

Testimony before the Senate Criminal Justice Committee Regarding Prescription Drug Abuse Prevention and Intervention

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Regarding Interim Charge 6: *Assess the current trends in prescription drug abuse including crimes and arrests, abuse of prescription and over-the-counter medication in the prison population, impact on probation violations and recidivism, and incidences of law enforcement as the first responders to prescription drug overdose emergencies. Identify strategies for law enforcement and criminal justice systems to work with education and health care professionals to use all means, including technology, to identify abuses, and increase education and prevention. Make recommendations to enhance drug abuse prevention and intervention programs.*

The Texas Public Policy Foundation is a 501(c)3 nonprofit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, free markets and limited government. Our research reveals the advantages of attacking prescription drug abuse with treatment placement options in the criminal justice system.

A Troubling Trend

Prescription drug abuse is on the rise across the United States. Even as the use of illicit drugs has fallen, the number of individuals presenting to hospitals or local jails addicted to prescription drugs or abusing them for nonmedical reasons is rising across almost every demographic.¹ In Texas, the number of prison inmates specifically charged with prescription drug crimes rose 18 percent between 2008 and 2011.²

While there are differences, the proper way for the criminal justice system to handle prescription drug abuse can find root in the best practices for defendants addicted to illicit drugs. Defendants charged with a crime related to prescription drug abuse usually are even more likely to be nonviolent and present fewer public safety concerns and more health concerns. Prescription drugs are legal substances, and in many cases they are legally obtained but consumed in excess. There is not the same type of black market and gang activities that follow illicit drugs, although sometimes a smaller underground market for legal drugs sold without a valid prescription does exist.

Therefore, prescription drug abuse is in large measure a health issue for individuals, families, and non-governmental organiza-

tions to address and a civil regulatory issue for public health and licensing agencies. The limited focus in the criminal justice system should be addressing the underlying addiction to prevent the addiction from leading to crimes against property and the person, as well as shutting down illegal prescription drug mills.

Today, this limited role has been extended to include an over-reliance on incarceration to put many addicts behind bars for significant terms. This has resulted in an estimated \$8.2 billion in costs in the criminal justice system across the United States for prescription drug addiction and incarceration alone.³

Presumption for Probation or Treatment

To be sure, those who abuse prescription drugs and those who knowingly smuggle medically indefensible quantities of such drugs to individuals must often be dealt with in the criminal justice system. If left untreated, prescription drug abuse has the potential to transform into a true public safety issue.

But the evidence shows that, at the outset, prescription drug abuse is largely nonviolent and without the same implications underlying illicit drug use. For example, only 4.8 percent of those who used a prescription pain reliever non-medically stole it from a family member, as opposed to being given the medication. And only 4.4 percent bought the pain reliever from a drug dealer or a stranger.⁴

Given the relatively nonviolent nature of prescription drug abuse, which is even clearer than in cases of low-level illegal drug possession, prescription drug abusers should be diverted to treatment as frequently as possible. The best way to effectuate this treatment is through a statutory presumption that a criminal defendant found abusing prescription drugs, or charged with a non-trafficking crime related to such an addiction, should be diverted entirely from the system or put on probation, in either case with a court requirement that they undergo treatment, instead of being sent to prison.

This presumption would ensure that treatment is at the core of the criminal justice response to a prescription drug addiction issue. This presumption would not, of course, apply to those who traffic in large amounts of illegal prescription drugs.

The exception to this presumption would be if there is evidence sufficient for the judge to make written findings that the offender presents a danger to the public safety.

Drug Courts and Treatment

Drug courts are one of the many successful treatment options for drug offenders generally, and that success could be easily translated to the somewhat unique case of a prescription drug abuser.

For example, drug court professionals have long dealt with defendants with substance abuse issues that have legitimate underlying medical issues; in those cases, drug courts coordinate with the defendant's sole physician to determine the availability of non-narcotic alternatives and often even require the use of an alternative therapy.⁵

In Texas, specifically, drug courts have been shown to reduce re-incarceration rates amongst all drug defendants. An initial evaluation of drug courts in Texas showed a 3.4 percent re-incarceration rate for those who had completed a drug court program after three years, as compared to a 21.4 percent re-incar-

ceration rate for those entering a drug court but not completing it, and a 26.6 percent re-incarceration rate for the comparison group.⁶

Further, at last count, drug courts in Texas cost approximately \$1,600-\$2,000 per offender, per year—a far cry from the almost \$20,000 per year the state pays to incarcerate an offender in a prison or jail cell.⁷

Drug courts revolve around a system of intense supervision. Prescription drug abusers are in genuine need of such supervision. Given the myriad of legal ways to obtain prescription drugs, non-penal supervision and therapy may often be the only way to resolve the addiction.

Finally, Texas may want to consider adopting a “Good Samaritan” law that provides immunity from prosecution when a friend or family member, who is not facilitating the addiction, reports a prescription drug overdose to 911.⁸ Some type of “Good Samaritan” law has been enacted in 13 states since 2007. These laws appropriately only provide immunity if a small quantity of prescription drugs is involved and there is no trafficking. ★

Endnotes

¹ “The NSDUH Report: Trends in Nonmedical Use of Prescription Pain Relievers: 2002 to 2007,” Substance Abuse and Mental Health Services Administration, Office of Applied Studies (Feb. 5, 2009).

² Email, Jeff Baldwin, Texas Department of Criminal Justice (Apr. 11, 2012).

³ “Six Strategies for Reducing Prescription Drug Abuse,” National Governors Association (Sept. 2012).

⁴ “Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings,” Substance Abuse and Mental Health Services Administration (Sept. 2011).

⁵ “Admitting to Drug Court Persons Using Prescription Drugs For Underlying Medical Conditions,” BJA Drug Court Clearinghouse/Technical Assistance Project, American University, Feb. 2010).

⁶ “Initial Process and Outcome Evaluation of Drug Courts in Texas,” Criminal Justice Policy Council (Jan. 2003).

⁷ Ibid.

⁸ Julie Turkewitz, “Good Samaritan’ Laws Could Help Overdose Victims—If Only People Knew They Existed,” *The Atlantic* (Oct. 19, 2012).

