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OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D. C. 20503

**"Quitting Hard Habits: Efforts to Expand
and Improve Alternatives to Incarceration
for Drug-Involved Offenders."**

House Committee on Oversight and Government Reform
Subcommittee on Domestic Policy

Thursday, July 22, 2010
2:00 p.m.
2154 Rayburn House Office Building

Written Statement
of
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Chairman Kucinich, Ranking Member Jordan, distinguished members of the Subcommittee, thank you for providing me with the opportunity to appear before you today to discuss alternatives to incarceration. As the newly confirmed Deputy Director of the Office of State, Local, and Tribal Affairs in the Office of National Drug Control Policy, it is an honor to appear before you today to address these important issues. I understand how important it is to identify alternatives to incarceration, having walked a beat as a New York City police officer and after working in the criminal justice field for 35 years. We cannot arrest our way out of our Nation's drug problems. It is vitally important, therefore, that we stop the revolving door of the criminal justice system and provide alternatives to incarceration. The *2010 National Drug Control Strategy* reflects this premise. It is balanced and comprehensive – recognizing that prevention, treatment, and enforcement are all essential components of an effective approach to addressing drug use and its consequences. Due to the desire to reduce recidivism, the high cost of incarceration, and budgetary constraints being felt at all levels of government, it is important that we take this opportunity to explore new approaches and expand proven efforts to address drug use and its consequences.

The *2010 Strategy* places an unprecedented focus on highlighting the importance of alternatives to incarceration. As our *Strategy* attests, there are more alternatives to incarceration available in our criminal justice system than ever before. While budget realities have driven some of these alternatives, in many cases, cooperative ventures among human service, criminal

justice, and community groups have led to these innovations. Therefore, these alternatives are not solely the province of the criminal justice system. Instead, for these programs to be effective, they also necessitate the involvement of other community and governmental actors. I will discuss several alternatives to incarceration today, including: drug and community courts, drug market interventions, and testing and sanctions programs. In recognition of the links between substance use and crime, treatment for offenders has been part of the *National Drug Control Strategy* for many years, as a combined effort to reduce threats to both public health and public safety.

The current *Strategy* stresses the importance of prevention, treatment, and enforcement. These necessary components comprise a common-sense approach to deterring young people and adults from using drugs and, as is too often the case, becoming involved with the juvenile and criminal justice systems.

The juvenile justice system is built on the belief that youth have the potential to change and grow, but, unfortunately, young people are cycling in and out of state and local systems on a regular basis. To keep young people from cycling through the juvenile justice system or, worse, entering and cycling through the adult system, early intervention and evidence-based approaches are critical. Youth should not only be screened and treated for substance use problems, but also for unmet emotional, behavioral, and academic needs. Protocols for screening, intervention and referral to treatment, and necessary services and programs must be supported to change risky and delinquent behavior and, in turn, stop further involvement in the juvenile justice system. These services should be available throughout the system, whether at diversion, pre-adjudication, post-disposition, or within a juvenile correctional setting or at re-entry. In the FY 2011 Budget proposal, \$4 million is requested by the Department of Justice to improve treatment programs

within the juvenile justice system through innovative diversion or re-entry programs. Because of the multidisciplinary nature of the problem, state and local juvenile justice, public health and behavioral health systems must collaborate with school districts, youth job training entities, and other youth services organizations to support positive youth development. ONDCP, the Department of Health and Human Services, the Department of Labor, the Department of Education and other Federal Agencies, through the Coordinating Council on Juvenile Justice and Delinquency chaired by the Attorney General, and other interagency collaborations will support the development and expansion of effective substance abuse, mental health treatment, and youth development programs in the juvenile justice system.

Prevention

While “Alternatives to Incarceration” is the topic of this hearing, no conversation about the intersection of crime and drugs is complete without a discussion of the directly related concept of prevention. The Administration’s *National Drug Control Strategy* seeks to prevent individuals from abusing drugs and ever becoming addicted. Prevention helps limit involvement with the juvenile or criminal justice systems.

Research and experience have helped us understand the importance of supporting communities in identifying and responding to the unique nature of their local drug problems. As we provide the training and technical assistance necessary to assist communities in implementing effective prevention strategies, we hope to see more communities strengthened and more lives saved. Major efforts include:

- Creation of a national, community-based prevention system – referred to as Prevention Prepared Communities – to protect our adolescents;
- Continued development of Drug Free Community coalitions;

- A new, National Youth Anti-Drug Media Campaign;
- Grants to assist state and local educational agencies in the development and implementation of a comprehensive set of programs and services.

In the Administration's FY 2011 Budget proposal, \$1.7 billion in resources have been requested to support a variety of education and outreach programs aimed at preventing the initiation of drug use, representing a 13.4 percent increase over the FY 2010 enacted level. The Administration has requested \$85.5 million to support the Drug Free Communities program and \$66.5 million to support the National Youth Anti-Drug Campaign in FY 2011.

Early Intervention and Treatment

Another important component of providing "front-end" alternatives to incarceration is facilitating effective early intervention for individuals with drug problems. Studies indicate most healthcare spending related to substance abuse goes to the avoidable, catastrophic consequences of addiction, rather than to its treatment. For approximately 23 million Americans, substance use progresses to the point that they require treatment. This is roughly the same number of American adults who suffer from diabetes.

Addiction is a chronic, complex disease, both psychological and biological in nature. Addiction should be managed in the same way as other chronic conditions. Unfortunately, there are some major differences between those who suffer from addiction and those who suffer from other chronic health conditions. Often, people who are addicted do not recognize their need for treatment. Interventions, whether delivered in a clinical health setting or in a criminal justice context, connect people who would not otherwise seek treatment with the help they need. Furthermore, drug use is frequently associated with criminal activity. Unfortunately, the criminal justice system is often the only environment where an individual will receive treatment

and be strongly motivated to reduce or eliminate their drug use. Therefore, while it is our hope that an individual can avoid involvement in the criminal justice system, if their substance abuse problem and behavior results in criminal activity, it is important that the criminal justice system be able to treat the disease of addiction. For this reason, the FY 2011 budget requests \$3.9 billion for the entire Federal government's treatment efforts.

Criminal Justice

Unfortunately, even the best prevention, intervention, and treatment efforts may not help every person. For some, drug use results in criminal and delinquent behavior, disrupting family, school, neighborhood, and community life in fundamental and long-lasting ways. Currently, more than 7 million adult Americans are under supervision by the criminal justice system. Two million are incarcerated and 5 million are on probation or parole. Fifty percent of inmates were active drug users at the time of their offense; nearly one-third of state prisoners and a quarter of Federal prisoners committed their crimes while under the influence of drugs.¹ The criminal justice system plays a vital role in reducing the costs and consequences of drug crimes, not just by incarcerating serious offenders who threaten the safety of the community, but also by providing a powerful incentive to address drug use before it escalates into a costly, and life threatening addiction. It is critical for drug-involved probationers and parolees to succeed and, in turn, break the cycle of recidivism. In order for probationers and parolees to be successful under community supervision, treatment needs to be of high-quality and readily accessible within the community. That is why, in FY 2011, the Budget proposal for the Department of Justice includes \$10 million for prosecution-led drug treatment alternatives to incarceration. The FY 2011 Budget proposal for the Center for Substance Abuse Treatment (CSAT) at the Substance Abuse and Mental Health Services Administration (SAMHSA) also includes \$4.6

¹ Bureau of Justice Statistics, 2004: <http://bjs.ojp.usdoj.gov/content/DCF/duc.cfm>

million for the Adult Criminal Justice Treatment program, a grant program that addresses the gaps in substance abuse treatment for adults under community supervision.

The *Strategy* highlights several key principles to breaking the cycle of drug use, crime, delinquency, and incarceration:

- Provide communities with the capacity to prevent drug-related crime;
- Develop infrastructure to promote alternatives to incarceration when appropriate; and
- Use community corrections programs to monitor and support drug-involved offenders.

Alternatives to Incarceration

The majority of drug-involved offenders are in state correctional systems. In addition, most low-risk State offenders are sentenced to probation and placed in the community. Many are referred to programs that are alternatives to incarceration. These alternatives include drug court, residential treatment programs, testing and sanctions programs, and programs that use monitoring devices. These offenders remain in their communities unless they violate the terms of their probation (e.g., missed or positive drug tests or missed treatment sessions). Depending on the violation, the probationer may receive more stringent restrictions, or, if arrested on another offense, may have his or her probation revoked and be placed in jail or prison for a specific length of time. The Federal government promotes innovation and supports promising approaches employed in state systems, the primary correctional entity for drug-involved offenders.

A key to effectively addressing drug-involved offenders within the criminal justice system is to properly assess offenders to determine the most appropriate approach to simultaneously deal with their criminal activity and their substance abuse problem(s). Regardless of what is chosen, every approach must have a continuum of responses. There are a

range of promising initiatives for drug-involved offenders throughout various stages of the juvenile and criminal justice systems. The following are some of the innovative programs being implemented.

Pre-Trial/Post-Booking Diversion

Diversion initiatives have expanded greatly over the past decade, and include a variety of programs at all points of the system: pre-booking, post-booking, court-based, deferred entry of judgment, and even those focused on special populations, such as women with children. Some jurisdictions have allowed offenders with a drug use disorder, upon arrest, to be immediately diverted to alternative programs. Front-end efforts that direct individuals with substance use disorders to community-based treatment have proven promising in treating behavioral health disorders and reducing the likelihood of recidivism.

Specialty Courts

Drug courts combine assessment, judicial interaction, accountability, monitoring and supervision, graduated sanctions and rewards, and treatment and recovery support services. Numerous evaluations over many years have shown drug courts are cost-effective alternatives to traditional incarceration. Data also indicates drug courts prevent most offenders, who successfully complete their individualized programs, from committing new crimes and returning to drug use. The President's FY 2011 Budget request provides for expansion, in scope and size, of such problem solving courts, and we should concentrate efforts on increasing their impact on high-risk, high-need offenders who may be prison-bound, and who, due to continuing substance abuse and criminal activity, continue to cycle through the criminal justice system. In an unprecedented longitudinal study that accumulated recidivism and cost analyses of drug court cohorts over 10 years, Northwest Professional Consortium research found drug courts may lower

recidivism rates (re-arrests) and significantly lower costs. This research found that when comparing drug court to traditional case processing, there was an estimated savings of \$1,392 per drug court participant and savings of \$6,744 for costs associated with outcomes, for a combined savings of \$8,136 on average.

Another type of specialty court is community court. These problem-solving courts can effectively serve the needs of misdemeanor drug-using offenders. Community courts are neighborhood-focused courts that address local problems, including misdemeanor drug possession, shoplifting, vandalism, and assault. Like drug courts, community courts link addicted offenders to judicially monitored drug treatment, and they make use of a broader array of mandates, such as job training and community restitution. These courts strive to create new relationships with neighborhood stakeholders, such as residents, merchants, churches, and schools. Furthermore, they pilot new and more proactive approaches to public safety, rather than only responding to crime after it has occurred.

The Red Hook Community Justice Center, located in Brooklyn, New York, is a great model. As the country's first multi-jurisdictional court, it addresses an array of neighborhood problems – drugs, domestic violence, and landlord tenant disputes. One judge handles all of these matters, and justice is supported by various sanctions, drug treatment, and mental health services.

The Administration supports locally driven drug and community courts and will continue to support approaches that ensure offenders are matched with the appropriate court. For example, veterans' courts have taken root in several jurisdictions across the country. Veterans' courts meet the unique needs of veterans, while matching them with services to assist them on the road to recovery from substance abuse.

The FY 2011 Budget request contains funding totaling \$56.4 million for substance abuse treatment activities in drug courts in the Department of Health and Human Services budget (an increase of \$12.5 million over the FY 2010 enacted level) and \$57 million for drug, mental health, and problem-solving courts in the Department of Justice's budget. This represents a total Federal investment of \$113.4 million.

Community Corrections

Community corrections represent a major intervention opportunity. Five of every seven offenders under criminal justice supervision are in the community on probation or parole. Community supervision is an alternative to incarceration with limited services. A community corrections program that is unable to address an offender's substance abuse issues only perpetuates recidivism and incarceration. Recently, however, local community supervision initiatives have been established that aim to improve the rehabilitation of probationers and parolees in their communities by employing swift and certain sanctions for positive drug screens, as well as implementing other evidence-based practices.

Testing and sanctions programs for positive drug screens provide new opportunities to curtail crime, drug use, and its associated consequences among community corrections populations. "*Managing Drug Involved Probationers with Swift and Certain Sanctions, Evaluating Hawaii H.O.P.E.*," an evaluation by Drs. Angela Hawkins and Mark Kleiman, reveals promising results for an innovative community supervision program for both high-risk and general population probationers. Other jurisdictions, such as Lincoln County, Oregon; Fairfax County, Virginia; and Anchorage, Alaska are initiating pilot community correction programs with testing and sanctions.

Another community corrections protocol is Delaware's Department of Corrections

Decide Your Time program, which also applies deterrence through certain and swift apprehension and response. Supported by ONDCP, the National Institute of Justice awarded a grant to the University of Delaware for a project titled, "Evaluating a Drug Testing and Graduated Sanctions Program in Delaware: A Randomized Trial." The purpose of this research is to inform and improve criminal justice and public health policy and practice regarding relapse, violations, and recidivism among chronic drug-using offenders in the community.

The program is for serious offenders serving intensive supervision sentences. Those who remain drug free transition to less-intensive levels of supervision, allowing resources to be focused upon those in need. Failed urine tests result in sanctions that graduate from more frequent testing, to curfew, and ultimately, brief incarceration. In cases of non-compliance, program participants undergo a reassessment of treatment and other service needs. Outpatient drug treatment is mandated after repeated positive drug tests, and treatment modalities, including long-term residential services, are available.

Another program is South Dakota's 24/7 Sobriety Project. Devised by the South Dakota Attorney General's Office, 24/7 is a court-based management program designed for repeat driving-under-the-influence offenders. This program also utilizes swift and certain sanctions. A variety of mechanisms are used to ensure abstinence, including: twice-daily breath testing for alcohol, use of an ankle bracelet to monitor alcohol consumption, and random urine testing for other drugs.

In the instance of positive drug tests, offenders are taken into custody immediately and brought to court within 24 hours. Repeat violations lead to increased periods of incarceration and the revocation of any pretrial release. Results have been encouraging, and the North Dakota Attorney General's Office began its own pilot in January 2008 and hopes to expand it Statewide.

We monitor these promising initiatives to determine their effectiveness and provide information to the criminal justice community to assist them in modifying their existing programs.

States are also reconsidering how to effectively manage drug-involved offenders outside correctional facilities. As the Pew Center on the States reports in its publication, “1 in 31: The Long Reach of American Corrections,” a number of States, including Texas and Kansas, have initiated justice reinvestment programs, while States such as Arizona, Michigan, Pennsylvania, Indiana, and Vermont are considering such approaches. The outcomes are promising. As reported by the Council of State Governments in its publication, “*Justice Reinvestment: An Overview*,” in Texas, the legislature reinvested \$241 million to expand the capacity of substance abuse and mental health treatment and diversion programs, and to ensure that the release of low-risk individuals is not delayed due to lack of in-prison and community-based treatment programs. These States are examining ways to redirect prison funding to provide for community supervision of low-risk offenders. The additional funding would improve the quality of supervision and services needed to appropriately manage these offenders in the community. Unfortunately, the budget crises many states are facing are forcing them to make difficult decisions regarding corrections funding. Initially, funding alternatives to incarceration can represent a significant additional cost. However, over time, high-quality alternatives to incarceration will result in reduced drug use, crime, delinquency, and incarceration, ultimately resulting in long-term net savings.

I am also encouraged by Congress’s interest in seeking alternatives to incarceration by supporting demonstration projects that develop probation programs with the goal of reducing drug use, crime, and recidivism by requiring swift, predictable, and graduated sanctions for non-compliance with the conditions of probation.

Developing and sustaining better community supervision programs with intense supervision, quality and accessible treatment, and other necessary services would facilitate successful supervision of these offenders in a community setting. More importantly, it will improve an offender's ability to succeed and avoid cycling back into the criminal justice system – which is the ultimate goal of corrections.

Drug Market Intervention

Not every drug-related offender has a substance abuse problem that is best addressed by treatment or public health interventions. Some are caught in the cycle of drugs and crime because of their role in drug markets. While prison sentences may be appropriate for some, in certain circumstances, it produces only short-lived results at high costs. Moreover, conditions resulting from the drug market activities persist in threatening the community. Drug market interventions (DMI) that attempt to divert drug dealers from further involvement in the drug trade, working in concert with traditional law enforcement techniques, are an emerging practice in this area.

Under the DMI model, the most violent offenders are prosecuted and low-level offenders are given the option to change their behavior or face prosecution. They are provided a variety of services to assist them in transitioning to a crime-free life style. Many communities, discouraged by the seemingly never-ending cycle of drug dealing and violence, followed this new multi-pronged operational plan, piloted in High Point, North Carolina. The operational plan addressed individual geographic drug markets, directly engaged drug dealers, their families and communities, created clear and predictable sanctions, offered a range of community services and help, and, perhaps most important, established community standards for acceptable behavior. Several cities are in the process of evaluating initial results. Training on the DMI has taken

place, and the Department of Justice is in the process of replicating and evaluating these efforts, and reviewing and funding DMI efforts will remain a priority area for exploration.

Conclusion

The Federal Government's role in these efforts is to ensure Federal assistance promotes evidence-based, effective, and long-term approaches, require evaluations to determine program effectiveness, and highlight model programs.

Drug courts have been evaluated for approximately 20 years. Based on these evaluations, we have seen drug courts make adjustments and improve their models of operation. This same approach of evaluating and adjusting must be conducted for other promising alternative approaches to incarceration being employed across the country to reach maturity and scalability. This can be done by supporting demonstration projects and pilots, be they pre-trial, deferred entry of judgment, or community supervision. When implemented effectively, the criminal and juvenile justice systems can deter drug use and dealing, reduce drug availability, steer users toward getting the help they need and, as a result, help make our neighborhoods safer. By supporting these efforts, the Federal Government is a full partner with State, local, and tribal governments to reduce drug use and crime, improve the lives of individuals, and stabilize communities through the effective and innovative use of resources.

As reflected in the *2010 National Drug Control Strategy*, combining effective and fair enforcement with robust prevention and treatment efforts will enable us to be successful in addressing drug use and its consequences. Measurable and sustained progress against drug use can only be attained when local communities, state agencies and the Federal Government coordinate and complement their efforts.

I look forward to working with the Committee to address these challenging and important

issues. I recognize that none of the many things ONDCP and my Executive Branch colleagues want to accomplish for the Nation are possible without the active support of Congress. Thank you very much for the opportunity to testify and for the support of the Committee on these vital issues.