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Private Drug Treatment Should Always Be Preferred Over Incarceration

The intended purpose of this essay is to promote the use of private drug treatment facilities over extended periods of incarceration.¹ In attempting to achieve my purpose I will tell the story of two drug addicted individuals as they navigate life, the courts, probation, and parole.² The thesis of this essay is for courts across the State of Georgia to make every attempt to prefer and allow a Defendant to enter into private treatment over long term confinement in a county jail or prison. Factors used to determine a defendant's eligibility for private treatment need to be reevaluated. Factors that need reevaluating include criminal history, severity of the crime, acts of violence and desire and ability of a defendant to attend private treatment.³

I will begin this essay by telling the story of Defendant One and his tragic battle with the courts. Then I will discuss my proposed solution to the problem encountered by the courts. Defendant One's story will end by applying my proposed criteria to his story to show how things could have turned out differently. After, I will tell the story of Danielle Bonanno and the sobriety and joy for life she obtained while a resident at The Palm House Recovery Center. I have purposely omitted any discussion of statistics. An addict needing treatment is more than a statistic.

¹ The viewpoints expressed in this essay are in favor of punishment for committing crimes

² This essay was read to Defendant One over the phone and confidentiality was explained and he gave me his permission to share this information.

³ This list is not exhaustive. Just includes factors that need reevaluating.

Defendant One: Face tattoos passed out in Prison

The story of Defendant One is unnecessarily harsh. The greatest tragedies of his story could have been avoided if the Court had properly intervened. Defendant One was born to a drug addicted mother who used continuously during her pregnancy. At birth, he was adopted into a wonderful family, by two loving, kind, and generous parents. Defendant One and his siblings were raised in a safe, middle class neighborhood with everything they needed.

Defendant One had a few behavioral issues but it was not anything out of the ordinary. It was manageable with the proper medication and regular doctor visits. As he entered high school he was completely normal, your typical kid. He was the type of student that flirted with girls, smoked cigarettes in the parking lot and skipped class. He sometimes got into trouble, but only for being mischievous, nothing illegal. At some point during high school he started using drugs. He described his drug use as recreational but it was more likely to self-medicate.

When he was nineteen, Defendant One placed himself in a bad situation and two consequential decisions were made. He was charged and convicted of a crime that was innocent in nature but cruel in its punishment. An act that deserved a misdemeanor's punishment ended with two years in prison and a registration requirement.⁴ Once in prison, he continued to use drugs.⁵ At some point during his sentence, he acquired an unknown drug, probably a concoction of sorts, and got high. While high, he passed out in an unknown jail cell and received numerous large tattoos on his face. Imagine, the artist with a rusted needle, high, on the same drugs as Defendant One, with a painful buzz, dark blue zig zags were permanently placed on his face.

⁴ I am in no way saying this shouldn't be a crime. This is meant to provide no commentary as to the merits of any statutes.

⁵ I don't think its fair to say with credibility that either there are not drugs in prison, or, it was his choice to use. What do you expect to happen when you place an addict in a grim situation with drugs are were readily available.

Defendant One was not a criminal. He was a drug addict, consumed in the lifestyle. A lifestyle that both him and the victim enjoyed. Before he was arrested, he had never spent a single second in a cold, damp cell. After speaking with Defendant One and his family I learned no real attempts were made for him to enter private treatment. One idea for allowing defendants more access to private treatment would be to allow an Inquiry to be conducted. The Inquiry would be conducted using the following factors: (1) Criminal history, (2) Acts of violence and propensity to commit violent acts, (3) severity of crime, and (4) Desire of Defendant to attend and ability to pay.

This presents the question, whose responsibility is it to conduct the inquiry? I would suggest a guardian ad litem type figure called a Private Treatment Coordinator (PTC). The PTC would be a qualified neutral party who evaluates the above factors in their inquiry of the defendant. A qualified neutral party could be a local attorney who is familiar with Court. The Inquiry would be similar to an accountability court evaluation. If the Defendant utilizes the PTC then an additional fee would be added onto the Defendant's sentence as an additional fee to cover the cost of the PTC. I would further suggest that the only requirement to obtain a PTC would be a verbal request. Preferably, this verbal request would be made at a preliminary hearing or arraignment. But there should be no time limit and no bad faith presumption shall arise if a defendant requests a PTC at a late time and date in their proceedings.

How would using a Private Treatment Coordinator have impacted Defendant One's case? Defendant One did not receive a bond when he was arrested. Let's say he verbally requests the

PTC at a preliminary hearing. Then, preferably within two weeks, the PTC would have conducted the Inquiry with Defendant One.⁶

During the Inquiry, the PTC would have considered the fact that Defendant One had no criminal history. Criminal history should only be looked at in terms of acts of violence and propensity to commit violent acts. Trafficking and distribution charges should not be used as disqualifying factors because addiction is also a lifestyle. What begins as a choice thinking, I can't get addicted, turns into a daily habit. To support this daily habit many turn to sales. They turn to sales because their environment allows the criminal activity and its actively encouraged by others in the addict lifestyle.

Defendant One's crime was not violent so he will not be evaluated under this factor. That being said, acts of violence and propensity to commit violent acts should be used as a determinative of future behavior. A violent criminal past should not be used to disqualify a defendant from receiving private treatment. Behavior can change with proper guidance. The alleged, and likely to be proven, level of violence used by the Defendant in their instant charge, shall be used in the determination of the proper punishment.

The severity of the crime would be the toughest factor to evaluate. I would suggest for crimes involving a victim, the PTC utilize any victim statements that were given no later than two weeks after the incident. The PTC shall then learn the defendant's account of events. If the PTC determines the Defendant's account of events to be honest and sincere the PTC shall, at their discretion, utilize the defendants account of events in combination with qualified victim statements. In Defendant One's case, an inquiry conducted in this manner would have yielded

⁶ Due to the nature of the Inquiry it would be favorable to meet face to face with defendants as opposed to video conference.

results showing that a crime was committed but it was consensual and both parties obliged. Taking this approach would show a low level severity of crime.

Desire of Defendant to participate in private treatment and ability to pay would be the final factors determined by the PTC. To determine a Defendant's desire to attend private treatment the PTC would analyze the genuineness and sincerity of the defendant's statements regarding private treatment. The PTC would determine genuineness and sincerity by determining whether or not the defendant has been truthful during the Inquiry. In evaluating the sincerity and genuineness, the PTC should disqualify any candidate who appears disingenuous. To protect the integrity of the process, a PTC shall owe their duty to the public. Once a PTC makes the determination that the defendant's statements are genuine and sincere the PTC then determines the ability of the defendant to pay for private treatment. I would suggest all that is needed to satisfy this requirement, I would be a signed affidavit by an immediate family member related by blood, marriage or adoption.

If a PTC had determined that Defendant One expressed a genuine and sincere desire to attend private treatment his Mother would have signed an affidavit of ability to pay. If his mother signed the affidavit he would have attended private treatment.⁷ If he went to private treatment maybe his face wouldn't be scarred with prison tattoos.

Probation Violations

After he was released from prison, Defendant One violated his probation three or four times before I began representing him. The first few violations involved *dirty urines*. The

⁷ While writing this I had several conversations with Defendant One's mother and she confirmed that he would have gone to private treatment and he had health insurance at the time to pay.

probation violation that began my representation occurred after law enforcement executed a fourth amendment waiver search on a roommate of Defendant One. No drugs were found on or near Defendant One nor was he in the same room as anything found by law enforcement. Defendant One was more than cooperative with law enforcement and there was nothing to indicate that he was using drugs or was responsible for anything found in the house. He was taken into custody and bond continuously denied because it was a probation violation. I fought the charges. Eventually, they were reduced to a misdemeanor and he was sentenced to a daily reporting center.

He entered into the daily reporting center around late September of that year. Overall, he was doing great. Yes, he had a few slip ups. But that was expected, after all the purpose of the daily reporting center is to provide support for high risk offenders. Even with the slip ups, he was still making progress, with both his substance use and mental health. Then Covid hits. The Daily Reporting Center shuts down. Defendant One is required to purchase a \$400 laptop and attend classes online.⁸ This completely defeated the purpose of the daily reporting center. Yes, the pandemic was unprecedented and there really weren't better options available but overall the Daily Reporting Center failed Defendant One. During this time, Defendant One started using again and he was quickly violated. After a heated hearing, Defendant was sentenced to an Integrative Treatment Facility and forced to wait four months in the county jail before he began the nine month program.⁹

⁹ Integrated Treatment Facility (ITF) is a dual diagnosis treatment center within the Department of Corrections that treats persons with both a qualified mental health diagnosis and documented substance abuse.

Danielle Bonanno: Drug addicted and Trans

Confident, Fierce and Powerful - Danielle's story is a true testament to the long-term power of private treatment. She entered the Palm House recovery center in 2019. Since, she has achieved so much. And she continued to achieve, each and every day. For the first time in her life, she wakes up, excited for the day; excited to live. Something she never thought was possible. A feat she achieved only through the support she received at The Palm House.

Getting here was not easy for Danielle. Her life has been tough. In fact, it was downright disastrous at times. The harsh experiences of her life began the day she was born. Danielle was born a female trapped in the body of a male. Her Dad was overbearing, her Mom unaccepting. The only ally she had growing up was her older brother Jon. Because of the negativity, at fifteen years of age, she came out to her family and left home for good.

Danielle's tumultuous tumble down a rocky mountain was only the beginning. She often prayed to her god, as she filled her veins, praying there were no more rocks below, and she was at the bottom. Each rock tearing her life apart, worse than the rock before. After leaving home, Danielle quickly found a home in the local underground gay culture. A culture full of sex, drugs, and crime; a dark paradise for an addict. To fuel her bad habits, she resorted to sex work and financial crimes. In 2005 she was sentenced to five years in federal prison.¹⁰ Danielle and I are both in agreement that she deserved a punishment, and agreed that her punishment was just.

She was released in 2010 and all on her own. No mom to provide love and a father that would not help pave her path. The federal prison had not seemed to help her. The whole time she was locked up nothing was done to address her addiction or related trauma. Completely on her

¹⁰ I am unfamiliar with how federal courts work so I will not comment on private treatment as applied to federal court.

own, she sold her body to numb her soul. She spent seven years living life this way, she tried many times to get a real job. But let's be real, would you hire a drug addicted trans woman who just did a five year stint in federal prison for a crime involving dishonesty. Yeah, neither would I.

Between 2010 and 2017 she violated her probation a few times. Nothing major for her, only misdemeanors. She received punishment. But never once was she offered meaningful help. Eventually she did end up in private treatment. It was on her own accord and not by court order. Danielle said the recovery center she attended was a joke. There were just as many drugs in the treatment center as there were on the streets. The staff purposely turned a blind eye. It was a vile business practice, for each *dirty urine*, a resident of the program would be required to pay a fine. If they did not pay the fine, the *dirty urine* was reported to probation and the resident would be terminated from the program. This type of business model for a private treatment center provides a prime example as to why THOR approval is so important.¹¹ Danielle left the center before her program ended. It was a better decision than living in toxicity.

Again, out on her own, she got arrested for felony fleeing and attempting to elude. Danielle doesn't have much to say about the car chase. Her memory begin when she woke up in a hospital, handcuffed to a bed, sheriffs deputy outside her room keeping guard. In her words, "I took way too many Xanax." Here is what she thinks happened. She was driving through Troup County and saw the familiar blue lights as they bounced off her side mirror and beamed into her dead eyes. She took off. Fast, it was beyond reckless. The Xanax rid her mind of any proper care or caution. Eventually, after ten minutes of weaving in and out of traffic, probably passing at least three minivans full of children and family, law enforcement initiated a pit maneuver and

¹¹ Transitional Housing Offender Registry (Thor) is maintained by the Department of Community Supervision (Probation) and provides that private treatment centers need to meet certain qualifications before a court will order a defendant to attend.

spun her out and into the grass median, hitting a concrete barrier, before her car came to a stop upside down. The ambulance arrived quickly and sped off with Danielle in the back. After she was evaluated, she was injured, but nothing long term. The only permanent damage was the black space in her brain where this memory should be.

Felony fleeing and attempting to elude carries a mandatory minimum of one year in confinement. So, the whole Private Treatment Coordinator argument above might not apply. To remedy this, the Court could have incorporated private treatment into her sentence as a special condition of probation. She needed treatment. She was not refused. There was never an offer.

She spent that year in prison, day to day, out the door. Released with no training, no tools not a learned trade to her name. After fumbling around for a few months, Danielle ended up at The Palm House. Her life would never be the same. Her whole life she had been an outcast, a life scarred by the twisted gravel path she travelled. Now, for the very first time, Danielle was drug free, working, totally in love with her life. She earnestly believed she would overdose and stop breathing before she was happy. Now she wakes up, excited for each and every mystery the beautiful day brings her. In her twelve months at The Palm House she learned how to cope without drugs. She learned how to feel without drugs. She learned how to express herself without drugs. She learned to embrace and harness the negativity, and now, she uses the negativity to fuel her inner beauty; and its powerful, beaming for all to see.

She wished she could stay forever. As she learned at The Palm House, life goes on and you have to adapt to the changes. After her program was finished, she didn't go far, she couldn't; the recovery community needed her just as much as she needed the recovery community. Danielle found a home and threw some roots down. Immediately after The Palm House she obtained her CPS-MH and CPS-AD certifications. Inspired by passion, she worked hard to get

her job at Acceptance Recovery. She started as a residential assistant and now she writes grants for the recovery center. It's a full-time job with excellent benefits. For the first time, she was not selling her body.

It was a success story indeed, but Danielle prefers to call it a love story, because she learned how to fall in love with life. Before she entered The Palm House, Danielle wanted to get clean. She wanted to be sober. She was miserable. She made a full body decision that she was ready to get clean. After being released from prison, it took her months of fumbling around, before her direction was aimed at treatment. She knew about The Palm House, knew she wanted to go, but she did not know how to access the program. What I mean, she did not know who to contact, how to set up intake, and how to commit. She never received the tools. Did not know the techniques. Wow, lets welcome the Court's back into the discussion.

On any number of occasions, the Courts could have provided the tools to access private treatment. It would not have been hard. At a minimum, the tools could have been provided by giving Danielle a single piece of paper with a step-by-step guide on what needed to be done to enter private treatment. Maybe she would have tried a real private treatment center earlier in life if she had the tools. After providing the tools to access private treatment the Courts should strive to provide the opportunity for defendants to attend private treatment whenever possible. I do not understand who benefits without the opportunity. Sending someone to a private treatment facility would save tax dollars by freeing up resources in the county jail. Further, if a person is in private treatment, eventually they will begin working, not committing crimes, and spending their earned money in the local economy.

Conclusion

The bottom line of Danielle's story is that she never needed to commit the crime and flee from law enforcement. It could have been avoided. She could have been offered private treatment at one of her several thousand court dates. But that is the past and she is in the present. In the future, the Courts should work in unison with public defenders, private attorneys, district attorneys, probation and the jail to intervene with private treatment at the earliest possible date. Just think, what if she was fleeing and hit a family in a minivan, killing the youngest child.