



UNODC
United Nations Office on Drugs and Crime



**World Health
Organization**

Draft Concept Note

Treatment and Care of Persons with Drug Use Disorders in Contact with the Criminal Justice System

A joint UNODC-WHO initiative

**For further information please contact
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This document promotes a joint initiative of the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO) to provide support to Member States in their efforts to implement treatment and care for people affected by drug use disorders who are in contact with the criminal justice system. This initiative explores effective strategies and options to direct people with drug use disorders who are in contact with the criminal justice system, in appropriate cases, to the health care system, in line with the international drug control conventions¹ and other relevant legal instruments.

UNODC and WHO aim with this initiative to identify experiences and good practices from around the world. These examples will focus on the implementation of drug dependence treatment and care as alternatives to criminal justice sanctions in line with the international drug control conventions. It will also serve to build a platform for exchange and mutual learning of experiences among Member States.

This initiative is developed, *inter alia*, considering resolution 58/5 of the Commission on Narcotic Drugs (CND) entitled “Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction and punishment for appropriate drug related offences of a minor nature”.

¹ The international drug control conventions are the 1961 Single Convention on Narcotic Drugs as amended by its 1972 Protocol (1961 Convention); the 1971 Convention on Psychotropic Substances (1971 Convention); and the 1988 United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention).

The right to health

Health is a fundamental human right indispensable for the exercise of other human rights.² Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The right to health has been acknowledged in numerous international, regional and national documents, including Article 25.1 of the Universal Declaration of Human Rights, according to which “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services”.

It is understood that the right to health is associated with the accessibility of educational, social and health services without discrimination. Therefore the right to health and the right to access adequate health services extends to any person in contact with the criminal justice system, no matter the charges. In the case of people with drug use disorders, this includes the right to the effective treatment of drug use disorders, and the prevention and treatment of other conditions commonly found in people who use drugs such as HIV, hepatitis, TB, mental health disorders, and drug overdose.

Drug use disorders are multifactorial health disorders

Drug dependence is considered to be a multifactorial brain disease often taking the course of a chronic and relapsing disorder. Three dimensions contribute to the pathogenesis of the addictive process: (1) repeated exposure to psychoactive drugs which affect brain function, (2) genetic predisposition influencing temperament and personality traits, and (3) adverse life experiences. Each of these factors contributes to long-term changes in brain function that constitute the neurobiological basis for the development of addictive behaviour.

Drug use disorders can be described along a clinical continuum from harmful drug use to drug dependence.

In general, drug use disorders should be seen as health-care conditions and should be treated in the health-care system. People with drug use disorders need the availability of accessible, affordable and evidence-based drug dependence treatment and care services along a continuum of care³ including outreach, brief interventions, psychosocial and pharmacological treatment interventions at the outpatient and inpatient level, and continued support for recovery through rehabilitation and reintegration. Treatment

² United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (art. 12 of the Covenant)*, E/C.12/2000/4, 11 August 2000.

³ UNODC/WHO, *Principles of drug dependence treatment*, 2009, available at: https://www.unodc.org/docs/treatment/Principles_of_Drug_Dependence_Treatment_and_Care.pdf.

requires the involvement of the health care system and may benefit from the involvement of the larger community and social support systems,⁴ but should be conducted by professionals who have suitable training and practical experience.⁵

It has been estimated that expenditure on drug treatment produces savings not only for the health system but also for the criminal justice system⁶. Many people affected by drug use disorders at some point in their lives may also be in contact with the criminal justice system for different reasons, including drug related offences. A significant portion of people going through the criminal justice system worldwide, if not the majority, suffer from drug use disorders.

Treatment and care – when implemented as alternatives to conviction or punishment

States parties to the international drug control conventions committed themselves to take all practicable measures for the prevention of the illicit use of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of persons involved with the illicit use of drugs.⁷

When people with drug-use disorders commit an offence, treatment, education or social reintegration can be applied as alternative measures to conviction or punishment, in the following cases, as determined by national legislation:

- Offences related to personal consumption of drugs;⁸
- Offences of drug trafficking and related conduct in cases of a minor nature.⁹

In these cases, treatment addressing the severity of the disorder and other measures of education or social reintegration may be applied as complete alternatives to conviction or punishment for people with drug use disorders.

When people with drug use disorders commit a more serious drug-related offence¹⁰ or any other particularly serious offence and are sentenced to prison, treatment and care should be provided in the prison setting, following the same quality standard as in the community.¹¹

In addition, there are other offences, for which there is no specification under the international drug control conventions, such as non-violent property crimes, for which

⁴ Rule 13.4. of the United Nations Standard Minimum Rules for Non-custodial Measures, General Assembly resolution 45/110, annex (the Tokyo Rules).

⁵ Rule 13.2. of the Tokyo Rules.

⁶ http://www.wsipp.wa.gov/ReportFile/756/Wsipp_The-Comparative-Costs-and-Benefits-of-Programs-to-Reduce-Crime-v-4-0_Full-Report.pdf

⁷ Article 38 of the 1961 Convention and article 20 of the 1971 Convention.

⁸ See article 3, paragraph 2 and subparagraph 4(d) of the 1988 Convention.

⁹ See article 3, paragraph 1 and subparagraph 4(c) of the 1988 Convention

¹⁰ See article 3, subparagraphs 4 (a), 4(b) and paragraph 5, of the 1988 Convention.

¹¹ UNODC, *Drug Dependence Treatment: Interventions for drug users in prison*, Good practice documents, 2008, available at http://www.unodc.org/docs/treatment/111_PRISON.pdf.

treatment and care can be applied as alternatives to imprisonment for people with drug use disorders, in appropriate cases.

International standards and norms supporting the use of non-custodial measures in appropriate cases

The international drug control conventions and other relevant international instruments provide a framework on how to deal with people with drug use disorders at different stages of criminal proceedings. The implementation of the norms deriving from these international documents require a comprehensive national normative and institutional framework to be in place.

The United Nations Standard Minimum Rules for Non-custodial Measures (the “Tokyo rules”) foresee that various treatment interventions should be among the range of non-custodial measures available to meet the needs of offenders¹² with drug use disorders. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the “Bangkok rules”¹³) contain specific standards relating to female offenders, taking into account gender specific vulnerabilities when considering the application of non-custodial measures. Finally, where non-custodial measures cannot be applied, the United Nations Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela rules”¹⁴) outline how the same level of treatment and health care available in the community should be provided for prisoners, including the requirement of informed consent of the patient.¹⁵

Offenders with drug use disorders may be referred to treatment or other non-custodial measures at all stages of criminal proceedings, from pre-trial (including the possibility of diversion from the criminal justice system) to post-sentencing. Generally, “[t]he selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims”.¹⁶ Prison should be considered a measure of last resort,¹⁷ especially pending trial, and be kept under regular review.¹⁸

A number of legal safeguards should be in place to ensure due process is followed with regard to the supervision of offenders and consequences for breaches of conditions.¹⁹ For

¹² As in Rule 2.1. of the Tokyo Rules, the term “offenders” is used irrespective of whether they are suspected accused or sentenced..

¹³ General Assembly resolution 65/229, annex.

¹⁴ General Assembly resolution 70/175, annex.

¹⁵ See Rules 24 to 35 of the Nelson Mandela Rules.

¹⁶ Rule 3.2. of the Tokyo Rules.

¹⁷ Rules 2.6 and 6.2 of the Tokyo Rules.

¹⁸ International Covenant on Civil and Political Rights, article 9(3); rule 6.1. of the Tokyo Rules; Principle 39 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).

¹⁹ Rules 10 to 14 of the Tokyo Rules.

instance, the failure of a non-custodial measure should not automatically lead to incarceration.²⁰ Rather, the competent authority should attempt to establish a suitable alternative and imprisonment may only be considered in the absence of other suitable alternatives.²¹

A large body of research indicates that the success rates of treatment of people in contact with the criminal justice system are comparable to that of non-offenders. While effective treatment services, including primary health care and low-threshold services, should be the point of contact with the health system for people with drug use disorders, a contact with the criminal justice system, where necessary and appropriate, could be considered as an additional opportunity to encourage people to start treatment for their drug use disorder and to offer them access to appropriate educational, social and health services. Like for any other health intervention (outside concrete emergency situations), the decision whether or not to enter treatment should remain voluntary²² and require the informed consent of the patient.²³ Forcible drug dependence treatment and the compulsory detention without due process of suspected drug users would be contrary to a number of international obligations.²⁴

A combined health care and criminal justice approach to improve the treatment and care of persons with drug use disorders in contact with the criminal justice system: the proposed UNODC/WHO initiative

Where treatment and care as an alternative or complementary non-custodial measure is provided for in law, its success depends to a great extent on an effective collaboration between public health and justice authorities.²⁵ It is essential that police, prosecutors, judges and other officials are aware of the potential benefits of available non-custodial measures and apply them. It is equally essential that qualified and well-trained service providers implement evidence-based treatment, care and other services with a keen understanding of the realities that patients face in their interactions with the justice system.

UNODC and WHO have complementary mandates, and existing tools to build upon, to support Member States to introduce and expand policies and programmes, which enable effective and science-based treatment and care to be used to the possible extent as an alternative to imprisonment. On this initiative the UNODC Prevention, Treatment and Rehabilitation Section (PTRS) and the Justice Section (JS) work jointly in close collaboration with WHO.

Active in 19 countries, the UNODC-WHO Programme on Drug Dependence Treatment and Care (GLOK32) supports both public health and drug control authorities to join

²⁰ Rule 14.3. of the Tokyo Rules.

²¹ Rule 14.4. of the Tokyo Rules.

²² UNODC, *From Coercion to Cohesion: Treating Drug Dependence Through Health Care, Not Punishment*, Discussion paper, 2010, p. 5.

²³ See, e.g., Principle 11 of the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (General Assembly resolution 46/119, annex).

²⁴ See, e.g., article 12 of the International Covenant on Economic, Social and Cultural Rights; and articles 7 and 9 of the International Covenant on Civil and Political Rights.

²⁵ See Commission on Narcotic Drugs resolutions 58/5 and 55/12.

forces, in partnership with civil society, in order to support the development of policies and programmes to improve drug dependence treatment and care, including as an alternative to punishment and incarceration. This project offers Member States the opportunity to benefit from each other's experiences.

To support Member States in their efforts to develop effective policies and practices on alternatives to imprisonment, UNODC and WHO propose the following activities as initial steps to expand their collaboration in the area of drug dependence treatment and care for persons with drug use disorders in contact with the criminal justice system, notably as alternatives to imprisonment.

a) Compilation of experiences and practices from around the world

In order to facilitate mutual support and exchange of relevant practices and policies to offer treatment and care to people in contact with the criminal justice system, it is suggested to compile practices from different countries and regions in the area of treatment as an alternative to conviction or punishment.

If you have a relevant experience from your country to share, please contact UNODC and WHO at healthandjustice@unodc.org

b) Expert consultation

It is suggested that a meeting of international experts with health and justice backgrounds be held to critically evaluate the compiled information and to share lessons learned in different jurisdictions, also with a view to their applicability in low and middle income countries

c) Publication on “*Policies and practices to offer treatment for people with drug use disorders in contact with the criminal justice system*”

Based on the previous steps, a publication will be made available with the following aims:

- to assist Member States in considering a variety of practices for the treatment and care of people with drug use disorders in contact with the criminal justice system; and
- to assist Member States in identifying and developing a model suitable to their own legislative framework and health and social care systems.

For further information on this initiative, please contact:

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- Prevention, Treatment and Rehabilitation Section
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