublic.com/article/156135/human-trafficking-courts-not-criminal-justice-innovation>.

87 Sharp, Sonja. “The War on Human Trafficking Looks a Lot Like the War on Sex Work.” VICE, July 10, 2017. <https://www.vice.com/en/article/zmv3je/the-war-on-human-trafficking-looks-a-lot-like-the-war-on-sex-work>; Kendis, Becca. “Human Trafficking and Prostitution Courts: Problem Solving or Problematic?” *Case Western Reserve Law Review* 69, no. 3 (2019): 805–39; Grant, Melissa Gira. “Human Trafficking Courts Are Not a Criminal Justice ‘Innovation.’” *The New Republic*, January 7, 2020. <https://newrepublic.com/article/156135/human-trafficking-courts-not-criminal-justice-innovation>.

88 Becca Kendis, “Human Trafficking and Prostitution Courts: Problem Solving or Problematic?,” *Case Western Reserve Law Review* 69, no. 3 (2019): pp. 805-839, 838; “International Covenant on Economic Social and Cultural Rights,” adopted on December 16, 1966, United Nations Treaty Series Online, art. 12, <https://www.ohchr.org/sites/default/files/ceschr.pdf>.

89 Hogan, Caelainne. “Should New York State Save Sex Workers from Themselves?” *Narratively*, October 10, 2015. <https://narratively.com/should-new-york-state-save-sex-workers-from-themselves>.

#3

**Trafficking courts and the criminalization of prostitution and aspects of the sex trades make working conditions more dangerous for people in the sex trades:**

Criminalization of sex workers makes involvement in the sex trade - like any activity that's criminalized - more dangerous. Trafficking courts put restrictions on who people in the sex trades can associate with, which makes it riskier for them to come together to support each other, and makes it more difficult for them to organize for better working conditions.<sup>90</sup> People in the sex trades who work together, or even live with or support each other in other ways, are criminalized as either sex traffickers or as people who are trafficked into the sex trades.<sup>91</sup>

#4

**Trafficking court services attract sub-par "treatment" providers:**

Providers who are part of a given community and who care about consent and self-determination are not always the providers who participate in these programs.<sup>92</sup> This is often because it is hard to provide quality treatment while also reporting back to, and relying on referrals from, the criminal punishment system. Trafficking court providers often approach people in the sex trades with a savior mentality and the desire to "rescue" them, rather than to genuinely offer support and respect for their agency - and demonize them if they don't ascribe to the providers' view of the sex trade.<sup>93</sup> There are no standards that service providers are required to meet.<sup>94</sup>

90 Herrmann, Frankie. "Building a Fair and Just New York: Decriminalize Transactional Sex." *Hastings Race and Poverty Law Journal* 15, no. 1 (January 1, 2018): 65-129.

91 "Preserving Punishment Power." *Survived and Punished NY*. Accessed June 19, 2022. <https://www.survivedandpunishedny.org/wp-content/uploads/2020/04/SP-Preserving-Punishment-Power-report.pdf>.

92 "Preserving Punishment Power." *Survived and Punished NY*. Accessed June 19, 2022. <https://www.survivedandpunishedny.org/wp-content/uploads/2020/04/SP-Preserving-Punishment-Power-report.pdf>.

93 Chen, Michelle. "Are New York's Sex Workers Getting Their Fair Day in Court?" *The Nation*, October 6, 2014. <https://www.thenation.com/article/archive/are-new-yorks-sex-workers-getting-their-fair-day-court/>; "Preserving Punishment Power." *Survived and Punished NY*. Accessed June 19, 2022. <https://www.survivedandpunishedny.org/wp-content/uploads/2020/04/SP-Preserving-Punishment-Power-report.pdf>.

94 Caterine, Emma, and Audacia Ray. "Criminal, Victim, or Worker? The Effects of New York's Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses." *New York Foundation*, October 1, 2014. <https://nyf.issuelab.org/resource/criminal-victim-or-worker-the-effects-of-new-york-s-human-trafficking-intervention-courts-on-adults-charged-with-prostitution-related-offenses.html>.

**#5** **Trafficking courts widen the net of carceral control through increased surveillance of participants:** People in trafficking courts are under a microscope, and are often required to report the details of their schedules and lives well beyond the “services” they participate in. Trafficking courts and the criminalization of prostitution-related offenses increase police surveillance of people who are or are perceived to be involved in the sex trades out on the streets, in their homes and at their workplaces.<sup>95</sup> Trafficking court’s mandated treatment providers are often required to report the details of participants’ treatment.<sup>96</sup>

**#6** **Trafficking courts impose punitive requirements that make people’s lives harder and add more stress:** Burdensome and frequent court check-ins, appointments, and sessions force people to choose between completing trafficking court and doing the other things they need to do to survive and thrive.<sup>97</sup> Mandated services deny people the ability to self-determine their lives, which should be a key part of supportive services.

95 “Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts.” Global Health Justice Partnership of the Yale Law School, September 2018. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable\\_promises\\_htic\\_report\\_ghjp\\_2018rev.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf).

96 Grant, Melissa Gira. “Inside NY Courts Where Sex Workers Are ‘Painted as Victims and Treated as Criminals’.” The Appeal, September 21, 2018. <https://theappeal.org/inside-ny-courts-where-sex-workers-are-painted-as-victims-and-treated-as-criminals>.

97 Grant, Melissa Gira. “Inside NY Courts Where Sex Workers Are ‘Painted as Victims and Treated as Criminals’.” The Appeal, September 21, 2018. <https://theappeal.org/inside-ny-courts-where-sex-workers-are-painted-as-victims-and-treated-as-criminals>.





**#7** **Trafficking courts can lead to criminal records, deportation and the involvement of family policing:** Trafficking court participants' arrests, open cases, and/or convictions can show up on their records, acting as lifetime barriers to many aspects of social, economic, and political life, including housing, employment and healthcare.<sup>98</sup> Prostitution-related charges, even if dismissed at the end of trafficking court, can result in deportation for noncitizens.<sup>99</sup> Furthermore, ICE agents have arrested people at sex trafficking court.<sup>100</sup> People charged with sex work-related charges can also lose custody of their children.<sup>101</sup>

**#8** **Trafficking courts increase arrests of sex workers:** Overtime pay and promotions drive cops to arrest as many people on prostitution-related charges.<sup>102</sup> This creates a feedback loop where diversion courts lead to more arrests, which lead to more diversion and jail in an endless cycle.<sup>103</sup> People are rounded up by the cops during trafficking diversion sweeps in some jurisdictions.<sup>104</sup> Trafficking courts have led to increases in funding for the prosecution of prostitution-related offenses.<sup>105</sup>

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98 Almquist, Lauren, and Elizabeth Dodd. "Mental Health Courts: A Guide to Research-Informed Policy and Practice," 2009. [https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental\\_Health\\_Court\\_Research\\_Guide.pdf](https://csgjusticecenter.org/wp-content/uploads/2009/09/Mental_Health_Court_Research_Guide.pdf); Fabris, Erick. *Tranquil Prisons: Chemical Incarceration under Community Treatment Orders*. Toronto, Can.: University of Toronto Press, 2011.

99 "Un-Meetable Promises: Rhetoric and Reality in New York City's Human Trafficking Intervention Courts." Global Health Justice Partnership of the Yale Law School, September 2018. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable\\_promises\\_htic\\_report\\_ghjp\\_2018rev.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf).

100 "ICE Agents Are Showing up in Human Trafficking Courts." Episode. *The Brian Lehrer Show*. WNYC, June 262, 2017.

101 Sapient, Joaquin, and Joshua Kaplan. "NYPD Cops Cash in on Sex Trade Arrests with Little Evidence, While Black and Brown New Yorkers Pay the Price." ProPublica, December 7, 2020. <https://www.propublica.org/article/nypd-cops-cash-in-on-sex-trade-arrests-with-little-evidence-while-black-and-brown-new-yorkers-pay-the-price>.

102 Sapient, Joaquin, and Joshua Kaplan. "NYPD Cops Cash in on Sex Trade Arrests with Little Evidence, While Black and Brown New Yorkers Pay the Price." ProPublica, December 7, 2020. <https://www.propublica.org/article/nypd-cops-cash-in-on-sex-trade-arrests-with-little-evidence-while-black-and-brown-new-yorkers-pay-the-price>.

103 For more on net widening see Natapoff, Alexandra. *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal*. New York, NY: Basic Books, 2018.

104 Cassidy, Megan. "Phoenix's Anti-Prostitution Program Flawed, Critics Say." AZ Central, June 9, 2014. <https://www.azcentral.com/story/news/local/phoenix/2014/06/09/phoenix-anti-prostitution-program-project-rose-controversy/10225429/>.

105 Maya Schenwar and Victoria Law, *Prison By Any Other Name: The Harmful Consequences of Popular Reforms* (New York, NY: The New Press, 2021), 143; "Un-Meetable Promises: Rhetoric and Reality in New York City's Human Trafficking Intervention Courts," Global Health Justice Partnership of the Yale Law School, September 2018, [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable\\_promises\\_htic\\_report\\_ghjp\\_2018rev.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf), 28.

## #9

**Trafficking courts do not reduce incarceration:** Because trafficking courts often require a guilty plea in order to participate,<sup>106</sup> entering into a trafficking court can cut off the person's ability to get evidence from the prosecution in their case, to negotiate a better plea bargain, or fight their case at trial. People may be detained while awaiting entry into trafficking court, or may be jailed if a trafficking court judge thinks it will be "good for them."<sup>107</sup> And in many jurisdictions, even for those who successfully "complete" trafficking court, there are still strings attached. In New York City, for example, the best case scenario is an Adjournment in Contemplation of Dismissal (ACD), which requires the person to stay arrest free for 6 months after trafficking court is complete in order to have their charges dismissed.<sup>108</sup> Notably, by entering into trafficking court and accepting the ACD offer you forfeit the opportunity to plead "trafficking" as an affirmative defense.<sup>109</sup> For many sex workers targeted by policing, it is not possible to remain arrest-free for 6 months. Historically, some trafficking courts have imposed greater sentences for people who have "failed" trafficking court requirements.<sup>110</sup> Layleen Polanco, Yang Song, and countless other sex workers have been killed by the state through the criminalization of prostitution-related offenses and trafficking courts.<sup>111</sup> Layleen Polanco died while being held on a \$500 bail at Rikers Island Jail in New York City for missing a trafficking court appointment.<sup>112</sup>

106 Crabapple, Molly. "The Woman Who Fought and Won Against New York's Special Prostitution Courts." VICE, May 12, 2016. <https://www.vice.com/en/article/xd7egq/the-woman-who-fought-and-won-against-new-yorks-special-prostitution-courts>.

107 Becca Kendis, "Human Trafficking and Prostitution Courts: Problem Solving or Problematic?," *Case Western Reserve Law Review* 69, no. 3 (2019): pp. 805-839, 834.

108 Catherine, Emma, and Audacia Ray. "Criminal, Victim, or Worker? The Effects of New York's Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses." New York Foundation, October 1, 2014. <https://nyf.issuelab.org/resource/criminal-victim-or-worker-the-effects-of-new-york-s-human-trafficking-intervention-courts-on-adults-charged-with-prostitution-related-offenses.html>.

109 "Un-Meetable Promises: Rhetoric and Reality in New York City's Human Trafficking Intervention Courts." Global Health Justice Partnership of the Yale Law School, September 2018. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable\\_promises\\_htic\\_report\\_ghjp\\_2018rev.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf).

110 Quinn, Mae C. "Revisiting Anna Moscowitz Kross's Critique of New York City's Women's Court: The Continued Problem of Solving the 'Problem' of Prostitution with Specialized Criminal Courts." *Fordham Urban Law Journal* 33, no. 2 (2006): 101-60.

111 Grant, Melissa Gira, and Emma Whitford. "Family, Former Attorney of Queens Woman Who Fell to Her Death in Vice Sting Say She Was Sexually Assaulted, Pressured to Become an Informant." *The Appeal*, December 15, 2017. <https://theappeal.org/family-former-attorney-of-queens-woman-who-fell-to-her-death-in-vice-sting-say-she-was-sexually-d67461a12f1>.

112 Dickson, EJ. "How the Tragic Death of Layleen Polanco Exposes Horrors of Criminalizing Sex Work." *Rolling Stone*, June 13, 2019. <https://www.rollingstone.com/culture/culture-features/layleen-polanco-transgender-decriminalize-sex-work-847437>.

**#10** **Trafficking courts lead to increased police violence against people who are or are perceived to be in the sex trades:** Trafficking courts operate like conveyor belts, rather than an adversarial process in traditional court where defendants at least in theory have the opportunity to obtain evidence and cross examine witnesses. This means that people's routine experiences of sexual violence and other forms of violence by the cops during stings and arrest are less likely to be heard by a judge or documented against specific cops.<sup>113</sup> Additionally, creating trafficking courts provides the justification for more criminalization of people in or perceived to be in the sex trades, more policing, and therefore more police violence. Eliminating trafficking courts and ending criminalization of prostitution-related offenses, on the other hand, would reduce police violence against people who are in or perceived to be in the sex trade by reducing contact with the cops.<sup>114</sup>

**#11** **Trafficking courts do not "save money":** Trafficking courts and their mandated counseling services cost jurisdictions a lot of money.<sup>115</sup> This money otherwise could be spent on community-based resources like housing, healthcare and harm reduction that actually support people who are trading sex to survive in our communities.<sup>116</sup>

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113 Sapient, Joaquin, and Joshua Kaplan. "NYPD Cops Cash in on Sex Trade Arrests with Little Evidence, While Black and Brown New Yorkers Pay the Price." ProPublica, December 7, 2020. <https://www.propublica.org/article/nypd-cops-cash-in-on-sex-trade-arrests-with-little-evidence-while-black-and-brown-new-yorkers-pay-the-price>.

114 Herrmann, Frankie. "Building a Fair and Just New York: Decriminalize Transactional Sex." *Hastings Race and Poverty Law Journal* 15, no. 1 (January 1, 2018): 65–129.

115 Crabapple, Molly. "The Woman Who Fought and Won Against New York's Special Prostitution Courts." VICE, May 12, 2016. <https://www.vice.com/en/article/xd7egq/the-woman-who-fought-and-won-against-new-yorks-special-prostitution-courts>.

116 Herrmann, Frankie. "Building a Fair and Just New York: Decriminalize Transactional Sex." *Hastings Race and Poverty Law Journal* 15, no. 1 (January 1, 2018): 65–129; "The Harmful Consequences of Sex Work Criminalization on Health and Rights." Yale Law School, June 2020. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences\\_of\\_criminalization\\_v2.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences_of_criminalization_v2.pdf).

**#12 The criminalization of sex work and the use of trafficking courts target marginalized people, especially Black, Indigenous, and migrant trans women<sup>117</sup>:** Due to racism and white supremacy, Black, Indigenous, and other people of color are targeted for trafficking court charges at higher rates than white people.<sup>118</sup> Due to transmisogyny, trans women are particularly targeted by the criminalization of sex work and by trafficking courts.<sup>119</sup>

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**#13 “Safe Harbor” laws harm youth and families:** Youth-specific diversion laws, called “safe harbor” laws, sometimes allow for young people who are charged with prostitution-related charges to avoid traditional court and jail time. However, these laws also result in family policing (otherwise known as child protective services) involvement, or even loss of custody for their caregiver.<sup>120</sup>

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**#14 Trafficking courts increase the stigmatization of sex work:** The criminalization of prostitution-related offenses broadly stigmatizes sex work. When prostitution-related arrests and convictions show up on someone’s record - whether someone goes through trafficking court or traditional court - it is often a barrier to housing, healthcare and other basic needs.<sup>121</sup>

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117 “Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts.” Global Health Justice Partnership of the Yale Law School, September 2018. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable\\_promises\\_htic\\_report\\_ghjp\\_2018rev.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf).

118 Catherine, Emma, and Audacia Ray. “Criminal, Victim, or Worker? The Effects of New York’s Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses.” New York Foundation, October 1, 2014. <https://nyf.issuelab.org/resource/criminal-victim-or-worker-the-effects-of-new-york-s-human-trafficking-intervention-courts-on-adults-charged-with-prostitution-related-offenses.html>.

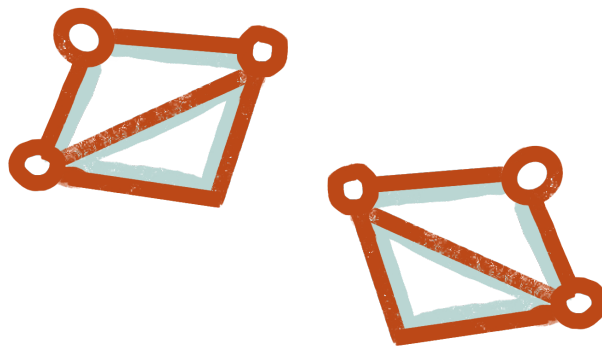
119 Herrmann, Frankie. “Building a Fair and Just New York: Decriminalize Transactional Sex.” *Hastings Race and Poverty Law Journal* 15, no. 1 (January 1, 2018): 65–129.

120 Maya Schenwar and Victoria Law, *Prison By Any Other Name: The Harmful Consequences of Popular Reforms* (New York, NY: The New Press, 2021), 145.

121 “The Harmful Consequences of Sex Work Criminalization on Health and Rights.” Yale Law School, June 2020. [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences\\_of\\_criminalization\\_v2.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences_of_criminalization_v2.pdf); Valente, Brittany M. “Treatment with a Side of Stigma: The Influence of Sex Work Stigma on the Chicago Prostitution and Trafficking Intervention Court.” *DePaul Law Review* 68, no. 4 (2019): 777–812.

## RESOURCES FOR MORE INFORMATION:

- [Criminal, Victim or Worker? The effects of New York’s Human trafficking intervention courts on adults charged with prostitution-related offenses](#) by The Red Umbrella Project (2014).
- “New York City Human Trafficking Intervention Courts & Proposed New York State Sex Work-Related Legislation,” in [Preserving Punishment Power: A grassroots assessment of New York reforms](#) by Survived and Punished NY (2020).
- [Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts](#) by Global Health Justice Partnership of the Yale Law School, Yale School of Public Health, and The Sex Workers Project of the Urban Justice Center (2018).





# PROSECUTOR-RUN RESTORATIVE JUSTICE PROGRAMS

**#1 The concept of restorative justice is inherently incompatible with the legal system:** Restorative justice “is an approach that attempts to empower communities to respond holistically to forms of violence and harm experienced by individuals.”<sup>122</sup> In other words, restorative justice is a process of repair held between individuals involved in instances of harm, and their communities. By contrast, in criminal cases in the US, the prosecutor represents the state only, never any individuals, and any criminal case is between the prosecutor and the accused person.<sup>123</sup> In the legal system, many cases have no complaining witness or victim, but even in cases where there is a complaining witness or victim, prosecutors’ offices have policies that they will proceed with the case even when the complaining witness/victim does not want the case to move forward.<sup>124</sup> If a so-called restorative justice process is embedded within the legal system, then it is still ultimately between the accused person and the state, not the accused person and whoever was harmed. While restorative justice is meant to be reparative and consensual for all parties, restorative justice diversion programs operating within the legal system often impose a framework, set of facts, and next steps that both parties must agree to, rather than allowing the parties to determine with each other and within their communities what happened and what is needed for repair.<sup>125</sup> The incorporation of restorative justice into the criminal legal system also requires that restorative justice take on features of the court that it otherwise wouldn’t. This includes the role of the prosecutor-run diversion program as a “fact finder” and the idea that “there can only be one truth, which the system adjudicates.” To put it another way, “the danger with this approach is that it seeks to restore humanity to a system that was not designed to be human.”<sup>126</sup>

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122 Erica R. Meiners, “For the Children?” *University Press Scholarship Online*, May 2017, <https://doi.org/10.5749/minnesota/9780816692750.001.0001.107>.

123 “National Prosecution Standards.” National District Attorneys Association . Accessed June 19, 2022. <https://ndaa.org/wp-content/uploads/NDAA-NPS-3rd-Ed.-w-Revised-Commentary.pdf>.

124 Noir, Corrie. “Student Review.” *Criminal Procedures*. Accessed June 19, 2022. [http://users.wfu.edu/wrightrf/Aspen-Students/studreview\\_ch13\\_01.htm](http://users.wfu.edu/wrightrf/Aspen-Students/studreview_ch13_01.htm).

125 M. Eve Hanan, “Decriminalizing Violence: A Critique of Restorative Justice and Proposal for Diversionary Mediation,” *New Mexico Law Review* 46, no. 1 (2016): pp. 123-170, 146.

126 Shailly Agnihotri and Cassie Veach, “Reclaiming Restorative Justice: An Alternate Paradigm for Justice,” *CUNY Law Review* 20, no. 2 (2017): pp. 323-350, 336.

**#2 Restorative justice diversion programs do not address the structural causes of criminalization:** Restorative justice as a model is focused on individual repair - particularly when enacted within the legal system - and can actually further invisibilize and entrench structural violence.<sup>127</sup> Restorative justice, especially in the context of a prosecutor-led diversion program, can be contrasted with transformative justice, which could never take place inside the criminal legal system (as a diversion program or otherwise) because it is “aimed at transformation of the social relations and conditions that gave rise to the violence in question, rather than conflict resolution or the restoration of peace alone.”<sup>128</sup>

**#3 Restorative justice diversion programs appropriate and misapply Indigenous peacemaking practices that are inherently incompatible with the settler state:** Restorative justice is often cited as having its roots in Indigenous peacemaking practices.<sup>129</sup> At the same time, in flagrant opposition to Indigenous peoples’ self-determination to handle conflict and harm within their own community, settler legal systems across the world specifically target Indigenous people for prosecution, and imprison Indigenous people at an ever-growing rate.<sup>130</sup> As Ngati Porou scholar Juan Tauri has written, there are “indigenous critique[s] of the globalisation of restorative justice and the industry’s utilisation of Indigenous practices, symbols and philosophies in the marketing of its products.”<sup>131</sup> Tauri describes restorative justice within settler legal systems specifically as “a colonial project in the disempowerment of indigenous people.”<sup>132</sup>

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127 Erica R. Meiners, “For the Children?” *University Press Scholarship Online*, May 2017, <https://doi.org/10.5749/minnesota/9780816692750.001.0001>, 113.

128 “Responding to Violence, Restoring Justice.” Barnard Center for Research on Women, August 20, 2018. <https://bcrw.barnard.edu/publications/responding-to-violence-restoring-justice/>.

129 Pika, J. (2019, November 1). *Honoring the Global Indigenous Roots of Restorative Justice: Potential Restorative Approaches for Child Welfare*. Center for the Study of Social Policy. Retrieved July 8, 2022, from <https://cssp.org/2019/11/honoring-the-global-indigenous-roots-of-restorative-justice>.

130 Wang, Leah. “The U.S. Criminal Justice System Disproportionately Hurts Native People: The Data, Visualized.” Prison Policy Initiative, October 8, 2021. <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday>.

131 Juan M. Tauri, “An Indigenous Commentary on the Globalisation of Restorative Justice,” *British Journal of Community Justice* 12, no. 2 (2014): pp. 35-55, 35.

132 Gavrielides, Theo, and Juan M. Tauri. “Restorative Justice as a Colonial Project in the Disempowerment of Indigenous Peoples.” Essay. In *Routledge International Handbook of Restorative Justice*. Andover: Routledge Ltd, 2018.

**#4****Restorative justice diversion programs increase the power of the prosecutor and reduce transparency and protections for accused people:**

The co-optation of restorative justice by the legal system - or non-profits tapped to implement restorative justice on behalf of the state - “extend[s] and even mask[s] the state’s ability to punish and harm.”<sup>133</sup> “Whenever the State is able to avoid the rigors of trial, State power is enhanced.”<sup>134</sup> While many proponents of restorative justice diversion programs do actually have accused people’s best interests in mind, the effect of restorative justice diversion programs is that they instill even more power in prosecutors by removing what little legal and procedural checks exist.<sup>135</sup> At their best, they preserve the prosecutor’s power. Restorative justice diversion programs, through the offer of leniency, often coerce people into taking a plea.

**#5****Restorative justice diversion programs widen the net of prosecution and increase surveillance of accused people:**

In addition, the restorative justice diversion programs are not usually confidential. Participants can have anything that they say in the restorative justice diversion program used against them if they don’t complete the program “successfully,” and can even be charged with new crimes based on anything they reveal during the process.<sup>136</sup> Accused people don’t have the same right to counsel during the diversion process as they do during traditional court proceedings.<sup>137</sup>

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133 Erica R. Meiners, “For the Children?,” *University Press Scholarship Online*, May 2017, <https://doi.org/10.5749/minnesota/9780816692750.001.0001>, 115.

134 Agnihotri, Shailly, and Cassie Veatch. “Reclaiming Restorative Justice: An Alternate Paradigm for Justice.” *CUNY Law Review* 20, no. 2 (2017): 323–50.

135 Shailly Agnihotri and Cassie Veatch, “Reclaiming Restorative Justice: An Alternate Paradigm for Justice,” *CUNY Law Review* 20, no. 2 (2017): pp. 323-350, 336.

136 Shailly Agnihotri and Cassie Veatch, “Reclaiming Restorative Justice: An Alternate Paradigm for Justice,” *CUNY Law Review* 20, no. 2 (2017): pp. 323-350, 338; Pauly, Madison. “Restorative Justice Won’t Work Without This Crucial Piece.” *Mother Jones*, August 13, 2021. <https://www.motherjones.com/politics/2021/08/restorative-justice-illinois-privilege-criminal/>.

137 Shailly Agnihotri and Cassie Veatch, “Reclaiming Restorative Justice: An Alternate Paradigm for Justice,” *CUNY Law Review* 20, no. 2 (2017): pp. 323-350, 338.

#6

**Restorative justice diversion courts often leave people saddled with**

**criminal records:** Most restorative justice diversion programs require a plea in order to participate,<sup>138</sup> leaving people saddled with criminal records that can act as lifetime barriers to many aspects of social, economic, and political life. The consequences of a conviction can include denial or loss of child custody, voting rights, employment, business loans, licensing, student aid, public housing, other public assistance, and can result in deportation.

#7

**Restorative justice diversion programs often exclude people with certain charges or who have prior convictions and exacerbate racial inequalities:**

While exceptions exist, most restorative justice diversion programs are only available to people charged with lower-level charges and/or people who have little to no criminal record.<sup>139</sup> Like everything else in the legal system, from charging to sentencing, this tracks along racial lines, and those who will be least afforded the “leniency” of these programs will be poor Black and brown people.<sup>140</sup>

#8

**Restorative justice diversion courts do not “save money”—they actually increase the amount of money diverted into the legal system:**

Restorative justice diversion programs have increased funding to prosecuting offices at the federal<sup>141</sup> and local level.<sup>142</sup> These programs absorb resources that could otherwise have been spent on community-based and community-controlled ways to address structural violence.

138 Shailly Agnihotri and Cassie Veach, “Reclaiming Restorative Justice: An Alternate Paradigm for Justice,” *CUNY Law Review* 20, no. 2 (2017): pp. 323-350, 335.

139 Shailly Agnihotri and Cassie Veach, “Reclaiming Restorative Justice: An Alternate Paradigm for Justice,” *CUNY Law Review* 20, no. 2 (2017): pp. 323-350, 341; Sabah Muhammad and Michael Gray, “Race, Mental Illness, and Restorative Justice: An Intersectional Approach to More Inclusive Practices,” *Seattle Journal for Social Justice* 20, no. 1 (December 31, 2021): pp. 159-198, 165.

140 Shailly Agnihotri and Cassie Veach, “Reclaiming Restorative Justice: An Alternate Paradigm for Justice,” *CUNY Law Review* 20, no. 2 (2017): pp. 323-350, 342.

141 Crowley, Michael. “Biden’s Budget Steps up Spending for Criminal Justice Reform.” Brennan Center for Justice, June 25, 2021. <https://www.brennancenter.org/our-work/analysis-opinion/bidens-budget-steps-spending-criminal-justice-reform>.

142 Stein, Michael Isaac. “District Attorney Asks for More Funding Ahead of Second Implementation Phase of Louisiana’s ‘Raise the Age’ Law.” *The Lens*, November 14, 2019. <https://thelensnola.org/2019/11/14/district-attorney-asks-for-more-funding-ahead-of-second-implementation-phase-of-louisianas-raise-the-age-law/>; Dickman, Cassie. “SJ DA’s Office Receives \$5 Million State Restorative Justice Grant.” *The Stockton Record*, October 7, 2020. <https://www.recordnet.com/story/news/local/2020/10/07/sj-district-attorney-receives-5-million-dollar-restorative-justice-grant-from-the-state/5913983002/>.

## RESOURCES FOR MORE INFORMATION

- [Reclaiming Restorative Justice: An Alternate Paradigm for Justice](#) by Shailly Agnihotri and Cassie Veach (2017)
- [Responding to Violence, Restoring Justice](#) by Barnard Center for Research on Women
- [An Indigenous commentary on the globalisation of restorative justice](#) by Juan M. Tauri (2014)
- “Restorative Justice is Not Enough,” in [For the Children?: Protecting Innocence in a Carceral State](#), by Erica Meiners (2016)





**HEALTH  
CREATES  
SAFETY**



# HEALTH CREATES SAFETY

## What do meaningful, life-giving, health-creating investments look like?

Despite the promise of diversion programs to offer health-based alternatives to prosecution or incarceration, in reality they represent, like the rest of the carceral system, a punitive response to addressing social problems. Instead, we can look to an abolitionist approach that advocates for primary prevention instead of carceral solutions.

What constitutes a primary prevention strategy? According to the American Public Health Association (APHA), which adopted an official statement in October 2021 titled “Advancing Public Health Interventions to Address the Harms of the Carceral System,” in order to truly promote public health, the prevention strategy must include decarceration, divesting from carceral systems, decriminalization, and investing in communities and structural and social determinants of health.<sup>143</sup>

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<sup>143</sup> “Advancing Public Health Interventions to Address the Harms of the Carceral System.” American Public Health Association, October 26, 2021. <https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2022/01/07/Advancing-Public-Health-Interventions-to-Address-the-Harms-of-the-Carceral-System>.



The APHA's recommendations include providing access to basic resources that people and communities need to thrive, such as stable, supportive, and affordable housing, healthy food, clean water and air, high-quality education starting in early childhood, guaranteed basic income, well-paying employment, affordable and accessible community-based healthcare (including mental health services), community-based drug treatment and harm reduction services. These interventions – while not as well-funded, and therefore not as well-researched,<sup>144</sup> as carceral solutions – have been proven to promote health and safety.

In fact, abolitionists are consistently and insistently asked to provide evidence to support non-carceral solutions, in spite of the fact that they are chronically underfunded and delegitimized. On the flip side, there is plenty of evidence that carceral solutions are harmful to health,<sup>145</sup> yet those death-making institutions are still given nearly unlimited federal, state, local, and private funding.

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144 Collins, Erin. "Abolishing the Evidence-Based Paradigm." *Brigham Young University Law Review*, Forthcoming, April 21, 2022; Bell, Monica C. "Next-Generation Policing Research: Three Propositions." *Journal of Economic Perspectives* 35, no. 4 (2021): 29–48. <https://doi.org/10.1257/jep.35.4.29>; Sharkey, Patrick, Gerard Torrats-Espinosa, and Delaram Takyar. "Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime." *American Sociological Review* 82, no. 6 (2017): 1214–40. <https://doi.org/10.1177/0003122417736289>.

145 Wang, L. (2022, June). *Chronic Punishment: The Unmet Health Needs of People in State Prisons*. Prison Policy Initiative. Retrieved July 8, 2022, from <https://www.prisonpolicy.org/reports/chronicpunishment.html>; Nowotny KM, Rogers RG, Boardman JD. Racial disparities in health conditions among prisoners compared with the general population. *Popul Health*. 2017;3:487–496; Beaudry G, Zhong S, Whiting D, Javid B, Frater J, Fazel S. Managing outbreaks of highly contagious diseases in prisons: a systematic review. *BMJ Glob Health*. 2020;5(11):e003201; *Liberating our Health: Ending the Harms of Pretrial Incarceration and Money Bail*. Human Impact Partners. (2020, February). Retrieved July 8, 2022, from [https://humanimpact.org/wp-content/uploads/2020/02/HIP\\_HealthNotBailNationalReport\\_2020.02\\_reduced.pdf](https://humanimpact.org/wp-content/uploads/2020/02/HIP_HealthNotBailNationalReport_2020.02_reduced.pdf).

# SUPPORTIVE, STABLE, AND AFFORDABLE QUALITY HOUSING

**#1 Access to stable housing has important implications for health.** Being unhoused, and getting evicted,<sup>146</sup> is associated with chronic health problems, food insecurity, and premature death.<sup>147</sup> Getting evicted and being unhoused is associated with an increase in drug-related harms, including non-fatal overdose, overdose mortality,<sup>148</sup> infectious diseases, and syringe sharing.<sup>149</sup>

146 Himmelstein, G., & Desmond, M. (2021, April 1). *Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic: Health Affairs Brief*. Health Affairs. Retrieved July 8, 2022, from <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908>.

147 Hwang, S. W. (2001). Homelessness and Health. *Canadian Medical Association Journal*, 164(2); Gundersen, C., Weinreb, L., Wehler, C., & Hosmer, D. (2003). Homelessness and Food Insecurity. *Journal of Housing Economics*, 12(3), 250–272. [https://doi.org/10.1016/s1051-1377\(03\)00032-9](https://doi.org/10.1016/s1051-1377(03)00032-9).

148 Bradford, A. C., & Bradford, W. D. (2020). The Effect of Evictions on Accidental Drug and Alcohol Mortality. *Health Services Research*, 55(1), 9–17. <https://doi.org/10.1111/1475-6773.13256>.

149 Pilarinos, A., Kennedy, M. C., McNeil, R., Dong, H., Kerr, T., & DeBeck, K. (2017). The Association Between Residential Eviction and Syringe Sharing Among a Prospective Cohort of Street-Involved Youth. *Harm Reduction Journal*, 14(1). <https://doi.org/10.1186/s12954-017-0150-5>.



**#2 Stable, accessible housing reduces the likelihood of incarceration.** Due to the criminalization of homelessness, people who are homeless are much more likely to be arrested and incarcerated.<sup>150</sup> Investing in services such as “permanent supportive housing,”<sup>151</sup> which includes housing, long-term rental support, and social support for people living with mental health needs or addiction,<sup>152</sup> has been shown to reduce incarceration rates. For instance, an Ohio study found that formerly incarcerated people who received supportive housing services were 40% less likely to be re-arrested and 61% less likely to be re-incarcerated.<sup>153</sup> Supportive housing programs that do not require people to be sober, documented, or exit the sex trades in order to access housing, protect people having to engage in criminalized survival.<sup>154</sup>

150 Tars, Eric S. “Criminalization of Homelessness.” National Low Income Housing Coalition, 2021. [https://nlihc.org/sites/default/files/AG-2021/06-08\\_Criminalization-of-Homelessness.pdf](https://nlihc.org/sites/default/files/AG-2021/06-08_Criminalization-of-Homelessness.pdf); Nat’l Homelessness Law Ctr., *Housing Not Handcuffs 2021: State Law Supplement*, November 2021, <https://homelesslaw.org/wp-content/uploads/2022/02/2021-HNH-State-Crim-Supplement.pdf>; Keeping Homeless People Out of the Justice System: The HCH Role, *Healing Hands: A Publication of the HCH Clinicians’ Network*, Vol. 8, No. 6, Dec. 2004, [https://nhchc.org/wp-content/uploads/2019/08/HealingHands12\\_17\\_04.pdf](https://nhchc.org/wp-content/uploads/2019/08/HealingHands12_17_04.pdf); Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, Prison Policy Initiative, August 2018, <https://www.prisonpolicy.org/reports/housing.html>; Alexi Jones, *New Data: The Revolving Door Between Homeless Shelters and Prisons in Connecticut*, Prison Policy Initiative, February 10, 2021, <https://www.prisonpolicy.org/blog/2021/02/10/homelessness>; Mogk J, Shmigol V, Futrell M, Stover B, Hagopian A, Court-Imposed Fines as a Feature of the Homelessness-Incarceration Nexus: A Cross-Sectional Study of the Relationship Between Legal Debt and Duration of Homelessness in Seattle, Washington, USA. *J Public Health (Oxf)*. 2020, DOI: 10.1093/pubmed/fdz062.

151 “Housing First in Permanent Supportive Housing.” HUD Exchange. Accessed June 19, 2022. <https://files.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf>.

152 Nat’l Alliance to End Homelessness, *Fact Sheet: Housing First*, April 2016, <https://endhomelessness.org/wp-content/uploads/2016/04/housing-first-fact-sheet.pdf>.

153 Fontaine J, Gilchrist-Scott D, Roman J, Taxy SA, Roman CG. *Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project*. Urban Institute. Published June 4, 2016. Accessed August 14, 2021. <https://www.urban.org/research/publication/supportive-housing-returning-prisoners-outcomes-and-impacts-returning-home-ohio-pilot-project>.

154 Sarma, Bidish, and Jessica Brand. “The Criminalization of Homelessness: Explained.” *The Appeal*, June 29, 2018. <https://theappeal.org/the-criminalization-of-homelessness-an-explainer-aa074d25688d>.

**#3****Supportive services embedded within permanent supportive housing foster dignity, safety, stability, and opportunity.**

People who have access to permanent supportive housing are more likely to participate in job training programs, attend school, reduce problematic substance use, have fewer instances of intimate partner violence, and spend fewer days hospitalized or in the emergency room or in detoxes than those who don't.<sup>155</sup> As one report on permanent supportive housing emphasizes, "Once in housing, individuals are safer than they were on the streets or in shelter, experiencing fewer accidents and injuries that require immediate attention."<sup>156</sup> Further, people are better positioned to use preventative and primary health care, better coordinate with mental health providers, and maintain consistent permanent tenancy. Overall, permanent supportive housing improves tenants' health and quality of life.

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155 Tull, Tanya, and Susan D. Einbinder. "The Housing First Program for Homeless Families: Empirical Evidence of Long-Term Efficacy to End and Prevent Family Homelessness." Beyond Shelter, June 2005. <https://www.first5la.org/files/SeaverPolicyBrief4-10-06.pdf>; Gulcur, Leyla, Ana Stefancic, Marybeth Shinn, Sam Tsemberis, and Sean N. Fischer. "Housing, Hospitalization, and Cost Outcomes for Homeless Individuals with Psychiatric Disabilities Participating in Continuum of Care and Housing First Programmes." *Journal of Community & Applied Social Psychology* 13, no. 2 (April 9, 2003): 171–86. <https://doi.org/10.1002/casp.723>; Pearson, Carol L., Gretchen Locke, Ann Elizabeth Montgomery, and Larry Buron. "The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness." U.S. Department of Housing and Urban Development, July 2007. <https://www.huduser.gov/portal/publications/hsgfirst.pdf>; Mackelprang, Jessica L., Susan E. Collins, and Seema L. Clifasefi. "Housing First Is Associated with Reduced Use of Emergency Medical Services." *Prehospital Emergency Care* 18, no. 4 (May 30, 2014): 476–82. <https://doi.org/10.3109/10903127.2014.916020>; Padgett, Deborah K., Victoria Stanhope, Ben F. Henwood, and Ana Stefancic. "Substance Use Outcomes Among Homeless Clients With Serious Mental Illness: Comparing Housing First With Treatment First Programs." *Community Mental Health Journal* 47, no. 2 (January 9, 2010): 227–32. <https://doi.org/10.1007/s10597-009-9283-7>.

156 "Permanent Supportive Housing: A Solution Driven Model," Massachusetts Housing and Shelter Alliance, December 2017, <https://archives.lib.state.ma.us/bitstream/handle/2452/782511/ocn887735103-2017.pdf?sequence=1&isAllowed=y#page=9>, 8.

**#4**

**Permanent supportive housing is cost effective.** Providing access to deeply affordable, accessible, quality housing<sup>157</sup> and/or supportive housing generally results in cost savings for communities because housed people are less likely to need or use emergency services, including hospitals and emergency shelter, or come into contact with law enforcement or be arrested and jailed, than those who are unhoused.<sup>158</sup> A Denver study found an average cost savings on emergency services of \$31,545 per person housed in a Housing First program over the course of two years—representing a cumulative decline of ~73% in emergency-related costs for the sample group.<sup>159</sup> Another study showed that a Housing First program could cost up to \$23,000 less per consumer per year than a shelter program.<sup>160</sup> By contrast, policing and punishment approaches to people who are unhoused are expensive and counterproductive.<sup>161</sup>

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157 Burrowes, Kimberly. “Can Housing Interventions Reduce Incarceration and Recidivism?” *Housing Matters*, February 27, 2019. <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism>.

158 Larimer, Mary E., Daniel K. Malone, Michelle D. Garner, David C. Atkins, Bonnie Burlingham, Heather S. Lonczak, Kenneth Tanzer, et al. “Health Care and Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons With Severe Alcohol Problems.” *JAMA* 301, no. 13 (April 1, 2009). <https://doi.org/10.1001/jama.2009.414>; Srebnik, Debra, and Laurie Sylla. “A Pilot Study of the Impact of Housing First–Supported Housing for Intensive Users of Medical Hospitalization and Sobering Services.” *American Journal of Public Health* 103, no. 2 (February 2013): 316–21. <https://doi.org/10.2105/ajph.2012.300867>; Clifasefi, Seema L., Daniel K. Malone, and Susan E. Collins. “Exposure to Project-Based Housing First Is Associated With Reduced Jail Time and Bookings.” *International Journal of Drug Policy* 24, no. 4 (July 2013): 291–96. <https://doi.org/10.1016/j.drugpo.2012.10.002>.

159 Perlman, Jennifer, and John Parvensky. “Denver Housing First Collaborative: Cost Benefit Analysis and Program Outcomes Report.” Colorado Coalition for the Homeless, December 11, 2006. [https://shnny.org/uploads/Supportive\\_Housing\\_in\\_Denver.pdf](https://shnny.org/uploads/Supportive_Housing_in_Denver.pdf).

160 Stefancic, Ana, and Sam Tsemberis. “Housing First for Long-Term Shelter Dwellers with Psychiatric Disabilities in a Suburban County: A Four-Year Study of Housing Access and Retention.” *The Journal of Primary Prevention* 28, no. 3-4 (June 26, 2007): 265–79. <https://doi.org/10.1007/s10935-007-0093-9>.

161 “Policing- and Punishment-Based Approaches: A Really Expensive Way to Make Homelessness Worse.” National Coalition for Housing Justice. Accessed June 19, 2022. <https://nchj.org/wp-content/uploads/2021/09/NCHJ-Statement-on-Criminalization-of-Homelessness.pdf>.



# HEALTHY FOOD

## #1 Access to healthy food, particularly through public assistance benefits like TANF and SNAP (food stamps), reduces the likelihood of incarceration.<sup>162</sup>

The risk of incarceration goes up in places where public benefits are eliminated.<sup>163</sup> One study found that for every 1% increase in food insecurity in the US, there was a 12% increase in violence.<sup>164</sup> Furthermore, incarceration is correlated with an up to 15% increase in food insecurity in households with children who have a parent incarcerated.<sup>165</sup>

## #2 Access to healthy, affordable food improves people's overall health.<sup>166</sup> "Good nutrition plays an important role in the optimal growth, development, health and well-being of individuals in all stages of life. Healthy eating can reduce the risk of chronic diseases, such as heart disease, stroke, diabetes and some types of cancer."<sup>167</sup>

162 Sherburne, Morgan. "Children With Access to SNAP Fare Better as Adults." Institute for Social Research, April 23, 2020. <https://isr.umich.edu/news-events/news-releases/children-with-access-to-snap-fair-better-as-adults>; Bailey, Martha, Hilary Hoynes, Maya Rossin-Slater, and Reed Walker. "Is the Social Safety Net a Long-Term Investment? Large-Scale Evidence from the Food Stamps Program." *National Bureau of Economic Research*, April 2020. <https://doi.org/10.3386/w26942>; Gassman-Pines, Anna, and Zoelene Hill. "How Social Safety Net Programs Affect Family Economic Well-Being, Family Functioning, and Children's Development." *Child Development Perspectives* 7, no. 3 (June 20, 2013): 172–81. <https://doi.org/10.1111/cdep.12037>.

163 "No More Double Punishments: Lifting the Ban on SNAP and TANF for People With Prior Felony Drug Convictions." The Center for Law and Social Policy, April 19, 2022. <https://www.clasp.org/publications/report/brief/no-more-double-punishments>.

164 Caughron, Jonathan Randel, "An Examination of Food Insecurity and Its Impact on Violent Crime in American Communities" (2016). All Theses: 2565.

165 Wallace, Sally, and Robynn Cox. "The Impact of Incarceration on Food Insecurity among Households with Children." University of Kentucky Center for Poverty Research Discussion Paper Series, October 2012. [https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1024&context=ukcpr\\_papers](https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1024&context=ukcpr_papers).

166 McLean, Terry. "Access to Healthy Food and Why It Continues to Matter – Part 1." Michigan State University, January 10, 2014. [https://www.canr.msu.edu/news/access\\_to\\_healthy\\_food\\_and\\_why\\_it\\_continues\\_to\\_matter\\_part\\_1](https://www.canr.msu.edu/news/access_to_healthy_food_and_why_it_continues_to_matter_part_1).

167 Azétsop, Jacquineau, and Tisha R Joy. "Access to Nutritious Food, Socioeconomic Individualism and Public Health Ethics in the USA: A Common Good Approach." *Philosophy, Ethics, and Humanities in Medicine* 8, no. 1 (October 29, 2013). <https://doi.org/10.1186/1747-5341-8-16>.

# CLEAN ENVIRONMENT:

## CLEAN WATER, CLEAN AIR, GREEN SPACES

**#1 Clean water results in better health outcomes.** On the flip side, a lack of clean water can lead to many illnesses such as: cholera, diarrhea, dysentery, and typhoid, among others.<sup>168</sup> Depending on the nature of the contaminants and the socio-political context surrounding a water crisis, the absence of clean water can also result in severe mental health concerns, such as depression, anxiety, or PTSD.<sup>169</sup>

**#2 Clean water, uncontaminated by lead, is critical to community health.** Research has consistently revealed that lead poisoning negatively impacts children's mental health, as well as educational, employment, and life outcomes well into adulthood.<sup>170</sup> Ensuring clean water by replacing old lead pipes can disrupt these patterns of contamination and exposure.<sup>171</sup>

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168 "Drinking-Water." World Health Organization, March 21, 2022. <https://www.who.int/news-room/fact-sheets/detail/drinking-water>.

169 Ezell, Jerel M., and Elizabeth C. Chase. "A Population-Based Assessment of Physical Symptoms and Mental Health Outcomes Among Adults Following the Flint Water Crisis." *Journal of Urban Health* 98, no. 5 (March 31, 2021): 642–53. <https://doi.org/10.1007/s11524-021-00525-2>.

170 Sampson, Robert J., and Alex S. Winter. "Poisoned Development: Assessing Childhood Lead Exposure as a Cause of Crime in a Birth Cohort Followed Through Adolescence." *Criminology* 56, no. 2 (February 20, 2018): 269–301. <https://doi.org/10.1111/1745-9125.12171>; Neil, Roland, and Robert J. Sampson. "The Birth Lottery of History: Arrest Over the Life Course of Multiple Cohorts Coming of Age, 1995–2018." *American Journal of Sociology* 126, no. 5 (March 2021): 1127–78. <https://doi.org/10.1086/714062>; Reuben, Aaron, Jonathan D. Schaefer, Terrie E. Moffitt, Jonathan Broadbent, Honalee Harrington, Renate M. Houts, Sandhya Ramrakha, Richie Poulton, and Avshalom Caspi. "Association of Childhood Lead Exposure with Adult Personality Traits and Lifelong Mental Health." *JAMA Psychiatry* 76, no. 4 (January 23, 2019): 418–25. <https://doi.org/10.1001/jamapsychiatry.2018.4192>.

171 Maciel, Darío, and Rick Nevin. "Lead Poisoning and Crime: Why the Pipeline to Prison Is Running Dry." Human Impact Partners, August 14, 2015. <https://humanimpact.org/lead-poisoning-and-crime-why-the-pipeline-to-prison-is-running-dry>.

**#3 Lack of adequate sanitation directly compromises individual and population-level health and can lead to criminalization.** Without appropriate septic or sanitation systems for wastewater, community members may experience serious health consequences from contamination due to bacteria in drinking water. This can lead to the re-emergence of tropical diseases—a particular issue facing Black communities in Alabama, for instance. Overall, “as many as 12 million residents in the United States are affected by tropical diseases related to poverty and inadequate living conditions.”<sup>172</sup> Not only are low-income homeowners individually saddled with maintaining infrastructure for wastewater disposal — with little support from the government — they can also be criminally charged for failing to install and maintain sanitation systems.<sup>173</sup> Lack of adequate sanitation may also depreciate home values and carry a host of additional socio-economic consequences. Ensuring adequate sanitation protects and promotes positive health outcomes, community public health, quality of life, and economic security.

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**#4 Clean air leads to better health.** Pollution can lead to disease and death.<sup>174</sup>

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**#5 Green spaces promote health and well being.** Green spaces in urban areas have been shown to have direct health benefits by providing urban residents spaces for physical activity and social interaction, and allowing psychological restoration to take place.<sup>175</sup> Strong positive associations have been shown between the quantity of green space and perceived mental health and all-cause mortality, as well as moderate associations with perceived general health.<sup>176</sup>

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172 Winkler, Inga T., and Catherine Coleman Flowers. “‘America’s Dirty Little Secret’: The Human Right to Sanitation in Alabama’s Black Belt.” *Columbia Human Rights Law Review* 49, no. 1 (2017): 181–228, 190.

173 Winkler, Inga T., and Catherine Coleman Flowers. “‘America’s Dirty Little Secret’: The Human Right to Sanitation in Alabama’s Black Belt.” *Columbia Human Rights Law Review* 49, no. 1 (2017): 181–228.

174 Fann, Neal, Amy D. Lamson, Susan C. Anenberg, Karen Wesson, David Risley, and Bryan J. Hubbell. “Estimating the National Public Health Burden Associated with Exposure to Ambient PM<sub>2.5</sub> and Ozone.” *Risk Analysis* 32, no. 1 (May 31, 2011): 81–95. <https://doi.org/10.1111/j.1539-6924.2011.01630.x>; Krewski, Daniel. “Extended Follow-Up and Spatial Analysis of the American Cancer Society Study Linking Particulate Air Pollution and Mortality.” Health Effects Institute. Accessed June 19, 2022. [http://westrk.org/CARBdocs/Krewski\\_052108.pdf](http://westrk.org/CARBdocs/Krewski_052108.pdf).

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176 van den Berg, M., Wendel-Vos, W., van Poppel, M., Kemper, H., van Mechelen, W., & Maas, J. (2015). Health Benefits of Green Spaces in the Living Environment: A Systematic Review of Epidemiological Studies. *Urban Forestry & Urban Greening*, 14(4), 806–816. <https://doi.org/10.1016/j.ufug.2015.07.008>.

# HIGH QUALITY EDUCATION

- #1 Access to high quality education starting in childhood reduces the risk of incarceration.**<sup>177</sup> Although a much different context, one study from Sweden found that every one year of added schooling decreased the likelihood of incarceration by 15.5%.<sup>178</sup>
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- #2 Investing in quality education increases public safety.** Studies have shown that states that have invested financial resources in education have lower rates of violent crime and incarceration.<sup>179</sup>
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- #3 Police in schools inhibit students' ability to attain a high quality education, through causing physical and psychological harm and creating an unhealthy and unsafe environment.**<sup>180</sup> One study found that interactions with police are one of the main reasons young people aged 15 to 34 are treated in hospital emergency rooms for injuries.<sup>181</sup> Another study found that young people stopped by the police in their schools, in particular, faced higher levels of emotional distress and PTSD.<sup>182</sup> Schools with police have an arrest rate 3.5 times higher than schools without police, making students at increased risk for criminalization and incarceration.<sup>183</sup>

177 Arum, Richard, and Irene R. Beattie. "High School Experience and the Risk of Adult Incarceration." *Criminology* 37, no. 3 (March 7, 2006): 515–40. <https://doi.org/10.1111/j.1745-9125.1999.tb00495.x>.

178 Hjalmarsson, Randi, Helena Holmlund, and Matthew J. Lindquist. "The Effect of Education on Criminal Convictions and Incarceration: Causal Evidence from Micro-Data." *The Economic Journal* 125, no. 587 (October 29, 2014): 1290–1326. <https://doi.org/10.1111/eoj.12204>.

179 "Education and Crime." Criminal Justice. Accessed June 19, 2022. <https://criminal-justice.iresearchnet.com/crime/education-and-crime/4/>.

180 "Health and Cultural Wealth: Student Perspectives on Police-Free Schools in Fresno, California." Human Impact, March 2021. <https://humanimpact.org/wp-content/uploads/2021/03/HIP-Health-and-Cultural-Wealth-Student-Perspectives-on-Police-Free-Schools-in-Fresno-California-March-2021.pdf>.

181 Feldman JM, Chen JT, Waterman PD, Krieger N. Temporal Trends and Racial/Ethnic Inequalities for Legal Intervention Injuries Treated in Emergency Departments: US Men and Women Age 15–34, 2001–2014. *J Urban Health*. 2016;93(5):797-807. doi:10.1007/s11524-016-0076-3.

182 Jackson DB, Fahmy C, Vaughn MG, Testa A. Police Stops Among At-Risk Youth: Repercussions for Mental Health. *J Adolesc Health*. 2019;65(5):627-632. doi:10.1016/j.jadohealth.2019.05.027

183 Cops and No Counselors. American Civil Liberties Union. Accessed June 22, 2022. <https://www.aclu.org/report/cops-and-no-counselors>.

# GUARANTEED INCOME

- #1 A guaranteed income can increase employment, and improve financial stability and overall well-being.**<sup>184</sup> The added stability provided by unrestricted cash payments support recipients' physical and mental health.
- #2 Studies have shown that in places across the world where a basic income is guaranteed, the overall effects have been increases in happiness, physical and mental health, school attendance, and trust in social institutions, as well as reductions in crime.**<sup>185</sup>
- #3 Cash assistance to youth decreases the likelihood of involvement in the criminal legal system.** One study showed that removing access to the Supplemental Security Income program (SSI) for youth after the age of 18 increased their chances of criminal charges by 20%.<sup>186</sup>

184 West, Stacia, Amy Castro Baker, Sukhi Samra, and Erin Coltrera. "Preliminary Analysis: SEED's First Year." Stockton Economic Empowerment Demonstration. Accessed June 19, 2022. [https://static1.squarespace.com/static/6039d612b17d055cac14070f/t/603ef1194c474b329f33c329/1614737690661/SEED\\_Preliminary+Analysis-SEEDs+First+Year\\_Final+Report\\_Individual+Pages+-2.pdf](https://static1.squarespace.com/static/6039d612b17d055cac14070f/t/603ef1194c474b329f33c329/1614737690661/SEED_Preliminary+Analysis-SEEDs+First+Year_Final+Report_Individual+Pages+-2.pdf).

185 Samuel, Sigal. "Everywhere Basic Income Has Been Tried, in One Map." Vox, October 20, 2020. <https://www.vox.com/future-perfect/2020/2/19/21112570/universal-basic-income-ubi-map>.

186 Despande, Manasi, and Michael Mueller-Smith. "Does Welfare Prevent Crime? The Criminal Justice Outcomes of Youth Removed from SSIM." Becker Friedman Institute, February 18, 2022. [https://bfi.uchicago.edu/wp-content/uploads/2022/02/BFI\\_WP\\_2022-28.pdf](https://bfi.uchicago.edu/wp-content/uploads/2022/02/BFI_WP_2022-28.pdf).



# WELL-PAYING EMPLOYMENT

**#1 Access to stable, well-paying jobs promotes people's health and overall well-being.** Research has shown that those who do not work for pay or are unemployed are less healthy than those in the paid labor force, based on their risk of mortality, self-rated health, and mental health.<sup>187</sup>

**#2 Well-paying jobs make it possible for workers to create safer and healthier conditions for themselves and their families.** This is particularly true when jobs come with healthcare benefits. But it is also true because workers can have better access to housing, more choice over which neighborhoods they live in, provide quality education for their children, and secure childcare.<sup>188</sup>

187 Burgard, Sarah A., and Katherine Y. Lin. "Bad Jobs, Bad Health? How Work and Working Conditions Contribute to Health Disparities." *American Behavioral Scientist* 57, no. 8 (May 9, 2013): 1105–27. <https://doi.org/10.1177/0002764213487347>.

188 "How Does Employment, or Unemployment, Affect Health?" Robert Wood Johnson Foundation, March 12, 2013. <https://www.rwjf.org/en/library/research/2012/12/how-does-employment--or-unemployment--affect-health-.html>.





# HEALTHCARE ACCESS

**#1 Access to healthcare reduces the likelihood of incarceration.** Studies have shown a relationship between increased Medicaid expansion and a reduction in both police arrests<sup>189</sup> and crime rates<sup>190</sup>. Studies have also shown that incarceration is more likely if people lose Medicaid coverage, specifically access to mental health care.<sup>191</sup>

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189 Simes, Jessica T., and Jaquelyn L. Jahn. "The Consequences of Medicaid Expansion Under the Affordable Care Act for Police Arrests." *Plos One* 17, no. 1 (January 12, 2022). <https://doi.org/10.1371/journal.pone.0261512>.

190 Wen, Hefei, Jason M. Hockenberry, and Janet R. Cummings. "The Effect of Medicaid Expansion on Crime Reduction: Evidence from HIFA-Waiver Expansions." *Journal of Public Economics* 154 (October 2017): 67–94. <https://doi.org/10.1016/j.jpubeco.2017.09.001>.

191 Jácome, Elisa. "Mental Health and Criminal Involvement: Evidence from Losing Medicaid Eligibility." *Stanford Institute for Economic Policy Research*, February 2022.



# COMMUNITY-BASED DRUG TREATMENT AND HARM-REDUCTION INTERVENTIONS

- #1** Read the entire American Public Health Association's statement "Defining and Implementing a Public Health Response to Drug Use and Misuse" for a thorough list of data points and sources.<sup>192</sup>

192 "Defining and Implementing a Public Health Response to Drug Use and Misuse." American Public Health Association, November 5, 2013. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/08/04/defining-and-implementing-a-public-health-response-to-drug-use-and-misuse>.



These are the interventions, quite basic and practical, that allow people to be healthy and free, and that truly keep people and communities safe.

