

Alternatives to what? Drug treatment alternatives as a response to prison expansion and overcrowding

Alex Stevens, University of Kent

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COMMENTS WELCOME: a.w.stevens@kent.ac.uk

Abstract

In response to rising rates of imprisonment and prison overcrowding, many governments, NGO's and international organisations (including the UN and Council of Europe) have advocated the increased use of alternatives to imprisonment for drug-related offenders. In the USA, these have included drug courts and California's proposition 36. Drug courts have also spread to Canada, Australia, Norway, UK and Ireland. Other EU members have longer established systems for 'treatment instead of punishment'. This paper examines international differences in the targeting, content and approach of alternatives to imprisonment. It tests their ability to reach the stated aim of reducing prison overcrowding and it briefly compares them to other alternatives for dealing with drug related offenders. It suggests that, in the absence of deliberate efforts to reduce the numbers entering prison and the lengths of their sentences, treatment alternatives will not reduce the use of imprisonment.

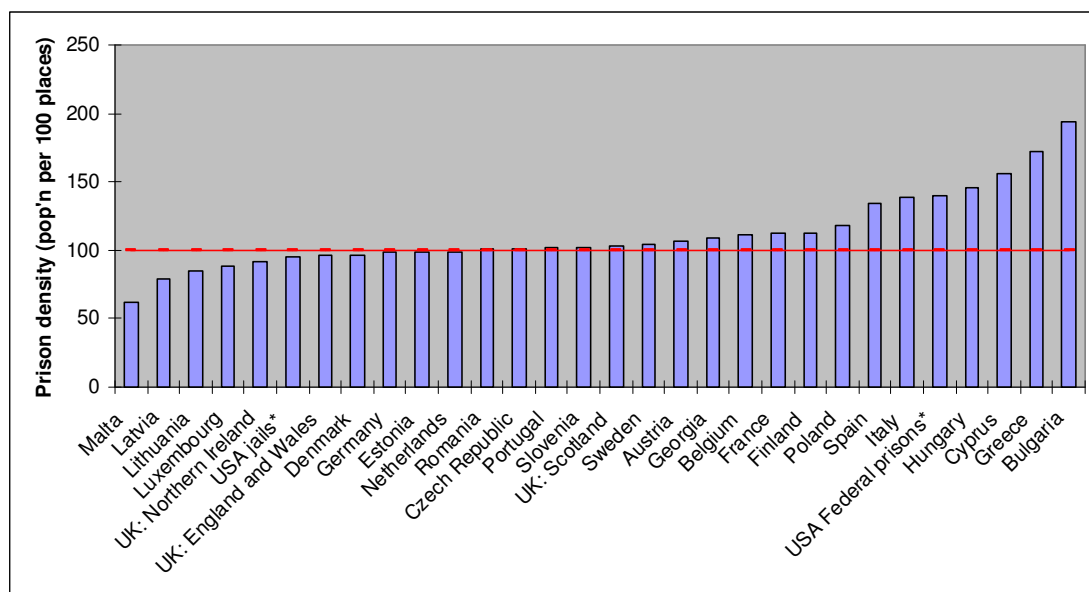
Introduction

Prisons across the developed world are increasingly full of people who have committed drug offences, or whose offences are in some way related to their drug use. In the USA, there was a dramatic increase in the proportion of prisoners who were sentenced for drug offences in the 1980s, and this proportion has stayed high ever since. In 2006, 53% of federal prisoners were imprisoned for drug offences, as were 19.5% of state sentenced prisoners (Sabol, Couture, & Harrison, 2007). In Europe, where general imprisonment rates are significantly lower, this proportion ranges from 2% in Bulgaria to 35% in Portugal (Council of Europe, 2006). As many drug users are imprisoned for other offences, the proportions of prisoners who have problems with drug use is often higher than this. For example, a US survey by Mumola and Karberg (2006) found that, in 2004, 46% of state prisoners reported indicators of drug abuse or

dependence¹. In the UK, between a third and a half of people taken into prisons are estimated to be problem drug users (UKDPC, 2008).

The large presence of drug users in prisons has exacerbated problems of prison overcrowding. Figure 1 below shows the results of increasing prison populations, with most systems in the USA and EU housing more than 100 prisoners per 100 prison places.

Figure 1: Prison density (prison population per 100 prison places) in the USA and EU, 2005



Source: Council of Europe Penal Statistics, * US Bureau of Justice Statistics

Of course, overcrowding is not the only problem related to sending drug users to prison. Rather, it is one of many problems that suggest a need to find other ways of dealing with drug-involved offenders, including high rates of recidivism, problems of order and health in prisons, and the massive costs of imprisonment to taxpayers and communities (Clear, Cole, & Reisig, 2006; Jacobson, 2005; John Howard Society of Alberta, 1996).

According to Sanford and Arrigo (2005: 251), “the problems of prison overcrowding because of the dramatic increase of drug-related convictions during the 1980s

¹ This meant that they had not just used illicit drugs, but that they had reported problems associated with this use.

contributed to the creation of drug courts”, although drug courts were not the only measure used to divert offenders to drug treatment. In California, the successful ballot for Proposition 36 in California in 2000 provided funding for low-level drug offenders to enter treatment instead of prison. In New York in 2000, Chief Judge Judith Kaye, ordered that nearly all non-violent drug addicted offenders be offered treatment instead of punishment (Spohn, 2002). Arizona and Kansas have also introduced diversionary measures (Jacobson, 2005). Even Texas, has recently decided to invest in treatment and diversion instead of new prisons (Warren, Gelb, Horowitz, & Riordan, 2008). In Europe, the EU Action Plan on Drugs and the Council of Europe’s Recommendation R(99)2 (concerning prison overcrowding and population inflation) have endorsed the use of credible alternatives to imprisonment as a way to reduce the prison population². A 2007 Council of Europe conference in Bucharest on alternatives to imprisonment heard examples from across Europe, including adaptations of drug courts in England, Ireland and Norway, as well as other forms of quasi-compulsory treatment for drug dependent offenders.

An early review of the literature on alternative sentencing in the USA found that alternatives do not reduce the use of imprisonment in the long-term, and that any initial reductions are quickly overcome by changes in other sentencing practices (Austin & Krisberg, 1982). Nevertheless, as Sanford and Arrigo (2005:251) state, “few studies have examined the reduction in prison crowding attributable to drug courts” and this applies also to other drug treatment alternatives. This paper will examine drug treatment alternatives. It will describe the differences between them in context, targeting, content and approach. And it will test their ability to operate as an alternative to imprisonment. The methods adopted in this paper include a review of the available evidence on alternatives to imprisonment (including the QCT Europe study, which was led by the author³), as well as analysis of available data on offending, imprisonment and drug treatment alternatives.

² An approach which the Council of Europe has repeatedly endorsed, including in its recent recommendation 1576 (2007) *For a European convention on promoting public health policy in drug control*.

³ For more information on this study and its methods, see Stevens et al (2006).

Comparing alternatives

Not all treatment alternatives to prison are the same. Their most evident differences are in their context, the people they target, their treatment content and their approach to non-compliance. These differences mean that there is a choice, not just between prison and an alternative, but of what alternative to employ. Diversity will be explored here in order to show the range of potential alternatives.

Context

There are at least three elements of the context for treatment alternatives which deserve attention. These include the cultural context, the legal context and the socio-economic context. If we follow Mary Douglas' (1992) conception of culture, we can see it as a system within which people hold each other accountable for their adherence to expected standards of behaviour. There are great differences between cultures and countries in these standards, especially when it comes to the consumption of psychoactive substances. One of the most important distinctions between the USA and many European countries is the greater cultural emphasis on abstinence that has influenced American policy and practice. Perhaps the clearest symbol of this is the difference between the UK and USA in the decisions that were taken in the early twentieth century on the acceptability of providing psychoactive substances as a medical treatment. The US Supreme Court, in the 1919 Doremus and Webb cases, affirmed that physicians could be prosecuted for giving heroin to addicts, while the 1926 Rolleston Committee instituted the "British system" of prescribing heroin (Nolan, 2002). This reflects a wider tension between US and European cultures on the moral acceptability of taking mind-altering substances.

With its specifically protestant origins, American culture has been more influenced by the call to curtail sensory pleasures in favour of embodying the purity of scripture. This contrasts with European cultures which retain the influence of mediaeval Catholicism in celebrating the sensuous carnality of consumption (Mellor & Shilling, 1997). For example, the temperance movement was much larger (and more influential) in America than in the less protestant cultures of Europe (excepting the more pristine Protestantism of Scandinavia). These attitudes to unearned pleasure and intoxication

have been transferred onto more recently imported psychoactive substances, with significant consequences for the aims and methods adopted by drug treatment in general, and by treatment alternatives in particular.

This cultural context affects both the legal and socio-economic contexts for alternatives to imprisonment. If we compare, for example, the sentences used for the possession and distribution of illicit drugs, we find that US legislatures have transferred their taste for abstinence into much longer penalties, and a much wider use of imprisonment than their European counterparts. In many European countries, it is comparatively rare for people to be sent to prison for drug possession alone. For example in 2003, in Scotland, the rate of imprisonment for convicted drug offenders other than drug traffickers was 0.6 per 100,000 population (despite a relatively high prevalence of heroin and cannabis use, by European standards). This rate was 5.4 in Germany and 13.6 in Switzerland (Council of Europe, 2006). In the USA in 2004, 28% of state convicts' and 5% of federal convicts' most serious offence was drug possession (Mumola & Karberg, 2006), implying a convict imprisonment rate for possession of at least 24 per 100,000. This higher rate may partly be explained by higher rates of drug use in the USA (see Reuter & Stevens, 2007) and the imprisonment of people under conviction for possession who actually had roles in drug distribution (Sevigny & Caulkins, 2004). However, there is other evidence for a more punitive approach to drug offenders in the USA. Looking at maximum sentences, we find that Sweden, which is considered to be America's strongest European ally in upholding drug prohibition, has a maximum prison sentence of only 10 years, even for serious trafficking offences (ELDD, 2008). By contrast, 10 years is the *minimum* sentence an Alabama court can give to *any* drug seller, provided that the sale occurs within 3 miles of both a school and a housing project (Greene, Pranis, & Ziedenberg, 2006). The disparity in sentencing between the USA and Europe creates a radically different legal context for the use of alternatives to imprisonment. In the USA, a much larger group of drug offenders is prone to much longer sentences than their European counterparts. In practice, it means that treatment alternatives are used for a group of much less serious offenders in the USA, as will be shown below.

As Weber (1920) noted, the less contested influence of Protestantism in the USA has led to a purer form of capitalism. The broader social base of the capitalist "spirit" in

the USA, and the individualism it inspired, has led to less intervention by the state in providing healthcare and welfare support. US social policy has been described as the archetype of the individualist “liberal” system and contrasted to the interventionist “corporatist” and “social democratic” systems of continental Europe (Esping-Anderson, 1990). Weber argued that the American protestant sect was a more exclusive institution than the European guild. It relied on people proving their worth and respectability in order to join and remain within the trusted membership. This exclusivity can be seen as the root of the increasing social exclusion which characterises societies that have taken the USA as their model in late modern society (Young, 1999). These different socio-economic cultures imply that people who go through alternatives to prison will also be expected to live up to different standards of respectability as evidence of their success. In the USA, the intended outcome of treatment is much more likely to include both abstinence and paid employment, while the European alternatives are more likely to tolerate continued reliance on prescribed or illicit drugs and enrolment in social welfare systems.

Targeting

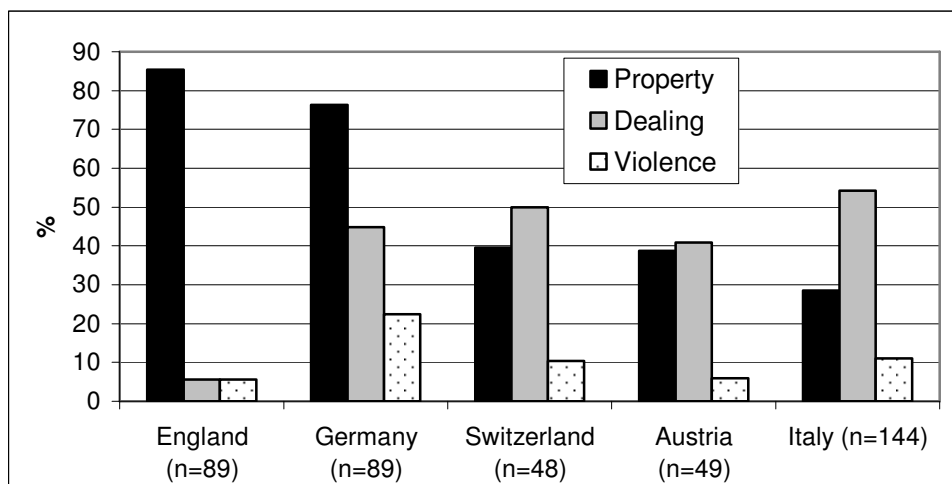
As noted above, the pool of people who are liable to imprisonment for drug offences is much bigger in the United States. This might imply that there is a larger group who might be considered eligible for alternatives, but this would depend on how far up the scales of seriousness of offence and offender US jurisdictions are prepared to countenance diversion from prison. And this does vary widely between jurisdictions.

Many drug courts follow the model of the original Dade County prototype in limiting eligibility to offenders charged with possession or purchase of controlled substances and excluding people with a history of violent offences. Even if there has been a historical pattern of drug courts expanding their eligibility criteria as they have matured, with more serious and violent offenders being included as eligible (Saum, Scarpitti, & Robbins, 2001), the main target group of drug courts is still one that would face a much lower risk of imprisonment in most European countries. The California drug courts, for example, explicitly exclude people who have committed offences of sale or production of illicit drugs (Burns & Peyrot, 2003). The Urban Institute surveyed 600 drug courts in 2005 and found that 88% excluded offenders

with any history of violent offending, and 49% excluded people with prior treatment history (Singh Bhati, Roman, & Chalfin, 2007).

In European systems, the imprisonment of people for possession alone is comparatively rare (see, for example, Mwenda, 2005). But there are wide disparities within Europe in the type of offender that receives QCT outside prisons. In the QCT Europe study, we selected research sites purposively, so did not recruit a truly random sample of QCT entrants. However, our findings on the type of offences they had committed in order to receive their QCT sentence did indicate that some countries provide such measures for more serious offenders than others. Figure 2 shows that, while a large majority of people entering Drug Treatment and Testing Orders (DTTOs) in England had been convicted of property offences, this proportion was lower in the other countries of the study, where drug dealers and violent offenders made up larger proportions of the group who were given sentences to treatment instead of prison. These data suggest that, England and the USA are locking up many offenders who would not be considered to warrant imprisonment in other countries. Most offenders in each country of the QCT Europe study also had significant prior experience of treatment⁴, which would have excluded them from many US drug courts.

Figure 2: Proportions of QCT Europe sample sentenced for property, dealing or violent offences, by country⁵



⁴ 85 percent of the QCT sample across the countries had at least one prior treatment episode. The average number prior treatment episodes was six.

⁵ Some respondents reported being sentenced for more than one category of crime. Each reported category is included in this figure.

Treatment content

There were also differences between countries in the QCT Europe study in the type of treatment provided to these offenders, with English offenders more likely to be ordered to participate in community-based day programmes, often while receiving an opiate substitution prescription, while the other countries made more use of drug-free, intensive residential treatment. Drug-free treatment, whether residential or ambulatory, is also the dominant mode of treatment in US treatment alternatives. Methadone substitution is often denied to participants in these treatments, despite its proven effectiveness (Jaeger, 2002). The Urban Institute survey found that only 18 percent of the estimated number of people in drug court treatment were receiving methadone. The remainder were in drug-free treatment (Singh Bhati, Roman, & Chalfin, 2007). Abstinence, as Bean (2002: 72) has written, "has the obvious virtue of making treatment compatible with the goals of criminal justice". From this he concludes that "the sole aim of drug treatment agencies working within a criminal justice setting ... must be compliance with the law" (Ibid), but he does not explain whether this should rule out legal treatment that is non-abstinent, or whether exact compliance with the law (e.g. not using marijuana) is more important than the long-term prevention of offending through successful retention in drug treatment.

Approach to non-compliance

This dilemma is also visible in the different approaches taken by various treatment alternatives to the definition and sanctioning of non-compliance. In the US drug courts, any renewed drug use can lead to action by the court. In the English DTTO and other European systems in the QCT Europe study, continued drug use was often tolerated, with offenders providing repeated positive drug tests with little risk of being punished for this. A more important indicator of compliance for the DTTO was the person's attendance in treatment. They were supposed to attend a minimum of 20 hours treatment per week, with the treatment providers contracted to report on attendance to the probation service. In turn, the probation service were expected to institute breach proceedings (leading to a court review of the DTTO sentence) if the offender had more than two days of "unexplained absence" from the treatment

programme. Many of them fell foul of this standard. Other countries in the QCT Europe project used a more flexible approach to compliance, based more on professional discretion more than on rigid rules and standards.

US drug courts, while having a stricter attitude to compliance, tend to have more flexibility when responding to it, as they use a wider range of sanctions. In the European systems, the reviewing courts could either continue or terminate treatment orders, perhaps with the inclusion of various conditions, such as different hours or frequencies of mandated treatment or drug tests. US drug courts have these options, but also employ others, such as ordering offenders to attend extra days in court, or to go to prison for short spells during their drug court participation. Indeed, the use of such prison time as a “graduated sanction” can be so extensive as to eliminate any differences in the use of prison for drug court participants and comparable offenders who do not go through drug court (Harrell, 2003). In this Baltimore example at least, the drug court operated as an adjunct to imprisonment rather than as an alternative. In the UK, high rates of non-compliance with the DTTO led to large numbers of participants being resentenced to prison and to one QCT Europe interviewee describing the DTTO as “an expensive precursor to imprisonment”. The approach to non-compliance is therefore crucial in analysing the potential contribution of treatment alternatives in reducing rates of imprisonment.

The net-widening hypothesis

In a famous contribution to the literature on social control, Cohen (1985: 41-56) uses the analogy of a net to stand in metaphorically for the control system which trawls in deviant fish from the ocean of society. He argues that three patterns have frustrated previous attempts to decarcerate and deinstitutionalise criminals and the mentally ill. The first is that the net becomes wider. It takes in larger numbers, including people who would not previously have been processed. The second is that the net becomes denser, with an increasing intensity of intervention. The third is that new nets are created as new agencies and services supplement the original control systems. The creation of US drug courts and of the English DTTO provide examples of new and denser nets. They are novel additions to the criminal justice system and they involve more intensive intervention than traditional probation approaches. But the question of

net-widening remains. Do these supposed treatment alternatives divert offenders from the net of prison into the net of drug treatment, leaving the overall “catch” unchanged? Or do they, as Cohen would expect, increase the total number who are subject to more intensive control mechanisms?

The net-widening hypothesis has often been invoked in explaining the increase in probation caseloads and prison populations (e.g. Hough, Jacobson, & Millie, 2003; Morgan, 2003; Norris & Tonry, 1991; Spohn, 2002; Sutton & Hawks, 2005), but has rarely been tested empirically. A Vera Institute report has usefully discussed the mechanisms by which drug courts may increase or reduce imprisonment, but did not specifically test these effects (Fluellen & Trone, 2000). A multi-level analysis of sentencing decisions in US states found that the availability of alternative sentences was not predictive of the likelihood of judges giving custodial sentences in individual cases (Weidner, Frase, & Schultz, 2005), which suggests that alternative sentences do not necessarily reduce the use of imprisonment. But no research can be found in the *Social Science Citation Index* that explicitly relates the use of alternative sentences for drug-related offenders to trends in the penal population.

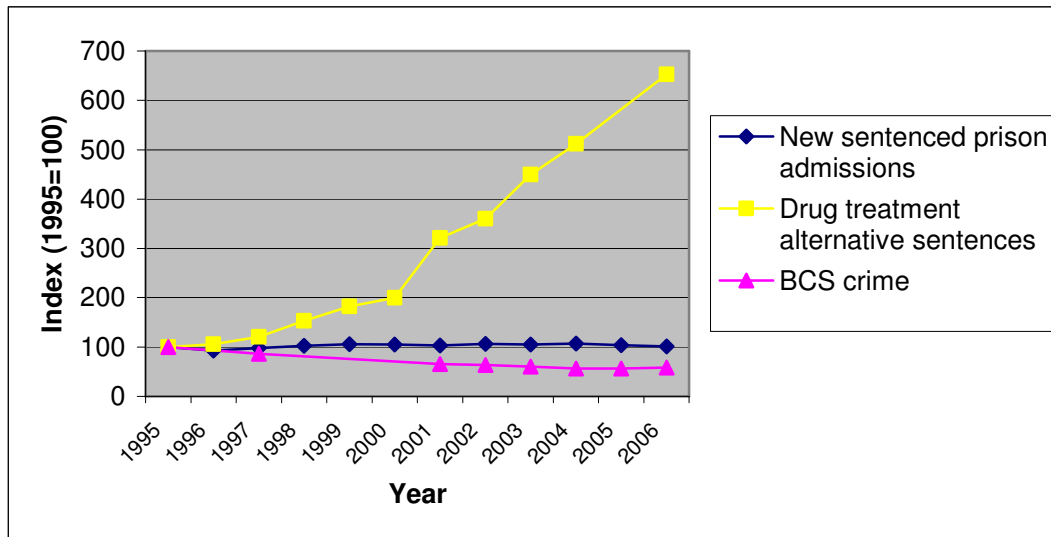
Fluellen and Trone (2000) recommend that this test be provided by studies which follow a sample of drug court participants alongside a matched sample of offenders outside drug court to analyse the use of imprisonment for each group. As noted above, at least one such study has since been carried out and suggested that drug courts do not reduce the use of imprisonment (Harrell, 2003). However, studies at the level of the individual drug court cannot tell us about the dynamics of the penal system as a whole. For this, we need aggregate data on the numbers of people who are sent to prison, compared to the number of people who are sent to treatment from the criminal justice system, preferably controlling for other variables which might influence these two variables. From previous studies on the use of imprisonment (Arvanites & Asher, 1995; Beckett & Western, 2001; Nicholson-Crotty, 2004; Ouimet & Tremblay, 1996; Selke & Andersson, 2003; Weidner, Frase, & Schultz, 2005), these potentially confounding variables (in the case of the USA) would include the crime rate, the unemployment rate, the provision of welfare support, and the proportions of young males and of African Americans in the populations of interest. Some advocates of sentencing commissions promised that they would prison populations (Aas, 2005),

although it has been suggested that they have had the opposite effect by increasing sentence lengths (Spohn, 2002). More sophisticated, multivariate, hierarchical analysis has shown that, where sentencing commissions take criminal justice resources into account, they can have minimal or downward effects on prison populations (Nicholson-Crotty, 2004).

The differences between treatment and prison systems in Europe mean that it would be impossible to carry out multivariate analysis across countries that includes these confounding variables, as issues of the consistency of definition and validity of measurement would be very difficult to solve. We can, however, carry out some simple analyses using, for example, the available data on the English and Welsh control system.

Figure 3 shows trends in the use of treatment ordered by the criminal justice system, in new sentenced admissions to prison from the courts, and in criminal victimisation, as measured by the British Crime Survey. It shows that there has been a dramatic increase in the use of non-custodial sentences that include a treatment element, especially since the national roll-out of the DTTO in 2001. It also shows a substantial fall in the number of crimes that are reported to the British Crime Survey. Both these factors should, all else being equal, have led to a fall in the number of people being sent to prison. However, the graph shows that this number has been remarkably consistent since 1995. In 2006, over 12,000 people were sentenced to non-custodial drug treatment, compared to under 2,000 in 1995. However, the figures for new prison sentences were 90,040 and 89,173 respectively. Increasing the annual number of sentences to treatment alternatives by over 10,000 appears to have had no effect at all on the use of imprisonment. With these data, it would be very difficult to claim that increasing the use of non-custodial treatment sentences has reduced the use of imprisonment.

Figure 3: Trends in the use of imprisonment, drug treatment alternatives and in crime in England and Wales, 1995-2006



Sources: Offender Management Caseload Statistics, British Crime Survey

For the USA, Data is available on prison admissions from the National Corrections Reporting Programme (NCRP). The Treatment Episode Dataset (TEDS) includes state-level data on diversions to drug treatment from the criminal justice system. This could enable multivariate analysis of the relationship between treatment alternatives using, for example, hierarchical linear models (HLM) with the data on rates of imprisonment and diversion nested within states and years. However, not all states contribute to these reporting programmes, and some of the data seems to be unreliable. For the 16 states which appear in both the TEDS and NCRP datasets, data is available only between 1992 and 2003, again limiting the sample size for hierarchical analysis. And initial exploration of the relationship between diversion and imprisonment suggests that, if there is any relationship, it is not linear, thereby ruling out HLM as a tool for analysis. In the absence of data on a wider range of states and years, the graphs below can be used to explore how well the net-widening hypothesis fits the states of the USA for which data is available.

Graphs are included here for those states with both TEDS and NCRP data who reported increases in diversion to drug treatment between 1992 and 2003. They are based on the raw numbers downloaded from the mentioned sources, converted into

rates per 100,000 population of each state. They are indexed to enable comparison in trends.

Figure 4: Nevada - Trends in the use of imprisonment, drug treatment alternatives and in recorded crime, 1992-2003

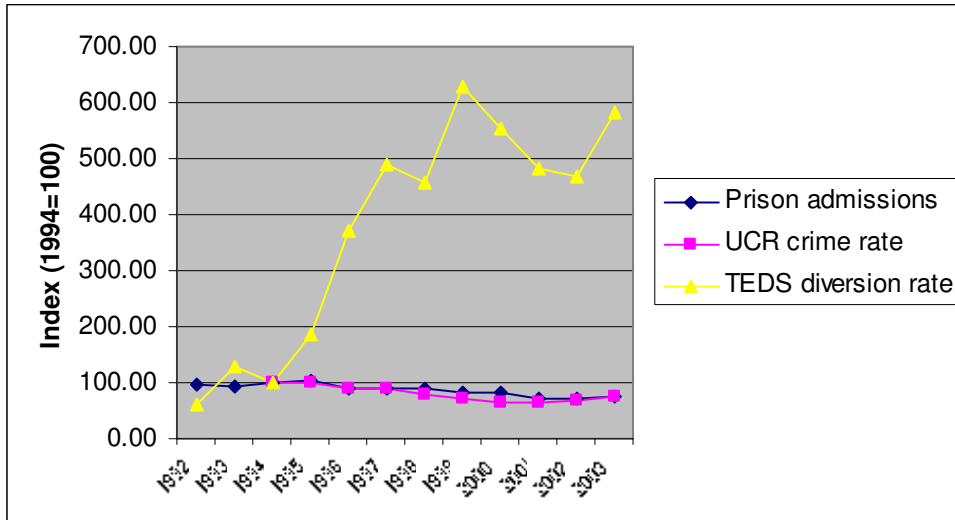


Figure 5: New Hampshire - Trends in the use of imprisonment, drug treatment alternatives and in recorded crime, 1992-2003

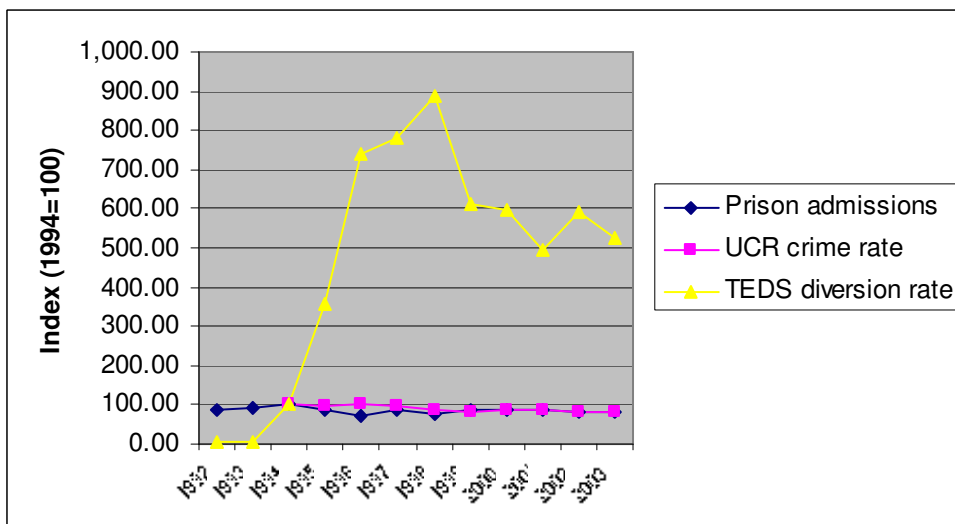
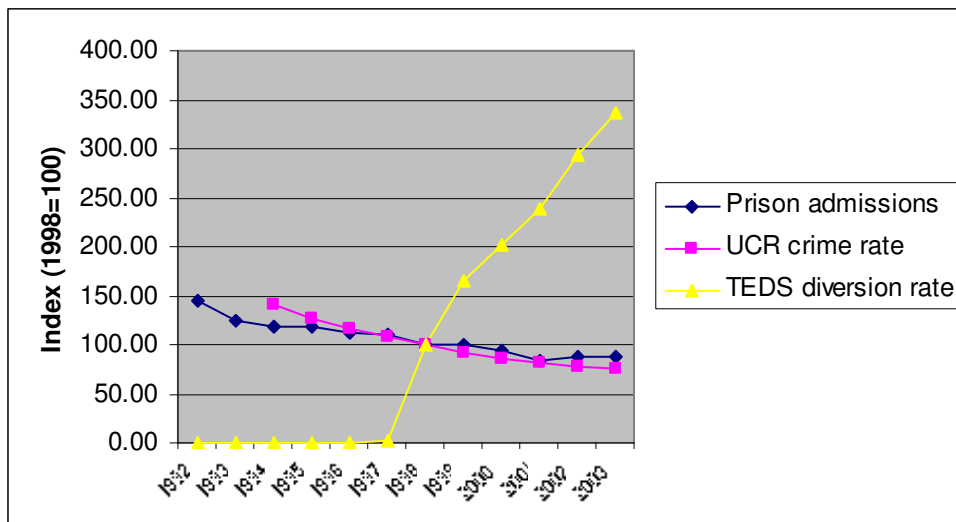


Figure 4 suggests at first sight that the case of Nevada disconfirms Cohen’s hypothesis. As the use of diversion to treatment increases, so the rate of admission to prison decreases. However, we should also not that the rate of recorded crime also falls over the period, which suggests that - on the naïve assumption that imprisonment

is a constant response to crime and is affected only by diversion - it should have fallen even faster. And data from other states provides a more heterogeneous picture of the relationship between the use of imprisonment and diversion to drug treatment. New Hampshire (figure 5) follows Nevada in displaying an overall decrease in imprisonments, while diversion increased. But the use of diversion apparently fell after 1996, with no apparent impact on the number of people being sent to prison. And again, the fall in admissions to prison follows the trend in recorded crime. In New York (figure 6), prison admissions also fall, but more slowly than does the recorded crime rate. And the rapid rise in the use of diversion to treatment which is evident from 1998 onwards (two years before Judge Kaye made her order), seems to have made very little difference to the downwards trend in imprisonments that had already been established.

Figure 6: New York - Trends in the use of imprisonment, drug treatment alternatives and in recorded crime, 1992-2003



The graphs for Ohio (figure 7), Oregon (figure 8), Hawaii (figure 9) and North Dakota (figure 10) suggest that there is no consistent relationship between diversion and imprisonment. At some periods, in some states, imprisonment goes down while diversion goes up, but the opposite is also true. There is a consistent relationship, however, between recorded crime and the use of imprisonment: only in Hawaii does the trend in imprisonments show that the number of people sent to prison fell faster than did the recorded crime rate. In this period of historically and internationally high

levels of imprisonment and overcrowding in the USA, states that increased their use of diversion to treatment did not reduce the use of imprisonment relative to the recorded crime rate.

Figure 7: Ohio - Trends in the use of imprisonment, drug treatment alternatives and in recorded crime, 1992-2003

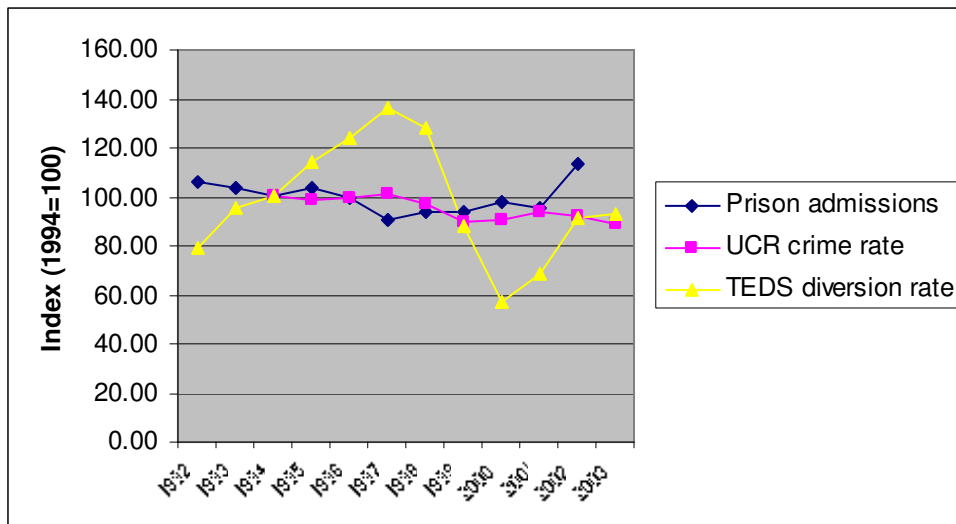


Figure 8: Oregon - Trends in the use of imprisonment, drug treatment alternatives and in recorded crime, 1992-2003

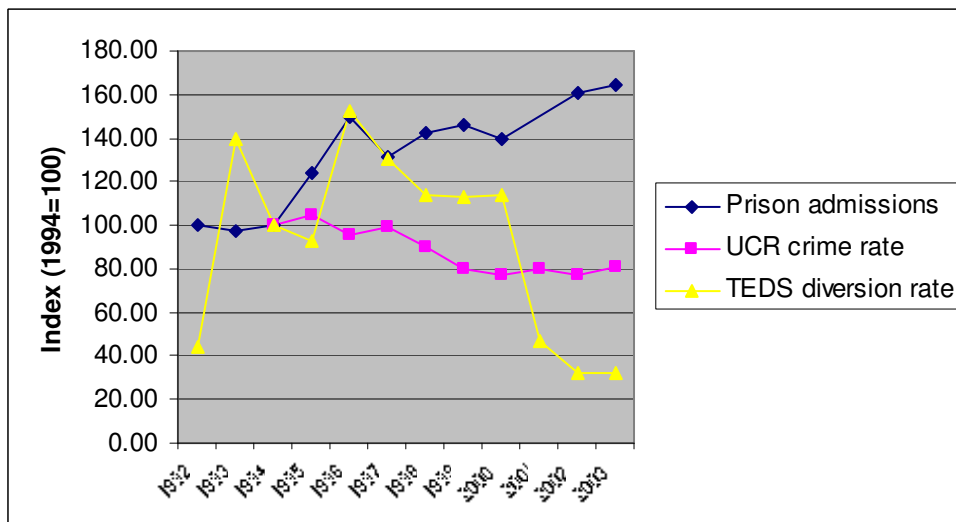


Figure 9: Hawaii - Trends in the use of imprisonment, drug treatment alternatives and in recorded crime, 1992-2003

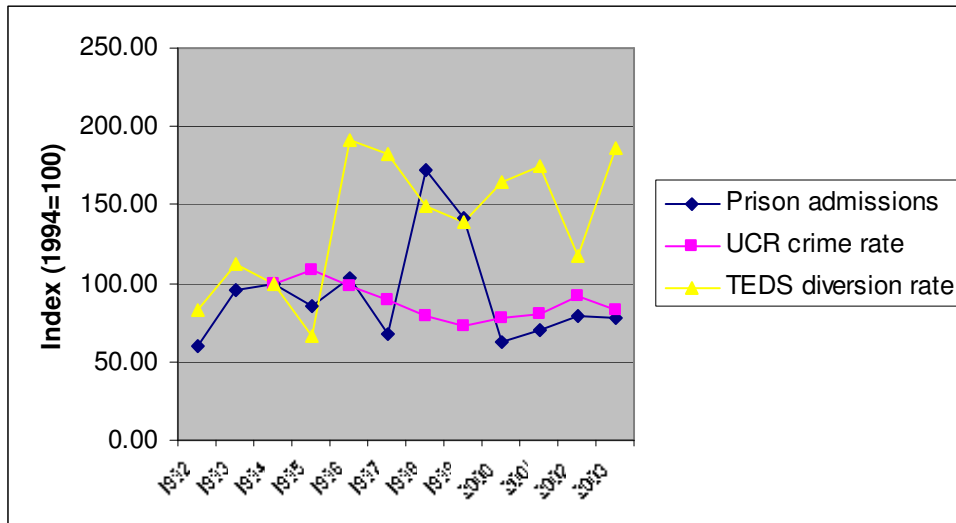
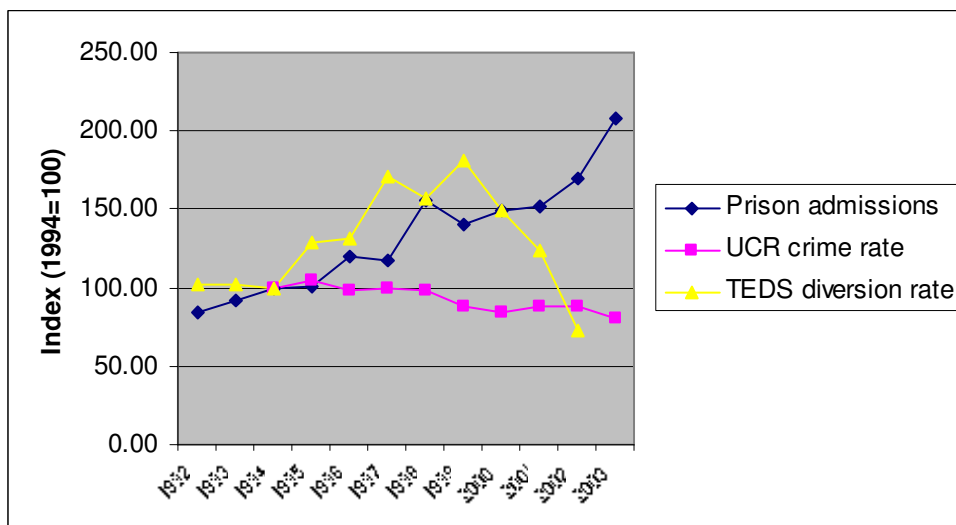


Figure 10: North Dakota - Trends in the use of imprisonment, drug treatment alternatives and in recorded crime, 1992-2003



Unfortunately, California is not one of the states for which NCRP and TEDS data is available. Its introduction of Proposition 36, diverting non-violent drug possession offenders from imprisonment, has been credited with the reduction in the number of drug offenders being admitted to prison (Bailey & Hayes, 2007). However, after a slight reduction immediately after the enactment of Prop' 36, the California prison population returned to growth (as Austin and Krisberg [1982] would have predicted)

and its prisons remain chronically overcrowded. This can be explained by the take-up by other categories of offenders of the spaces vacated by the low-level drug offenders (who were diverted to treatment by Prop' 36, but would not have been facing imprisonment in many European countries). So, despite reductions in recorded crime rates and significant diversion to drug treatment, the penal net continued to widen.

In summary, the data from England and Wales offer clear support for the net-widening hypothesis. The increased use of treatment alternatives did not reduce the number of people being sent to prison, but rather increased the number of people who were ordered into more intensive forms of penal supervision. The picture is somewhat less clear in those US states for which data is available. It would be hard to claim that these data unequivocally support the net-widening hypothesis. But it would be equally hard to claim that they support the position of those who advocate the use of treatment alternatives as a way of reducing the use of imprisonment. It seems that there are other, more important influences on the use of imprisonment than the number of drug-related offenders who are diverted to treatment. Multivariate analysis might help us to understand these influences, but it is also possible that they are not amenable to measurement and control, resting instead in less tangible, cultural responses to crime and drug use (Garland, 2001).

Alternatives to what?

If treatment programmes are not genuine alternatives to prison, then what are they? What risks do we run by expanding such programmes, and how better might we focus our intellectual, financial and political resources?

Starting with the practical effects of increasing diversion to treatment, there are dangers of blocking access to treatment for people who have not come through the criminal justice system. A manager of a drug treatment service, whom I interviewed during the period when the use of the DTTO was being rapidly expanded in England, told me of the difficulties that this imposed for other clients. Funding priority had been given to offenders, but there was a shortage of slots in methadone prescription treatment. Entry to such treatment had been closed to all but DTTO clients. She gave me an example of a pregnant woman who was injecting heroin into her neck and so

risking extreme harm to herself and her unborn child. She would have usually been offered methadone maintenance. But the blockage of treatment to all but DTTO clients meant that this woman was turned away. This happened in the context of rapid expansion in the English drug treatment system. Two years later, in the same area, not only was methadone treatment again available to all who needed it, but criminal justice funding had been used to open a rapid access prescription service which had reduced waiting times for all categories of clients.

In the USA, there has not been a similar expansion in drug treatment funding. Indeed, in the latest Federal Drug Control Budget, a cut of \$112 million is proposed to the “other treatment capacity” programme, which supports opioid substitution treatment (Pacula, 2008). Where diversion to treatment alternatives has expanded, there is some evidence of its displacing other clients from treatment. For example, the number of voluntary drug treatment clients reduced by 8,000 in each of the two years subsequent to the enactment of Proposition 36 in California (Hser, Teruya, Brown, Huang, Evans, & Anglin, 2007). If voluntary clients are displaced from treatment, then any crime reduction gains that arise from lower recidivism amongst those diverted to treatment will be reduced by the continued offending of voluntary clients who could otherwise have benefited from treatment. This is without considering the continuing physical and psychological suffering of these excluded drug users and their families.

The proposed cut in federal funding for opiate treatment programmes threatens to extend this exclusion. It is also instructive to compare it to other elements of the federal drug control budget for fiscal year 2009. It proposes increases of \$2 million for treatment programmes for prison inmates, and of \$27.9 million for treatment delivered through drug courts (Pacula, 2008). What the federal government is giving with one hand to drug treatment in the criminal justice system, it will more than take away with the other hand from more generally targeted drug treatment programmes. This confirms again the preference for abstinence-based services delivered in the criminal justice system over pharmacotherapies managed by health agencies.

We should view these developments in the context of the wider imbalance between spending on drug law enforcement and on drug treatment (Ibid). This persists despite British attempts to redress the balance, which have been hampered by the lack of

clarity on what is being spent on drug law enforcement (Reuter & Stevens, 2007). The rapid expansion of drug treatment has been loudly proclaimed (e.g. Home Office, 2004). Much less attention has been paid to the increased use of imprisonment for drug offenders. The amount of prison time given by courts to drug offenders increased by over 150% between 1994 and 2005 (Reuter & Stevens, 2007). This contributed to increasing costs of drug law enforcement, which were estimated at over £2 billion in 2001/2 in a recently released internal government report (Anonymous, 2001). This compares to the half billion pounds that the drug treatment budget reached in 2005/6 after a decade of rapid growth (Reuter & Stevens, 2007).

These figures suggest that punishment and control remain the predominant governmental responses to drug users, despite the use of treatment alternatives. In 1977, a self-styled radical analyst suggested that the prison would become obsolete as "the continuation of an increasingly costly social control policy which, in terms of effectiveness, possesses few advantages over an apparently much cheaper alternative becomes ever more difficult to justify" (Scull, 1977: 139). This complete failure to predict rapid *increases* in imprisonment across Europe and America should warn us to be careful of analyses that focus simply on costs and benefits of the various ways of dealing with offenders. If these were the only considerations, the use of imprisonment would surely be lower than it currently is, due to the failure to demonstrate that imprisoning drug offenders has effects in reducing drug use and related harm which could justify the huge costs involved (MacCoun & Reuter, 2001).

Prison provides a symbolic, as well as a technocratic response to drug related offending. Its use constructs drug users and dealers as a class of people who are worthy of exclusion and control. Even if we do not see increased imprisonment as a result of increasing vindictiveness by people whose security has been threatened by rapid social change (Young, 2007), or as a response to the resentment among the "anxious middle classes" to the unearned pleasures of the poor (Garland, 2001), we can see that large-scale imprisonment develops a dynamic of its own when it becomes entangled with the fortunes of populist politicians and the security industry (Christie, 2000). To ignore the lessons of previous attempts to deinstitutionalise people who have been marked out as deviants, which are given so cogently by Cohen, is to engage in a somewhat naïve pursuit of hope over experience; to believe that we can divert the

apparatus of social control into a more benign, therapeutic orientation without directly confronting the logic of expansion.

It is likely that reductions in the use of mandatory minimum sentencing and of re-imprisonment for technical parole violators would be more successful in reducing prison populations (Jacobson, 2005). Finland is the only Western European country to have substantially reduced its prison population in recent memory. It did this, not by introducing alternatives to prison, but by using shorter sentences (Christie 2000). The Council of Europe has also recommended decriminalisation as a means to reduce prison overcrowding and population inflation. Perhaps it is also naïve, in the current US political climate at least, to advocate this policy. But at least - in contrast to drug treatment alternatives - it would have the direct effect of reducing the size of the penal net, and it has already been tried. Since Portugal's decriminalisation of drug possession in 2001, the rate of imprisonment has fallen from 132 to 119 per 100,000 population in 2006. Prison density has reduced from 119 to 104. This is partly due to the reduction in the proportion of the prison population made up by drug law offenders, which fell from a peak of 44% in 1999 to 28% in 2005 (Hughes & Stevens, 2007).

Conclusion

This paper has discussed the diversity in contexts and approach of drug treatment alternatives to prison across the USA and Europe. These differences show the importance of culture and politics in influencing what sort of alternatives will be offered and how they will be run. And it suggests that, just because a country has already developed a model for diverting drug-related offenders, does not mean that this model has to be set in stone. Changes in eligibility criteria, treatment content and the approach to non-compliance can make dramatic differences to the ability of treatment sentences to reduce the use of imprisonment while reducing reoffending. There are several alternative ways of providing drug treatment to offenders.

However, the data presented in the second part of this paper suggests that, rather than being alternatives to imprisonment, sentences to drug treatment may represent a diversion from the real issues which determine the scale and cost of incarceration. If

opponents of the imprisonment of drug offenders focus their attention on expanding the use of treatment alternatives, they may miss opportunities to push forward policies that have a more certain outcome on the level of punishment meted out to drug users and dealers.

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Data from the National Corrections Reporting Program was downloaded from the National Archive of Criminal Justice Data. Data on UCR crime rates were downloaded from the website of the Federal Bureau of Investigation.

British data on Offender Management Caseload Statistics and the British Crime Survey were downloaded from the websites of the Ministry of Justice and the Home Office.

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References

- Aas, K.F. (2005). *Sentencing in the age of information: From Faust to MacIntosh* London: Glasshouse Press
- Anonymous (2001). *SR 2000: Stocktake of anti-drug interventions and cost-effectiveness* London: Home Office
- Arvanites, T.M., & Asher, M.A. (1995). The Direct and Indirect Effects of Socio-Economic Variables on State Imprisonment Rates. *Criminal Justice Policy Review*, 7(1), 27-53.
- Austin, J., & Krisberg, B. (1982). The Unmet Promise of Alternatives to Incarceration. *Crime and Delinquency*, 28(3), 374-409.
- Bailey, A., & Hayes, J.M. (2007). Who's in Prison? The Changing Demographics of Incarceration. *California Counts. Population Trends and Profiles*, 8(1), 1-27.
- Bean, P. (2002). *Drugs and Crime* Cullompton: Willan Publishing
- Beckett, K., & Western, B. (2001). Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy. *Punishment and Society*, 3(1), 43-59.
- Burns, S.L., & Peyrot, M. (2003). Tough love: Nurturing and coercing responsibility and recovery in California drug courts. *Social Problems*, 50(3), 416-438.
- Christie, N. (2000). *Crime Control as Industry: Towards Gulags Western Style. Third edition* London: Routledge
- Clear, T.R., Cole, G.F., & Reisig, M.D. (2006). *American Corrections* Belmont CA: Thomson
- Cohen, S. (1985). *Visions of Social Control* Cambridge: Polity Press
- Council of Europe (2006). *European Sourcebook of Crime and Criminal Justice Statistics* The Hague: WODC, Ministry of Justice
- Douglas, M. (1992). *Risk and Blame* London: Routledge
- ELDD (2008). *Illegal Possession of Drugs*. Lisbon: EMCDDA European Legal Database on Drugs.
- Esping-Anderson, G. (1990). *The Three Worlds of Welfare Capitalism* Princeton: Princeton University Press
- Fluellen, R., & Trone, J. (2000). *Do drug courts save jail and prison beds?* New York: Vera Institute of Justice
- Garland, D. (2001). *The Culture of Control: Crime and Social Order in Contemporary Society* Oxford: Oxford University Press
- Greene, J., Pranis, K., & Ziedenberg, J. (2006). *Disparity by Design: How drug-free zone laws impact racial disparity - and fail to protect youth* Washington, DC: Justice Policy Institute
- Harrell, A. (2003). Judging Drug Courts: Balancing the Evidence. *Criminology & Public Policy*, 2(2), 207-212.
- Home Office (2004). *Tackling Drugs. Changing Lives. Keeping Communities Safe from Drugs. Drug Strategy Progress Report 2004*. London: Home Office.
- Hough, M., Jacobson, J., & Millie, A. (2003). *The Decision to Imprison: Sentencing and the Prison Population*. London: Prison Reform Trust.
- Hser, Y.I., Teruya, C., Brown, A.H., Huang, D., Evans, E., & Anglin, M.D. (2007). Impact of California's Proposition 36 on the drug treatment system: Treatment capacity and displacement. *American Journal of Public Health*, 97(1), 104-109.
- Hughes, C., & Stevens, A. (2007). *The effects of the decriminalization of drug use in Portugal* Oxford: Beckley Foundation

- Jacobson, M. (2005). *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration* New York: New York University Press
- Jaeger, G. (2002). Letter to Drug Court Judges on Methadone California Society of Addiction Medicine.
- John Howard Society of Alberta (1996). Prison Overcrowding. Edmonton: John Howard Society of Alberta,.
- MacCoun, R.J., & Reuter, P. (2001). *Drug War Heresies: Learning from Other Vices, Times, & Places* Cambridge: Cambridge University Press
- Mellor, P.A., & Shilling, C. (1997). *Re-Forming the Body: Religion, Community and Modernity* London: Sage Publications
- Morgan, R. (2003). Thinking about the demand for probation services. *Probation Journal*, 50(1), 7-19.
- Mumola, C.J., & Karberg, J.C. (2006). *Drug Use and Dependence, State and Federal Prisoners, 2004. Bureau of Justice Statistics Special Report* Washington DC: U.S. Department of Justice
- Mwenda, L. (2005). Drug Offenders in England and Wales 2004. Home Office Statistical Bulletin 23/05. London: Home Office.
- Nicholson-Crotty, S. (2004). The Impact of Sentencing Guidelines on State-Level Sanctions: An Analysis Over Time. *Crime and Delinquency*, 50(3), 395-411.
- Nolan, J.L. (2002). *Drug Courts: In Theory and in Practice* New York: Aldine de Gruyter.
- Norris, N., & Tonry, M. (1991). *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* New York: Oxford University Press
- Ouimet, M., & Tremblay, P. (1996). A Normative Theory of the Relationship Between Crime Rates and Imprisonment Rates: An Analysis of the Penal Behavior of U.S. States from 1972 to 1992. *Journal of Research in Crime and Delinquency*, 33(1), 109-125.
- Pacula, R.L. (2008). What Research Tells Us About the Reasonableness of the Current Priorities of National Drug Control. Testimony presented before the House Oversight and Government Reform Committee, Subcommittee on Domestic Policy on March 12, 2008. Santa Monica: RAND.
- Reuter, P., & Stevens, A. (2007). *An Analysis of UK Drug Policy*. London: UK Drug Policy Commission.
- Sabol, W.J., Couture, H., & Harrison, P.M. (2007). *Prisoners in 2006: Bureau of Justice Statistics Bulletin* Washington DC: U.S. Department of Justice
- Sanford, J.S., & Arrigo, B.A. (2005). Lifting the cover on drug courts: Evaluation findings and policy concerns. *International Journal of Offender Therapy and Comparative Criminology*, 49(3), 239-259.
- Saum, C.A., Scarpitti, F.R., & Robbins, C.A. (2001). Violent offenders in drug court. *Journal of Drug Issues*, 31(1), 107-128.
- Scull, A.T. (1977). *Decarceration. Community Treatment and the Deviant: A Radical View* Englewood Cliffs, NJ: Prentice-Hall
- Selke, W.L., & Andersson, S.A. (2003). A Test of Social Stress Theory As Applied to the Study of Imprisonment Rates. *The Prison Journal*, 83(4), 426-441.
- Sevigny, E.L., & Caulkins, J.P. (2004). Kingpins or mules? An Analysis of Drug Offenders Incarcerated in Federal and State Prisons. *Criminology and Public Policy*(3), 401-434.

- Singh Bhati, A., Roman, J., & Chalfin, A. (2007). *Going to Scale in the Treatment of Drug Involved Criminal Offenders* Washington DC: The Urban Institute Justice Policy Center
- Spohn, C.C. (2002). *How Do Judges Decide? The Search for Fairness and Justice in Punishment* Thousand Oaks, CA: Sage
- Stevens, A., Berto, D., Frick, U., Hunt, N., Kersch, V., McSweeney, T., Oeuvray, K., Puppo, I., Santa Maria, A., Schaaf, S., Trinkl, B., Uchtenhagen, A., & Werdenich, W. (2006). The relationship between legal status, perceived pressure and motivation in treatment for drug dependence: Results from a European study of quasi-compulsory treatment *European Addiction Research*, 12, 197-209.
- Sutton, A., & Hawks, D. (2005). The Cannabis Infringement Notice scheme in Western Australia: a review of policy, police and judicial perspectives. *Drug and Alcohol Review*, 24(4), 331-336.
- UKDPC (2008). *Reducing Drug Use, Reducing Reoffending. Are programmes for problem drug-using offenders in the UK supported by the evidence?* London: UK Drug Policy Commission
- Warren, J., Gelb, A., Horowitz, J., & Riordan, J. (2008). *One in 100: Behind Bars in America 2008* Washington DC: The Pew Center on the States
- Weber, M. (1920). Die Protestantischen Sekten und der Geist des Kapitalismus. *Gesammelte Aufsätze Zur Religionssoziologie*, 1(207-236).
- Weidner, R.R., Frase, R.S., & Schultz, J.S. (2005). The Impact of Contextual Factors on the Decision to Imprison in Large Urban Jurisdictions: A Multilevel Analysis. *Crime and Delinquency*, 51(3), 400-424.
- Young, J. (1999). *The Exclusive Society* London: Sage
- Young, J. (2007). *The Vertigo of Late Modernity* London: Sage