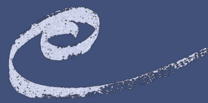

EUROPEAN CENTRE FOR SOCIAL WELFARE POLICY AND RESEARCH

POLICY BRIEF 2020/1

Prevention and treatment of substance abuse among young people in criminal justice systems*

Günter Stummvoll, Rahel Kahlert, Cees Goos

Günter Stummvoll and Rahel Kahlert are Researchers and Cees Goos is Honorary Consultant at the European Centre for Social Welfare Policy and Research
stummvoll@euro.centre.org
kahlert@euro.centre.org
goos@euro.centre.org

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Introduction

Substance abuse is a growing problem all over the world, affecting many parts of society, in particular the health and social care and the criminal justice systems. Typically, the health and social care system regards substance abuse in terms of illness and substance users as vulnerable persons in need of help. Most criminal justice systems in Europe treat possession and/or trade of illicit drugs primarily as a criminal offence and they consequently prosecute substance users as criminal offenders. Each of the two institutional systems has its own mechanisms of response: the health and social care system uses means of health promotion, harm reduction, treatment and rehabilitation in order to restore health. The criminal justice system uses a variety of instruments such as surveillance, discipline, opportunity reduction, compensation for damages, and punishment in order to reduce crime.

This Policy Brief, (1) investigates drug treatment and rehabilitation services for the group of young drug users who have come in contact with the criminal justice system, (2) looks at risk factors for young people to develop drug use disorders, and (3) elaborates particular need dispositions of these so-called 'criminal justice clients'. The argument starts at a macro-level (the legal framework), goes on to a meso-level (types of services), and leads to a discussion at micro-level (individual and social risk factors), before analysing need dispositions of young people more generally. Trust was found to be an important factor in the relations between the clients, on the one hand, and the professionals in the health and criminal justice systems, on the other hand; as well as between the health and the criminal justice systems themselves.

* The results presented here are based to a great extent on our participation in the research project "EPPIC – Exchanging Prevention Practices on Polydrug Use among Youth in Criminal Justice Systems", together with participants from Germany, the United Kingdom, Denmark, Poland and Italy, co-funded by Chafea (Consumers, Health, Agriculture and Food Executive Agency) in the Third EU Health Programme (2014-2020) (see https://www.euro.centre.org/projects/detail/203). The authors would like to thank Selma Kadi and Sonila Danaj for their comments. We also thank Willem Stamatiou for editing and layout.

Legal framework

Diversion is offered on several levels in the criminal justice process

In 2016, at the 59th session of the UN Commission on Narcotic Drugs, the UNODC together with WHO launched the initiative *"Treatment and Care of People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment"*. This initiative aimed to "enhance the knowledge, understanding, scope and potential for alternative measures to conviction or punishment", and "explores options to divert people with drug use disorders who are in contact with the criminal justice system to treatment" (UNODC and WHO, 2018: p. VII). Diversion from conviction and punishment to treatment may exist at various levels of the criminal justice system: ranging from pre-trial stage, trial at court, imprisonment, to post-sentencing. Police, prosecutors, judges, prison services and probation workers should always consider options for diversion at the different stages in the criminal justice process.

At the pre-trial stage, the police may caution a perpetrator and initiate a diversion to treatment. Other diversion options may be a conditional dismissal or suspension of the prosecution; postponement of the sentence and deferring the execution of a sentence; referral to "drug courts"; and early release on probation on the condition of taking some form of health treatment.

In cases of diversion, criminal justice systems such as the legal authority usually continue to hold control over the process, while the perpetrator is "seconded" to the responsibility of the health or social care institution concerned. To date, the practice of diversion is not yet an accepted principle in all jurisdictions. National systems vary in their administrative and legal relationship between the criminal justice system and the health and social care system. First and foremost, most European countries do not have special "drug courts" (in which the judge maintains control over the progress of drug treatment). In jurisdictions where such "drug courts" exist, the clients or patients have to appear regularly in court and report on their progress in controlling their drug use disorders (Murphy, 2015; Tiger, 2013). Alternatively, many European jurisdictions may transfer a case completely to health and social care institutions.

Treatment in criminal justice systems

Drug prevention has to integrate medical, psychological and social approaches

In accordance with national legal regulations, health and social care services in some European countries offer various diversion options for young people such as attenuated custody, in- and out-patient drug treatment, psychotherapy, social support and drug counselling. In general, the list runs from treatment in closed institutions on the one end, to community-based counselling services on the other end.

Attenuated custody

As an example, attenuated custody in Italy involves special drug treatment units inside prisons, equipped to provide persons with alcohol and drug use disorders with substitution therapy, physical and mental rehabilitation, and support for social integration. Following a special therapeutic concept, the aim of attenuated custody is to prevent the progression and escalation of drug dependence. Therapeutic treatment is combined with group therapy, day release, craftwork, and leisure-time activities in a controlled environment. Usually, individual opioid substitution and other pharmacological therapies in combination with psycho-social therapies are supervised by a team of psychiatrists, psychologists, general practitioners and social workers.

Prisons for juveniles and youth departments within adult prisons particularly focus on social well-being, education and leisure activities: Juveniles may complete school, attend apprenticeships in several vocations, and also obtain psychotherapy including drug therapy and anti-violence and social training. Nevertheless, they remain in custody in a closed prison institution.

In-patient and out-patient drug treatment

According to the principle of “treatment instead of punishment” a criminal case can be fully transferred from the criminal justice system to a health and social care service provider for a certain time of probation. Institutions offer residential care for community living in a controlled environment. Usually at the end of a therapy, the prison sentence will be turned into a suspended sentence. In these institutions the principle of abstinence from drugs has been widely replaced by a systemic approach to drug prevention: current concepts of intervention integrate medical treatment (including opioid substitution) with psycho-social treatment (including psychotherapy), and support in communal living, management of co-habitation and conflict resolution. Often, young people are also provided with opportunities to do an apprenticeship supported by the care centre.

In some European countries such as Austria and Germany, a form of transition management, in combination with ambulant out-patient drug treatment is offered, while clients live in accommodation outside the premises of the facility itself. Clients are then offered autonomous living in the community; they must however follow a strict time schedule of blood- and/or urine tests.

Psychotherapy and drug counselling

Young people with a record of minor offences may be offered treatment in ambulant psychotherapy (in individual or group sessions). There are some institutional differences in European countries that seem to reflect cultural and

Health services are organized as top-down and bottom-up approaches

political traditions. In some countries (e.g. Austria and Germany) such services must be formally certified and must be registered with criminal justice authorities. This will guarantee that only experts in psychiatry, psychology and social work with special training in drug therapy may offer services to criminal justice clients. Here, the emphasis is on individual systemic psychotherapy, including the development of individual coping strategies to cope with difficult situations related to re-integration in social life.

In other countries (e.g. the United Kingdom, Denmark, Italy) charity organisations offer low-threshold services to young people who are either already in contact with the criminal justice system or considered at 'high risk' of problematic substance use and offending behaviour. In the UK, for example, community-based case management services were established to bridge the gap between the criminal justice system and the health and social care referral services. This "bridge" is designed as a consultancy service provided by so-called "peer navigators"; the overall objective here is to keep young offenders purposefully occupied, 'upskill' them and provide an opportunity to ex-offenders to 'give back' by offering support to other young people. At the same time they are being kept in education themselves (whereby also their risk of reoffending is being reduced). Peer navigators are young adult ex-offenders (16-21 years) who have been through the criminal justice system themselves and have similar relevant life experiences as young people who come to use the service. Navigators are volunteers who go through a training programme and receive accredited qualifications in peer mentoring and youth and community work. They are trained in aspects of mental health, trauma, personal well-being, speech and language, and substance misuse. Once their whole programme is completed, they can undertake paid work (Duke et al., 2019).

Risk factors for developing drug abuse

There are many different pathways that can lead to drug abuse in young people. In the various institutions for prevention and drug treatment, people with different levels of drug abuse and concomitant drug use disorder can be found.

The "propensity model" looks at individual risk factors and low self-controls

In life-course criminology (Carlsson and Sarnecki, 2016) it is argued that drug careers are the result of an accumulation of a number of risk factors, including individual, psychological, social and economic factors. These risk factors are said to have two features: first, they come in clusters, where social arrangements such as family, school, and neighbourhood are meshed up. Secondly, these risk factors are cumulative – the more risk factors an individual is exposed to, the higher the risk of offending. On the one hand, Gottfredson and Hirschi (1990) argue that low self-control is a cause for criminal propensity developed in early

The "life-course model" looks at social circumstances and informal social control

childhood. People with low self-control are characterised as "impulsive, insensitive, risk-taking, short-sighted and non-verbal and will therefore tend to engage in criminal acts such as smoking, drinking, drug-use, etc." (Gottfredson and Hirschi, quoted in Carlsson and Sarnecki, 2016: 32). On the other hand, Sampson and Laub (1995) proposed a dynamic model of pathways and turning points throughout the life-cycle of persons. They argued that *informal social controls* are the key to understanding why individuals engage in drug use and crime, why they persist, and why they quit. A lack of bonding in the family, school failure, delinquent peers, social deprivation and unemployment are significant risk factors for developing drug abuse careers. In turn, restoration of bonding offers potential turning points in the trajectories of young people. Together with other factors such as change in routine activities and cognitive change, a change in social control seems to be a critical condition for desistance in crime and drug consumption.

Empirical research

The work at the *European Centre for Social Welfare Policy and Research* has been guided by the search for particular risk factors involved in persistence and desistance of drug abuse. A most recent European research project called "EPPIC – Exchanging Prevention Practices on Polydrug Use among Youth in Criminal Justice Systems", focused on interventions for young people who have come in contact with authorities in criminal justice systems in Europe.

Methodology in the EPPIC project

Particular interventions in drug prevention have been selected in partner countries (Austria, Denmark, the United Kingdom, Germany, Poland) that are located at the interface of health promotion and law enforcement. They represent a variety of services offered to young people who have come in contact with criminal justice institutions. First, explorative interviews have been conducted with leaders of service institutions such as in-patient and out-patient drug treatment facilities, psychiatric and psychological drug treatment units in prisons, independent counselling institutions, and probation services. Second, 189 interviews with young people at the age of 14 to 24 were conducted in 2017/2018 to learn about their pathways and trajectories and about their experiences in intervention programmes. Interviews followed standardised interview guidelines; they were transcribed and analysed following a common coding book. Deductive and inductive methods of coding were combined, i.e. a number of family codes based on the study aims were complemented by other codes generated from interview material. Software for qualitative data analysis (MAXQDA and others) was used in the analysis of interviews (Mayring, 2015).

Qualitative research conducted in the context of the EPPIC project has shown that a number of individual characteristics had often accumulated and contributed to a heightened vulnerability for both drug abuse and involvement in crime. Our findings are mostly in accordance with previous research findings in life-course criminology (Carlsson and Sarnecki, 2016):

- Psychological factors found, included: hyperactivity-impulsivity-attention deficits, anxiety, and early aggressiveness – these being strong predictors of early onset of criminal offending.
- Large family size, but more importantly, how families function in terms of poor parental supervision, harsh and inconsistent discipline, maltreatment and neglect, family conflict, and parent's own problems such as crime, substance abuse, mental illness, and poverty.
- The experience of migration may increase drug abuse. Refugees in Italy and Austria reported a vicious circle: difficulties in finding a regular job without having a permanent residency, and being unable to apply for residency without having formal employment. Smoking cannabis with fellow immigrants can be a way of joining the community of origin in the new country. The lack of economic opportunities is often related to experiences of status frustration and depression.
- Proximity and "differential association" (Sutherland, 1939) with delinquent peers and siblings and gang membership is another important risk factor. Friends not only play a role in terms of onset of drug use, but also in terms of increasing amounts and frequency of drug use. Starting to attend music clubs, parties and concerts was reported as a contributing factor especially regarding use of stimulants and new psychoactive substances. Also reviving old friendship groups (e.g. after prison) can easily restart drug use after a period of abstinence.
- Learning difficulties and low school achievement, truancy, dropping out or being expelled from school further had a significant effect on drug trajectories and delinquency of young people. Schools can have a strong effect of social control through quality of schooling: classroom management, high teacher expectations, teachers as positive role models, positive feedback and treatment of students, good working conditions for staff and students, shared staff-student activities are some of the features of effective schools. However, this high-quality schooling unfortunately cannot be provided everywhere. Where this is not available, young people with learning difficulties tend to drop out.
- Low socio-economic status and associated neighbourhood features contribute to the risk of developing drug use disorders: a regional concentration

of economic deprivation, disorder and incivilities, poor neighbourhood integration, and the level of gang activity in the neighbourhood are significant environmental conditions for involvement in drugs and crime.

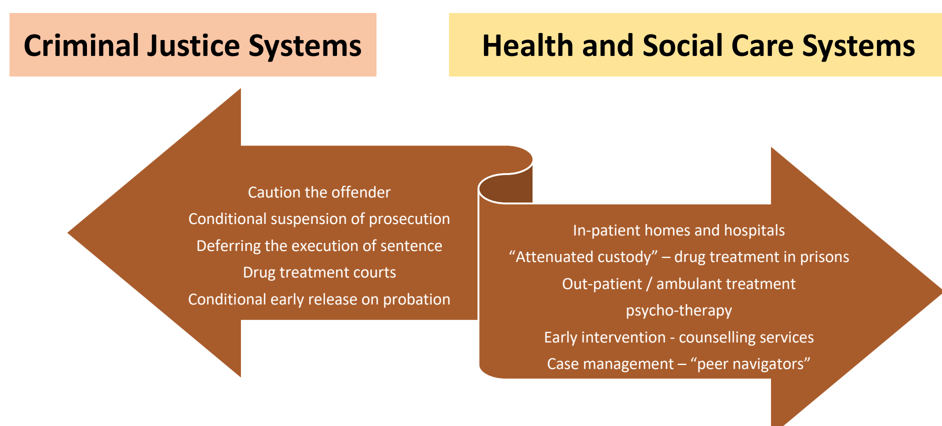
We have here presented some of the most important psychological and social risk factors for young people to develop drug abuse in combination with delinquency and crime. It is obvious that working with this target group presents particular difficulties in practical work. In the following section we will provide a short analytical statement about this particular target group and discuss some of the difficulties with the more specific group of so-called "recreational drug users" in "constrained choice therapies".

Clients of two systems

Young drug users in CJS being 'criminal' and 'patient'

As young drug users get in contact with the criminal justice system, they enter into relationships with the police, a prosecutor, or a judge on the side of the criminal justice system and with social or health workers on the side of the health and social care system. An offer to take treatment instead of punishment often appears to them as a "constrained choice" (Seddon, 2007) while being labelled as deviants in terms of both crime and drug abuse. They have so to speak to acquire both the role of the criminal and the role of the sick. The provision in this situation of the offer of "treatment instead of punishment" is an expression of convergence of criminal justice and health care, as it incorporates both the idea of crime prevention and the idea of rehabilitation. In other words: crime prevention and rehabilitation congregate in cases of coercive treatment in the criminal justice system.

Figure 1: Diversion options in criminal justice systems and service options in health and social care systems



Need dispositions of criminal justice clients

In our analysis of services for drug prevention, we identified a group of clients with specific need dispositions, who are difficult to treat with conventional methods: those young people, who insist on denying that they have a drug problem and who pretend to be able to control their drug consumption. They usually do not feel any need for therapy. They certainly do not feel physically dependent on drugs, but in their view drug use has become a social routine shared with peers. In their opinion, the troubles start when they are caught by the police – either for drug dealing or for other offences. Beforehand, smoking marihuana and occasional "trips" on synthetic drugs were allegedly part of their lifestyle. They are usually not aware of the way their behavioural patterns have changed and of how the use of drugs obstructs, for instance, opportunities for their education and vocational training, their family relationships or other social partnerships. Experimenting with drugs and engaging in deviant behaviour are experienced by them as ways of having fun, exciting and status-generating. "Hanging out together" is often considered by them as freedom from the institutions of social control such as family and school. Together with easy access to synthetic drugs in sub-cultures of night-time leisure activities, this mind-set of thrill-seeking presents a fertile ground for persistent and increasing drug use.

Authorities in the legal system, the police, prosecutors, judges, emphasise the character of diversion as a positive offer to perpetrators. This is also the gist in the Resolution of UNODC and WHO referred to earlier, which maintains that the coercive power of the criminal justice system does not interfere with the principle of individual liberty, as individuals still have a choice between accepting treatment and facing imprisonment or other administrative sanctions: "This type of pressure is significantly different from compulsory treatment that does not allow the individual to decline treatment or choose the type that they receive" (UNODC, 2010: 2). Moreover, for the drug user there is practically always some form of coercion to go for treatment, coming either from parents, other social partners or employers. Taking the clients' perspective, things are often not as clear. Even though alternatives to conviction or punishment comprise an element of choice for the offender to opt for diversion to treatment on the one hand, or for continuation of the criminal justice process on the other, a moment of external 'official' coercion cannot be denied. Both sides, the judge who offers "treatment instead of punishment", and the medical doctor, the psychotherapist or social worker who provide treatment, mean well and do focus on what is best for the client. However, from the point of view of young drug users, in particular of those who feel that they are in full control of their drug use, these services are not necessarily appreciated as help. One could indeed appreciate that the authority's offer is somehow forged, being experienced as an obligation in the

eyes of the offender if the sole alternative is the continuation of the criminal process (with a likely outcome of imprisonment). Consequently, voluntariness as a basic principle of psychotherapy may indeed be under some form of constraint, particularly so in the eyes of the young drug user.

Hence, drug abuse therapy for this particular sub-group, defining themselves as 'recreational drug users', needs particular attention; therapists will first meet with severe resistance and must manage to establish trust relations with their clients who, after all, feel that therapy is imposed rather than freely chosen. The first therapy sessions will therefore need to focus on establishing clients to enter into a trusting relationship with the therapist. Establishing such trust is fundamental for a positive development of young people who have come in contact with the criminal justice system. Trust is essential in any good doctor-patient relationship, and *a fortiori* so in therapeutic relations within a criminal justice context (Snedker, 2018).

Conclusion and further research

Treatment and social care for people with drug use disorders are certainly positive interventions particularly for young people who have come in contact with the criminal justice system. There is hardly any evidence that incarceration and punishment of young people leads to positive change in their behaviour; often to the contrary: incarceration frequently helps to strengthen the tendency towards delinquency and crime. The plea by UNODC and WHO (referred to earlier) for treatment instead of punishment has come about after a long and intensive process of evaluating evidence and experiences in this regard throughout the world. The variety of opportunities for diversion can effectively initiate – with the necessary determination – a process of guiding young people through adolescence to live an autonomous life free of drugs and crime. We saw that "coercive treatment" is a difficult and delicate matter.

One of the major facilitating factors for intervention in drug prevention in general, but even more in this particular situation of convergence between health and criminal justice systems, is the practice of trust. Trust is relevant to social relations both on a micro-level and on a macro-level, and can be understood, first, as a mechanism for bridging the "competence gap" between experts and laymen as in the example of doctor-patient relationships, and second, as a crucial element in the cooperation between authorities in health and criminal justice administrations. While on the one side, the relationship remains authoritarian, on the other side the diversion to a health practitioner offers opportunities to build trust relationships as a starting point for the client

to live a life free of drugs and crime. The professional orientation of the therapist and his or her trust in the client's ability in rehabilitation are at the heart of a positive relationship with the patient. On the part of the client, trust has to be built up in small steps, in particular as he or she is coerced into treatment.

Secondly, to improve the interaction between the health and criminal justice system, policy- and decision-makers may call for a better understanding of how the two systems intersect.

Examining the function of trust on an institutional level will be useful for a better understanding of the mechanisms for diversion of cases from the criminal justice system to the health system. A comparative study in European countries on building up trust in this particular context may yield interesting answers to questions such as: How do so-called "peer navigators" compare to professional therapists in terms of trustworthiness? How much information about a client is and can be shared between the two systems? Which data and knowledge about clinical examinations of a client can or will be reported back to the criminal justice system? How is progress in drug therapy being documented and shared between the professionals in both systems? How can trust between institutions be guaranteed under variable conditions?

There can be little doubt, overall, that trust does play a vital role in the making of relationships between the two systems of criminal justice and health and social care for the benefit of the drug abuser / criminal justice client.

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Contact
Berggasse 17
A – 1090 Vienna
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