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### **An Arguments for Providing Drug Courts in all Alabama Counties Based on Judeo-Christian Ethics Essay**

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## AN ARGUMENT FOR PROVIDING DRUG COURTS IN ALL ALABAMA COUNTIES BASED ON JUDEO-CHRISTIAN ETHICS

*Susan Pace Hamill\**

*We have a serious drug problem in Alabama as well as a serious problem with prison overcrowding . . . [but d]rug courts have given thousands of offenders the tools they need to defeat their addictions and learn to live a sober, productive life. . . . We want to be known for fixing people as opposed to simply filling prisons[.]\*\**

*We can literally become known as one of the first states to have a model drug court in every county.\*\*\**

—Sue Bell Cobb, Chief Justice, Alabama Supreme Court\*\*\*\*

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\* Professor of Law, the University of Alabama School of Law. Professor Hamill gratefully acknowledges the support of the University of Alabama Law School Foundation, the Edward Brett Randolph Fund and the William H. Sadler Fund and the support of the staff at the Bounds Law Library at the University of Alabama, especially Creighton Miller, Paul Pruitt, and Penny Gibson, my secretary Donna Warnack, and the hard work of my 2007-2008 Alabama Research Team, Latasha McCrary, Neah Mitchell, Cassie Fleming, Braxton Comer, and Freddie Effinger.

\*\* *Alabama Chief Justice Pushing for Drug Courts*, DRUGREHABRESOURCES.COM, <http://www.drugrehabresources.com/content.php?cid=4614&state=Alabama> (last visited May 1, 2008).

\*\*\* Desiree Hunter, *State Positioned to Lead Country in Drug Courts*, THE DECATUR DAILY, Aug. 31, 2007, available at <http://legacy.decaturdaily.com/decaturdaily/news/070831/drug.shtml>.

\*\*\*\* Chief Justice of the Alabama Supreme Court. Immediately following her admission to the Bar in 1982, Justice Cobb was appointed as District Judge of Conecuh County, becoming one of the state's youngest judges. Biography of Sue Bell Cobb, Alabama Judicial System Online, <http://www.judicial.state.al.us/supreme.cfm?Member=93> (last visited May 1, 2008). As a district judge Justice Cobb presided over trials in approximately forty counties. *Id.* She was elected to the Alabama Court of Criminal Appeals in 1994 where she served until she took office as Chief Justice of the Supreme Court of Alabama in 2007. *Id.* In 1997 she served as the Alternate Chief Judge of the Court of the Judiciary. *Id.* Justice Cobb served as President of the Alabama Council of Juvenile and Family Court Judges. *Id.* She is Chair of the Children First Foundation, which is dedicated to helping make the lives and conditions of Alabama's children a top priority in our state through advocacy, awareness, and accountability. *Id.* As a result of her efforts in the field of juvenile justice, she received the Distinguished Service Award from the National Juvenile Detention Association, the Juvenile Probation Officer Institute Outstanding Service Award, and the Children's Voice Award. *Id.* Justice Cobb is also a faculty member in the Alabama Judicial College. *Id.* Justice Cobb is a graduate of Leadership Alabama and is a Stennis Center Pacesetter. *Id.* She received the 1999 Public Citizen of the Year Award from the Alabama Chapter of National Social Workers Association, the 1996 NAACP Political Achievement Award from the Conecuh County Branch of the NAACP, the 1995 Montgomery Advertiser Woman of Achievement Award and the 1992 Judicial Conservationist Award of the Ala-

Currently in Alabama, drug courts are available as an alternative to the traditional court system in approximately half of the local jurisdictions.<sup>1</sup> The state has not yet taken significant steps in the form of state-wide funding, legislative mandates, or even legislative encouragement to institutionalize drug courts as a permanent part of the court system.<sup>2</sup> This Article provides a snap-shot of the availability of drug courts both nationwide and in Alabama, summarizes the traditional arguments supporting the drug court alternative and then illustrates why the moral principles of Judeo-Christian ethics compel all Alabamians of faith to insist that our political leaders adopt an appropriate plan that implements drug courts in all sixty-seven counties through the state's judicial and legislative branches.

A drug court is an alternative process in the criminal justice system for eligible nonviolent drug offenders that differs substantially from the traditional courts.<sup>3</sup> Unlike the traditional court system, which focuses on establishing guilt and imposing a range of legal penalties that often involve prison time, drug courts focus on treatment.<sup>4</sup> Under the auspice of the judicial system, drug courts combine the efforts of substance abuse professionals and local social programs.<sup>5</sup> The court monitors the defendant's progress, which includes periodic drug testing.<sup>6</sup> Drug offenders that comp-

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bama Wildlife Federation. *Id.* Justice Cobb was recently named State Winner of the Bishop Barron State Employee Public Service Award. *Id.* She is an honorary member of the Alabama Council on Crime and Delinquency. *Id.* Justice Cobb is a past member and officer of the Evergreen Industrial Development Board. *Id.* Justice Cobb is Past Chair of the Board of the Alabama Division of the American Cancer Society. *Id.* She has held numerous positions with the American Cancer Society and consequently received the Volunteer of the Year Award, the Wes Nowlin Award, and the highest national award, the St. George Medal. *Id.* She has represented Alabama on the Mid-South Division Board, which includes representatives from Mississippi, Arkansas, Louisiana, Tennessee, and Kentucky. *Id.* She has also served on the National Assembly of the American Cancer Society. *Id.* Justice Cobb served on the Board of Campaign for Alabama. *Id.* Justice Cobb graduated from The University of Alabama, where she obtained a degree in History, receiving the highest scholastic award in that field of study, the Phi Alpha Theta Scholarship Key. *Id.* In 1981, she earned her Juris Doctor Degree from The University of Alabama School of Law and was a member of the Bench and Bar Honor Society, Farrah Law Society, and the Moot Court Board. *Id.* Formerly a resident of Evergreen, she now resides in Montgomery. *Id.* She is a member of the Farrah Law Society Board of Directors, the Montgomery Kiwanis Club, and First United Methodist Church where she plays the piano for children's choir. *Id.* She is married to William J. Cobb, Executive Director of Governmental Affairs of Bell South. *Id.* They have three children, Bill, Andy and Caitlin. *Id.*

1. Telephone Interview with Della Davis, Drug Court Administrator, Alabama Administrative Office of Courts (Feb. 7, 2008); Map of Drug Courts in Alabama (Jan. 2008) (unpublished map, on file with the Alabama Law Review).

2. Mitchell B. Mackinam, Starting an Adult Drug Court in Alabama 11 (unpublished manual, on file with the Alabama Law Review); see also *infra* text accompanying note 26.

3. See DRUG COURTS PROGRAM OFFICE, U.S. DEP'T OF JUSTICE, DEFINING DRUG COURTS: THE KEY COMPONENTS 6-7 (1997), available at <http://www.nadcp.org/docs/dkeyp.pdf>; Eric L. Jensen & Clayton Mosher, *Adult Drug Courts: Emergence, Growth, Outcome Evaluations, and the Need for a Continuum of Care*, 42 IDAHO L. REV. 443, 446 (2006).

4. See DRUG COURTS PROGRAM OFFICE, *supra* note 3, at 7; Jensen & Mosher, *supra* note 3, at 446.

5. See DRUG COURTS PROGRAM OFFICE, *supra* note 3, at 15-16; Jensen & Mosher, *supra* note 3, at 446.

6. See C. WEST HUDDLESTON III ET AL., NATIONAL DRUG COURT INSTITUTE, PAINTING THE

ly with the court's requirements are released from court supervision without a criminal record.<sup>7</sup>

In America today only a handful of states offer drug courts in most of their local jurisdictions and are moving towards institutionalizing drug courts as an established branch of their court system.<sup>8</sup> Of the three major states in this group that offer models for implementing state-wide drug courts most helpful to Alabama, New York, which has drug courts in all jurisdictions, relies exclusively on the authority of the judicial branch to mandate drug courts and spell out the procedures for setting them up in all local jurisdictions across the state.<sup>9</sup> In New Jersey the judicial branch assumed the dominant leadership role in establishing drug courts across the state by coming up with the initial blueprint.<sup>10</sup> However, unlike the situa-

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CURRENT PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM SOLVING COURT PROGRAMS IN THE UNITED STATES 1 (2004), available at <http://www.ndci.org/publications/paintingcurrentpicture.pdf>; Jensen & Mosher, *supra* note 3, at 446. See generally *infra* notes 27-30 and accompanying text (detailing eligibility for and procedures applicable to drug courts in Alabama).

7. See ALA. CODE § 12-23-5 (2006); ANDREW E. TASLITZ & MARGARET L. PARIS, CONSTITUTIONAL CRIMINAL PROCEDURE 50 (2d ed. 2003); Mackinem, *supra* note 2, at 6 (stating that under a quasi adjudicatory drug court model, defendants are released from court supervision without a criminal record upon successful completion of the drug court process, but that under a post-adjudicatory model charges are not dismissed).

8. Six states offer drug courts in the majority of their jurisdictions: California (94.83%), Delaware (100%), Hawaii (100%), New Jersey (100%), New York (100%), and Rhode Island (100%). See BJA DRUG COURT CLEARINGHOUSE PROJECT, AMERICAN UNIV., SUMMARY OF DRUG COURT ACTIVITY BY STATE AND COUNTY 10, 19, 26, 64, 68, 90 (2008), available at <http://spa.american.edu/justice/documents/2361.pdf>. However, while Delaware, Hawaii, and Rhode Island offer drug courts in the majority of their jurisdictions, other factors, such as size and composition of the state, have probably contributed to the wide scale expansion of drug courts more so than actual institutionalization. See *id.* at 26, 64, 90.

9. New York's unified court system is the main reason that the drug court movement is solely led by the judicial branch. See Aubrey Fox & Robert V. Wolf, Ctr. for Court Innovation, The Future of Drug Courts: How States are Mainstreaming the Drug Court Model 21 (2004), available at [http://www.courtinnovation.org/pdf/future\\_of\\_drug\\_courts.pdf](http://www.courtinnovation.org/pdf/future_of_drug_courts.pdf). This unified system consolidates many administrative functions at the state level that would otherwise be handled at the county level. *Id.* Thus court administrators have the authority to decide how money is spent within the judicial system state-wide and "also have the authority to require courts to adopt certain policies and procedures." *Id.* In efforts to expand the drug court program throughout the state, the New York Chief Judge created the Office of Drug Court Treatment Programs in 2001 and gave it the authority to implement drug courts in every county of the state. *Id.* However, court administrators have rejected the need for legislation for fear that such legislation would be too restrictive. *Id.* at 22. Despite this rejection of legislation, the state still contributes sizeable funding for the drug court program in the amount of \$9.4 million. Huddleston et al., *supra* note 6, at 11. Furthermore, the Office of Drug Court Treatment Programs has made great strides in the institutionalization of drug courts in New York by creating permanent civil service drug positions, developing a universal management information system, and working on a uniform treatment application. See Fox & Wolf, *supra*, at 21.

10. See New Jersey Judiciary, Adult Drug Court Programs, <http://www.judiciary.state.nj.us/drugcourt/index.htm> (last visited May 1, 2008) (discussing the judiciary's publication of a plan that proposed a three phase plan for the statewide implementation of drug courts). The first phase of the judiciary's plan "[i]nvolved the transfer of the . . . drug courts from grant funding to direct appropriations from the State of New Jersey." *Id.* The second phase involved the start up of five new drug courts and the final phase implemented the remaining new drug courts. *Id.*

tion in New York, the legislative branch, which passed legislation to provide funding for the plan and at least implicitly approved the plan set forth by the judicial branch, plays a supporting role.<sup>11</sup> Although the judicial and other government agencies still maintain the authority over most of the details, in California the legislative branch assumes more leadership than in the previous two states.<sup>12</sup> In addition to setting out funding details, the California legislature defined the roles and responsibilities for state-wide drug courts to be carried out by the other branches.<sup>13</sup>

Fourteen states not only show a greater percentage of local jurisdictions offering drug courts than Alabama but these states also indicate modest levels of institutional support in the form of state funding or legislative encouragement.<sup>14</sup> The sister Southern states of Arkansas, Kentucky, Louisiana, and Tennessee are among this group showing significantly more progress than Alabama.<sup>15</sup> In Florida the legislative branch passed a

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11. See Act of Sept. 6, 2001, 2001 N.J. Laws c. 243, available at <http://www.judiciary.state.nj.us/drugcourt/legislative.pdf> (providing funding for the drug court program to be administered by the judiciary); HUDDLESTON ET AL., *supra* note 6, at 11 (citing the state funding provided by the legislation to be in the amount of \$18.5 million). In addition to its other substantial institutionalization efforts (including direct state funding and legislation), the state of New Jersey has developed a statewide data collection for the drug courts to further encourage uniformity and the stabilization of the drug court program. See New Jersey Judiciary, Adult Drug Court Programs, <http://www.judiciary.state.nj.us/drugcourt/index.htm> (last visited May 1, 2008).

12. The Comprehensive Drug Court Implementation Act (CDCI) sets out funding for California's drug courts which has been realized in the amount of \$15–18 million. See Comprehensive Drug Court Implementation Act, CAL. HEALTH & SAFETY CODE § 11970.2 (West 2007); HUDDLESTON ET AL., *supra* note 6, at 11; National Criminal Justice Reference Service, Drug Courts—Legislation, [http://www.ncjrs.gov/spotlight/drug\\_courts/legislation.html](http://www.ncjrs.gov/spotlight/drug_courts/legislation.html) (last visited May 1, 2008). Additionally, the Drug Court Partnership Act (“DCP”) sets forth a loose legislative mandate for statewide drug court implementation and mandates who will oversee the drug court efforts. See Drug Court Partnership Act, CAL. HEALTH & SAFETY CODE § 11970.45 (West 2007); JUDICIAL COUNCIL OF CALIFORNIA & CALIFORNIA DEP'T. OF ALCOHOL AND DRUG PROGRAMS, DRUG COURT PARTNERSHIP ACT OF 1998, CHAPTER 1007, STATUTES OF 1998 FINAL REPORT 9–10 (2002), available at [http://www.courtinfo.ca.gov/reference/documents/dc\\_partnership.pdf](http://www.courtinfo.ca.gov/reference/documents/dc_partnership.pdf).

13. See CAL. HEALTH & SAFETY CODE § 11970.45 (designating the Department of Alcohol and Drug Programs and the Judicial Council as responsible for the drug court program as joint partners).

14. These states are: Arizona (73.33%), Arkansas (62.67%), Florida (68.66%), Idaho (75%), Kentucky (60.83%), Louisiana (59.38%), Maine (62.50%), Maryland (70.83%), Missouri (68.70%), Nevada (76.47%), New Mexico (57.58%), Oregon (80.56%), Tennessee (64.21%), and Wyoming (60.87%). See JUSTICE PROGRAMS OFFICE, *supra* note 8, at 6, 8, 20, 27, 35, 39, 42, 43, 54, 61, 66, 86, 94, 111.

15. Not only do these states have higher percentages of drug courts throughout the state, but they also show greater signs of moving towards institutionalization. Louisiana and Tennessee have made great strides in the move towards institutionalization. Louisiana has enacted legislation that appoints the Louisiana Supreme Court as the leader of the drug court movement and the Supreme Court subsequently created the Drug Court Office to oversee the efforts. FOX & WOLF, *supra* note 9, at 26. Additionally, Louisiana provides substantial state funding for the drug court program in the amount of \$13. *Id.* Tennessee has enacted legislation that establishes the legitimacy of drug courts statewide and the Office of Criminal Justice Programs is leading the efforts to expand drug courts in the state. See TENN. CODE ANN. § 16-22-104 (2003) (establishing the principles by which Tennessee Drug Courts should operate); Tennessee Office of Criminal Justice Programs, Drug Courts, <http://www.state.tn.us/finance/rds/drugcourts.html> (last visited May 1, 2008). Arkansas and Kentucky have taken some steps towards institutionalization through legislation as well, and Kentucky receives state funding. See ARK. CODE ANN. § 16-98-303 (2007) (enabling jurisdictions to establish drug

mandate requiring drug courts on all jurisdictions and later repealed it when the grassroots efforts effectively responded to that mandate.<sup>16</sup>

In fourteen states, including the sister Southern states of Georgia, Mississippi and South Carolina, the process of moving towards drug courts in all jurisdictions are similar to that of Alabama.<sup>17</sup> Fifteen states, including the sister Southern states of North Carolina and Virginia, have made noticeably less progress than Alabama has. Significantly fewer of their jurisdictions have drug courts and they show less or in some cases no substantial signs of moving towards institutionalizing drug courts to be a permanent part of their court systems.<sup>18</sup>

In Alabama, the court process for all criminal cases, including drug offenses, starts with an initial appearance where the defendant is informed of the charges against him or her.<sup>19</sup> If the defendant is charged with a felony, a preliminary hearing may be scheduled.<sup>20</sup> Preliminary hearings are

courts); *id.* §16-98-307 (creating the Drug Court Advisory Committee to oversee the expansion and administration of drug courts throughout the state); KY. REV. STAT. ANN. ch. 47, app. A, part I, 13(7) (West 2007) (granting \$1.8 million for the drug court program for the fiscal year of 2007–2008); *id.* ADMINPROC Pt. XIII § 3 (appointing the Administrative Office of Courts to oversee the drug court program).

16. See SUPREME COURT TASK FORCE ON TREATMENT-BASED DRUG COURTS, REPORT ON FLORIDA'S DRUG COURTS 9 (2004), available at [http://www.flcourts.org/gen\\_public/family/drug\\_court/bin/taskforcereport.pdf](http://www.flcourts.org/gen_public/family/drug_court/bin/taskforcereport.pdf) [hereinafter FLORIDA REPORT] (stating that the legislative mandate was repealed in the hopes that the grassroots effort would continue to be as successful as it had been under the mandate). Despite the heavy grassroots leadership in the state, the legislature and the judiciary still maintain influential leadership in the expansion and institutionalization of the drug court program. The legislature not only sets out standards for drug courts but also mandates that there be at least a minimum of one drug court coordinator per county. See *id.* at 5; National Criminal Justice Reference Service, Drug Courts—Legislation, [http://www.ncjrs.gov/spotlight/drug\\_courts/legislation.html](http://www.ncjrs.gov/spotlight/drug_courts/legislation.html) (last visited Apr. 12, 2008). Moreover, the Florida Supreme Court created the Supreme Court Task Force on Treatment Based Drug Courts to oversee the expansion of drug courts in the state. See FLORIDA REPORT, *supra*, at 9.

17. These fourteen states are: Connecticut (50%), Georgia (37.73%), Massachusetts (57.14%), Michigan (38.55%), Minnesota (54.02%), Mississippi (50%), Montana (30.36%), New Hampshire (50%), Ohio (45.45%), Oklahoma (49.35%), South Carolina (50%), Utah (51.72%), Vermont (42.86%), and Washington (53.85%). See JUSTICE PROGRAMS OFFICE, *supra* note 8, at 18, 24, 45, 46, 50, 52, 59, 63, 79, 83, 91, 100, 102, 105. Additionally, these states show at most slight signs of moving towards institutionalization. See generally HUDDLESTON ET AL., *supra* note 6, at 11; National Criminal Justice Reference Service, Drug Courts—Legislation, [http://www.ncjrs.gov/spotlight/drug\\_courts/legislation.html](http://www.ncjrs.gov/spotlight/drug_courts/legislation.html) (last visited May 1, 2008).

18. These states are: Alaska (18.50%), Colorado (15.63%), Illinois (21.57%), Indiana (27.17%), Iowa (4.04%), Kansas (2.86%), Nebraska (15.05%), North Carolina (23%), North Dakota (9.43%), Pennsylvania (29.85%), South Dakota (3.03%), Texas (16.93%), Virginia (20.90%), West Virginia (14.55%), and Wisconsin (22.22%). See JUSTICE PROGRAMS OFFICE, *supra* note 8, at 4, 17, 30, 32, 34, 60, 75, 88, 93, 97, 103, 107, 109.

19. AL. R. CRIM. P. 4.4.

20. *Id.*; see also TASLITZ & PARIS, *supra* note 7, at 50. Preliminary hearings are not deemed an integral part of Alabama's criminal process. In Alabama, a preliminary hearing must be requested within thirty (30) days of the Defendant's arrest or the Defendant's right to a preliminary hearing will be waived. ALA. CODE § 15-11-1 (2007). Furthermore, if the Court finds that there is no probable cause for the arresting charge, unlike in many jurisdictions, the state/prosecution is not barred from pursuing the case further. *Id.* § 15-11-2.

held at the district level in each of the sixty-seven counties.<sup>21</sup> At the preliminary hearing, the district judge decides whether there is probable cause for the case to move forward to trial or whether the case should be dismissed for lack of evidence.<sup>22</sup>

Criminal cases that are not dismissed by the preliminary hearing proceed to the grand jury for indictment and eventually to one of forty one Circuit Courts for trial.<sup>23</sup> Larger counties, such as Jefferson, Madison and Tuscaloosa have their own Circuit Court,<sup>24</sup> while smaller counties such as Bibb, Dallas, Hale, Perry and Wilcox share one circuit, with these counties making up the Fourth Circuit.<sup>25</sup> Jury trials are conducted in the cir-

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21. Ala. Code § 15-11-2 (stating that “[t]he district court shall exercise exclusive jurisdiction to hold preliminary hearings in prosecutions for felonies”).

22. *Id.*

23. See TASLITZ & PARIS, *supra* note 7, at 51; Alabama Administrative Office of Courts, Alabama Unified Judicial System Structure, <http://www.alacourt.gov/CourtStructure.aspx> (last visited May 1, 2008). “An ‘indictment’ is an accusation in writing presented by the grand jury of the county, charging a person with an indictable offense.” ALA. CODE § 15-8-1. Following an indictment and prior to trial, a defendant is entitled to an arraignment. NICHOLAS L. CHIARKAS, JR., ALABAMA CRIMINAL TRIAL PRACTICE § 16-1, at 243 (2d ed. 1988). At arraignment, the defendant will be read his/her indictment in open court and asked how he/she wishes to plead—“(1) guilty, (2) not guilty, (3) not guilty by reason of insanity, or (4) not guilty and not guilty by reason of insanity.” *Id.* § 16-1 cmt., at 243. If a defendant pleads guilty, he/she will be informed of the rights that he/she is giving up—namely the right to a trial by jury—and ultimately be sentenced by the judge. See *id.* § 16-2, at 244–45. A guilty plea will not be entered if the defendant does not understand the rights that he/she is waiving and the consequences of his/her plea. *Id.* If the defendant pleads not guilty, the case will proceed to trial, unless a prior plea agreement is reached. See *id.* § 16-1, at 243. Similarly, if the defendant remains mute and fails to make a plea, it is presumed that the defendant is pleading not guilty and the same process will ensue. ALA. CODE § 15-15-1. In contrast, the procedure for a civil case varies greatly from the criminal process. In a civil case, there is no initial appearance, determination of probable cause, arraignment, or indictment by the grand jury. A civil case begins with a complaint either in district or circuit court, depending upon the amount and nature of the claim. Alabama district courts have exclusive jurisdiction over small claims up to \$3,000, and they also hear cases involving claims ranging between \$3,000 and \$10,000. Alabama Administrative Office of Courts, Alabama Unified Judicial System Structure, <http://www.alacourt.gov/CourtStructure.aspx> (last visited May 1, 2008). Alabama circuit courts have jurisdiction over suits involving domestic relations and they also hear cases where claims range from \$3,000 and above, without limitation. *Id.* The complaint may be followed by responses and counterclaims from the defendant(s), pretrial conferences, discovery by all parties, and eventually trial, if the case is not settled beforehand.

24. Other counties which make up their own circuit include: Baldwin, Blount, Colbert, Covington, Cullman, Escambia, Etowah, Franklin, Jackson, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Marshall, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Talladega, Tuscaloosa, and Walker counties. Alabama Administrative Office of Courts, Alabama’s Judicial Circuits, <http://www.alacourt.gov/JudicialCircuits.aspx> (last visited May 1, 2008).

25. The remaining small counties which combine to form circuits are as follows: First Circuit (Clarke, Choctaw, and Washington), Second Circuit (Butler, Crenshaw, and Lowndes), Third Circuit (Bullock and Barbour), Fourth Circuit (Bibb, Dallas, Hale, Perry, and Wilcox), Fifth Circuit (Chambers, Macon, Randolph, and Tallapoosa), Seventh Circuit (Calhoun and Cleburne), Ninth Circuit (Cherokee and DeKalb), Twelfth Circuit (Coffee and Pike), Seventeenth Circuit (Greene, Marengo, and Sumter), Nineteenth Circuit (Autauga, Chilton, and Elmore), Twentieth Circuit (Henry and Houston), Twenty Fourth Circuit (Fayette, Lamar, and Pickens), Twenty Fifth Circuit (Marion and Winston), Thirty Third Circuit (Dale and Geneva), Thirty Fifth Circuit (Conecuh and Monroe), Fortieth Circuit (Clay and Coosa). *Id.*

cuits, and, defendants found guilty have a right to appeal to the Court of Criminal Appeals and ultimately the Alabama Supreme Court.<sup>26</sup>

Alabama circuits that have established drug courts offer eligible drug offenders the opportunity to have his or her case processed through the drug court instead of facing a criminal trial.<sup>27</sup> Alabama law states that only first time drug offenders being charged with possession that have no previous felony convictions or felony cases pending against them are eligible.<sup>28</sup> These eligibility requirements limit the availability of the drug court

26. Alabama Administrative Office of Courts, Alabama Unified Judicial System Structure, <http://www.alacourt.gov/CourtStructure.aspx> (last visited May 1, 2008). After trial, if a defendant has not waived his right to appeal and he/she timely appeals, the matter will appear before Alabama's Court of Criminal Appeals and possibly before Alabama's Supreme Court, if further appealed. *Id.* In contrast, in a civil case, if the case is appealed from circuit court, it will appear before Alabama's Court of Civil Appeals. *Id.* However, if the case originates in district court, it will first be appealed to a circuit court and then to the Court of Civil Appeals. *Id.* If the case is appealed further, it may be heard by Alabama's Supreme Court. *Id.*

27. See ALA. CODE § 12-23-5 (2006). Another alternative to the traditional criminal justice system is the Community Corrections Program, first enacted in 1991, which targets defendants guilty of a number of offences, including drug offenses. See ALA. CODE § 15-18-171 (2007). These programs, which do not expunge the criminal record, use the tools of "confinement, work release, day reporting, home detention, restitution programs, community service, education and intervention programs, and substance abuse programs" as part or all of the defendant's punishment. *Id.* § 15-18-171(6). Community corrections programs are established at the county level. *Id.* § 15-18-172(a)-(b). In Alabama, some drug court programs fall within the domain of community corrections. However, drug courts offer a much better plan because defendants who successfully complete drug court not only completely avoid incarceration but also suffer no criminal record. If a drug court is part of a larger community corrections program, the drug court is entitled to funding from the State-County Community Corrections Partnership Fund in the State Treasury. *Id.* § 15-18-186; Telephone Interview with Della Davis, *supra* note 1. In 2007, \$6.1 million was appropriated to community corrections programs. ALA. SENTENCING COMM'N, COLLABORATIVE SUCCESS: ALABAMA IMPLEMENTS SENTENCING STANDARDS 27 (2007), *available at* <http://sentencingcommission.alacourt.gov/Publications/ASC%202007%20Final%20Report.pdf>.

In addition to money received through community corrections, a drug court may also receive grant funding from the state if the state chooses to allocate money that year. For the 2007 fiscal year, the state appropriated \$1.7 million in grants specifically for drug courts. Telephone Interview with Della Davis, *supra* note 1. In Alabama, the following twenty-eight individual counties operate community corrections programs: Barbour, Blount, Calhoun, Cherokee, Chilton, Colbert, Cullman, Dale, DeKalb, Escambia, Etowah, Franklin, Geneva, Houston, Jackson, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Marshall, Mobile, Montgomery, Morgan, Shelby, St. Clair, Tuscaloosa, and Walker. Alabama Department of Corrections, Community Correction Programs Contact List, <http://www.doc.state.al.us/commcorr.asp> (last visited May 1, 2008). Madison County is the only county that has a community corrections program, yet does not receive funding from the Department of Corrections. Alabama Sentencing Commission, Alabama Community Corrections Programs, <http://sentencingcommission.alacourt.gov/images/Community%20Corrections%20Map%204.4.2006.pdf> (last visited May 1, 2008). An additional thirteen counties operate community corrections programs on the circuit level. *Id.* These counties and circuits are as follows: Second Circuit (Butler, Crenshaw, and Lowndes), Fourth Circuit (Bibb, Dallas, Hale, Perry, and Wilcox), Twenty Fourth Circuit (Fayette, Lamar, and Pickens), and Twenty Fifth Circuit (Marion and Winston). *Id.* Of the twenty-six counties that do not have a community corrections program, twenty-one (81%) also do not have a drug court in operation. See Map of Drug Courts, *supra* note 1.

28. ALA. CODE § 12-23-5 (2006) (stating that "[a]ny person arrested or charged with the violation of a controlled substance offense . . . may file a request with the district attorney having jurisdiction over the offense to enroll in a drug abuse treatment program in lieu of undergoing prosecution"). However, to be eligible to participate in a program such as drug court, "[t]he defendant must have no prior felony convictions for controlled substance offenses or other pending felony charges" and the



alternative to nonviolent drug offenders who are not dealing and therefore pose no significant public safety issues.<sup>29</sup> The defendant must plead guilty and agree to the process of monitoring and treatment set forth by the individual circuit which is supervised by the presiding judge.<sup>30</sup>

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controlled substance involved in the offense must fall below presumed trafficking amounts. *Id.* § 12-23-5(1). If the defendant is accepted into drug court, he/she must complete treatment, pay restitution to the victim, and pay for his/her assessment, treatment, and monitoring, unless indigent. *Id.* Moreover, if the defendant fails to complete treatment, charges will be initiated against the defendant and he/she must pay all costs associated with the drug abuse treatment program. *Id.* Although legislation makes drug court available as an option, drug court is only one possible alternative to incarceration for a defendant. Another form of diversion from prison includes probation. Probation can be distinguished from drug courts in that drug courts are focused primarily on rehabilitative treatment for offenders who have drug abuse problems. See generally EQUAL JUSTICE INITIATIVE OF ALA., CRIMINAL JUSTICE REFORM IN ALABAMA: A REPORT AND ANALYSIS OF CRIMINAL JUSTICE ISSUES IN ALABAMA—PART ONE: SENTENCING, PROBATION, PRISON CONDITIONS AND PAROLE 61–66 (2005), available at <http://eji.org/eji/files/criminaljusticereform.pdf>. Drug court programs are designed “to reduce crime, recidivism and substance abuse . . . therefore improving the quality of life for both the participants and the community at large.” Geneva County Drug Court 1 (Jan. 2008) (unpublished manual, on file with the Alabama Law Review). As such, while probationers may be subjected to random drug testing, they do not undergo an intensive drug treatment program as would a participant in drug court. See EQUAL JUSTICE INITIATIVE OF ALA., *supra*, at 63–64. Furthermore, a defendant who receives probation will have a conviction on his/her criminal record whether or not they successfully comply with their probation guidelines. See *id.* at 61. On the other hand, a drug court participant, who successfully completes the program, will have his/her conviction set aside so that they can move forward in life with a clean record. ALA. CODE § 12-23-5 (2006). It is important to note that there are three basic drug court models—pre-adjudicatory, quasi-adjudicatory, and post-adjudicatory. Mackinem, *supra* note 2, at 6. Most Alabama drug courts, like Jefferson County, use the quasi-adjudicatory model. See *id.* Such a model requires the defendant to plead guilty pending his/her completion of drug court. *Id.* If drug court is successfully completed, the charges are dismissed and the plea is null. *Id.* In contrast, the post-adjudicatory model would be similar to probation in that the model is used after a plea of guilty (as a condition of probation) and typically charges are not dismissed upon successful completion. *Id.* This Article advocates the former model as most effective for reaching the goals asserted herein.

29. Defendants charged with violent crimes or defendants with a history of violent crimes are universally excluded from participating in drug court as a diversion to prison. Mackinem, *supra* note 2, at 14. As such, defendants who participate in “[c]rimes such as armed robbery, rape, criminal sexual conduct and assaults are all excluded.” *Id.* However, local jurisdictions may or may not make exceptions for offenders charged with criminal domestic violence. *Id.* Defendants who are charged with drug trafficking are also universally excluded from participating in drug court. *Id.* Nevertheless, local jurisdictions have some discretion in how they interpret “distribution.” *Id.* For instance, a local jurisdiction may conclude that ‘buy one get one free’ dealing—the lowest level of drug dealing in which an individual buys a few rocks and sells some to cover the costs of their own drug use—does not qualify as distribution, since such cases are primarily motivated by addiction rather than profit. *Id.* In addition to these universal and local exclusions, there are additional exclusions if a drug court is categorized as an Alabama community corrections program. See ALA. CODE § 15-18-171(14) (2007). If the drug court is classified as such, the persons convicted of the following offenses are excluded from consideration in drug court: murder, kidnapping in the first degree, rape in the first degree, sodomy in the first degree, arson in the first degree, selling or trafficking in controlled substances, robbery in the first degree, sexual abuse in the first degree, forcible sex crimes, lewd and lascivious acts upon a child, or assault in the first degree if the assault leaves the victim permanently disfigured or disabled. *Id.* Furthermore, persons who demonstrate a pattern of violent behavior, whether exhibited through prior convictions, through other acts not resulting in conviction or criminal charges, or while an offender was in state or county confinement, are also excluded. *Id.* § 15-18-175.

30. See Jefferson County Drug Court Adult Plea Pack (Nov. 9, 2004) (unpublished form, on file with the Alabama Law Review). See *infra* note 41 for more details on Jefferson County Drug Court.

In Alabama drug courts are only established at the local level,<sup>31</sup> and, as a practical matter, are overwhelmingly funded at the local level.<sup>32</sup> The most recent data available indicates that out of Alabama's sixty-seven counties, thirty-seven of them purport to have drug courts in place and operating.<sup>33</sup> Drug courts are much more prevalent in the western and northern regions of the state than in the Black belt and southern regions, which have a higher African-American population than the northern and western regions.<sup>34</sup> Of the twenty-eight counties that can be reasonably

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31. In Alabama "drug courts are grass roots efforts"; hence, drug courts are generally established on the county or circuit level. See Mackinem, *supra* note 2, at 4, 5, 11.

32. Drug courts are generally funded through the efforts of local jurisdictions. See Mackinem, *supra* note 2, at 11. Local jurisdictions are encouraged to apply for state and federal grants in order to establish their drug court program. *Id.* However, "[t]o stay viable for the long-term, drug courts cannot rely on grant funding." *Id.* As such, local jurisdictions are advised to pursue local funding from sources such as associate agencies (ie. the judiciary, district attorneys office, defense counsel, probation, treatment professionals, and law enforcement) and/or city and county councils. *Id.* Additionally, each drug court is expected to collect fees from participants to subsidize the costs of treatment. *Id.* at 12. In Jefferson County, over a ten year period, the local jurisdiction raised over \$3 million to support their drug court through the collection of participant fees. See *infra* note 41. However, in addition to the money that it collected from its participants and other local funding, like other Alabama counties, Jefferson County may qualify for a portion of any state or federal grant money available for drug courts. In terms of planning drug courts, federal funding is not currently available. Mackinem, *supra* note 2, at 11. However, some money may be available through the state, since the legislature recently appropriated \$1.7 million. See *supra* note 27 (describing limited state funding available for drug courts and community corrections programs).

33. Telephone Interview with Della Davis, *supra* note 1; Map of Drug Courts, *supra* note 1.

34. In 2006 the average black/white population for the state of Alabama was 26.3% black and 71.2% white. See U.S. Census Bureau, State & County QuickFacts, Alabama, <http://quickfacts.census.gov/qfd/states/01000.html> (last visited May 1, 2008). At 12.1% black and 85.8% white, the western and northern regions have a substantially lower black population than the state average. See *id.* (The average percentages of the black/white population in this region were computed by adding the black/white percentages of each individual county and dividing by 28, the total number of counties in this region. At the individual county level in the western and northern region, the black/white population is as follows: Blount (1.6%, 96.8%); Calhoun (19.8, 78.1%); Cherokee (5.5% 93.1%); Clay (14.9%, 83.5%); Cleburne (4.4%, 94.4%); Colbert (16.6%, 81.7%); Cullman (1.2%, 97.2%); DeKalb (1.8%, 95.9%); Etowah (14.5%, 83.7%); Fayette (12%, 87%); Franklin (4.3%, 94.1%); Jackson (3.7%, 92.3%); Jefferson (41.3%, 56.4%); Lamar (11.7%, 87.5%); Lauderdale (9.8%, 88.6%); Lawrence (11.8%, 79.6%); Limestone (13.2%, 84.8%); Madison (23.5%, 71.9%); Marion (4%, 94.6%); Marshall (1.7%, 96.2%); Morgan (12%, 85.5%); Randolph (21.7%, 77.1%); Shelby (9.7%, 87.8%); St. Clair (8.4%, 89.9%); Talladega (31.3%, 67.2%); Tuscaloosa (30.4%, 67.3%); Walker (6.5%, 92.1%); Winston (0.6%, 97.9%)). In stark contrast at 43.7% black and 64.7% white, the Black belt and southern regions have a substantially greater black population than the state average as well as the average in the western and northern regions. See *id.* (Percentages were computed using the same methodology as above: Autauga (17.3%, 80.6%); Baldwin (9.7%, 88.4%); Barbour (46.6%, 51.9%); Bibb (22.1%, 76.9%); Bullock (70.6%, 28.2%); Butler (41.8%, 57.2%); Chambers (38.1%, 60.9%); Chilton (10.6%, 88.1%); Choctaw (44.2%, 55.1%); Clarke (43.5%, 55.6%); Coffee (18.7%, 77.5%); Conecuh (43.9%, 55.1%); Coosa (31.5%, 67.4%); Covington (12.8%, 85.6%); Crenshaw (25.1%, 73.5%); Dale (21.3%, 74.6%); Dallas (67%, 32%); Elmore (20.9%, 77%); Escambia (31.3%, 64.1%); Geneva (10.7%, 87.6%); Greene (79.3%, 20.1%); Hale (58.7%, 40.5%); Henry (31.1%, 67.8%); Houston (25.8%, 72.2%); Lee (23.4%, 73.7%); Lowndes (71%, 28.3%); Macon (82.5%, 15.4%); Marengo (52%, 47%); Mobile (34.5%, 62.1%); Monroe (40.9%, 57%); Montgomery (53.2%, 44.3%); Perry (68.8%, 30.3%); Pickens (41.8%, 57.2%); Pike (37%, 59.9%); Russell (41.8%, 56%); Sumter (73.9%, 25.4%); Tallapoosa (25.9%, 72.9%); Washington (26.2%, 65.6%); Wilcox (71.8%, 27.7%)).

classified as western or northern counties, twenty of them, seventy-one percent are covered by drug courts.<sup>35</sup> Of the thirty-nine counties that can be reasonably classified in the Black belt and southern regions of the state, only seventeen, forty-four percent are covered by drug courts.<sup>36</sup> This broad overview suggests that black Alabamians suffering drug problems may be disproportionately denied this important opportunity for recovery and raises significant moral concerns under the principles of Judeo-Christian ethics.<sup>37</sup>

The First Circuit and the Fifth Circuit are different than the others in that they offer drug courts in some but not in all counties within the circuit, resulting in only some drug offenders within these circuits enjoying the opportunity to chose the drug court alternative, while others are denied this opportunity.<sup>38</sup> This situation within these two circuits raises the same efficiency and moral concerns that exist across the state.<sup>39</sup> Moreover the Sixth Circuit, which covers Tuscaloosa County, purports to have a drug court that only exists in form in that the court is no longer taking new cas-

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35. Of the twenty-eight counties that can reasonably be classified as western and northern counties, the following twenty are covered by drug courts as of January 2008: Calhoun, Cherokee, Cleburne, Colbert, Cullman, Dekalb, Etowah, Franklin, Jackson, Jefferson, Lauderdale, Lawrence, Madison, Marion, Marshall, Morgan, Shelby, St. Clair, Tuscaloosa, and Winston counties. Telephone interview with Della Davis, *supra* note 1; Map of Drug Courts, *supra* note 1. Of these twenty-eight counties, eight counties including Blount, Clay, Fayette, Lamar, Limestone, Randolph, Talladega, and Walker counties do not have drug courts as of January 2008. Telephone Interview with Della Davis, *supra* note 1; Map of Drug Courts, *supra* note 1.

36. Of the thirty-nine counties that can reasonably be classified as Black belt and southern counties include, the following seventeen are covered by drug courts as of January 2008: Baldwin, Bibb, Butler, Chambers, Clarke, Crenshaw, Dale, Dallas, Escambia, Geneva, Hale, Lowndes, Mobile, Montgomery, Perry, and Wilcox counties. Telephone Interview with Della Davis, *supra* note 1; Map of Drug Courts, *supra* note 1. Of these thirty-nine counties, twenty-two counties did not have drug courts as of January 2008, including: Autauga, Barbour, Bullock, Chilton, Choctaw, Coffee, Conecuh, Coosa, Covington, Elmore, Greene, Henry, Houston, Lee, Macon, Marengo, Monroe, Pickens, Pike, Russell, Sumter, Tallapoosa, and Washington. Telephone Interview with Della Davis, *supra* note 1; Map of Drug Courts, *supra* note 1.

37. The moral principles of Judeo-Christian ethics condemn all forms of race discrimination, indeed, any form of discrimination that assumes any group of people are inferior to or less important than others. See CRAIG L. BLOMBERG, *THE NEW AMERICAN COMMENTARY: MATTHEW 71* (1992) ("There is no place in God's economy for discrimination against any kind of people."); DARRELL L. BOCK, *LUKE 1:1-9:50*, at 41 (1994) (discussing the love for God and the love for one's neighbor noting "[s]uch care and compassion know[s] no boundaries of race, gender, or class, as Jesus' own ministry showed."); KENNETH A. MATHEWS, *THE NEW AMERICAN COMMENTARY: GENESIS 1-11:26*, at 61 (2001) ("Since all human life is created in the image of God, there is no person or class of humans lesser than others."). The issue whether this form of race discrimination unconstitutionally violates the Equal Protection Clause of the 14th Amendment is beyond the scope of this Article.

38. In the First Circuit, Clarke has a drug court, but Choctaw and Washington counties do not. Likewise, in the Fifth Circuit, Chambers has a drug court, but Macon, Randolph, and Tallapoosa counties do not. Telephone Interview with Della Davis, *supra* note 1; Map of Drug Courts, *supra* note 1.

39. See *infra* notes 61-65 and accompanying text (detailing why traditional cost/benefit analysis, social science studies, and the moral principles of Judeo-Christians compels the establishment of drug courts in all Alabama jurisdictions).

es, thus further illustrating that state-wide efforts are needed to secure drug courts for all eligible defendants.<sup>40</sup>

Other than the law stating that only first time drug offenders with no felony convictions or pending felonies against them can choose the drug court, and the requirement that those so choosing plead guilty, all other details and procedures of the drug court are established by the local circuit. In other words many important details are solely a function of decisions and the available funding at the local level. These details include how which court and judge within the circuit handles the cases, how long the defendant is required to remain under the jurisdiction of the drug court, how often the defendant must undergo drug testing, the penalties if the defendant fails to comply with any part of the process, and finally the availability of a support network of professionals such as social workers and counselors.<sup>41</sup>

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40. The drug court in Tuscaloosa was established in 1998, with Judge Phillip Lisenby presiding in addition to his duties as a Family Court judge. Interview with Joe Morrison, Assistant Public Defender, Tuscaloosa Public Defender's Office, in Tuscaloosa, Ala. (Jan. 22, 2008). Nevertheless, according to local defense attorneys, the Tuscaloosa Drug Court has not accepted cases for "a few years" because Judge Lisenby became "burned out" by the intensity of the program. *Id.*; Interview with Corie Crowder, Assistant Public Defender, Tuscaloosa Public Defender's Office, in Tuscaloosa, Ala. (Mar. 28, 2008). Judge Lisenby and his staff declined our requests for an interview concerning the status of Tuscaloosa's drug court. Tuscaloosa drug offenders may qualify for "diversion," which is a far less intense version requiring less judicial supervision and commitment from the defendant (for example, unlike the drug court, in a diversion a judge does not directly oversee the defendant's progress and the defendant does not have to pay \$125 per month in court fees, attain a high school diploma or GED or maintain a job to successfully complete the program). *Id.* This example illustrates that due to the lack of state-wide coordination and funding of drug courts, it is difficult to guarantee their survival once started or even fully discover the true availability of drug courts. Telephone Interview with Della Davis, *supra* note 1 (stating that she was not aware that Tuscaloosa's purported drug court was no longer accepting new cases); see also JUSTICE PROGRAMS OFFICE, *supra* note 8, at 3 (national survey of drug courts across the country lists Tuscaloosa County as having a drug court).

41. See, e.g., Jefferson County Drug Court Adult Plea Pack, *supra* note 30. Established in 1996, Jefferson County's drug court is one of the longest running and most comprehensive drug courts in the state and is a community corrections program that falls within UAB's Treatment Alternatives to Street Crimes (TASC) Program. THE JEFFERSON COUNTY COMMUNITY CORRECTIONS PROGRAM YEAR END REPORT 2 (2005), available at [http://www.uab.edu/uabsap/tasc/content/2005\\_yearendreport.doc](http://www.uab.edu/uabsap/tasc/content/2005_yearendreport.doc). The drug court attracts a great deal of judicial and community support in the form of on-site Alcohol Anonymous meetings hosted in the judicial center. *Id.* Drug court participants also have regular access to drug counselors and individual case managers. See Jefferson County Drug Court Adult Plea Pack, *supra* note 30. To successfully complete drug court in Jefferson County, the defendant must enroll in a drug treatment program and regularly meet with a drug court counselor. *Id.* The defendant must "comply with all of the directives of the Drug Court Judge and the Drug Court Staff and treatment providers[.]" including submitting to random drug testing—a process used to ensure that defendants remain drug and alcohol free. *Id.* Additionally, a defendant must perform at least 100 hours of community service, pay all fees and court costs, attain a driver's license and a high school diploma or its equivalent, and maintain employment. *Id.* If a defendant successfully complies with these (and other) requirements for at least one year, the defendant's guilty plea will be set aside and the case will be dismissed. *Id.* If, however, a defendant relapses or fails to follow the directives of the court or case manager, he/she will be sanctioned in the following manner: first sanction results in one to two days in jail; second sanction results in one week in jail; third sanction results in one week in jail and the defendant is referred to house treatment; and the fourth and final sanction results in drug treatment in prison. *Id.* Over a ten year period, Jefferson County has had more than 4,000 drug court participants and a graduation rate of 80 percent. See Sheryl Marsh, *Chief Justice Pushing for Drug Courts: Cobb*

There are two fundamental arguments why drug courts should be institutionally provided on a state-wide basis in all of Alabama's counties. First, state-wide drug courts would help alleviate the problems of extreme overcrowding and under funding of Alabama's prisons. It has been well documented that Alabama's prisons are vastly overcrowded,<sup>42</sup> and woefully underfunded.<sup>43</sup> The incarceration of drug offenders is a major factor in the overcrowding of Alabama's prisons.<sup>44</sup> A large portion of these incarcerated drug offenders were convicted of possession of a controlled substance and therefore would have most likely been eligible for a drug court alternative thus decreasing the prison population.<sup>45</sup> The actual cost of handling drug offenders in drug courts is far less than sending these defendants to prison.<sup>46</sup> Because the actual cost of drug courts is less than prison,

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*Says Move May Keep Minor Offenders Out of Prison*, THE DECATUR DAILY, Apr. 29, 2007, available at <http://legacy.decaturdaily.com/decaturdaily/news/070429/court.shtml>. Furthermore, Jefferson County participants have paid over \$3 million to support their own drug treatment and committed more than 220,000 hours towards community service. *Id.* The drug court program has "saved taxpayers more than \$36 million." *Id.*

42. Alabama's inmate population has grown over the last thirteen years. ALABAMA SENTENCING COMMISSION, *supra* note 27, at 51. In six year period, ending in December of 2006, the population of Alabama's prisons increased from 26,332 to 28,241, an increase of almost 2,000 prisoners or 7.25%. WILLIAM J. SABOL ET AL., BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2006 2 (2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p06.pdf>. As of December 2006, Alabama's prisons have almost twice as many prisoners as they were initially designed to hold. *Id.*, App. 5, at 20. The operational capacity of these prisons—that is, the number of prisoners they can be arranged to hold—was at 95%, dangerously close to its maximum threshold. *Id.* These startling statistics illustrating the overcrowding problem in Alabama's prisons, however, are not a new phenomenon. ALA. SENTENCING COMM'N, *supra* note 27, at 52.

43. After the ratification of the 1901 constitution, Alabama has had neither the funds nor the will to provide for fundamental public services such as prisons. WAYNE FLYNT, ALABAMA IN THE TWENTIETH CENTURY 16 (2004). Inadequate revenue and excessive earmarking have since restricted the ability of legislators to move funds to areas in times of financial crisis—resulting in lawsuits against the state for violation of the constitutional rights of prisoners, among others. *Id.* at 19. At the end of the twentieth century studies show that Alabama's prisons housed more inmates per guard and spent less doing it than any other Southern state. *Id.* at 201–02 ("In some cases, one guard was responsible for the security of 400 prisoners. And the \$18.27 per inmate the state spent in 1999 compared to a southern average more than twice as much."). At the turn of the century, the Alabama Department of Corrections was so understaffed and underfunded that it stopped jail inspections and no longer allowed families to send Christmas gifts to inmates, for lack of personnel to inspect the packages. *Id.* at 202.

44. For example, in May of 2007, of the 28,832 inmates in Alabama's prisons, almost 20% of them, 5,698, were drug offenders. ALA. SENTENCING COMM'N, *supra* note 27, at 19, 35.

45. In May of 2007 of the 5,698 prisoners incarcerated for drug offenses, 2,110 of them (over a third) were convicted of or pleaded guilty to possession of a controlled substance. *Id.*; see also *supra* notes 19–26 and accompanying text (detailing drug court eligibility requirements set forth by Alabama's statute).

46. Studies have shown that drug courts are more cost effective than prisons. See ALA. SENTENCING COMM'N, *supra* note 27, at 25 ("Prison is the most costly sentencing option and should, therefore, be used only where it exists as the only feasible punishment option for holding a violent or repeat offender accountable for his or her offense(s)[.]" ); STEVEN BELENKO, RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 4 (2001), available at <http://www.drugpolicy.org/docUploads/2001drugcourts.pdf> ("For those drug courts conducting cost analysis, estimates indicate that drug courts produce cost savings compared to traditional adjudication[.]" ); BJA DRUG COURT CLEARINGHOUSE, BUREAU OF JUSTICE ASSISTANCE, OFFICE OF JUSTICE

offering the drug court alternative in all jurisdictions will save Alabama taxpayers money. Moreover at least some experts have argued that non-violent offenders that experience incarceration are more likely to commit more serious crimes after being released from prison.<sup>47</sup> Consequently in addition to being more cost effective, the drug court alternative at least arguably enhances the overall well being of society by improving public safety.

The second and even more compelling argument explores the drug court alternative from a moral perspective based on the standards of justice adopted by the people of Alabama. An overwhelming majority of Alabamians are Protestant Christians, deeply committed to their faith.<sup>48</sup> Although, as an ancient text, the Bible does not explicitly address many contemporary ethical issues, including the issue whether people of faith

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PROGRAMS, U.S. DEP'T OF JUSTICE, COST BENEFITS/COSTS AVOIDED REPORTED BY DRUG COURT PROGRAMS AND DRUG COURT PROGRAM EVALUATION REPORTS 6-7 (2004), available at <http://spa.american.edu/justice/documents/1945.pdf> (last visited May 1, 2008) ("Per day costs for drug court program participation and services generally range between \$8.00- \$14.00, depending upon the nature and extent of treatment and ancillary services provided."); Steven Belenko, *Research on Drug Courts: A Critical Review*, 1 NAT'L DRUG COURT INST. REV. 1, 2 (1998), available at <http://www.ndci.org/admin/docs/casa.pdf> ("Drug courts generate savings, at least in the short term, from reduced jail/prison use, reduced criminality and lower criminal justice costs."); Dwight Vick and Jennifer Lamb Keating, *Community Based Drug Courts: Empirical Success. Will South Dakota Follow Suit?*, 52 S.D. L. REV. 288, 304 ("Generally, results have shown that drug courts generate savings in jail costs, reduced criminality, police overtime, and other criminal justice expenses. Further, research has indicated that drug courts 'are a more cost effective method of dealing with drug problems than either probation or prison.'" (quoting HUDDLESTON ET AL., supra note 6, at 3)); Pamela L. Simmons, Comment, *Solving the Nation's Drug Problem: Drug Courts Signal a Move Toward Therapeutic Jurisprudence*, 35 GONZ. L. REV. 237, 257 ("Drug courts are an affordable solution to handling drug offenders when compared to the costs of traditional incarceration.").

47. In fact, prison may make nonviolent offenders more likely to commit violent crimes. See JOHN IRWIN ET AL., JUSTICE POLICY INSTITUTE, AMERICA'S ONE MILLION NONVIOLENT PRISONERS 12-13 (1999), available at <http://www.javasap.com/reports/onemillionnonviolentoffenders.pdf> (asserting that prison time is "profoundly damaging" for nonviolent offenders and makes their attempt at a normal life upon release much more difficult, thereby increasing the chances of continued criminality); ROBERT J. SAMPSON & JOHN H. LAUB, CRIME IN THE MAKING 255 (1993) ("Through [prison's] negative effect on male employment, imprisonment may thus lead . . . to increases in future rates of crime and violence"); Craig Haney & Philip Zimbardo, *The Past and Future of U.S. Prison Policy: Twenty-Five Years After the Stanford Prison Experiment*, 53 AM. PSYCHOLOGIST 709, 720 (1998) (asserting that the "Department of corrections data shows that about a fourth of those initially imprisoned for nonviolent crimes are sentenced a second time for committing a violent offense. Whatever else it reflects, this pattern highlights the possibility that prison serves to transmit violent habits and values rather than to reduce them."); Joel Waldfogel, *The Effect of Criminal Conviction on Income and the Trust "Reposed in the Workmen"*, J. OF HUM. RESOURCES, Winter 1994, at 2 ("[C]onviction may stigmatize offenders, limiting their future legal work opportunities and encouraging them to return to crime.").

48. At least two sources reveal that an overwhelming majority of Alabamians claim to practice Christianity. See BARRY A. KOSMIN ET AL., AMERICAN RELIGIOUS IDENTIFICATION SURVEY 39 (2001), available at [http://www.gc.cuny.edu/faculty/research\\_studies/aris.pdf](http://www.gc.cuny.edu/faculty/research_studies/aris.pdf) (indicating religious affiliations of Alabama's population to be as follows: 13% Catholic, 71% Protestant, 1% Jewish, and 15% outside the Judeo-Christian tradition); Adherents-Religion by Location, <http://www.adherents.com/adhloc/Wh6.html> (last visited May 1, 2008) (citing B. KOSMIN & S. LACHMAN, ONE NATION UNDER GOD: RELIGION IN CONTEMPORARY SOCIETY 88-93 (1993)) (indicating that approximately 93% of Alabamians practice Christianity).

should support the drug court alternative, many Protestants, especially evangelicals, believe that the moral principles of the Bible provide the definitive authority for all contemporary ethical issues.<sup>49</sup> Several distinct themes of the moral principles of Judeo-Christian ethics compel the use of drug courts as an alternative for nonviolent, first time offenders who are not dealers.<sup>50</sup>

The first Judeo-Christian moral theme focuses on how the community should treat those in who are weak and vulnerable due to physical or mental impairments, which would include those who are struggling with substance abuse issues.<sup>51</sup> Numerous passages in the Bible reveal Jesus Christ in his ministry healing people who at the time were second class citizens and outcasts, thereby establishing a moral principle that people of faith should be compassionate towards the sick, even those generally despised as drug offenders often are.<sup>52</sup> The moral principles of Judeo-Christian eth-

49. AUTHORITY AND INTERPRETATION: A BAPTIST PERSPECTIVE 7, 16 (Duane A. Garrett & Richard R. Melick eds., 1987); GORDON D. FEE & DOUGLAS STUART, HOW TO READ THE BIBLE FOR ALL ITS WORTH 10–11 (2d ed. 1993). In the Catholic church, the Pope has the final authority to interpret Scripture. CATECHISM OF THE CATHOLIC CHURCH ¶¶ 882–86 (1994). For Jews, moral principles speaking to ethical issues are extrapolated from studying the Torah and the rabbinic literature. See ELLIOT N. DORFF, TO DO THE RIGHT AND THE GOOD: A JEWISH APPROACH TO MODERN SOCIAL ETHICS 8–10 (2002).

50. The proper interpretation and application of the Bible to contemporary issues, including the question whether drug courts are morally required, involves first determining what the text meant to the first audience, a process scholars of the Bible call “exegesis;” the next step, which scholars of the Bible call “hermeneutics,” then discovers the broad ethical principles the biblical text established for the first audience and applies those principles to the specific life situation of the contemporary ethical issue that is genuinely comparable to the situation the text addressed to the first audience. FEE & STUART, *supra* note 49, at 17–19, 21–25; GARRETT & MELICK, *supra* note 43, at 36–37, 45; *see infra* notes 51–55 and 57–63 and accompanying text (analysis develops why the moral principles of Judeo-Christian ethics compels drug courts as an alternative to the traditional criminal justice system).

51. “Drug addiction is a brain disease that can be treated.” NAT’L INSTITUTE ON DRUG ABUSE, NAT’L INSTITUTES OF HEALTH, U.S. DEP’T OF HEALTH & HUMAN SERVICES, DRUGS, BRAINS, AND BEHAVIOR: THE SCIENCE OF ADDICTION ii (2007), available at <http://www.drugabuse.gov/scienceofaddiction/sciofaddiction.pdf>. “All drugs of abuse directly or indirectly target the brain’s reward system by flooding the circuit with dopamine . . . [the neurotransmitter] that regulate[s] movement, emotion, cognition, motivation, and feelings of pleasure.” *Id.* at 17. Overstimulation of this system produces the euphoric effects sought by people who abuse drugs and teaches them to repeat the behavior. *Id.* Our brains are wired to repeat activities that bring us pleasure or reward (e.g., eating or having sex) as a way of ensuring our survival. *Id.* at 18. Because taking drugs of abuse stimulates the same circuit, our brains urge repetition of the behavior, and thus people “learn” to abuse drugs without thinking about it. *Id.* These intense impulses can overcome a person’s willful intent not to take drugs, despite catastrophic consequences—which is really the essence of drug addiction. *Id.* The Office of National Drug Control Policy contends that “[d]rug dependence is a chronic, relapsing disorder requiring specialized treatment.” OFFICE OF NAT’L DRUG CONTROL POLICY, TREATMENT PROTOCOL EFFECTIVENESS STUDY 1 (1996), available at <http://www.ncjrs.gov/txtfiles/trmtprot.txt>. Moreover, the AMA, the ABA, the APA, and the CDC have also concluded that substance abuse is a disease. Lisa Rosenblum, Comment, *Mandating Effective Treatment for Drug Offenders*, 53 HASTINGS L.J. 1217, 1225 (2002).

52. *See e.g.*, *Matthew* 8:1–4; *Mark* 1:40–44; *Luke* 5:12–14, 17:11–19 (leprosy); *Matthew* 8:5–13; *Luke* 7:1–10 (centurion’s servant); *Matthew* 8:14–15 (Peter’s mother-in-law); *Matthew* 8:16–17, 28–34, 9:32–34, 17:14–18; *Mark* 1:21–28, 5:1–20, 9:14–27; *Luke* 4:31–36, 8:26–38, 9:37–43 (demon possessed); *Matthew* 9:1–8; *Mark* 2:1–12; *Luke* 5:17–26, 13:10–17 (paralytic and cripples); *Matthew* 9:18–22; *Mark* 5:21–34; *Luke* 8:43–48 (bleeding woman); *Matthew* 9:27–31, 20:29–34; *Mark* 7:31–

ics also require that the community's laws embrace the reasonable opportunity of each individual to reach his or her divinely created potential.<sup>53</sup> At least some evidence suggests that drug offenders benefitting from the treatment-oriented goals built into the drug court structure have a better chance of overcoming their addiction than they would from the prison alternative.<sup>54</sup> Therefore, the moral principles of Judeo-Christian ethics, requiring both compassionate healing efforts for the sick and reasonable opportunity, compel making drug courts available on a state-wide basis.<sup>55</sup>

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35, 8:22–25, *John* 9:1–12 (blind, deaf, mute); *Mark* 1:29–34; *Luke* 4:38–41; *John* 5:1–15 (many sick); *Mark* 3:1–6 (man with shriveled hand); *John* 4:43–54 (official's son); see also BLOMBERG, *supra* note 37, at 137 (discussing many of the healing miracles as involving Jesus ministering to social outcasts, while ignoring cultural norms and “lavish[ing] compassion upon the ostracized.”); BOCK, *supra* note 37, at 487 (discussing Jesus' healing of lepers as “ministering to the rejected of society”).

53. Susan Pace Hamill, *An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics*, 25 VA. TAX REV. 671, 680–691 (2006) (exegesis and hermeneutics of numerous passages in the Bible establish this moral requirement as mandating adequate education, housing and healthcare on twenty-first century standards).

54. Many experts agree that prison does not effectively serve the rehabilitation needs of drug offenders and that drug courts offer a better alternative. See DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT, LOOKING AT A DECADE OF DRUG COURTS (1999), available at <http://spa.american.edu/justice/publications/decade1.htm#redrecid> (“Most criminal justice system professionals estimate that well over 50 percent of defendants convicted of drug possession will recidivate with a similar offense within 2 to 3 years.”); JOHN ROMAN ET AL., RECIDIVISM RATES FOR DRUG COURT GRADUATES: NATIONALLY BASED ESTIMATES, FINAL REPORT 2 (2003), available at <http://www.ncjrs.gov/pdffiles1/201229.pdf> (estimating that recidivism rates for drug court graduates are 16.4% one year after graduation and 27.5% two years after graduation); SAMPSON & LAUB, *supra* note 47, at 3 (asserting that a narrow approach to punishment, which focuses on long term prison time, may be counterproductive in regards to solving America's crime problem); Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 461 (1999) (stating that in some instances “[a]t least half of drug offenders sentenced to probation in state courts are rearrested for felony offenses within three years; a third are arrested for new drug offenses.” (quoting DRUG STRATEGIES, CUTTING CRIME: DRUG COURTS IN ACTION 6 (1997))); *id.* at 449 (“Criminal justice practitioners have come to realize ‘that incarceration alone does little to break the cycle of drugs and crime.’” (quoting BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, PUB. NO. NJC-144531, PROGRAM BRIEF: SPECIAL DRUG COURTS 1 (1993))); *id.* at 535 (“By understanding that drug addiction should be considered a treatable disease, judges sitting in DTCs apply a more appropriate and effective solution for the problem—judicially supervised drug treatment for a problem that is and should be recognized as largely medical in nature.”); Simmons, *supra* note 46, at 255 (stating that “[b]ecause of the often insurmountable obstacles correctional treatment providers face, many drug offenders and addicts are released from prison before they are rehabilitated [and a]s a result, the recidivism rate of drug offenders and addicts is very high.”); Peter T. Elikann, *Reinventing Justice: The American Drug Court Movement*, 88 MASS. L. REV. 112, 114 (2003) (book review) (stating that treatment, not prison time, is what an addict really needs).

55. The drug court alternative, which compassionately focuses on treatment instead of punishment for people who are often rejected from mainstream society, is genuinely comparable to the healing ministries of Jesus Christ and the built in safeguards of the Old Testament Law forming the foundation of the reasonable opportunity requirement. See *supra* note 50 (generally discussing the process of biblical exegesis and hermeneutics); *supra* notes 51–54 (establishing that drug addiction is more of a disease than a crime, prisons do not generally rehabilitate drug offenders while drug courts do and general Judeo-Christian moral principles compel compassionate healing efforts for those suffering physical and mental afflictions in a way that allows them a reasonable chance to be restored to their full potential).



The drug court alternative costs less, enhances public safety, and compassionately offers nonviolent first time offenders, who are not drug dealers, a better chance of turning their life around. Why would the state not adopt policies institutionalizing drug courts in all sixty-seven counties? Why would the state place this responsibility on local jurisdictions, which traditionally rely on prison time and criminal records as forms of punishment? Why are not more Alabamians of faith pressuring our political leaders to take this step? The hidden reasons smoldering below the surface confront our own pride and arrogance. The truth is many of us find substance abusers, even those who are only hurting themselves, repulsive and want to punish them, even though it costs more, both in the short run and the long run, and such punishment will make recovery far more difficult.<sup>56</sup>

Alabamians of faith cannot succumb to these negative emotions for at least two reasons. First the moral principles of Judeo-Christian ethics forbid oppression, which constitutes actions, laws, or procedures which cause a weak, vulnerable, or powerless person's situation to become worse.<sup>57</sup> Because the criminal record created when a drug offender goes through the traditional court system greatly inhibits the person's ability to find

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56. According to a Pew Research Study, 48% of Americans believe that drug abuse is a crime rather than a disease. THE PEW RESEARCH CENTER, INTERDICTION AND INCARCERATION STILL TOP REMEDIES (2001), available at <http://people-press.org/reports/display.php3?ReportID=16>. However, there is a distinct religious division on the issue of drug use: 48% of Evangelical Protestants think of drug use a criminal act as opposed to 64% of "mainline" Protestants who think of drug use as a disease. *Id.* However, despite these opinions of some that drug abuse is a disease, it is still harshly punished. For example, "[l]ow-level drug offenders, i.e., those with little or no prior criminal history, no violent offense behavior, and no involvement in sophisticated criminal activity serve an average sentence of 5.75 years before release." Rosenblum, *supra* note 51, at 1231; Margaret P. Spencer, *Sentencing Drug Offenders: The Incarceration Addiction*, 40 VILL. L. REV. 335, 368 (1995). Additionally, these prisoners compose a large portion of the prison population (21.2% of sentenced federal prisoners and 36.1% of those imprisoned for drug crimes). Rosenblum, *supra* note 51, at 1231; Spencer, *supra*, at 368. Grouping these low-level drug offenders with the rest of the prison population can have harsh effects, however, because "[o]nce in prison, these [low-level drug] offenders develop relationships with high-level offenders who give them an education in 'advanced-drug trafficking' and help them to identify as members of an operational drug culture." Rosenblum, *supra* note 51, at 1231. Additionally, these low level offenders contribute to already staggering prison costs. *Id.* (stating that an estimated \$2 billion a year is spent to incarcerate federal drug offenders). In contrast, drug courts provide offenders a chance to recover from drug addiction, get an education, be exposed to employment opportunities, and obtain a dismissal or significant reduction of criminal charges. CENTER FOR SUBSTANCE ABUSE TREATMENT, U.S. DEP'T OF HEALTH & HUMAN SERVICES, TREATMENT IMPROVEMENT PROTOCOL SERIES NO. 23, TREATMENT DRUG COURTS: INTEGRATING SUBSTANCE ABUSE TREATMENT WITH LEGAL CASE PROCESSING 2 (1996), available at <http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat5.section.44347>.

57. The theme forbidding oppression appears in numerous places throughout the Old Testament, both in general terms and addressing concrete situations. *See, e.g., Exodus* 22:21–22, 23:9, *Leviticus* 19:13, 33 (generally forbidding oppression); *Deuteronomy* 24:12–13, *Exodus* 22:26–27 (forbidding the keeping a cloak as a pledge for a loan); *Deuteronomy* 24:6 (forbidding taking a pair of millstones as security for a debt); *see also* PETER C. CRAIGIE, THE NEW INTERNATIONAL COMMENTARY ON THE OLD TESTAMENT: THE BOOK OF DEUTERONOMY 306–07 (1976) (in ancient Israel describing millstones as needed to make bread for the family to eat and the cloak as a blanket by night, both being survival tools). This theme condemning oppression also appears in the fiery orations of the Hebrew Prophets. *See, e.g., Amos* 2:7–8, 8:4–6; *Micah* 2:1; *Isaiah* 10:1–2.

meaningful employment after release,<sup>58</sup> automatically saddling nonviolent, first time drug offenders who are not dealers with a criminal record constitutes biblical oppression.<sup>59</sup> Moreover, because at least some evidence suggests that the experience of incarceration results in nonviolent first time drug offenders later committing more serious crimes, a strong argument can be made that subjecting these people to prison instead of offering the treatment-oriented avenue of a drug court, in addition to compromising public safety, constitutes biblical oppression.<sup>60</sup>

The moral principles of Judeo-Christian ethics as found in the Old Testament also condemn excessive punishment because it perpetuates the sin of vengeance; instead these moral principles demand that the punishment fit the crime.<sup>61</sup> Moreover, the teachings of Jesus Christ, which fulfill these principles, require that we show mercy and compassion, even to people who break the law.<sup>62</sup> Requiring nonviolent first time drug offend-

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58. There is strong evidence of employer aversion to applicants with criminal history records. JEREMY TRAVIS ET AL., URBAN INSTITUTE JUSTICE POLICY CENTER, FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 31 (2001), available at [http://www.urban.org/UploadedPDF/from\\_prison\\_to\\_home.pdf](http://www.urban.org/UploadedPDF/from_prison_to_home.pdf) (citing a survey that found that “two-thirds of all employers indicated they would not knowingly hire an ex-offender”); Harry J. Holzer, *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J.L. & ECON. 451, 453 (2006) (stating that more than 60% of employers have an aversion to hiring ex-offenders). Furthermore, in one study examining the willingness of employers to hire from disadvantaged or stigmatized groups, convicted felons were the least likely to be hired out of this group. Christopher Stafford, Note, *Finding Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism*, 13 GEO. J. ON POVERTY L. & POL’Y 261, 269 (2006) (citing JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER RE-ENTRY 163 (2005)). Even if a criminal conviction is not noticed by a possible employer, the nature of incarceration creates an inconsistent work record, a trait that does not fare much better with potential employers. Marlaina Freisthler & Mark A. Godsey, *Going Home to Stay: A Review of Collateral Consequences of Conviction, Post-incarceration Employment, and Recidivism in Ohio*, 36 U. TOL. L. REV. 525, 532 (2005). The inability to secure employment undoubtedly prevents many offenders from earning a living, obtaining housing or loans, or supporting a family. *Id.*

59. The ability to secure adequate employment is a necessary tool to survive in the United States of the twenty-first century. Consequently the biblical principle forbidding oppression condemns laws or actions that unnecessarily block someone’s access to employment opportunities as immoral. See FEE & STUART, *supra* note 49, at 155 (discussing the specific Old Testament laws as examples intended “as a reliable *guide* with general applicability—not a technical description of *all* possible conditions one could imagine”); DOUGLAS STUART, WORLD BIBLICAL COMMENTARY: HOSEA–JONAH 317 (Bruce M. Metzger et al. eds., 1987) (analysis of oppression condemned by the Prophet *Amos* includes the wealthy and powerful “hindering access or progress” of the poor and powerless).

60. See *supra* note 47 and accompanying text (discussing evidence that the experience of prison and exposure to hardened criminals increases the likelihood drug offenders will commit more serious crimes after release thus making their situation worse); *supra* note 57 (biblical oppression condemns laws or actions that cause a vulnerable person’s situation to become worse).

61. PAUL R. HOUSE, OLD TESTAMENT THEOLOGY 151, 186 (1998); MARK F. ROOKER, THE NEW AMERICAN COMMENTARY: LEVITICUS 297 (2000); CHRISTOPHER J.H. WRIGHT, AN EYE FOR AN EYE: THE PLACE OF OLD TESTAMENT ETHICS TODAY 166 (1983); CHRISTOPHER WRIGHT, NEW INTERNATIONAL BIBLICAL COMMENTARY: DEUTERONOMY 225–26 (1996) (biblical passages of *Exodus* 21:24 and *Deuteronomy* 19:21 “[e]ye for eye, tooth for tooth” require that punishment fit the crime and forbid excessive punishment or punishment motivated by vengeance).

62. BLOMBERG, *supra* note 37, at 113 (interpretation of *Matthew* 5:38–42 where Jesus addresses *Exodus* 21–24 and *Deuteronomy* 19:21 as requiring “Jesus’ followers to act more generously than what the letter of the law demand[s] . . . [n]ot only must disciples reject all behavior motivated only by a

ers, who are not dealers, to face incarceration and all the negative consequences flowing from incarceration violates the Old Testament's ethical principles forbidding excessive punishment. The periodic drug testing and penalties for noncompliance built into the drug court alternative represent a much more fitting punishment than incarceration and the imposition of criminal records. In addition, the treatment and rehabilitative focus of drug courts follows the principles of the teachings of Jesus Christ requiring us to treat substance abusers with mercy and compassion.<sup>63</sup>

Chief Justice Sue Bell Cobb's goal of establishing drug courts in all of Alabama's sixty-seven counties presents a compelling challenge for all Alabamians.<sup>64</sup> Even those who are less or even unconcerned with the well being of drug offenders should support this goal on the grounds of cost effectiveness and enhanced public safety. Alabamians of faith, however, cannot take a view that only addresses cost and public safety. Because biblical principles clearly support the drug court alternative, all Alabamians of faith have a moral obligation as well as a constitutional right to vote responsibly for candidates seeking election to the legislature, judiciary, and the office of Governor who will actively work towards establishing drug courts in all sixty-seven counties. Alabamians of faith who currently serve as judges, members of the legislature, or as the Governor similarly have a moral obligation as well as a constitutional right to actively promote state-wide drug courts on faith-based grounds.<sup>65</sup>

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desire for retaliation, but they also must positively work for the good of those with whom they would otherwise be at odds"); CRAIG S. KEENER, A COMMENTARY ON THE GOSPEL OF MATTHEW 196 (1999) (interpretation of *Matthew* 5:38 as Jesus calling his followers to "qualify justice with mercy because they do not need to avenge their honor").

63. See *supra* note 28 and accompanying text (discussing the eligibility requirements for drug courts as targeting first time nonviolent offenders who are not dealers and the treatment focused procedures of drug courts being much more appropriate given the negative consequences that flow from the prison experience); *supra* notes 50 and 61-63 (principles of exegesis and hermeneutics support proposition that denying the drug court alternative for these offenders not only amounts to excessive punishment in violation of biblical principles established by the Old Testament but also fails to embrace the principles set forth by the teachings of Jesus Christ requiring justice to be qualified with mercy).

64. In 2006, Chief Justice Cobb is quoted as stating about the judicial system, "We're going to have a focus, from the top to the bottom and from the bottom to the top, on how we treat people. . . . Regardless from where they come, we want people to be treated with dignity, courtesy and fairness." Joe Kennedy, *Exciting Times for Alabama's Court System*, BIRMINGHAM NEWS, Dec. 20, 2006, available at [http://documents.crdl.ua.edu/news/CRDLRelated/061220\\_ExcitingTimesForAL.pdf](http://documents.crdl.ua.edu/news/CRDLRelated/061220_ExcitingTimesForAL.pdf).

65. Hamill, *supra* note 53, at 675-80 (Free Exercise Clause of the First Amendment guarantees all citizens the right to vote and exercise free speech rights in accordance with faith-based moral principles, all political leaders the right to make decisions in accordance with faith-based moral principles as long as adequate secular grounds also support the decision, with the Establishment Clause posing no problem for either); *id.* at 704-06 (in the context of tax policy discussing moral obligation of citizens and political leaders of faith to exercise their political rights in accordance with faith based principles); Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1, 71-74 (2002) (same).