Substance-Free Probation Conditions for Drug-Addicted Criminals: Reformation or Criminalization?

“The fact that relapse is an almost inevitable feature of [Substance Use Disorder] leads to the straightforward conclusion that relapse is ‘not a weakness of character or will.’”

I. INTRODUCTION

Substance Use Disorder (SUD), a pervasive disease affecting more than forty million Americans, requires ongoing and professional treatment. Currently, there are more than thirteen thousand rehabilitation centers in the United States. Unfortunately, many individuals are still unable to obtain treatment, and when left untreated, many addicts find themselves behind bars for crimes committed to sustain their habit.

In 1962, the Supreme Court attempted to resolve this criminalization issue in Robinson v. California. In Robinson, the Court determined that holding a drug addict criminally liable for using drugs constitutes cruel and unusual punishment. The Court reasoned that the criminal justice system should not punish someone simply because of his or her “status” as an addict.


3. See id. at 1506 (discussing rapid increase in number of rehabilitation facilities in recent years).


5. 370 U.S. 660, 666 (1962) (holding laws criminalizing diseases constitute cruel and unusual punishment).

6. See id. (comparing criminalizing drug addiction to criminalizing mental illness). The Court reasoned that the statute was unconstitutional because it makes the “status” of narcotic addiction a crime, rather than punishing for purchasing, selling, or possessing drugs. See id. (discussing Court’s rationale for holding statute unconstitutional cruel and unusual punishment).

7. See id. (pointing to unlikelihood of any state criminalizing disease).
was immediately controversial, as some argued Robinson would positively change the way society treats drug addiction, while others argued the Court was impermissibly attempting to overhaul state substantive criminal law. Good or bad, in the almost sixty years since Robinson, the Court’s ruling certainly changed the way states handle substance abuse in the criminal justice system.

For example, in the recent case Commonwealth v. Eldred, the Massachusetts Supreme Judicial Court upheld a requirement for the defendant and drug addict, Julie Eldred, to remain drug-free as a condition of her probation. After testing positive for fentanyl, and thus violating her probation, Eldred’s primary argument was that the drug-free probation condition violated the holding established in Robinson because it punished her status as a drug addict. Eldred, who was diagnosed with SUD, was subsequently incarcerated for violating her probation condition. Many view this outcome as going against precedent set in cases like Robinson, arguing that such an outcome allows judges to punish individuals based on their status as a drug addict.

This Note addresses the potential legal implications of Eldred, and analyzes possible alternatives by looking to other jurisdictions. Section II.A discusses the history of substance abuse in the United States and how Massachusetts uses probation to induce rehabilitation. Section II.B provides an overview of Eldred, as well as the precedent that guided the court’s rationale. Section II.C addresses the ways other jurisdictions have approached issues similar to those.


11. See id. at 924-25 (stating probation goals fulfilled by enforcing condition).

12. See id. at 916, 920 (outlining Eldred’s primary argument).

13. See id. at 915 (outlining court’s ultimate holding). Notably, Eldred was detained for only ten days until a rehabilitation facility became available. See id. at 916.


15. See infra Part III (discussing Eldred’s potential legal implications); see also Christensen, supra note 14 (mentioning prison’s limited assistance for people with drug problems). Drug addiction recovery is an “ongoing process rather than a discrete terminal event.” Christensen, supra note 14. Lawyers and judges have expressed concern with what the Eldred case means for drug addicts and have predicted this will not be the last time the probation condition issue comes up. See id. (expressing concerns with allowing probation conditions to force defendants with SUD to remain drug-free).

16. See infra Section II.A (discussing historical treatment of SUD in U.S. legal system); see also MASS. GEN. LAWS ch. 276, §§ 87, 87A (2018) (stating Massachusetts courts may impose any condition deemed proper on defendant and noting permitted conditions).

17. See infra Section II.B (providing overview of Eldred).
raised in *Eldred*.

Then, Part III analyzes the likely legal implications of *Eldred* and argues for a more balanced alternative to the court’s holding. Finally, Part IV concludes by reiterating the issues associated with criminalizing substance abuse and recognizing that while there is not an easy solution to the criminalization problem, more access to rehabilitation is necessary.

II. HISTORY

A. SUD and Its Treatment in the Legal System

The Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) classifies SUD as a chronic disorder featuring continued drug use, despite negative consequences and practically inevitable relapse. SUD affects multiple parts of the brain, such as areas involved with inhibition, reward, and motivation. Because SUD is a classified disorder, it is logical to compare it to other disorders and diseases, such as the common cold. If the other disorders mentioned are widely considered involuntary and consist of

18. See infra Section II.C (comparing various jurisdictions’ approaches to substance-free probation conditions).
19. See infra Part III (looking at future potential legal implications of *Eldred*).
21. See AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 483-84, 577-78 (5th ed. 2013) (defining SUD and detailing symptoms and subclassifications). According to the DSM-5, SUD has three subclasses: mild, moderate, and severe. See id. at 484. The number of symptoms that an individual displays determines the individual’s subclass. See id.; see also NAT’L INST. ON DRUG ABUSE, U.S. DEP’T OF HEALTH & HUMAN SERVS., MEDIA GUIDE 1, 3 (2018), https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/media_guide.pdf [http://perma.cc/2HT2-DVU9] (defining SUD and distinguishing between dependence, tolerance, and addiction). If used regularly, individuals can become dependent on any substance, which can then lead to tolerance—the need to take higher doses to feel the same effect. See NAT’L INST. ON DRUG ABUSE, supra, at 3. Addiction, on the other hand, is a chronic disorder characterized by compulsive drug seeking. See id.
22. See Nora D. Volkow, Preface to the Third Edition of NAT’L INST. ON DRUG ABUSE, PRINCIPLES OF DRUG ADDICTION TREATMENT: A RESEARCH-BASED GUIDE 3 (3d ed. 2018), https://www.drugabuse.gov/node/pdf/675/principles-of-drug-addiction-treatment-a-research-based-guide-third-edition [https://perma.cc/3H5F-CS2T] (noting some areas of brain affected by regular drug use); NAT’L INST. ON DRUG ABUSE, supra note 21, at 2 (describing how addiction affects brain). Most drugs target the brain’s reward system by producing large amounts of dopamine, which has the eventual effect of reinforcing drug use. See NAT’L INST. ON DRUG ABUSE, supra note 21, at 3. Repeated drug use results in physical changes in parts of the brain that affect behavior control. See id.; see also Gordon, supra note 2, at 1506 (describing addiction equivalent to disease rather than choice). “We now know that addiction is a complex brain disease, one that affects nearly 16% of Americans over the age of twelve.” Gordon, supra note 2, at 1506.
symptoms beyond the individual’s control, this raises the issue of whether the “symptom” of continued drug use by an individual with SUD constitutes a voluntary act.24

Experts in the field have long debated the question of voluntariness as it relates to drug addicts’ continued substance abuse.25 These experts generally agree, however, that the initial decision to take drugs is voluntary, but the continued use of drugs at least impairs an individual’s ability to exert self-control.26 Experts’ theories tend to differ though on the extent to which an individual has the ability to exert self-control at this point.27 Regardless, research suggests that SUD does not fit neatly into one category, but rather into a gray area between a drug addict’s voluntary and involuntary acts.28 This gray area calls for a more holistic approach to treatment, one that encompasses biological, social, and behavioral components.29

While psychological research supports multiple theories of the voluntariness debate, the legal system takes its own view.30 The law considers it a choice when someone uses drugs, and because the law prefers binary categories of voluntariness and involuntariness, it is difficult for judges to recognize any gray area regarding the voluntariness of drug use.31 For that reason, some argue the

24. See Stephen J. Morse, Voluntary Control of Behavior and Responsibility, 7 AM. J. BIOETHICS, Jan. 2007, at 12, 12 (suggesting SUD not completely involuntary, but choice made by drug user); Murray, supra note 23, at 1009 (outlining voluntariness debate and suggesting SUD neither voluntary nor involuntary).

25. See, e.g., Gordon, supra note 2, at 1512-13 (highlighting disagreement regarding whether drug abuse stems from lack of willpower); Murray, supra note 23, at 1009 (attacking assumption drug addiction either voluntary or involuntary).

26. See NAT’L INST. ON DRUG ABUSE, supra note 21, at 3 (noting unclear whether continued drug use after initial use voluntary); Stephen J. Morse, Addiction, Choice, and Criminal Law (noting disagreement whether seeking and using drugs post-addiction voluntary), in ADDICTION & CHOICE: RETHINKING THE RELATIONSHIP 426 (Nick Heather & Gabriel Segal eds., 2017).

27. See Morse, supra note 26, at 426 (discussing different addiction theories). Some believe that “addiction is a chronic and relapsing brain disease,” thus giving addicts little to no choice regarding their actions. See id. Others believe drug addiction constrains a user’s choices, but not to the extent of total involuntariness. See id. A third group, which has less research supporting its theory, believes addiction “is simply a consequence of moral weakness of will.” See id.; see also Gordon, supra note 2, at 1512-13 (outlining different theories of voluntariness and addiction). Unfortunately, many still consider and treat addiction as a social problem rather than as a medical condition, despite its characterization as a disease and research supporting this notion. See Gordon, supra note 2, at 1508.

28. See Murray, supra note 23, at 1009 (asserting addiction condition “caused by drug usage, genetics, mental illness, and other environmental factors” (footnotes omitted)). This theory suggests an alternative to a concrete distinction between voluntary and involuntary behavior, and instead advances the idea that drug addicts’ actions are “semi-voluntary.” See id.; see also Jordi Cami & Magí Farré, Mechanisms of Disease: Drug Addiction, 349 NEW ENG. J. MED. 975, 983 (2003) (noting multiple factors cause drug addiction). But see Morse, supra note 26, at 433 (rejecting involuntary drug addiction idea and supporting choice theory).

29. See Murray, supra note 23, at 1009 (calling for middle ground between involuntary and voluntary theories of addiction).

30. See id. (describing how criminal law deals with addiction and crime).

31. See id. at 1009, 1021 (discussing viewpoint law maintains regarding drug addiction). Because the criminal justice system typically does not hold one responsible for involuntary acts, classifying drug use as involuntary would result in no criminal liability. See id. at 1022. This effectively pigeonholes drug use into the
legal system has criminalized SUD, which has resulted in disproportionate effects within the legal system, such as higher incarceration rates of certain minorities over white adults.\textsuperscript{32} Massachusetts has taken some measures, however, in an attempt to avoid such criminalization.\textsuperscript{33} For example, judges must be well-informed about the problem of substance abuse and should order substance abuse treatment for criminals struggling with SUD.\textsuperscript{34} Nevertheless, while these precautions exist, judges have great leeway when imposing probationary conditions on individuals with SUD.\textsuperscript{35}

Judges in Massachusetts can create probation conditions as long as they are permissible within the statutory confines of the probation process and align with the articulated probationary goals.\textsuperscript{36} The two primary goals of probation in

“The voluntary” category because preserving public safety outweighs the consideration of drug users’ compulsions. See id. at 1020 (explaining policy concerns outweigh effects of addiction).


Yet unlike almost every known disease or illness—from physical conditions like diabetes, to mental illnesses like depression and schizophrenia—there are few guidelines governing the treatment of addiction, and addiction is instead treated in a “separate and unrelated system of addiction care that struggles to treat the disease without the resources or the knowledge base to keep pace with science and medicine.”


\textsuperscript{33} See STANDARDS ON SUBSTANCE ABUSE, STANDARD I (SUPREME JUDICIAL COURT STANDING COMM. ON SUBSTANCE ABUSE 1998) (detailing standard Massachusetts judges typically follow when dealing with substance abuse).

\textsuperscript{34} See id. STANDARD II, V, XV, XVIII (listing various standards Massachusetts judges utilize when implementing probation conditions). Massachusetts judges are also required to authorize access to court buildings for recovery meetings and counseling sessions, maintain an updated directory of treatment providers, and identify resources available in the community for substance abuse treatment. See id. (listing certain standards Massachusetts state court judges held to regarding substance abuse and probation).


\textsuperscript{36} See Eldred, 101 N.E.3d at 918 (encouraging judges to create individualized probation conditions supporting specific probationer’s needs and goals of probation); Commonwealth v. Pike, 701 N.E.2d 951, 959 (Mass. 1998) (granting judges wide latitude in imposing probation conditions).
Massachusetts are rehabilitating the defendant and protecting the public.\textsuperscript{37} Judges have also articulated other goals, such as punishment, retribution, and deterrence.\textsuperscript{38} Probation is meant to “enable the person to get on his feet, to become law abiding and to lead a useful and upright life under the fostering influence of the probation officer.”\textsuperscript{39} With these goals in mind, Massachusetts judges must abide by legal precedent, which states that the probation condition needs to be “reasonably related” to the articulated probationary goals.\textsuperscript{40}

Another issue that arises regarding criminal defendants with SUD is the need for rehabilitation.\textsuperscript{41} Court-ordered rehabilitation is sometimes required, but it is estimated that only about 20\% of incarcerated individuals who require treatment actually receive it.\textsuperscript{42} Recent statistics show that “68\%[1] of local jail inmates reported experiencing symptoms that met the criteria for drug dependence, abuse, or both the year prior to their incarceration. . . . but only 16.9\%[2]”

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\bibitem{37} See Eldred, 101 N.E.3d at 918 (outlining primary probation goals in Massachusetts). These probation goals can overlap, because rehabilitated defendants are not likely to engage in recidivism. See Goodwin, 933 N.E.2d at 930. The goals are also distinct, however, because although a condition might protect the public from the defendant’s potential recidivism, it may not be doing anything to rehabilitate the defendant. See id. (explaining how goals of probation intertwine yet still distinct); Pike, 701 N.E.2d at 959 (reiterating probation goals and mentioning other legitimate goals).
\bibitem{38} See Pike, 701 N.E.2d at 959 (mentioning additional probation goals); see also Commonwealth v. LaPointe, 759 N.E.2d 294, 298 (Mass. 2001) (reaffirming probation goals mentioned in Pike).
\bibitem{39} See Marino v. Hibbard, 137 N.E. 369, 370 (Mass. 1922) (explaining probation’s overall function). Further, the Marino court noted that probation mitigates the punishment of detention that would otherwise be imposed. See id.
\bibitem{40} See LaPointe, 759 N.E.2d at 298 (setting standard for probation conditions to “reasonably related” to goals of probation). Creating a probation condition that is reasonably related to the goals of probation is a relatively low threshold to meet. See Commonwealth v. Power, 650 N.E.2d 87, 91 (Mass. 1995). For example, in Power, the court upheld a probation condition prohibiting the defendant from profiting from selling her story to the media. See id. at 89, 93. The court reasoned that the condition was reasonably related to the probationary goal of deterrence because it disincentivized the defendant from profiting from criminal acts. See id. at 91-92. In another case, the Massachusetts Supreme Judicial Court again upheld a probation condition requiring the defendant to disclose her assault on a prior tenant to prospective tenants as it was reasonably related to the goals of probation. See Commonwealth v. Obi, 58 N.E.3d 1014, 1016, 1019, 1021 (Mass. 2016). The court explained that the condition substantially advanced the probationary goal of public safety by putting prospective tenants on notice of the defendant’s past crime. See id. at 1021. Notably, courts are not limited by constitutionally-protected rights of the defendant. See LaPointe, 759 N.E.2d at 298 (stating courts not restricted by constitutionally-protected rights of defendant). This means that probation conditions can still be enforceable, even if the condition is restricting the fundamental rights of the defendant, such as the right to interstate travel. See Pike, 701 N.E.2d at 959 (allowing judge to infringe on defendant’s fundamental rights when imposing probation conditions).
\bibitem{41} See Editorial Staff, What Is Court-Ordered Rehab?, DESERT HOPE (Nov. 19, 2019), https://deserthopetreatment.com/court-ordered-rehab/ [https://perma.cc/4Z78-R2JD] [hereinafter DESERT HOPE] (explaining need for court-ordered rehabilitation of defendants with SUD). Criminal behavior is often linked to substance abuse and addiction, making rehabilitation treatment an important means to stopping the criminal behavior that comes with drug abuse. See id.
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participated in treatment programs while in prison or jail.\textsuperscript{43} Without such treatment, an estimated 95\% of inmates arrested for drug-related crimes continue abusing drugs and other substances upon release, and between 60\% and 80\% of them commit a new crime upon release.\textsuperscript{44}

Further, incarceration often does not stop addicts from obtaining illegal substances while in prison.\textsuperscript{45} Those struggling with SUD unfortunately often end up in jail for crimes they committed to support their addiction, and they do not receive the professional treatment they require.\textsuperscript{46} For those who do receive treatment, these court-ordered programs can “serve as a diversion from traditional criminal justice methods for individuals struggling with substance abuse who have committed a crime.”\textsuperscript{47}

\textbf{B. Robinson and Its Aftermath}

\textit{Robinson} marks the first Supreme Court case to decide that criminalizing a person’s status as an addict is unconstitutional as it violates the Eighth and Fourteenth Amendments.\textsuperscript{48} In \textit{Robinson}, a California statute made it a crime to be addicted to narcotics.\textsuperscript{49} The defendant, Robinson, was charged under the statute, and later convicted at trial.\textsuperscript{50} But upon his arrest, there was no evidence of actual narcotic use, and consequently no proof Robinson actively did anything

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\item See DESERT HOPE, supra note 41 (reporting overview of statistics relating to individuals with SUD and drug-related crimes post-incarceration). Statistics further show that “around half of all prison and jail inmates battle addiction, and close to 80[\%] of offenders abuse alcohol or drugs. Around 60[\%] of people arrested for a majority of crimes test positive for illicit drugs at the time of their arrest.” Id.
\item See Drug Use in US Prisons, ANAHEIM LIGHTHOUSE (Dec. 12, 2017), https://anaheimlighthouse.com/blog/drug-use-in-us-prisons/ [https://perma.cc/UU9G-8U83] (describing accessibility to drugs in prison). In recent years, there has been a spike in the black market of illegal substances coming into prisons, with one inmate even claiming that “[d]rugs are easier to get than soap.” Id.
\item See DESERT HOPE, supra note 41 (linking substance abuse with criminal troubles).
\item Id.
\item See 370 U.S. at 660 (referencing California statute criminalizing drug addiction). The since-repealed statute provided that “[n]o person shall use, or be under the influence of, or be addicted to the use of narcotics, except when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics.” See id. at 660 n.1 (quoting CAL. HEALTH & SAFETY CODE § 11721 (repealed 1972)).
\item See id. at 661 (outlining procedural history). The trial judge instructed the jury that the statute’s reference to being “addicted to the use of narcotics” is considered a status or condition, rather than an act. See id. at 662. This meant that, as opposed to acute offenses, it was a chronic offense—one continuing after completion—thus subjecting the offender to arrest and conviction at any time before the user was rehabilitated. See id. at 662-63. The judge further instructed the jury that Robinson could be convicted, even if all the prosecution could show was that Robinson was addicted to the use of narcotics. See id. at 663.
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illegal. He appealed up to the Supreme Court, which ultimately overturned his conviction, and held that the statute penalized the status of being a drug addict without requiring proof of drug possession or any otherwise illegal conduct. The statute was ultimately struck down by a majority vote, despite dissenting opinions from Justices White and Clark.

Since Robinson, the Supreme Court and state courts have faced similar situations, and have continuously been asked to answer the question of whether particular statutes impermissibly criminalize a person’s status as a drug addict. While criminal defendants have raised this question in varying contexts over the years, one of the most recent contexts relates to probationary conditions. Eldred, the case at issue in this Note, presents an example of this question.

In July 2016, Eldred was charged with larceny for stealing jewelry, and admitted she stole the jewelry to support her heroin addiction. As a result, the judge imposed a one-year probation term, with a special condition requiring Eldred to remain drug free and submit to random drug testing. Eleven days

51. See id. at 661-62 (detailing evidence only constituted “scar tissue and discoloration” on Robinson’s arm).
52. See id. at 666-67 (discussing Court’s rationale and overall holding of case). The Court took issue with the fact that the jury instructions characterized the offense as continuous—or an offense at all—and compared it to punishing a person for the “criminal offense” of having leprosy. See id. This, the Court reasoned, constituted cruel and unusual punishment, and therefore violated the Eighth and Fourteenth Amendments. See id. at 666.
53. See Robinson, 370 U.S. at 667-68 (holding statute violated Constitution and reversing lower court decision, thereby striking down statute); id. at 680-81, 683 (Clark, J., dissenting) (arguing statute provided treatment rather than cruel and unusual punishment); id. at 686-88 (White, J., dissenting) (arguing within state’s power to confine individual for using or habitually using narcotics).
54. See, e.g., Powell v. Texas, 392 U.S. 514, 532 (1968) (deciding imprisoning person with chronic alcoholism for public intoxication not cruel and unusual punishment). The Court distinguished Powell from Robinson, reasoning that prohibiting public intoxication did not punish the defendant for his chronic alcoholism, but punished him for being drunk in public. See id.; see also State v. Margo, 191 A.2d 43, 44 (N.J. 1963) (noting case involved state court determining whether New Jersey statute criminalized drug addiction). In Margo, the defendant was convicted of violating a New Jersey statute that prohibited being under the influence of a narcotic drug. See Margo, 191 A.2d at 44. The appeal questioned the constitutionality of the statute that the defendant argued was cruel and unusual because it criminalized her addiction. See id. The New Jersey Supreme Court disagreed, however, reasoning that drug use is illegal, and she was punished for being under the influence of an illegal drug, not because she was addicted to the drug. See id. at 45 (explaining New Jersey Supreme Court reasoning).
55. See Commonwealth v. Eldred, 101 N.E.3d 911, 920 (Mass. 2018) (arguing imposing drug-free probation condition constitutes cruel and unusual punishment); Brief for the Probationer on a Reported Question and on Appeal from a Finding of Probation Violation from the Concord Division of the District Court Department, Eldred, 101 N.E.3d 911 (No. SJC-12279), 2017 WL 3977899, at *26 [hereinafter Brief for the Probationer] (arguing Robinson should apply to present case).
56. See Eldred, 101 N.E.3d at 920 (arguing cruel and unusual punishment to impose drug-free probation conditions on defendants with SUD); see also Martha Coakley & Rachel Hutchinson, Massachusetts High Court Rules Judges Can Require Sobriety as Part of Probation in Commonwealth v. Eldred, Bos. B.J., Fall 2018, at 15, 16 (outlining Eldred’s main argument to Massachusetts Supreme Judicial Court).
57. See Eldred, 101 N.E.3d at 915-16 (describing Eldred’s underlying charge).
58. See id. at 916 (outlining Eldred’s punishment for admitted crime).
later, Eldred tested positive for fentanyl.59 At a detention hearing, the judge determined Eldred had violated her probation condition and ruled she be placed in an inpatient treatment facility.60 Because none were available at that time, Eldred spent ten days in custody until finally being released into an inpatient treatment facility.61

At Eldred’s probation violation hearing, she argued for the first time that she suffered from SUD, and therefore did not willfully violate her probation condition when she used drugs.62 She further argued that the probation condition violated several state and federal constitutional rights, but the judge denied her motion to vacate the probation condition.63 Eldred appealed to the Massachusetts Supreme Judicial Court, asking the court to determine whether the probation condition constituted cruel and unusual punishment.64

Eldred’s main argument was that the probation condition constituted cruel and unusual punishment and set her up for failure as a person with SUD who cannot control her compulsion to use drugs.65 She also argued that incarcerating her for ten days without access to treatment or Suboxone criminalized her status as a person with SUD, and cruelly and unusually punished her.66 Finally, she claimed

59. See id. (noting Eldred violated probation condition).
60. See id. (highlighting procedural history after Eldred violated trial judge’s probation condition).
62. See id. at 916-17 (setting forth Eldred’s main argument against drug-free probation condition); Commonwealth v. Henry, 55 N.E.3d 943, 950 (Mass. 2016) (noting necessity of willfulness and voluntariness of violations); Brief for the Probationer, supra note 55, at *13 (arguing relapse symptom of SUD makes continued drug use inevitable); see also Brief of the Commonwealth of Massachusetts on a Reported Question and on Appeal from a Finding of Probation Violation by the Concord Division of the District Court Department, Eldred, 101 N.E.3d 911 (No. SJC-12279), 2017 WL 4273993, at *17, *19-20 [hereinafter Brief of the Commonwealth] (arguing voluntary choice to use drugs and Eldred’s violation voluntary).
63. See Eldred, 101 N.E.3d at 916-17 (outlining procedural history and noting first time Eldred claimed probation condition unconstitutional).
64. See id. at 917-18, 920 (summarizing procedural history up through appeal). The court was presented with three questions:

Where a person who committed a crime is addicted to illegal drugs, may a judge require that person to abstain from using illegal drugs as a condition of probation? If that person violates the “drug free” condition by using illegal drugs while on probation, can that person be subject to probation revocation proceedings? Additionally, at a detention hearing . . . may that person be held in custody while awaiting admission into an inpatient treatment facility, pending a probation violation hearing?

Id. at 917-18.
65. See id. at 920 (highlighting Eldred’s argument on appeal). Because there was no dispute that Eldred suffered from severe SUD, which, according to the DSM-5, is defined by compulsive substance use, Eldred argued it would be cruel to imprison her for testing positive for fentanyl. See Brief for the Probationer, supra note 55, at *27-28. Eldred relied heavily on the involuntariness argument, citing several scientific sources that affirm SUD is a brain disorder. See id. at *6-8, *30-32. Eldred pointed out that probation violations must be voluntary, and because there is research supporting the involuntariness theory of addiction, she should not be punished for testing positive for fentanyl. See id. at *33-34.
66. See Eldred, 101 N.E.3d at 920 (outlining Eldred’s cruel and unusual punishment argument and how her
that relapse is a symptom of addiction, and therefore the legal system should treat it that way.\textsuperscript{67}

In response, the Commonwealth argued that when Eldred violated the drug-free probation condition, she was not punished for having SUD, but rather was punished for the underlying larceny charge, for which she received a one-year probation term with agreed-upon special conditions.\textsuperscript{68} The Commonwealth also argued that Eldred’s detention was not cruel or unusual, but rather that it may have saved her life, as this prevented her from continually using an extremely dangerous drug.\textsuperscript{69} Finally, the Commonwealth argued that Eldred’s violation of the drug-free condition was willful, rather than an uncontrollable compulsion, and that SUD is not a legal defense to a probation violation.\textsuperscript{70}

In Justice Lowy’s response to Eldred’s issues on appeal, he reasoned that the rehabilitative goals of probation encourage and require judges to take an individualized approach, which at times includes enforcing these drug-free conditions.\textsuperscript{71} Further, Justice Lowy explained that judges need flexibility when creating conditions for an individual’s probation.\textsuperscript{72} Justice Lowy also mentioned the court’s already-established standards of substance abuse, specifically mentioning one provision that states the judge should prohibit a party from using drugs and alcohol if substance abuse was a factor in the underlying case.\textsuperscript{73}
court was not persuaded by Eldred’s argument because, as Justice Lowy noted, an individual released on probation has conditional liberty interests.\textsuperscript{74} Moreover, the drug-free condition was specifically tailored to Eldred’s admitted drug abuse, and aligned with the goals of probation.\textsuperscript{75} The court also noted the condition was not designed to punish Eldred, but rather to facilitate rehabilitation and treatment, and therefore could not constitute cruel and unusual punishment.\textsuperscript{76} When addressing the legality of Eldred’s incarceration after her probation violation, the court reasoned that the trial court was justified because, while addiction is a status that may not be criminalized, judges must have the authority to detain a defendant facing a probation violation in order to protect both the defendant and the community.\textsuperscript{77} Eldred has been cited and applied numerous times since the court decided it in July 2018.\textsuperscript{78} In \textit{Commonwealth v. Desmond},\textsuperscript{79} for example, the court upheld a probationary condition for an underlying assault charge that required the probationer to remain drug and alcohol free.\textsuperscript{80} When the probationer, a drug addict, inevitably violated the condition, the judge sentenced him to one year in the house of correction.\textsuperscript{81} In another case, the probationer pled guilty to larceny and was sentenced to a one-year period of probation that, when completed, would result in the dismissal of her charges.\textsuperscript{82} One of the probation conditions required
her to submit to drug and alcohol screenings. She too eventually violated her probation condition and was incarcerated. As a result, Eldred seems to indicate that there will be a trend towards judges setting substance-free probation conditions that are inevitably violated, which then leads to the addict’s incarceration.

C. Comparing Massachusetts to Other Jurisdictions

While Massachusetts has its own standards and laws regarding probation and the treatment of substance abuse in the legal system, other jurisdictions handle probation in various ways. The probation goals in Massachusetts similarly align with those of other jurisdictions, and courts across these jurisdictions generally have broad discretion in imposing probation conditions. Nevertheless, while looking at the ways other jurisdictions handle probation as a means for rehabilitating drug addicts, it is apparent that some courts have upheld similar probationary conditions, but others have not.

For example, in State v. Brotherton, a Montana case, the defendant pled guilty to possession of a dangerous drug with intent to distribute. The judge imposed a probation condition restricting the defendant from possessing or consuming intoxicants or alcohol. The defendant, who had a significant history of chemical dependency, appealed to the Supreme Court of Montana, which upheld the condition. The court reasoned that the probation condition was reasonably

83. See id. at 67-68 (describing defendant’s probation conditions).
86. See, e.g., DIST./MUN. COURT RULES FOR PROB. VIOLATION PROCEEDINGS RULE 5(C) (MASS. DIST. COURT & BOS. MUN. COURT 2015) (outlining Massachusetts’s standards for probation); Fern L. Kletter, Annotation, Propriety of Requirement, as Condition of Probation, that Defendant Refrain from Use of Intoxicants, 46 A.L.R.6th 241, § 2 (2009) (articulating states have authority to decide how to impose probation conditions). State courts have the power to decide if they want to impose probation conditions, or even utilize probation at all, thereby resulting in regulations that vary from state to state. See Kletter, supra, §§ 1-2 (explaining court’s analysis of various regulatory schemes for probation conditions).
87. See Kletter, supra note 86, § 2 (noting general similarities in probationary goals across jurisdictions); supra note 37 and accompanying text (stating probationary goals in Massachusetts).
89. See Brotherton, 182 P.3d at 89 (outlining charges against defendant).
90. See id. (imposing condition requiring probationer to remain alcohol-free despite substance abuse issues).
91. See id. at 93 (upholding probation condition). The probationer argued that the condition was unrelated to his offense, and therefore no nexus existed between the condition and the crime charged. See id. at 91
related and necessary to the defendant’s rehabilitation.  

Other jurisdictions, however, such as Idaho, have not been as quick to uphold probation conditions requiring sobriety. In State v. Oyler, the defendant pled guilty to driving under the influence, and the district court placed him on probation, imposing a condition that he refrain from consuming alcohol. After the prosecution filed a motion to revoke defendant’s probation so that the defendant would instead be incarcerated, the defense attorney objected to the probation condition on the ground it was impossible for the defendant to perform it. The defendant argued that he suffered from alcoholism, and therefore his excessive drinking was uncontrollable, making it impossible to comply with the probation condition. The Supreme Court of Idaho ruled that if it was impossible to comply with the probation condition due to his alcoholism, then the condition was impermissibly unjust and should be removed. The case was eventually remanded to the trial court to determine whether the defendant’s alcoholism actually made it impossible for him to abstain from drinking. If the trial court determined it was impossible, then they were to revoke the condition.

While jurisdictions vary in dealing with probation conditions, courts uphold probation conditions far more often than they strike them down. State courts’ authority to grant probation, while dependent on the state, is typically broad. Most courts have similar standards in imposing probation conditions, requiring that any special probation conditions promote certain objectives such as rehabilitation, protection of the public, or protection of victims’ rights.

92. See id. at 93 (holding nexus existed between underlying crime and probation condition). It is important to note the probationer’s substance abuse issues were with drugs, not alcohol. See id. at 91.

93. See, e.g., Oyler, 436 P.2d at 713 (remanding case to lower court to determine whether probation condition permissible).


95. See id. at 710 (summarizing underlying crime and probation condition).

96. See id. (describing prosecution and defense’s arguments).

97. See id. (discussing probationer’s argument against probation condition).

98. See Oyler, 436 P.2d at 712-13 (explaining rationale behind remanding case to lower court). The court cited to Robinson in making its decision, reasoning that if a person is powerless to abstain from drinking alcohol, and the court knowingly imposes a probation condition requiring abstention from alcohol, the condition “would be patently as vindictive as demanding a lame person run for his freedom.” See id. at 712.

99. See id. at 713 (remanding case to trial court). While acknowledging it would be impermissible to impose such a condition if what the probationer argued was true, the Supreme Court of Idaho ultimately remanded the case to the trial court because the district judge had not made a finding that the probationer did in fact suffer from alcoholism. See id. at 711 (discussing court’s ultimate holding).

100. See State v. Oyler, 436 P.2d 709, 713 (Idaho 1968) (instructing lower court to revoke condition if court finds probationer chronic alcoholic).

101. See generally Kletter, supra note 86, § 2 (noting various times courts upheld probation conditions).

102. See id. (explaining state court’s broad discretion in imposing probation and probation conditions).

103. See id. (comparing how jurisdictions regulate probation and concluding similar rules and restrictions apply).
While state courts’ powers to impose probation conditions are broad, they are not unlimited. Courts analyze several important factors when determining whether a condition is proper, such as the overbreadth of the condition, its vagueness, any constitutional challenges, whether the condition is reasonably related to the crime, and whether the defendant is an alcoholic or drug addict. Courts also consider the primary objectives of probation and protection of the public. Further, if the conditions are too vindictive, arbitrary, or unreasonable, courts will likely strike them down as not reasonably related to treating the probationer or protecting public safety. When looking at the specific facts of the case, as long as a probation condition aligns with the above-mentioned standards, judges are likely to hold the conditions enforceable.

Given other jurisdictions’ holdings in cases similar to Eldred and the overwhelming tendency to uphold probation conditions if they are reasonably related to probationary goals, it is unsurprising the court was not persuaded by Eldred’s arguments. Eldred was essentially asking the court to rule against precedent and consider a question it was ill-equipped to answer—whether substance abuse is voluntary. Given the lack of precedent in favor of defendants like Eldred, judges are hesitant to break new ground in this way, and while this does not mean Eldred’s arguments were incorrect, it does mean that she was fighting an uphill battle.
III. ANALYSIS

*Eldred* is unlikely to be the final word on this issue because the population’s understanding of drug addiction is still developing and evolving. While the decision did not change the way Massachusetts judges were administering probation conditions, it was the first time a state supreme court definitively decided on the issue. The Massachusetts Supreme Judicial Court was correct in determining substance-free probation conditions are constitutional, but this Note proposes that any future violation of such a condition should not result in incarceration. Rather, the individual should be placed in a readily available rehabilitation facility.

A. Anticipated Legal Implications of *Eldred*

*Eldred* created precedent that will make it extremely difficult for criminal defendants with SUD to argue their constitutional rights have been violated when judges impose drug-free conditions upon them. Further, because the Massachusetts Supreme Judicial Court was the first state supreme court to decide this matter, it would be unsurprising if courts in other jurisdictions look to Justice Lowy’s opinion for guidance when the issue inevitably arises in those jurisdictions. Regardless, given the wide publicity and significant public

112. See Coakley & Hutchinson, supra note 56, at 17 (noting perception of addiction still evolving). Coakley points out that “[w]hile the criminal justice system may be on the front lines of the crisis for now, that role may change as other jurisdictions, legislatures, agencies, and disciplines grapple with the same questions faced in *Eldred.”* Id.


114. See Brief for the Probationer, supra note 55, at *28 (arguing incarceration cruel and unusual when defendant with SUD violates substance-free probation condition); supra Section II.A (explaining need for rehabilitating defendants with SUD); infra Section III.B (proposing committing these defendants to rehabilitation facilities rather than incarcerating them).

115. See infra Section III.B (arguing for placement in rehabilitation facility rather than incarceration); see also *DESERT HOPE*, supra note 41 (explaining rehabilitation benefits for individuals with SUD). Rehabilitation facilities are not only beneficial to drug-addicted inmates and defendants, but also to society because if drug addicts are effectively rehabilitated, they are less likely to commit drug-related crimes in the future. See *DESERT HOPE*, supra note 41.

116. See generally *Eldred*, 101 N.E.3d at 915 (creating precedent upholding substance-free probation conditions). Massachusetts state courts’ relatively low “reasonably related” standard, coupled with the precedent set in *Eldred*, will undoubtedly make it an uphill battle for future defendants attempting to overturn the holding, but this is unlikely to stop them from trying. See Commonwealth v. LaPointe, 759 N.E.2d 294, 298 (Mass. 2001) (setting low standard for probation conditions to only “reasonably related” to goals of probation); Coakley & Hutchinson, supra note 56, at 17 (pointing to unlikeliness of *Eldred* to deter others from making same argument); Kletter, supra note 86, § 2 (noting courts’ broad powers in imposing probationary conditions).

117. See Coakley & Hutchinson, supra note 56, at 15, 17 (noting first time state supreme court decided on issue and predicting issue likely raised again). In the short time since the court decided *Eldred*, Massachusetts courts have cited the decision multiple times, and this trend will likely continue to spread to other jurisdictions. See, e.g., Commonwealth v. Plasse, 114 N.E.3d 64, 73 (Mass. 2019) (referencing *Eldred* when imposing
dissatisfaction with this case’s outcome, it is likely that the Eldred decision will compel attorneys across the United States to raise the issue of the voluntariness of drug addiction.\textsuperscript{118}

Due to the lack of precedent in favor of individuals with SUD, other courts will likely follow suit and uphold substance-free probationary conditions.\textsuperscript{119} As previously mentioned, most probation conditions are upheld due to the wide latitude judges hold in administering conditions.\textsuperscript{120} With that in mind, focusing the argument on the constitutionality of the condition itself is quite possibly why Eldred and other defendants with SUD are unable to persuade any court.\textsuperscript{121} Instead, defendants with SUD should focus their argument on the consequence of violating a substance-free probation condition.\textsuperscript{122} The result of such a violation should be rehabilitation, not incarceration.\textsuperscript{123} Eldred did include this in

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\item \textsuperscript{118} See Christensen, supra note 14 (discussing public opinion of Eldred decision). Eldred gained significant media coverage, and while it was viewed as a loss in the eyes of many, “[s]ince last year when she argued the case, Newman-Polk’s gotten calls and letters from lawyers and judges who are encouraged by her fight. Even without the win, ‘the idea to get the public to think about this is a win, and at least we’ve moved the needle a little.’” Id. Essentially, many view Eldred as just the beginning of a fight that has been a long time coming. See id.; Coakley & Hutchinson, supra note 56, at 17 (noting likeliness of issue continuing to come up in future); see also Editorial Board, supra note 32 (opining upholding Eldred’s probation condition would result in step in wrong direction).
\item \textsuperscript{119} See supra Section II.C (discussing how other jurisdictions handle probation conditions and lack of precedent on issue); see also Plasse, 114 N.E.3d at 70 (citing Eldred when upholding probation condition); State v. Brotherton, 182 P.3d 88, 93 (Mont. 2008) (upholding probation condition prohibiting drug-dependent probationer from consuming intoxicants).
\item \textsuperscript{120} See Commonwealth v. Eldred, 101 N.E.3d 911, 919 (Mass. 2018) (noting Massachusetts courts have great latitude when imposing probation conditions); Commonwealth v. Obi, 58 N.E.3d 1014, 1019 (Mass. 2016) (discussing judges’ ability to impose probation conditions and noting large amount of discretion); Commonwealth v. Goodwin, 933 N.E.2d 925, 930-31 (Mass. 2010) (outlining discretion judges hold when imposing probation conditions); Lapointe, 759 N.E.2d at 298 (summarizing standard most Massachusetts judges hold when administering probation conditions).
\item \textsuperscript{121} See Eldred, 101 N.E.3d at 916-17 (focusing on probation condition’s constitutionality); Brief for the Probationer, supra note 55, at *26-28 (focusing mainly on probationary condition rather than proposing alternative to incarceration for violating condition).
\item \textsuperscript{122} See Desert Hope, supra note 41 (arguing to send defendants with SUD violating probation conditions to rehabilitation facilities rather than incarcerate); Editorial Board, supra note 32 (discussing problems behind incarcerating drug addicts who relapse). Commenters suggest that “carrots work far better than sticks” when dealing with addicts, and threatening addicts with jail time is less incentivizing than offering help through rehabilitation tactics. See Editorial Board, supra note 32 (noting addicts more responsive to positive incentives); see also Brief for Probationer, supra note 55, at *26 (arguing unsuccessfully probation condition unconstitutional). Eldred’s counsel focused more on the probation condition’s constitutionality, rather than on what the consequence should be if Eldred violated the probation condition. See Brief for the Probationer, supra note 55, at *26-28.
\item \textsuperscript{123} See Editorial Board, supra note 32 (suggesting policies should not criminalize relapse); US: Disastrous Toll of Criminalizing Drug Use, supra note 32 (discussing consequences of criminalizing drug use); see also Eldred, 101 N.E.3d at 918 (emphasizing rehabilitation important goal of probation). Providing access to a
her argument, but the main focus was on the condition’s constitutionality. While Eldred was unsuccessful, future defendants with SUD might be more persuasive if they shift the focus to the real goal of probation—rehabilitation—as rehabilitation is the most important function of probation.

B. Finding a Middle Ground Between Incarceration and No Criminal Liability

When the underlying crime revolves around SUD, and the defendant, like Eldred, attempts to support his or her drug addiction, which violates a substance-free probationary condition, the solution should be mandatory commitment to a rehabilitation facility. Defendants with SUD should argue, and courts should find, that the real issue in cases like Eldred is not the probation condition itself. Rather, the issue centers on what happens if that condition is violated. One of probation’s primary goals is facilitating rehabilitation, and merely placing a defendant with SUD in jail does not achieve that goal. Incarcerating a rehabilitation facility in place of incarceration would further the mentioned probation goals. See Desert Hope, supra note 41 (arguing rehabilitation better alternative to incarceration).

124. See Eldred, 101 N.E.3d at 916-17, 920 (arguing incarceration unlawful because it punishes defendant for status of drug addict); Brief for the Probationer, supra note 55, at *26-28 (arguing mainly probation condition unconstitutional, but also including argument questioning constitutionality of incarceration).

125. See Eldred, 101 N.E.3d at 918 (discussing probation goals and emphasizing importance of rehabilitation); Commonwealth v. Goodwin, 933 N.E.2d 925, 930 (Mass. 2010) (highlighting probation goals and conditions imposed); Commonwealth v. Pike, 701 N.E.2d 951, 959 (Mass. 1998) (discussing “reasonably related” standard); see also Christensen, supra note 14, (discussing why rehabilitative goals of probation not facilitated by sending probationer to jail).

126. See Christensen, supra note 14 (discussing differing views of rehabilitation and incarceration); Desert Hope, supra note 41 (pointing out importance of rehabilitation tactics instead of punishing addicts for disease); see also supra Section II.A (explaining importance of rehabilitativing individuals struggling with SUD).

127. See Editorial Board, supra note 32 (explaining why incarceration only perpetuates and criminalizes drug addiction).

128. See id. (discussing larger issue of punishing relapse rather than constitutionality of probation condition itself).

129. See supra notes 36-40 and accompanying text (discussing need to facilitate rehabilitation when imposing probation conditions); see also Christensen, supra note 14 (detailing concerns of specialists arguing punishing defendants for relapsing not conducive to rehabilitation); Editorial Board, supra note 32 (analyzing issues with placing probation violators in jail); Segal & Lafaille, supra note 71 (arguing courts should not imprison people simply for relapsing). After the Eldred decision came down, Carol Rose, the executive director of the American Civil Liberties Union of Massachusetts, expressed her view that sending Eldred to jail accomplished the opposite of what the probation goals are intended to accomplish:

People should not be imprisoned simply because they stumble on their road to recovery. We are deeply disappointed that the Court has ruled to make probation an instrument of the war on drugs. By doing so, the Court chose a path that will incarcerate people suffering from addiction, interrupt their treatment, and endanger their lives. It is both unsafe and unjust to require probationers suffering from addiction to remain drug free or else face jail. Addiction should be treated as a public health concern, not a criminal justice issue.

Segal & Lafaille, supra note 71 (quoting Carol Rose).
defendants with SUD is simply a temporary fix to an ongoing epidemic.130 Once the defendant is released, still addicted to drugs, they will almost certainly resume criminal behavior in order to support their addiction.131 An estimated 95% of incarcerated individuals consume alcohol or other substances after being released, and between 60% and 80% commit drug-related crimes after being released.132 Further, forcing abstinence by sending a defendant to jail, rather than committing them to a rehabilitation facility, can be detrimental and even dangerous, as untreated withdrawal can be deadly.133 Some critics even argue “[p]olicies that punish relapse with jail time and keep sufferers from proven treatments are part and parcel of a nearly 50-year war on drugs, predicated almost entirely on criminalization, that no reasonable person would say is working.”134

Of course, the Eldred court felt that requiring a defendant with SUD to remain substance-free, on his or her own, would facilitate rehabilitation enough to satisfy the listed probationary goals and standards.135 What the court failed to recognize, however, is that if the defendant’s disease led her to commit a drug-related crime, then putting her in jail rather than a rehabilitation facility defeats the purpose of requiring her to remain substance-free in the first place.136 Once the defendant is placed in jail, her chances of rehabilitation are significantly decreased.137 The current system addresses drug addiction in a vicious, never-ending cycle that is not only failing to solve the problem, but also perpetuating the problem.138

The solution, then, would be to ensure rehabilitation facilities are readily

130. See Brief for the Probationer, supra note 55, at *28 (arguing sending probationer to jail constitutes cruel and unusual punishment); Christensen, supra note 14 (explaining jail interferes with recovery of defendants with SUD); Editorial Board, supra note 32 (discussing how addiction ongoing and pervasive).
131. See DESERT HOPE, supra note 41 (explaining likelihood of drug addicts to commit drug-related crimes).
133. See Elkins, supra note 42 (discussing dangerous repercussions of forced sobriety through incarceration without rehabilitation tactics); see also Editorial Board, supra note 32 (arguing punishment of jail time rather than providing treatment predicated on criminalization).
134. Editorial Board, supra note 32. It is also worth noting that the cost of incarcerating nonviolent drug offenses is staggeringly more expensive than providing treatment for these addicts. See id. An example of one treatment proven to be effective for drug addicts is known as medication-assisted therapy. See id. Treating an individual with this therapy, “which uses Food and Drug Administration-approved medications that can relieve opioid cravings and withdrawal symptoms[,]” costs an estimated $6,000 per year. See id. On the other hand, it costs approximately $33,000 per year to incarcerate that individual. See id.
135. See Commonwealth v. Eldred, 101 N.E.3d 911, 925 (Mass. 2018) (discussing court’s rationale); Christensen, supra note 14 (outlining both sides’ arguments and court’s decision).
136. See DESERT HOPE, supra note 41 (discussing statistics and effect of incarceration on recovery for drug addicts); Segal & Lafaille, supra note 71 (explaining issues behind Eldred court’s rationale); see also Christensen, supra note 14 (noting jail interferes with recovery of defendants with SUD).
137. See DESERT HOPE, supra note 41 (reporting effects of incarceration on rehabilitation); Elkins, supra note 42 (explaining unlikelihood of rehabilitation while in jail).
138. See Christensen, supra note 14 (arguing current system perpetuates, rather than resolves, drug-related crime); Editorial Board, supra note 32 (arguing court’s handling of drug addiction inhibits rehabilitation and perpetuates drug-related crimes); Segal & Lafaille, supra note 71 (expressing concern with how courts currently handle drug addiction).
available for individuals with SUD. Of course, this is easier said than done; rehabilitation was the end goal in *Eldred*, but even placement in a facility for *Eldred* was unavailable for ten days. While ensuring availability at a rehabilitation facility might not always be possible or even within the courts’ control, judges can still have a say in what happens in this situation. If immediate commitment to a facility is not available, judges could place the defendants on house arrest until placement is available. If temporary incarceration is the only option, judges could at least ensure defendants with SUD are properly treated for their addiction while in jail and awaiting placement.

While it is important, as the Commonwealth pointed out, for judges to hold individuals accountable for their actions, it is also important for judges to impose probation conditions that properly facilitate the goals of probation. Incarcerating a defendant with SUD for violating a drug-free probation condition does not further probation’s rehabilitative goals.

IV. CONCLUSION

Researchers, scientists, and the general public are still split on the voluntariness of addiction debate, and many disagree on what consequences are appropriate for those who commit offenses to support their drug addiction. It is obvious, however, that the effects of addiction feel very real to those struggling with SUD. Regardless, the legal system is set up in a way that is meant to punish

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139. See supra Section II.A (explaining rehabilitation more effective than incarceration); see also Editorial Board, supra note 32 (arguing rehabilitation solution to issue).

140. See *Eldred*, 101 N.E.3d at 916 (explaining reason court incarcerated Eldred before placing her in rehabilitation facility).

141. See Commonwealth v. Eldred, 101 N.E.3d 911, 925 (Mass. 2018) (discussing judge’s options when probation condition violated). “After determining that the defendant violated the conditions of her probation, the judge had the authority either to revoke the defendant’s probation, repropose her on the same conditions, or modify her probationary conditions to further the welfare of both her and the public.” Id. Accordingly, judges have wide discretion when it comes to deciding how to handle probation violations. See id.; supra notes 101-03 and accompanying text (noting judge’s wide latitude in administering probation conditions and flexibility in enforcing conditions).

142. See *Eldred*, 101 N.E.3d at 919, 925 (explaining judges’ discretion when dealing with violations of probation conditions).

143. See Editorial Board, supra note 32 (suggesting courts should ensure drug addicts properly treated rather than incarcerated if probation condition violated).

144. See *Eldred*, 101 N.E.3d at 918-19 (reasoning accountability important for guilty criminal defendants); Brief of the Commonwealth, supra note 62, at *48-49 (arguing standards create accountability for guilty defendants). But see supra notes 130-34 and accompanying text (pointing out drawbacks associated with incarcerating defendants with SUD).

145. See supra Section III.A (proposing committing to rehabilitation facility possible alternative to incarceration); see also Christensen, supra note 14 (suggesting incarceration inhibits rehabilitation for individuals with SUD); Editorial Board, supra note 32 (arguing for implementing more rehabilitation tactics to lessen SUD’s criminalization); Segal & Lafaille, supra note 71 (noting disappointment with court’s decision in *Eldred* and arguing punishing relapse perpetuates problem).
those who commit crimes, while also attempting to rehabilitate criminal behavior and reduce crime.

Unfortunately for those suffering from SUD, this black-and-white approach of punishing addicts who violate substance-free probation conditions is unforgiving when it comes to relapse. When judges impose substance-free probation conditions on drug addicts, defendants with SUD are almost certainly going to end up in violation of the condition. While these conditions are well-intentioned and meant to rehabilitate drug addicts, they are not effective in doing so. Instead, individuals with SUD too often end up in jail and using again. Providing efficient access to rehabilitation facilities and committing those who violate their probation conditions to these facilities would likely increase the odds of recovery for defendants with SUD. In turn, this would also likely decrease crime rates, as the offenses that individuals with SUD commit are typically drug-related crimes.

In short, defendants with SUD who violate substance-free probation conditions should be placed in rehabilitation facilities, rather than in jail. Incarcerating an individual who violates a condition of his or her probation due to a symptom of a disorder should be considered cruel and unusual punishment. This is not to say there should be no consequences when a drug addict commits a crime; rather, when specifically dealing with a defendant with SUD’s substance use, judges should handle the disorder with sensitivity, and ensure the consequence of any drug-free probation condition promotes rehabilitation, as opposed to simply punitive consequences.

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