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Towards a Strengths-based Focus in the Criminal Justice System for Drug-using Offenders

Charlotte Colman and Eva Blomme

Abstract: In this chapter the authors advocate for an increased focus on holistic, desistance- and recovery-oriented practices in the criminal justice system for dealing with drug-using offenders. They argue for looking beyond the offenders’ risks and focusing on individual and community empowerment.

Although the exact nature of the relationship between drug use and offending is complex to understand, it is clear that a connection exists between these two phenomena. In fact, research on this topic stresses that not only do a substantial amount of drug users have experience with committing offences, but also that persons in the criminal justice system have higher rates of drug use (disorders) compared to the general population.

In this chapter we focus on criminal justice responses to offenders who come into contact with the criminal justice system because of committing drug-related offences. This applies to cases in which individuals violate specific drug laws (such as the possession of drugs), but mainly when they commit certain offences to finance their drug use (such as shoplifting or thefts), or when they commit an offence under the influence of drugs (Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009). We focus specifically on those drug-using offenders whose offending is motivated by their drug use.

The relationship between drug use and offending has implications for the relationship between the processes of refraining from drug use, recovery, and refraining from offending, desistance. Consequently, desistance and recovery should be regarded as related processes that need to be considered jointly when developing criminal justice interventions targeting this group of drug-using offenders (Colman [2015](#CBML_BIB_ch031_027)BIB-027).

A considerable body of research has highlighted that a strict repressive approach towards this group of drug-using offenders is not beneficial. After all, recidivism rates are higher with offenders who served prison sentences compared to drug-using offenders who received a non-custodial sentence (Andrews and Anderson [2006](#CBML_BIB_ch031_002)BIB-002; Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093). Prison, in particular, may generate deprivation and criminogenic effects jeopardizing successful reintegration and long-term recovery and desistance (Spohn and Holleran [2002](#CBML_BIB_ch031_077)BIB-077; Camp and Gaes [2005](#CBML_BIB_ch031_021)BIB-021). Cloud and Granfield ([2008](#CBML_BIB_ch031_026)BIB-026), for example, have indicated that incarceration could represent a barrier to recovery and desistance due to the loss of personal and social resources, combined with discrimination and stigma from the public.

As a consequence, a growing group of policy makers are convinced that incarceration is not the right answer for these drug-using offenders. Moreover, treatment options in prisons are often limited, encouraging these authorities to divert drug-using offenders away from the criminal justice system.

The referral of these drug-using offenders from the criminal justice system to treatment programs relies on rehabilitative functions of punishment (Bean [2014](#CBML_BIB_ch031_006)BIB-006; Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009). Historically, however, the criminal justice system has struggled with finding a balance between punishment and protecting public safety on the one hand and offender rehabilitation on the other hand (Barton [2006](#CBML_BIB_ch031_004)BIB-004).

Traditionally, the criminal justice system starts from deficit-based approaches mainly seeking to reduce risks and offence-related behaviors (Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093). Although these approaches are a well-documented starting point from which to develop individualized interventions, they are based on factors predicting criminal behavior, rather than factors predicting desistance or recovery (McNeill [2012](#CBML_BIB_ch031_062)BIB-062). Rather than being defined in terms of “risk” and “need”, drug-using offenders also possess personal and social strengths and resources enabling them to desist from offending and recover from drug use (McNeill [2012](#CBML_BIB_ch031_062)BIB-062). A strengths-based client-empowering approach, influenced by the positive psychology movement, is suggested to complement older, risk-oriented approaches. Over the past decade, the emergence of this movement has influenced sentencing practices, striving to balance the traditional focus on risks and deficits with a renewing strengths-based approach integrating protective factors (Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093).

This chapter is organized into three sections. The first section will elaborate on the relationship between drug use and offending to clarify the relationship between these two phenomena. While this first section focuses on the onset of drug use and offending, the second section will highlight the processes of refraining from drug use and offending and thus elaborates on the link between recovery and desistance. These two sections provide an empirical basis for our third section in which we first examine the role of the criminal justice system in recovery and desistance and second, the reasons why we should apply more strengths-based principles within this system. Together, these three sections aim to contribute to the growing number of studies calling for a greater focus on holistic, desistance- and recovery- oriented practices in the criminal justice system for drug-using offenders.

The Complex Relationship between Drug Use and Offending

The relationship between drug use and offending has been widely studied (Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009; Bean [2014](#CBML_BIB_ch031_006)BIB-006; Bennett and Holloway [2009](#CBML_BIB_ch031_010)BIB-010; MacCoun et al. [2003](#CBML_BIB_ch031_055)BIB-055; Pierce et al. [2015](#CBML_BIB_ch031_071)BIB-071; Stevens [2007](#CBML_BIB_ch031_078)BIB-078). Two main assumptions could be drawn from this large evidence base. First, drug use seems to be more common among offenders. Studies have repeatedly shown that higher proportions of arrestees and inmates have used drugs (in a problematic way) compared to the general population (Fazel et al. [2006](#CBML_BIB_ch031_035)BIB-035; Fazel et al. [2017](#CBML_BIB_ch031_036)BIB-036; Hunt [2014](#CBML_BIB_ch031_045)BIB-045; Bennett et al. [2004](#CBML_BIB_ch031_011)BIB-011; Belenko and Peugh [2005](#CBML_BIB_ch031_008)BIB-008). Drug use also appears to increase the intensity and frequency of criminal behavior (Chaiken and Chaiken [1990](#CBML_BIB_ch031_024)BIB-024; Caulkins and Kleiman [2011](#CBML_BIB_ch031_023)BIB-023). Second, a considerable number of clients in drug treatment programs report having committed offences (van der Zanden et al. [2007](#CBML_BIB_ch031_089)BIB-089; Hayhurst et al. [2013](#CBML_BIB_ch031_042)BIB-042).

There are different theories on how drug use and offending might be connected. In fact, four types of relationships can be broadly identified: (1) drug use leads to offending, (2) offending leads to drug use, (3) an external variable leads to drug use and offending and (4) drug use and offending have a bidirectional relationship (Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009).

Theories on drug use leading to offending often rely on the tripartite framework of Goldstein (Goldstein [1985](#CBML_BIB_ch031_039)BIB-039). This framework identifies three subcategories of drug-related offences: psychopharmacological offences, including offences committed under intoxication; economic-compulsive crime, involving offences committed to finance drug use; and systemic crime, in which certain aspects of the marketing of drugs (often linked with the illegal character of drug markets) cause offending (Caulkins and Kleiman [2011](#CBML_BIB_ch031_023)BIB-023); these subcategories are often supplemented by a fourth – drug law violations (EMCDDA [2007](#CBML_BIB_ch031_033)BIB-033). Another theory argues that offending leads to drug use, in which drug use is a part of a criminal lifestyle (Bennett and Holloway, [2005](#CBML_BIB_ch031_009)BIB-009). Some refer to the subculture theory when explaining this theory. The subculture theory hypothesizes that offenders already circulate in an environment that is supportive of drug use, making access to drugs easier (Bean [2014](#CBML_BIB_ch031_006)BIB-006). A third explanation refers to a common factor of both drug use and offending (Bean [2014](#CBML_BIB_ch031_006)BIB-006; Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009). This theory holds that a third variable (such as poor social support systems or deviant peers) leads to both drug use and crime. Lastly, some theories mention a bidirectional relationship between drug use and crime, in which drug use sometimes leads to crime and crime sometimes leads to drug use (Bean [2014](#CBML_BIB_ch031_006)BIB-006; Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009).

While it is clear that a connection exists between these two phenomena, the exact nature of this connection remains highly debated (Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009; Bennett and Holloway [2009](#CBML_BIB_ch031_010)BIB-010, Bean [2014](#CBML_BIB_ch031_006)BIB-006; Stevens et al. [2003](#CBML_BIB_ch031_079)BIB-079). That is to say, rather than a causal relationship between drug use and offending, a large body of literature merely confirms an association between both phenomena. The strength of this association *per contra* varies across type of drug, type and intensity of offending (Bennett et al. [2008](#CBML_BIB_ch031_012)BIB-012; Best et al. [2001](#CBML_BIB_ch031_017)BIB-017) and the characteristics of the individual or the setting (Bean [2014](#CBML_BIB_ch031_006)BIB-006). For instance, MacDonald et al. ([2008](#CBML_BIB_ch031_056)BIB-056) report that participants in treatment programs who use alcohol and/or cocaine, are more often involved in violent offences, which was to a lesser extent the case for cannabis users. Moreover, MacDonald et al.’s research indicates that other variables such as lifestyle or one’s attitude towards regulations seem to have an additional influence on the connection between drug use and offending (Macdonald et al. [2008](#CBML_BIB_ch031_056)BIB-056). Similarly, Bennett, Holloway and Farrington (2008) have found that the odds for offending were 2.8 to 3.8 times higher for drug users compared to non-drug users. The odds for offending were particularly high for crack-users, followed by heroin users. Even recreational drug use was linked to offending, although the odds for offending were much lower compared to more problematic levels of drug use, which seems to confirm the variations in intensity of drug use. Additionally, the results vary among types of offences: the use of heroin, crack and cocaine enhances the odds of shoplifting and involvement in prostitution. Lastly, evidence suggests that there is variation in the drug-offending association when characteristics of the drug user (such as gender or age) were taken into account (Bennett et al. [2008](#CBML_BIB_ch031_012)BIB-012).

Thus, the evidence clearly shows an association between drug (mis)use and offending, yet this does not necessarily mean this relationship is causal (Bean [2014](#CBML_BIB_ch031_006)BIB-006; Colman and Vandam [2009](#CBML_BIB_ch031_028)BIB-028). The latter would imply that all drugs users are criminally active, or that all criminals are drug users and that is – of course – not the reality (MacCoun et al. [2003](#CBML_BIB_ch031_055)BIB-055). Studying causal relationships is also complicated and entails some methodological challenges, including the introduction of a comparison group of non-drug users. In practice, research on the drug-offending association often lacks this comparison group of non-drug users (Bennett et al. [2008](#CBML_BIB_ch031_012)BIB-012), or suffers from selection bias due to the limited selection of respondents either from treatment facilities (with a high proportion of drug users) or from the criminal justice system (with a high proportion of offenders) (Bean [2014](#CBML_BIB_ch031_006)BIB-006). Additionally, research seems to pay less attention to the socio-demographic features of the individuals involved in offending and drugs use, as well as to other circumstantial variables, although these might (partly) explain the differences in type of drug (mis)use and type of crime (Bean [2014](#CBML_BIB_ch031_006)BIB-006; Stevens [2007](#CBML_BIB_ch031_078)BIB-078).

The Relationship between Recovery and Desistance

The aforementioned relationship between drug use and offending as well as the common overlap in populations involved in the two activities’(Bennett et al. [2004](#CBML_BIB_ch031_011)BIB-011) has implications for the relationship between the process of refraining from drug use, recovery, and desistance, the process of refraining from offending.

The concepts of and explanations for recovery and desistance have varied over time and place. Some define recovery as “sobriety”: “a voluntarily maintained lifestyle characterized by sobriety, personal health and citizenship” (Betty Ford Institute Consensus Panel 2007). A growing number of scholars, however, do not limit recovery to sobriety, but focus on the person’s quality of life (Colman and Vander Laenen [2012](#CBML_BIB_ch031_029)BIB-029; Valentine [2010](#CBML_BIB_ch031_088)BIB-088), relating to their individual experience of recovery. In other words: people themselves defines when they are in recovery. It is clear that recovery emphasizes the experience of an improvement of quality of life and the feeling of empowerment throughout this process (Best and Laudet [2010](#CBML_BIB_ch031_016)BIB-016). As a result, recovery also includes a sense of belonging in the community, meaning, purpose and hope. Recovery is mostly considered as a process rather than an abrupt event with an end state, as people in recovery engage in a process of personal and social transition (Best et al. [2016](#CBML_BIB_ch031_013)BIB-013).

There is a strong rationale that recovery could be explained by (a combination of) three components. In this regard, a growing body of recovery research has been dedicated to the concept of “recovery capital” (Cloud and Granfield [2008](#CBML_BIB_ch031_026)BIB-026; Best and Laudet [2010](#CBML_BIB_ch031_016)BIB-016). Recovery capital (White [2008](#CBML_BIB_ch031_091)BIB-091) consists of the range of personal, social and community resources that facilitate recovery. “Personal recovery capital” consists of physical capital such as health, as well as educational/vocational skills, self-esteem, sense of meaning and purpose in life. “Social recovery capital” includes supportive and prosocial relationships with family or friends. “Community recovery capital” refers to the attitude, policy and perception of the community related to recovery (-oriented initiatives). It encompasses initiatives to reduce recovery-related stigma and the availability of support and treatment in local communities (White [2008](#CBML_BIB_ch031_091)BIB-091).

As with recovery, a growing number of scholars also point to desistance as a process. McNeill, Farrall, Lightowler and Maruna (2012: 2), for example, define it as “the long-term abstinence from criminal behavior among those for whom offending had become a pattern of behavior.” Fairly recently, some desistance researchers made distinctions between phases in the desistance process. In this regard, Farrall and Maruna (2004) distinguished “primary” desistance, defined as an offence-free period, from “secondary desistance”, entailing the successful orientation towards a (permanent) offence free life, including the construction of a (new or former) identity as a non-offender. A decade later, McNeill (2014) added “tertiary desistance” to Farrall and Maruna’s dual framework focusing on the recognition of the offender’s change by the community.

Desistance is also mostly understood in its interaction between internal and external elements such as changes in identity and informal social control (Giordano et al. [2002](#CBML_BIB_ch031_037)BIB-037; Sampson and Laub [1995](#CBML_BIB_ch031_075)BIB-075). In contrast to recovery, desistance mainly focuses on socially desirable outcomes – a reduction in offending – and less on client-reported outcomes. Still, over the past decade, criminologists have increasingly adopted aspects of the Good Lives Model (Ward and Stewart 2003), which could be considered as the counterpart of quality of life in recovery research (see above).

Although recovery originated as a central concept in mental health and addiction research, and desistance originated in criminal career criminology, researchers (Best et al. [2017](#CBML_BIB_ch031_015)BIB-015) argue that desistance research and theory could learn from the emerging evidence base around recovery research and *vice versa*. As a result, our knowledge of both recovery and desistance could be enhanced. After all, theories on desistance and recovery share common ground: they are both transformational processes which are not linear but dynamic, gradual and subject to relapse. Moreover, similar internal and external components, including personal, social and community resources, seem to influence both processes of change (Colman [2015](#CBML_BIB_ch031_027)BIB-027; Marsh [2011](#CBML_BIB_ch031_057)BIB-057).

However, despite the focus on the link between the (onset) of drug use and offending, far less attention has been paid to the relationship between refraining from drug use and offending. The extrapolation of evidence from these two areas remains scant and few (empirical) studies assess the relationship between recovery and desistance. These few studies recognize a relationship between recovery and desistance and indicate that the road to recovery and desistance is different for the population involved in both drug use and offending (Best et al. [2017](#CBML_BIB_ch031_015)BIB-015). One of these studies, elaborating on the recovery–desistance relationship in a population of drug-using offenders, shows that they perceive recovery as more important than desistance (Colman [2015](#CBML_BIB_ch031_027)BIB-027; Colman and Vander Laenen [2012](#CBML_BIB_ch031_029)BIB-029). Respondents indicated that their offending and drug use were related and that, to them, their desistance process is subordinate to their recovery process. Although the inclusion criteria of this study related to both drug use and offending, it became clear that most respondents viewed themselves mainly as recovering drug users rather than as desisting offenders. In this regard, most respondents were identified as primary drug users, who committed offences, rather than as primary offenders using drugs. Consequently, they acknowledged recovery as the first step to desistance (Colman and Vander Laenen [2012](#CBML_BIB_ch031_029)BIB-029). To the drug-using offenders included in the study, recovery was, however, not synonymous with sobriety: some respondents still used drugs, but in a significantly reduced way.

Sullivan and Hamilton (2007) highlight the need to focus on the reasons for developing and refraining from offending and drug use and to obtain a career perspective, rather than a sole focus on the onset of drug use and offending. Research conducted by Colman (2012; [2015](#CBML_BIB_ch031_027)BIB-027) confirms that not only recovery and desistance are related but that the relationship between drug use and offending has repercussions for the relationship between recovery and desistance. Similar results were found in other studies. Marsh ([2011](#CBML_BIB_ch031_057)BIB-057) indicates that sustaining desistance depends on sustaining recovery. Sullivan and Hamilton (2007) observe that although recovery is not sufficient for desistance, a decline in recovery and desistance often occur simultaneously. Likewise, other studies acknowledge the positive influence of recovery from drug use on desistance without discussing in detail the connection between desistance and recovery (Davis et al. [2013](#CBML_BIB_ch031_030)BIB-030; Wooditch et al. [2014](#CBML_BIB_ch031_095)BIB-095).

Recovery and Desistance in the Criminal Justice System

Because of the symbiotic relationship between drug use and offending, a large number of drug-using offenders could be found at different levels of the criminal justice system, from pre-trial stage to prison. They include both primary drug users who have committed drug-related offences and primary offenders who have used drugs. Research indicates that especially primary drug users, who have been using drugs or who have developed substance use disorders prior to their arrest, account for a substantial proportion of conviction and incarceration rates in many countries (Belenko et al. [2013](#CBML_BIB_ch031_007)BIB-007). In this chapter, we focus on primary drug users whose offending is motivated by their drug use.

Taking into account the above-mentioned link between recovery and desistance and the fact that to most drug-using offenders recovery is equally or even more important than desistance (Colman 2012, [2015](#CBML_BIB_ch031_027)BIB-027), criminal justice actors should focus more on the drug-using problem instead of primarily or solely focusing on the offending. If adopting this focus, prison sentences should be avoided and other, non-custodial sentences should be favored. In practice however, we notice that many drug-using offenders end up in prison. Based on data from 74 countries worldwide, the United Nation Office on Drugs and Crime (UNODC) estimated that among convicted prisoners, drug-related personal consumption offences accounted for an estimated 18% of the global prison population (UNODC [2016](#CBML_BIB_ch031_086)BIB-086).

However, custodial responses, in particular imprisonment, do not seem to achieve success in reducing drug-related offending (Stevens et al. [2003](#CBML_BIB_ch031_079)BIB-079; Mitchell et al. [2017](#CBML_BIB_ch031_065)BIB-065; Spohn and Holleran [2002](#CBML_BIB_ch031_077)BIB-077) or improved psychosocial functioning (Massoglia [2008](#CBML_BIB_ch031_058)BIB-058). Moreover, research shows that recidivism rates are higher with offenders who served prison sentences compared to offenders who received a non-custodial sentence provided in the community, especially within a sample of drug-using offenders (Andrews and Anderson [2006](#CBML_BIB_ch031_002)BIB-002; Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093; Spohn and Holleran [2002](#CBML_BIB_ch031_077)BIB-077). Spohn and Holleran ([2002](#CBML_BIB_ch031_077)BIB-077) speculate that the prison context may be criminogenic, as it weakens inmates’ social bonds. Offenders sentenced to prison may therefore be less prepared to return to the community, making it more difficult to reintegrate after their sentence. This view is supported by Camp and Gaes ([2005](#CBML_BIB_ch031_021)BIB-021), who hypothesize that inmate culture and prison regime have a criminogenic effect. Non-custodial sentences, including the supervision of offenders in the community, may prevent people from experiencing these debilitating circumstances by letting them, amongst other things, maintain contact with the community (Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093).

In the following sections, we will focus on the diversion of drug-using offenders from the criminal justice system to treatment. This diversion relies on rehabilitative functions of punishment (Bean [2014](#CBML_BIB_ch031_006)BIB-006; Bennett and Holloway [2005](#CBML_BIB_ch031_009)BIB-009). As mentioned above, the criminal justice system has historically struggled to find a balance between punishment and protecting public safety on the one hand and offender rehabilitation on the other hand (Barton [2006](#CBML_BIB_ch031_004)BIB-004). Recent changes, including improved screening and assessment, the promotion of strengths-based interventions, as well as the implementation of evidence-based treatment, have helped to find a balance between these competing demands (Barton [2006](#CBML_BIB_ch031_004)BIB-004).

Treatment as One of the Pathways to Recovery

Recovery has many pathways that should ideally be tailored to fit the unique needs of each individual. While taking a repressive approach to drug-using offenders seems counter-effective, there is promising evidence of the beneficial effects of treatment on reducing drug use and related criminal behavior (Mears et al. [2003](#CBML_BIB_ch031_063)BIB-063; Stevens et al. [2003](#CBML_BIB_ch031_079)BIB-079). Therefore, there is a growing need to provide appropriate, individualized, evidence-based treatment for drug-using offenders. Imprisonment should be avoided and diversion to treatment should be available at earlier stages of the criminal justice system for those in need of it (UNODC/WHO [2016](#CBML_BIB_ch031_084)BIB-084).

Although drug treatment will not be needed by everyone who seeks recovery, for some it may be one of the pathways to recovery. After all, drug treatment can be associated with reductions in drug use, the odds of offending and costs to society, as well as improved public safety and well-being for both the person and their direct environment (UNODC [2018](#CBML_BIB_ch031_087)BIB-087; Holloway et al. [2006](#CBML_BIB_ch031_043)BIB-043; Gossop et al. [2005](#CBML_BIB_ch031_040)BIB-040).

These results are, however, not univocal for all types of treatment and it is clear that some treatment approaches may work better with some individuals than with others. Treatment should be based on scientific evidence and individualized to match the unique needs and coping style of each client. In general, positive results are found for a range of psychosocial interventions reducing drug use, drug-related problems and criminal activity (National Institute on Drug Abuse [2012](#CBML_BIB_ch031_068)BIB-068; Dutra et al. [2008](#CBML_BIB_ch031_032)BIB-032). Examples of these evidence-based approaches include contingency management (CM), motivational interviewing (MI), cognitive behavioral therapy (CBT) and therapeutic communities (TC) (NICE [2007](#CBML_BIB_ch031_069)BIB-069). For psychostimulant misuse, for example, a systematic review of 52 randomized controlled trials (RCTs) found that psychosocial interventions (compared to no intervention) were effective in increasing recovery and reducing treatment dropout (Minozzi et al. [2016](#CBML_BIB_ch031_064)BIB-064). Opioid substitution treatment (OST) programs have been identified as a key model for the treatment of opioid users (Mattick et al. [2009](#CBML_BIB_ch031_059)BIB-059). Furthermore, a positive and supportive environment and the availability of a continuum of care including aftercare (recovery management) seem to gain better results (Joe et al. [1999](#CBML_BIB_ch031_046)BIB-046; Mears et al. [2003](#CBML_BIB_ch031_063)BIB-063). Also, treatment programs with an integrated and multi-methodological approach targeted at the participant’s various social and mental health problems seem to be more promising than those programs that focus exclusively on the drug-using problem (Mears et al. [2003](#CBML_BIB_ch031_063)BIB-063). When looking at the effectiveness of drug treatment programs in detail, research reveals that the characteristics of the participants (such as age, socio-economic background, mental and physical health) and psychosocial factors (such as motivation, family support) seem to have a meaningful influence on the outcome of a program, too (Bukten et al. [2012](#CBML_BIB_ch031_020)BIB-020; Holloway et al. [2006](#CBML_BIB_ch031_043)BIB-043). This implies that not all treatment programs are a good fit for every individual. Nevertheless, they could be effective for specific target populations and/or under some conditions (Holloway et al. [2006](#CBML_BIB_ch031_043)BIB-043). It should, however, be noted that most evaluation studies focus on the short-term effectiveness of treatment interventions with a follow-up between one and two years. Thus, there is insufficient data about their long-term effectiveness on recovery, highlighting an urgent focus for further recovery studies (Laudet et al. [2002](#CBML_BIB_ch031_051)BIB-051).

Generally, the above-mentioned evidence suggests that the criminal justice system may provide an opportunity for alternative (more effective and more humane) answers to drug use and associated criminal behavior in drug-using offenders (McCollister et al. [2004](#CBML_BIB_ch031_060)BIB-060). Diversion from the criminal justice system to drug treatment programs as an alternative to more punitive sanctions could provide effective treatment to offenders with an underlying drug-using problem. Thus, the criminal justice system could be a window of opportunity and reach a group in need of treatment who might otherwise not receive it (Chandler et al. [2009](#CBML_BIB_ch031_025)BIB-025).

Many countries therefore provide different linkages to a range of treatment programs at the different stages (ranging from pre-trial, trial and post-sentencing) of the criminal justice process. The promotion of these non-custodial measures is based on certain fundamental principles enshrined in various international legal documents.[[1]](#endnote-1) At pre-trial stage, police and prosecuting authorities can exercise a degree of discretion to divert offenders to treatment programs instead of arresting or prosecuting them. At the sentencing stage, where most of the alternatives are situated, judges can opt to refer an offender to a treatment program instead of more severe punishment including a prison sentence. Some jurisdictions even have specialized drug treatment courts, where offenders are referred from the criminal justice system to drug treatment programs before being convicted (see below). At the post-sentencing stage, an offender can receive a conditional release when s/he has served a minimum term in prison. One of these conditions can be treatment for their drug-using problem (Belenko et al. [2013](#CBML_BIB_ch031_007)BIB-007; UNODC/WHO 2018) and these non-custodial measures should be categorized in such a way that consistent sentencing remains possible. The type of alternative offered should depend on a thorough screening.

Criminal justice referral to treatment programs at each of these stages consists of a diverse range of treatment options. The type of treatment should depend on a thorough assessment conducted by treatment professionals (Tokyo Rules 1990). As mentioned before, treatment is not a one-size-fits-all. Drug users in the criminal justice system should also have access to the same level and quality of treatment and health care as the general population.[[2]](#endnote-2) Treatment programs for criminal justice clients generally operate through various government agencies and private organizations within the community which means that services for criminal justice clients and voluntary patients are mostly overlapping.

Most offenders entering treatment after a diversion from the criminal justice system do this under legal coercion. This means that legal consequences may be deferred, reduced or even lifted when the offender participates in a treatment program. The decision whether or not to enter the treatment program remains with the person concerned. In other words, the offender still has a choice (i.e. s/he has to give her/his consent to be referred to drug treatment) (UNODC [2018](#CBML_BIB_ch031_087)BIB-087; Seddon [2007](#CBML_BIB_ch031_076)BIB-076).

This aspect in particular – the judicial coercion to enter a treatment program – is often criticized precisely because of this “coercion” component. Since motivation is recognized as an essential aspect in treatment participation and success, some authors argue that pressuring an offender into treatment contradicts this (Klag et al. [2005](#CBML_BIB_ch031_049)BIB-049). They state that clients referred from the criminal justice system might not yet be ready to fully engage in treatment as they could lack internal motivation. Research has shown, however, that clients in drug treatment experience pressure from a number of sources and thus may experience coercion from informal sources such as friends, employer, parents and/or partner, if not from formal sources like the criminal justice system (Klag et al. [2005](#CBML_BIB_ch031_049)BIB-049; Seddon [2007](#CBML_BIB_ch031_076)BIB-076). Furthermore, Prendergast et al. ([2009](#CBML_BIB_ch031_072)BIB-072) show that offenders who are referred from the criminal justice system to treatment programs are more likely to believe that they chose to enter a treatment program than that they were forced into treatment; they are not necessarily unwilling clients. This illustrates that even for this target group of judicially coerced clients, treatment can still be useful.

Furthermore, research findings on the effectiveness of criminal justice referral to treatment in reducing drug use and offending in different populations and settings are mixed, yet promising, when compared to traditional jurisprudence (Lipsey and Cullen [2007](#CBML_BIB_ch031_054)BIB-054; Mitchell et al. [2007](#CBML_BIB_ch031_067)BIB-067). Regardless of some methodological constraints, studies that compare rehabilitative punishment (i.e. a diversion to treatment) to other sanctions, generally show lower recidivism rates for the offenders that received rehabilitation treatment (Lipsey and Cullen [2007](#CBML_BIB_ch031_054)BIB-054). Additionally, research has indicated that treatment instead of punishment saves money. Even taking into account the preconditions and resources for the delivery of evidence-based treatment, the costs for treatment are lower than the indirect costs caused by untreated substance use disorders (e.g., prisons, unemployment, law enforcement, health consequences, etc.).

Several preconditions are needed, however, in order for this diversion to be effective. First, treatment interventions offered under judicial pressure need to be evidence-based and follow the same standards of good medical practice as voluntary treatment for them to be effective. Second, screening and assessment at the various stages of the criminal justice system are essential to identify offenders in need of treatment as well as to match the offender to the most adequate treatment trajectory. The intensity of the treatment program should be adjusted to the individual needs of the offenders (Mears et al. [2003](#CBML_BIB_ch031_063)BIB-063). Offenders with low chances of recidivism do not respond well to intensive treatment programs (Andrews and Bonta [2010](#CBML_BIB_ch031_003)BIB-003). The Risk, Need and Responsivity (RNR) model, also known as “What works,” has become the dominant paradigm in risk and needs assessment in this context, connecting *an* offender’s *level of risk* and *criminogenic needs* to the intensity of supervision and treatment. It therefore enables treatment providers to develop a treatment plan for individual offenders based on their assessed level of risk, areas of criminogenic need and personal learning style. Judicial-supervised treatment can use the RNR assessment at nearly all points of the criminal justice system to make decisions regarding the level of supervision and treatment an offender needs (Andrews and Bonta [2010](#CBML_BIB_ch031_003)BIB-003).

Looking beyond the risks and focusing on empowerment

With the RNR model as a leading paradigm, it is clear that the criminal justice system generally suggests risk-driven criminal justice interventions involving the drug-using offender in a merely passive role. Traditionally, the criminal justice system starts from these deficit-based approaches, mainly seeking to reduce risk and offence-related behaviors (Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093). Although these approaches are an evidence-based starting point from which to develop individualized interventions, these interventions are based on factors predicting criminal behavior rather than factors predicting desistance (McNeill [2012](#CBML_BIB_ch031_062)BIB-062). While risk factors such as anti-social attitudes and negative relationships are indeed associated with reoffending and as such are adequate predictors of offending behavior and judicial outcomes, targeting individual strengths could allow them to serve as protective factors (Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093).

Besides risks and needs, drug-using offenders also possess personal and social strengths and resources enabling them to desist from offending (McNeill [2012](#CBML_BIB_ch031_062)BIB-062). More recently, the Good Lives Model (GLM) has been promoted as a complementary model to RNR. Willis and Ward (2010) argue that GLM has many links with desistance because of their similar theoretical concepts and their way of including the (social) context. Instead of primarily diagnosing weaknesses and focusing on recidivism risks and criminogenic needs, GLM recognizes the need to build on the strengths of offenders taking a client-empowering approach (Ward and Brown 2004). This strengths-based rehabilitation approach, influenced by the positive psychology movement, aims to complement the more traditional, risk-oriented approaches of which the RNR model is the best known. This alternative response to offending has emerged against the backdrop of prison overcrowding combined with increasing recidivism rates (Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093). Over the past decade, the emergence of this movement has influenced sentencing practices all over the world, striving for a balance between the historic focus on risks and deficits and a strengths-based approach integrating protective factors (Woldgabreal et al. [2014](#CBML_BIB_ch031_093)BIB-093). So, while risk and needs- assessment remains important, the strengths of the offender must also play a part in sentencing practices.

In this regard, McNeill ([2006](#CBML_BIB_ch031_061)BIB-061) calls upon criminal justice actors to add a strengths-based and integrated approach to rehabilitation inspired by desistance research and practices. After all, desistance and rehabilitation are interlinked since desistance could be regarded as a core objective of rehabilitation (McNeill [2012](#CBML_BIB_ch031_062)BIB-062). McNeill argues that offender management services, such as probation services, should see themselves as supporters of the desistance process, instead of mainly as providers of correctional services. The desistance and recovery process is owned by the offender him/herself, not by the providers. In this way, the professional intervention, including treatment, should be regarded as part of a broader process that belongs to the person undergoing desistance and recovery.

Consequently, the communication between the professional and the drug-using offender during an intervention is of vital importance (Weaver [2009](#CBML_BIB_ch031_090)BIB-090). The content and the desired outcome of the intervention should be developed together with the client instead of being imposed on him or her. The drug-using offender should evolve from a passive actor (risk-approach) to an active actor (strengths-approach) during the intervention. They should be given a “voice” in their own desistance and recovery process by collaboratively defining the details of the intervention. The client should be empowered to take responsibility of her/his future by actively participating in the intervention and by being supported by professionals to strengthen their personal and social resources. Furthermore, the language used by professionals should focus on the future, rather than on past, their former criminal behavior, drug use and level of risk.

Example of a Promising Strengths-based Approach in the Criminal Justice System for Drug-using Offenders: the Drug (Treatment) Court

Strengths-based approaches could be integrated into all stages of the criminal justice system. Today we see an increasing number of criminal justice initiatives focusing on a balance between risk and strengths approaches, of which the drug (treatment) courts at sentencing level are exemplary.

Drug (treatment) courts were first introduced in the United States in 1989, and their popularity quickly rose in the following years (Wolfer [2006](#CBML_BIB_ch031_094)BIB-094; Harrison and Scarpitti [2002](#CBML_BIB_ch031_041)BIB-041). Other countries later introduced similar concepts, mostly based on the US model and adapted to their national (judicial) context (Harrison and Scarpitti [2002](#CBML_BIB_ch031_041)BIB-041). Drug (treatment) courts, although varying greatly in eligibility criteria, procedure and treatment models, share the common goal to combine drug treatment with judicial supervision to move offenders towards long-term recovery and desistance (Mitchell et al. [2012](#CBML_BIB_ch031_066)BIB-066). In general, during a drug (treatment) court trajectory the person and her/his treatment trajectory is emphasized rather than the criminal case itself. When treatment is deemed successful, the charges can either be dropped or the criminal case can be dismissed (Mitchell et al. [2012](#CBML_BIB_ch031_066)BIB-066).

If implemented appropriately and taking into account the emerging evidence base regarding recovery and desistance, drug (treatment) courts hold considerable promise as a strengths-based alternative to traditional punishment. After all, drug (treatment) courts are different from traditional courts as they intend to be less punitive and actively cooperate in the rehabilitation process of a drug-using offender (Wolfer [2006](#CBML_BIB_ch031_094)BIB-094; Goldkamp et al. [2001](#CBML_BIB_ch031_038)BIB-038). Most drug (treatment) courts start from the client’s needs and strengths and focus on increasing her/his empowerment, enabling the client to take responsibility for their successful trajectory (Dekkers et al. [2016](#CBML_BIB_ch031_031)BIB-031). In general, drug (treatment) courts start from the broad definition of recovery, rather than the strict one focusing on abstinence alone. This is illustrated by the fact that relapse does not necessarily mean that the client is excluded from a drug (treatment) trajectory. Rather it indicates that adjustments in their treatment plan may be required. Additionally, these courts address impairment in other life domains (e.g., employment, financial situation, social network) too (Wolfer [2006](#CBML_BIB_ch031_094)BIB-094), as problem drug use is often associated with problems within these other life domains (Laudet and White [2010](#CBML_BIB_ch031_052)BIB-052). Previous studies have indicated that these additional interventions have beneficial outcomes regarding psychosocial functioning and criminal behavior (Leukefeld et al. [2007](#CBML_BIB_ch031_053)BIB-053; Wittouck et al. [2013](#CBML_BIB_ch031_092)BIB-092).

Life After Punishment: The Hard Work of Recovery and Desistance Happens in the Community

Recovery and desistance are individual processes happening in a social context rather than in a vacuum. Improving the offender’s strength is not only required at an individual level, but also at a community level.

The importance of the role of the community has been acknowledged in both recovery and desistance research. In recovery research we see this reflected in the concept of community recovery capital (Cloud and Granfield [2008](#CBML_BIB_ch031_026)BIB-026). Starting from this concept, Best and Savic (2014) developed the notion of “negative community recovery capital,” describing the barriers to recovery and effective reintegration including discrimination, stigma and exclusion by the general public and professionals (Best et al. [2017](#CBML_BIB_ch031_015)BIB-015). In desistance research, we already acknowledged the distinctions some scholars made between phases in the desistance process (Farrall and Maruna 2004; Nugent and Schinkel 2016). While much has been written about the role of personal transformation in desistance (see for example Paternoster and Bushway 2009), some have argued that personal change is not sufficient as the community must also accept this new identity of the person in desistance (Maruna 2001; Nugent and Schinkel 2016). As mentioned above, McNeill (2014) therefore added “tertiary desistance” to Farrall and Maruna’s dual framework of “primary” and “secondary” desistance (2004) focusing on the recognition of change by the community and the fact that desistance is a social process as much as a personal journey.

The reality is such that many drug-using offenders will face significant structural barriers to community involvement. In practice, we find two main problems. First, criminal justice clients, including drug-using offenders, are not well-prepared to go back into society. Starting from desistance research, McNeill ([2012](#CBML_BIB_ch031_062)BIB-062) argues that the rehabilitation of offenders leading to desistance should include interplay between psychological, moral, legal and social elements. While research and practice have mainly focused on the psychological (internal) elements of rehabilitation such as identity, cognitive transformation, agency and self-control, Kewley argues that social, moral and legal elements need equal support in order to promote desistance and successful re-integration (Kewley 2016BIB-048). The social element of rehabilitation should focus on intimate prosocial relationships with family and friends as well as the relationship with the wider community. After all, people often lack the resources and social relationships necessary to establish a new identity and promote/sustain desistance. The moral element refers to the fact that currently punishment offers limited opportunities for repair between the offender and the victim. Punishment mainly focuses on the offender, less on the conflict itself, the victim or the community. The legal element refers to the fact that the legal system, such as prosecution and incarceration rituals, might cause harm to the rehabilitation of the offender because the current legal processes support stigmatization and exclusion, jeopardizing the opportunities for an offender in desistance to return to the community as a prosocial member. In view of this, McNeill pleads for the development of a “more fully integrated and interdisciplinary theory and practice of rehabilitation” (McNeill [2012](#CBML_BIB_ch031_062)BIB-062: 19), incorporating social, moral and legal elements besides the psychological elements in rehabilitative interventions.

Second, even when drug-using offenders have the necessary psychological and social resources to promote and sustain recovery and desistance, we notice that society is not always willing, or prepared, to accept these individuals back into the community (Cano, Best, Beckwith et al 2019). While personal and social capital seem necessary to initiate desistance and recovery, the role of the (wider) community is crucial in providing opportunities to sustain the process (Best and Savic [2014](#CBML_BIB_ch031_018)BIB-018). Effective community reintegration is an integral part of all successful desistance and recovery journeys: social structures, such as employment, housing and education, have to be configured so that the individual is afforded the necessary opportunities to complete the reintegration process (Best and Colman [2018](#CBML_BIB_ch031_014)BIB-014).

However, the community is not always supportive towards persons who (problematically) use drugs and offend, not even towards those in recovery and desistance. On the one hand, there is considerable evidence highlighting the stigma people in both active addiction and in recovery are facing. In 2010, the United Kingdom Drug Policy Commission (UKDPC) commissioned a survey of 3 000 adults living in private households across the UK (Jones et al. [2011](#CBML_BIB_ch031_047)BIB-047). The findings indicated that people endorse the importance of supporting individuals in recovery and the need for them to reintegrate in the community. However, they do not want them as neighbors and are fearful of having treatment and support services in their neighborhoods. Nearly half of the respondents agreed that “people with a history of drug dependence are a burden to society” and over 40% agreed that “I would not want to live next door to someone who has been dependent on drugs” (Jones et al. 2011). In an earlier version of the survey (UKDPC [2008](#CBML_BIB_ch031_083)BIB-083), almost two-thirds of employers who participated in a survey reported that they would not employ a former heroin or crack user even if they were fit for the job.

Additionally, criminal justice clients face stigma as well, both from the general public, the criminal justice actors and the criminal justice system. For example, in certain jurisdictions, a conviction includes an ineligibility to vote or disqualifications to participate in certain job activities, leading towards reduced citizenship (Lacey and Pickard [2015](#CBML_BIB_ch031_050)BIB-050). Discrimination may also occur because of their criminal record impeding job opportunities, housing and relationships. Particularly the relationship between unemployment and offending has been widely documented, indicating that people are less likely to (re-)offend when they are employed. Employment also provides financial stability making reintegration easier (Sampson and Laub [1995](#CBML_BIB_ch031_075)BIB-075). However, a study examining employers’ attitudes towards hiring former offenders found that over 60% of employers would “probably not” or “definitely not” hire an individual with a criminal record (Holzer, Raphael and Stoll [2004](#CBML_BIB_ch031_044)BIB-044: 7).

Furthermore, drug-using offenders face dual stigma considering the combination of their drug use and offending. Research indicates that the stigma associated with criminal offending also contributes to the stigma surrounding drug use (Pickard [2017](#CBML_BIB_ch031_070)BIB-070). This becomes apparent also in the language the public is using towards them. Drug-using offenders are more likely to be labelled as “an addict” or “junkie” by the public, and negative adjectives are more often attached to these labels compared to people who only use drugs (without committing other offences) (UKDPC [2008](#CBML_BIB_ch031_083)BIB-083).

These studies acknowledge the negative effects of stigma on drug-using offenders (Room [2005](#CBML_BIB_ch031_074)BIB-074). The enduring stigma and discrimination may result in limited resources to attain full citizenship, creating obstacles to (sustaining) recovery and desistance (Uggen et al. [2004](#CBML_BIB_ch031_082)BIB-082). After all, stigma and discrimination could impact several life domains, such as access to quality employment, housing and social relationships (Radcliffe and Stevens [2008](#CBML_BIB_ch031_073)BIB-073). All these domains are vital components of recovery, desistance and community reintegration. What is also troubling, is that this stigma and discrimination did not markedly diminish when persons were described as being in recovery or desistance (instead of active addiction and offending), suggesting that, for many people, a substance use disorder and an offence leave an irreversible stain (Cano et al. 2019)(Philips and Shaw 2013). Such attitudes are central to the idea of “disintegrative shaming” (Braithwaite [1989](#CBML_BIB_ch031_019)BIB-019) in which exclusion persists beyond official sanctions (Best and Colman [2018](#CBML_BIB_ch031_014)BIB-014).

For the most part, the aversion among members in our community towards drug-using offenders, even when they are in recovery and desistance, is not based on personal experiences (Cano et al. 2019 ). Less negative attitudes have been found among those people who currently, or in the past, had lived, worked or were related to someone with a history of drug use or offending, compared to those who did not. This indicates that contact is generally associated with lower levels of stigmatizing behaviors and attitudes, suggesting that stigma could be tempered by increasing personal contact and experience (Batastini et al. [2014](#CBML_BIB_ch031_005)BIB-005). Therefore, not only the person in desistance and recovery needs to be empowered (see above), the community needs this empowerment as well. In this regard, Weaver ([2009](#CBML_BIB_ch031_090)BIB-090: 24) indicates that citizens should be involved more in criminal justice decision-making or be actively engaged in restorative justice work.

In a recent publication, Best and Colman ([2018](#CBML_BIB_ch031_014)BIB-014) plead to promote the idea of building inclusive cities, an initiative to support the creation of Recovery-Oriented Systems of Care at city level (White [2008](#CBML_BIB_ch031_091)BIB-091). The aim of Inclusive Cities is to make recovery visible, to celebrate it and to create a safe environment supportive to recovery. It actively engages all citizens in the recovery process. Some of the most promising examples of projects that fit within this idea of Inclusive Cities come from the restorative cities model (for example ACT Reform Advisory Committee 2017) where a range of governmental processes have been amended to increase inclusion and to reduce adversarial and discriminatory practices. Examples could be the organization of recovery weeks including recovery events where citizens can meet, or setting up a social enterprise to help people in recovery to learn a skill and thereby increase their job opportunities. The method and the outcomes of Inclusive Cities are predicated on improvements in connectedness, inclusion and civic participation, leading to greater bridging and bonding capital and stronger, more connected communities. Although the Inclusive Cities model starts from recovery to improve reintegration and social inclusion at city level, it aims to extend this model (in the near future) to other groups experiencing social exclusion, such as persons in the dual process of recovery and desistance.

Conclusion

The relationship between drug use and offending has implications for the relationship between the processes of abstaining from drug use (recovery) and offending (desistance). Research has indicated that recovery and desistance are related processes and that, especially in primary drug users, recovery is considered as the first step towards desistance. It is thus reasonable to consider that when developing criminal justice interventions for drug-using offenders equal attention should be paid to recovery and desistance.

There are many pathways leading to recovery and desistance. In this chapter we have focused on one particular pathway linked to the criminal justice system, namely a diversion to treatment. Drug treatment has proven its effectiveness in achieving recovery (including psychosocial improvements) and desistance. Treatment under judicial supervision seems to generate positive outcomes as well. Of course, not every drug-using offender will benefit from treatment and therefore it needs to be stressed that adequate and proper screening and assessment are essential in this process.

Up until today, the criminal justice system has been trying to balance punishment and the protection of public safety on the one hand and rehabilitation of the offender on the other hand. Starting from a health-oriented approach, dealing with drug-using offenders in the criminal justice system requires a flexible system of criminal justice interventions, allowing authorities to propose measures appropriate to each individual, including individualized diversion to treatment or other health care measures. This may in part be in response to the increase in prison overcrowding, including for drug-related offences, along with a recognition of significant shortcomings in prison systems when it comes to reducing drug use, reoffending or increasing possibilities for social reintegration.

Historically, most of these interventions are based on risk-driven approaches, considering the drug-using offender in a passive role. While risk factors such as anti-social attitudes and negative relationships are indeed associated with reoffending and as such are adequate predictors of offending behavior and judicial outcomes, drug-using offenders also possess personal and social strengths and resources enabling them to desist and recover. Instead of primarily diagnosing weaknesses and focusing on recidivism risks and criminogenic needs, there is a growing acknowledgement of the need to build on the strengths of offenders in an empowering, client-oriented approach. This strengths-based rehabilitation approach, influenced by the positive psychology movement, aims to complement more traditional, risk-oriented approaches.

In this chapter we have suggested that a strengths-based, client-oriented approach, starting from the emerging recovery and desistance evidence base, should be further expanded, implemented and promoted. The criminal justice system should focus on an integrated model promoting the use of more holistic, comprehensive approaches that are not solely based on risk factors. We propose that the effectiveness of interventions could be further improved if, besides psychological factors, equal attention was devoted to social and community factors promoting successful reintegration, recovery and desistance. Additionally, the drug-using offender should play an active role in this process and the community should also be empowered given its pivotal role in sustaining recovery and desistance.

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1. Such as the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), resolution 45/110 adopted by General Assembly on 14 December 1990 [↑](#endnote-ref-1)
2. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), resolution 70/175 adopted by the General Assembly on 17 December 2015 [↑](#endnote-ref-2)