

# An Exit Strategy for the Failed War on Drugs

## A Federal Legislative Guide

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The logo for the Drug Policy Alliance, featuring the text "A Drug Policy Alliance release." in white and yellow on a red background.

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# Table of Contents

**Introduction**.....5

**A New Bottom Line in U.S. Drug Policy**.....7

**Visualizing the War on Drugs**.....8

**Broad Federal Policy Change**.....9

- Declare a moratorium on creating new drug crimes, increasing existing drug sentences, or criminalizing more drugs.
- Set clear statutory goals for reducing the harms associated with both drugs and drug policies.
- Require racial, fiscal and health impact assessments before passing new drug legislation.
- Commission an independent body to analyze all drug policy options.
- Shift the focus of the federal drug budget from failed supply-side programs to cost-effective demand and harm reduction strategies.
- Prioritize federal law enforcement resources toward violent traffickers and major crime syndicates and leave low-level offenders to the states.
- Eliminate abstinence-only zero tolerance policies.
- Make harm reduction a cornerstone of U.S. drug policy.
- Allow states to reform their drug policies without federal interference.
- Reform the 1961, 1971 and 1988 U.N. treaties on narcotics drugs and support the rights of other countries to set their own drug policies.
- Reform the U.S. drug scheduling system.

**Civil Rights**.....15

- Reduce the militarization of domestic law enforcement.
- Reform civil asset forfeiture laws.
- Restore voting rights to formerly incarcerated individuals and people on parole and probation.
- Eliminate random, suspicionless drug testing of most federal employees and reform the Drug-Free Workplace Act.
- Reform and limit the use of confidential informants.
- Require federal law enforcement agencies to collect statistics on the race and ethnicity of people they stop, search or arrest.
- Require local and state law enforcement agencies receiving federal money to collect statistics on the race and ethnicity of people they stop, search or arrest.
- Eliminate the crack/powder cocaine sentencing disparity and make changes retroactive.
- Limit the Drug Enforcement Administration's authority over the practice of medicine.
- Remove bureaucratic obstacles to medical marijuana research.

**Deficit Reduction**.....19

- Sunset drug war programs.
- Eliminate or cut subsidies to local law enforcement agencies for drug enforcement activities.
- Eliminate or cut funding to the National Youth Anti-Drug Media Campaign.
- Require the drug czar to decertify wasteful agency budget requests.
- Reduce the federal prison population.
- Alter the asset forfeiture equitable sharing ratio and shift where the money goes.

**Enforcement.....21**

- Establish an inter-agency task force to analyze enforcement options.
- Reform the High Intensity Drug Trafficking Area (HIDTA) program.
- Increase reporting requirements for the Department of Justice.
- Raise threshold amounts for what constitutes a federal drug law violation and focus resources on big cases.
- Eliminate or reform federal law enforcement block grants to the states.
- Take evidence-based steps to reduce driving under the influence of marijuana and other drugs.
- Prohibit federal agencies from undermining state marijuana laws.
- Repeal the federal prohibition on hemp and let states set their own policy.
- Eliminate federal possession and paraphernalia laws.

**Foreign Policy.....27**

- Eliminate funding for fumigation and forced manual eradication in Colombia.
- Lift the ban on trade for coca products.
- Overhaul Merida funding for Mexico.

**Sentencing and Reentry.....30**

- Repeal federal mandatory minimum sentencing.
- Reform federal drug conspiracy laws.
- Reform drug courts and other treatment diversion programs.
- Increase funding for the Second Chance Act.
- Increase tax incentives for companies to hire formerly incarcerated people.

- Eliminate the federal provision that prohibits people who have been convicted of a drug law violation from receiving public assistance and food stamps.
- Eliminate the federal provision that denies financial assistance and school loans to students convicted of drug law violations.
- Restore access to Pell Grants for individuals currently or formerly incarcerated.
- Reform federal provisions prohibiting people convicted of a drug law violation from accessing public housing, and prohibit federal housing authorities from punishing entire families for the action of one family member.
- Eliminate federal licensing restrictions and encourage states to also do so.
- Eliminate discrimination against firearm owners who use marijuana or other drugs.
- Allow expungement of drug convictions.
- Direct the Office of National Drug Control Policy to study the impact of collateral consequences on the economic and social fabric of the nation, and make policy recommendations.
- Engage in justice reinvestment to reduce federal prison spending and increase public safety.
- Reduce Bureau of Prisons overcrowding by implementing a risk assessment to determine appropriate placement, including community confinement.
- Expand time credits for good behavior.
- Expand the mandatory minimum safety valve provision.
- Enhance elderly prisoner early release programs.
- Create a review process to consider sentence modification after a period of years.
- Provide effective treatment and prevention in the federal prison system, including methadone and

buprenorphine treatment and sterile syringes for HIV and hepatitis prevention.

**Treatment and Prevention.....37**

- Make treatment available to all who need it, whenever they need it, and as often as they need it.
- Ensure the Patient Protection and Affordable Care Act’s essential health benefit rule guarantees access to evidence-based drug treatment options, such as methadone and buprenorphine, in the plans offered in the individual and small group markets, both inside and outside the ACA Exchanges.
- Ensure that treatment programs meet the needs of populations who have historically confronted barriers to accessing treatment.
- Invest in pharmacotherapy, lift restrictions on methadone, and expand research on stimulant and opiate replacement therapies.
- Direct the Department of Health and Human Services (HHS) to coordinate a cross-federal agency response to fatal drug overdoses.
- Provide the Food and Drug Administration (FDA) with the authority and resources needed to accelerate the development and approval process of over-the-counter naloxone.
- Direct the Food and Drug Administration (FDA) to mitigate the acute and persistent shortage of the overdose reversal drug naloxone.
- Instruct the Department of Defense (DoD) and Department of Veterans Affairs (VA) to address overdose.
- Establish federal funding for state, county, tribal and non-profit recipients who provide overdose prevention training and resources to communities.
- Repeal the federal syringe funding ban.
- Encourage and allow for the establishment of supervised injection facilities.
- Increase funding for after-school programs.

- Increase funding for youth-oriented treatment programs.
- Prohibit states from using their share of Safe and Drug-Free grant money on programs proven to be ineffective, such as D.A.R.E. and random student drug testing.
- Discourage punitive, zero tolerance programs in schools and focus scarce resources on professional counseling, intervention and therapy.

# Introduction

Over the last four decades U.S. policymakers have enacted a set of counterproductive drug policies collectively regarded as the war on drugs, the drug war, or drug prohibition. These policies generally have two things in common: (1) a heavy reliance on law enforcement, the criminal justice system and the military in dealing with certain drugs; and (2) an addiction to abstinence-only approaches to treatment and prevention, to the exclusion of proven, evidence-based interventions. This costly, punitive, zero-tolerance approach has overwhelmingly failed.

Despite the incarceration of tens of millions of Americans and more than a trillion dollars of spending, illegal drugs remain cheap<sup>1</sup>, potent<sup>2</sup> and widely available.<sup>3</sup> The harms associated with them – addiction,<sup>4</sup> overdose<sup>5</sup> and the spread of HIV/AIDS<sup>6</sup> and hepatitis B and C<sup>7</sup> – continue to persist in every community. Meanwhile the war on drugs is creating problems of its own – broken families, increased poverty, racial disparities, wasted tax dollars, prison overcrowding and eroded civil liberties.

In 2011 alone (the latest year for which data are available) U.S. law enforcement made more than 1.5 million drug arrests<sup>8</sup> (roughly 660,000 for nothing more than possession of small amounts of marijuana<sup>9</sup>). Doors were kicked in. Children were put into foster care. Cars, houses and bank accounts were seized without trial. Those arrested were separated from their loved ones, branded criminals for life, denied jobs, and in many cases prohibited from voting and accessing public assistance for life. And yet at the same time, it is hard to find a presidential candidate or major public figure who has not used marijuana or other illegal drugs.

The United States now incarcerates more of its citizens in both absolute and per capita terms than any other country in the world, with less than 5 percent of the world's population but nearly 25 percent of the world's prison population.<sup>10</sup> Half of federal prisoners, and nearly 20 percent of local or state prisoners, are incarcerated for nothing more than a drug law violation.<sup>11</sup> On any given night roughly 500,000 Americans are behind bars for a drug law violation.<sup>12</sup> That is ten times the total in 1980, and almost as many as Northern, Central and Western Europe (with a much larger population) incarcerates for all criminal offenses combined.<sup>13</sup>

In the name of keeping America “drug-free” the U.S. has accepted a horrifically high death count. As other parts of the world made sterile syringes available in the 1980s and 90s to reduce the spread of HIV/AIDS and hepatitis C from injection drug use, U.S. policymakers purposefully blocked legal access to syringes. Hundreds of thousands of Americans contracted HIV/AIDS or hepatitis C as a result.<sup>14</sup> While some obstacles to syringe access have been removed in recent years, many remain – including a federal funding ban – and thousands of Americans contract HIV/AIDS or hepatitis C every year as a result.<sup>15</sup>

The criminalization of drugs and the people who use them has also dramatically increased overdose fatalities, both because illegal drugs are by definition unregulated – and because people with drug-related problems are afraid or unable to seek help.<sup>16</sup> Accidental overdose, is now the second leading cause of accidental death in the United States, and the leading cause of accidental death among Americans age 25 to 54.<sup>17</sup> Other countries have devised innovative strategies to reduce the frequency with which these deaths occur. They have made the overdose antidote naloxone widely available,<sup>18</sup> decriminalized drug use,<sup>19</sup> and established supervised injection facilities<sup>20</sup>, but zero-tolerance policies in the U.S. make such strategies hard to establish and hundreds of thousands of Americans have died as a result.<sup>21</sup>

Like alcohol Prohibition, the prohibition on marijuana and other drugs is empowering crime syndicates and terrorists. The estimated yearly global revenue stream for illegal drug traffickers is \$322 billion – largely untaxed and unregulated.<sup>22</sup> This underground market is roughly equal to one percent of the annual global economy<sup>23</sup> and is now the world's primary revenue source for organized crime.<sup>24</sup> Global drug prohibition handed the Taliban, and other extremist groups operating in Afghanistan, profits that were estimated at as much as half a billion dollars in 2008 alone.<sup>25</sup> Drug trafficking organizations operating in both Mexico and the United States reaped an estimated \$1.1-\$2 billion a year from illegal marijuana sales – or between 15 and 26 percent of their illicit drug export revenues.<sup>26</sup>

Even routine drug law enforcement can increase violence by destabilizing markets and creating power vacuums. A systematic review of more than 300 international studies found that when police crack down on people who use or sell drugs, the result is almost always an increase in violence.<sup>27</sup> Two studies conducted in 1991 and 1999 found that when there has been a

major increase in the homicide rate in the U.S., it could be positively associated with intensified enforcement of alcohol Prohibition or drug prohibition.<sup>28</sup> In recent years, the escalation of the war on drugs in Mexico and other Latin American countries has led to the deaths of tens of thousands of people in those countries.<sup>29</sup> Hundreds, if not thousands, of Americans die on U.S. streets in drug prohibition-related violence every year, although it goes largely untracked.<sup>30</sup>

The destructive effects of the U.S. war on drugs involves people of all demographics, but disproportionately impacts communities of color – for whom U.S. drug policy has come to be known as the “new Jim Crow”.<sup>31</sup> Even though blacks and Latinos use and sell drugs at similar rates to whites,<sup>32</sup> they are disproportionately targeted for arrest, and punished more harshly at every step of the criminal justice system.<sup>33</sup> Once convicted they can be legally discriminated against in employment, education and housing; denied access to food stamps, student loans and other forms of public assistance; and even prohibited from voting for life.<sup>34</sup>

In addition to racial disparities in the criminal justice system, the disproportionate concentration of law enforcement in communities of color has contributed to egregious racial disparities in health outcomes because aggressive policing encourages risky consumption practices and discourages people from seeking medical assistance.<sup>35</sup> One study found that blacks are at least 1.5 times more likely to suffer fatal overdoses than whites, despite similar rates of drug use.<sup>36</sup> Blacks are also five times more likely to contract HIV/AIDS<sup>37</sup> and have far higher rates of mortality associated with hepatitis C.<sup>38</sup> Law enforcement activity, especially drug arrests, has been shown to increase drug-related deaths in urban areas.<sup>39</sup> As a result of the overwhelming racial disparities in drug law enforcement in the U.S., mass incarceration has led to extremely disproportionate rates of HIV infection in communities of color. Blacks are far more likely to be incarcerated for drug law violations than whites, and these disproportionate incarceration rates are a primary reason for the far higher rates of HIV infection in black communities.<sup>40</sup> Blacks represent just 14 percent of the U.S. population but according to the CDC have accounted for almost half of new HIV infections nationwide in recent years.<sup>41</sup>

The U.S. clearly needs an exit strategy. The predominant role that criminalization and the criminal justice system play in dealing with drugs is unsustainable in both human and fiscal terms.

The stated goal of current U.S. drug policy is to create a “drug-free” America. This is not a realistic goal. It cannot be achieved, and in fact has virtually never been achieved in any society. Policymakers can, however, take steps to reduce both the harms of drug misuse and the collateral damage of U.S. drug policy. This legislative guide is a bipartisan roadmap for doing so. It recommends ending federal marijuana prohibition, remedying the decades of racial injustice the war on drugs has caused, treating drug use as a health issue instead of a criminal justice issue, and shifting more drug policy decisions to the states.

## A New Bottom Line: New Metrics for Success

Policymakers have historically considered illegal drug use rates as the most important measure for judging the success or failure of U.S. drug policy. Yet studies in the U.S. and around the world conclusively show that the relative severity of various drug laws has little to no impact on the rates at which people use particular drugs or not.<sup>42</sup> In fact, drug use rates measure surprisingly little about the actual effectiveness of various drug policies or their costs and benefits. It is possible for overall drug use rates to decrease because non-problematic casual drug use declines, while drug addiction, drug overdose fatalities, driving under the influence of drugs, and other problems stay the same or get worse. This has been the outcome of U.S. drug policy for decades – modest fluctuations in the use of certain drugs over certain periods of time, but overall little to no improvement, and in some cases worsening, of most of the problems associated with substance misuse.

When policymakers focus on trends in drug use rates to the exclusion of more meaningful criteria, they miss where drug policies are failing most. For instance, some drug policies designed to reduce drug use not only fail to reduce drug use but increase the harms associated with it.

Over-incarceration for drug law violations causes the breakup of families and communities, perpetuating drug abuse, poverty, crime and violence.<sup>43</sup> The use of scare tactics and over-the-top messages in prevention campaigns can cause young people to rebel against anti-drug messages, setting prevention efforts back.<sup>44</sup> Laws restricting the availability of sterile syringes increase the number of Americans that contract HIV/AIDS, hepatitis or other infectious diseases.<sup>45</sup> Aggressive campaigns to arrest and incarcerate people who use drugs increase drug-related deaths because people are afraid to call 911 when they are present at the scene of an overdose.<sup>46</sup>

A narrow focus on drug use rates also ignores the collateral damage of the war on drugs and the impact it has on other important policy goals, such as reducing government waste, reducing racial inequities, upholding the constitution, promoting democracy abroad, and reducing poverty (to name a few). Decisions about what drugs to criminalize, which penalties to impose, the

manner and degree to which various drug laws are enforced, and the criteria for who to arrest and why should take into account all possible negative consequences, including unintended ones.

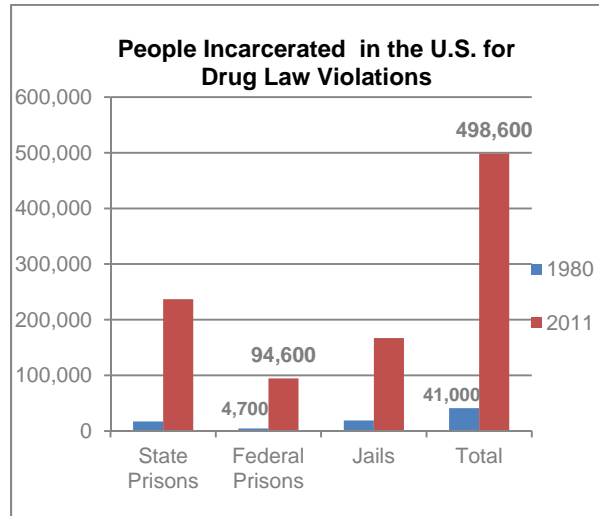
Setting a new bottom line in U.S. drug policy – one that focuses policy decisions on the best way to reduce the harms associated with drug misuse, while ensuring that the policies themselves do not exacerbate those harms or create new social problems of their own – would help policymakers ensure that drug laws do not do more harm than good. The optimal drug policies are those that best reduce both the harms associated with drug misuse and the harms associated with U.S. drug policy. Key performance measurements should focus on the death, disease, crime and suffering associated with both drugs and drug prohibition, not drug use per se.

As policymakers more accurately measure success and failure they should ensure that federal agencies do too. Treatment and health providers should be graded and funded based on their ability to improve the overall well-being of people under their care. Law enforcement should be graded and funded based on their ability to keep communities safe and free. Whether a person in drug treatment passes or fails a drug test is not necessarily as important as whether they are employed, getting healthier, or staying out of trouble. How many drug sellers a police department “takes off the streets” is not as important as whether violence in the community is declining or increasing, whether community members trust the police, or whether overall drug-related problems are getting worse or better.

There are many steps that Congress and the president could take to undo the drug policy mistakes of the last 40 years – steps that would more effectively control drugs and reduce the problems associated with them. States as diverse as California, Colorado, Kentucky, New Mexico, Texas and New York are already leading the way.

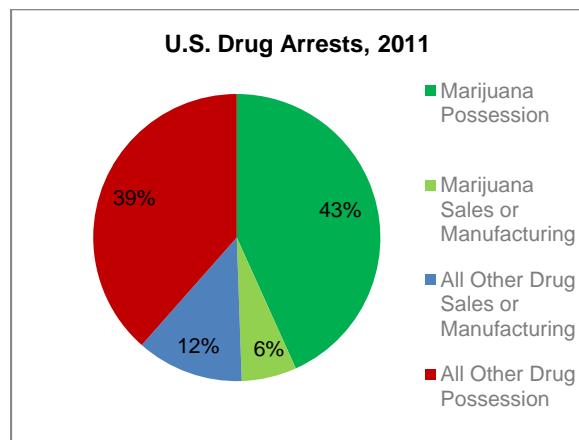
# Visualizing the War on Drugs

The U.S. has less than five percent of the world population – but nearly 25 percent of the world’s prison population.



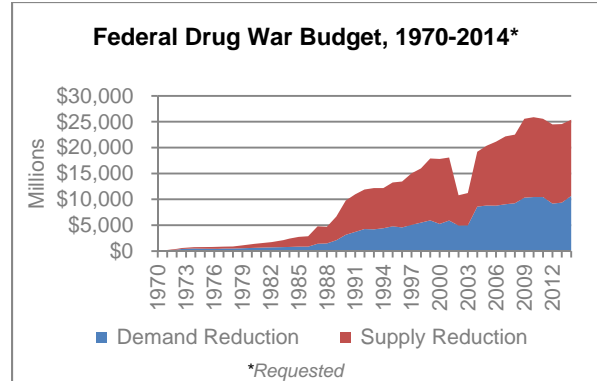
Source: E. Ann Carson and William J. Sabol, *Prisoners in 2011* (Washington: Bureau of Justice Statistics, 2012); and the Sentencing Project, *Trends in U.S. Corrections, 2012*.

More than 80 percent of all drug arrests in the United States every year are for possession alone.



Source: Federal Bureau of Investigation, *Uniform Crime Report, Crime in the United States, 2011*.

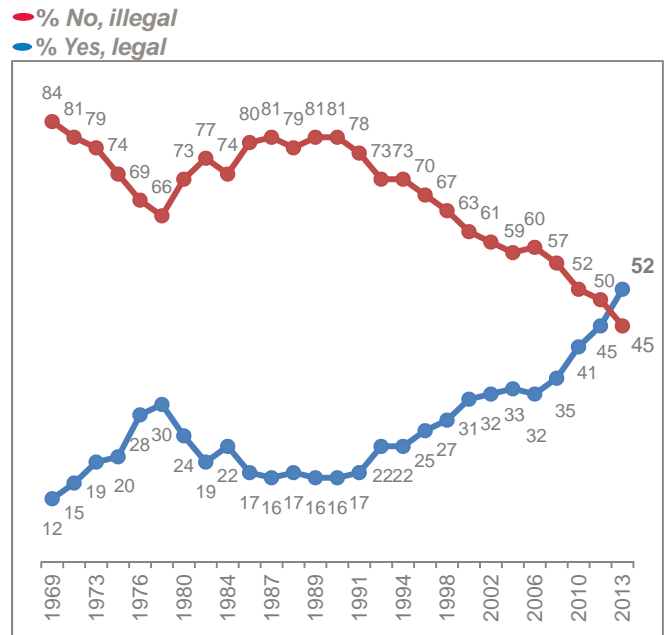
The Obama administration says that drug use should be treated as a health issue instead of a criminal justice issue. Yet both their budget and their drug policies continue to emphasize enforcement, prosecution and incarceration.



Source: Office of National Drug Control Policy, *FY 2013 Budget and Performance Summary*; and National Drug Control Budget *FY 2014 Funding Highlights*.<sup>47</sup>

Marijuana prohibition is unique among American criminal laws – no other law is both enforced so widely and harshly yet deemed unnecessary by such a substantial portion of the population.

Do you think the use of marijuana should be made legal or not?



Source: Pew, "Majority Now Supports Legalizing Marijuana," April 4, 2013.



## Broad Federal Policy Change

- **Declare a moratorium on creating new drug crimes, increasing existing drug sentences, or criminalizing more drugs.**

The first step policymakers should take is to stop making matters worse. Incarcerating more Americans for drug law violations will only waste more taxpayer money and break up more families.

Outlawing new and emerging drugs, such as synthetic drugs, would only exacerbate the problems associated with prohibition – most notably by further distracting police from violent crime<sup>48</sup>, increasing profits for crime syndicates<sup>49</sup>, making it easier for teens to obtain drugs<sup>50</sup>, and leading producers to switch to more dangerous chemicals and formulations.<sup>51</sup>

- **Set clear statutory goals for reducing the harms associated with both drug misuse and the war on drugs.**

In 2010 the Office of National Drug Control Policy (ONDCP) set groundbreaking five-year goals for reducing drug-induced deaths, drug-related morbidity, and drugged driving – good first steps to setting a new bottom line in U.S. drug policy.<sup>52</sup> ONDCP's 2013 strategy reiterates many of these goals.<sup>53</sup> Unfortunately the goals and measurement criteria are subject to change at any time and do not tackle the many problems associated with the war on drugs itself. The Government Accountability Office (GAO) issued a report in March 2013 finding that ONDCP and the federal government “have not made progress toward achieving most of the goals articulated in the 2010 National Drug Control Strategy.” In fact, GAO found that for some goals – like reducing youth drug use, overdose fatalities, and HIV caused by injection drug use – ONDCP has not just been unsuccessful but has lost ground.<sup>54</sup>

Congress should change federal law to require ONDCP to set short- and long-term goals for reducing fatal drug overdoses, the spread of HIV/AIDS and hepatitis, the number of nonviolent drug offenders behind bars, racial disparities in the criminal justice system and other problems related to drug misuse and drug prohibition. ONDCP should be graded – and funded – on its ability to meet these goals.

- **Conduct racial, fiscal and health impact assessments before passing new drug legislation.**

A number of states are now requiring racial impact statements before criminal justice-related bills can be passed.<sup>55</sup> At least one state requires not just a fiscal impact statement before passing drug war legislation, but an assessment of how much incarcerating someone will cost, versus less-costly sentencing alternatives.<sup>56</sup> Congress already requires through its PAYGO rules that new spending be offset. A similar rule should be adopted to ensure legislation increasing the number of federal prisoners (or expanding the length of time they will stay behind bars) is paid for somehow. It would be especially innovative to assess how the legislation might unintentionally increase the harms associated with drug use (by leading traffickers to switch to even more dangerous manufacturing methods, or by making it more likely for people who use drugs to inject the drug instead of smoking it).

- **Commission an independent body to analyze all drug policy options.**

Congress should commission the National Academy of Sciences, or a similar scientific body, to examine a range of macro-drug policy options to evaluate the costs and benefits of continuing current policies, creating more punitive policies, decriminalizing possession, creating a legal market for marijuana or other drugs, and other alternative policies, with an eye toward estimating the impact of various policy options on health and public safety. The commission could also examine the plusses and minuses of various incremental policies, including new eradication efforts, sentencing reform, and changes in policing practices.

- **Shift the focus of the federal drug budget from failed supply-side programs to cost-effective demand- and harm reduction strategies.**

Most of the federal drug budget focuses on largely futile interdiction and eradication efforts<sup>57</sup> as well as arresting, prosecuting and incarcerating extraordinary numbers of people. Only roughly 40 percent is earmarked for demand reduction (and some of that funding is wasted).<sup>58</sup> Very little is dedicated to reducing fatal drug overdoses, the spread of HIV/AIDS and hepatitis C from injection drug use, or other measures to reduce the negative consequences associated with drug misuse.

Yet decades of research has concluded that the quickest, cheapest and most effective way to undermine drug markets is to make quality substance abuse treatment more widely available to people struggling with drug misuse through public spending, tax credits and other measures.<sup>59</sup> Harm reduction strategies are proven to minimize public health threats, improve public safety and reduce healthcare expenditures.<sup>60</sup> Congress should shift funding from eradication and enforcement programs to treatment, harm reduction, and education strategies.

- **Prioritize federal law enforcement resources toward violent traffickers and major crime syndicates and leave low-level offenders to the states.**

Most federal drug prisoners are low- or medium-level offenders. A 2007 report to Congress, for instance, found that only 7.6 percent of federal powder cocaine prosecutions and 1.8 percent of federal crack cocaine prosecutions are against high-level traffickers.<sup>61</sup> A 2011 report to Congress produced similar findings: more than two-thirds of people convicted of federal drug law violations were low or mid-level offenders, and only 10 percent were “high-level” suppliers.<sup>62</sup>

Federal drug enforcement should focus on large cases that cross international and state boundaries, with a priority toward violent traffickers and major crime syndicates. All other cases should be left to the states. Agencies and departments that waste resources arresting and prosecuting low-level offenders should be subject to federal funding cuts.

Federal drug laws that are not consistent with prioritization and federalism, such as federal laws criminalizing the possession of drugs or drug paraphernalia, should be eliminated and the threshold amount of drugs it takes to trigger federal involvement should be increased so that law enforcement does not waste resources on small cases. Congress should set clear statutory goals for the disruption of major crime syndicates. Federal agencies should report on their progress towards meeting these goals.

- **Move beyond abstinence-only, zero tolerance policies.**

Most people who use drugs use them rarely or moderately with little to no harm to themselves or others.<sup>63</sup> Most drug use is not problematic, and most

drug users are not addicts. Of those who do have problems and are trying to quit, relapse is a normal and anticipated aspect of recovery.<sup>64</sup> Yet possessing certain drugs, failing a drug test, or even being merely suspected of drug use can be grounds for denying people public assistance, removing them from drug treatment, firing them, incarcerating them, or otherwise punishing them. This punishment is often meted out regardless of whether drug use has been problematic and, for those in treatment, even while their condition is improving.

Punitive zero tolerance policies should be replaced with policies that actually help those who need it. Congress can start by eliminating federal policies that deny school loans, TANF benefits, public housing or other public assistance to people who commit drug law violations. Federal treatment programs and grants to states should be overhauled to ensure that drug testing, if it is used at all, is used like any other medical assessment – to set a baseline that informs doctors and patients, not to arrest or otherwise punish people.

Drug misuse is a complex problem and people need to be reached where they currently are in their lives. For some, this means taking small steps (like reducing or moderating their use); for others it means helping them quit all together. Whether a person is totally abstinent from alcohol, marijuana or other drugs matters far less than whether the problems associated with their drug misuse are getting better or not. Metrics like health, employment and family situation are far more important than the outcome of a drug test.

- **Make harm reduction a cornerstone of U.S. drug policy.**

Alcohol, tobacco, caffeine, marijuana, psychedelics, coca, opium and other drugs have been used for thousands of years, and will almost certainly be used for thousands more. No matter what policymakers do or say, some people will use drugs. Members of Congress should take steps to reduce the risks to individuals and society of that drug use – and keep people who use drugs as safe as possible – even while remaining committed to reducing the overall use and misuse of both legal and illegal drugs.

Congress should expand funding for policies that reduce the health consequences associated with drug misuse, such as by making sterile syringes widely available to reduce the spread of HIV/AIDS and hepatitis C and by making the overdose antidote naloxone widely available

to reduce fatal drug overdoses. Congress should also create a Deputy Director of Harm Reduction within the Office of National Drug Control Policy to work alongside the Deputy Director of Demand Reduction and the Deputy Director of Supply Reduction.

- **Allow states to reform their drug policies without federal interference.**

Federal drug prohibition is largely a static policy that has not changed in decades, besides consistently becoming harsher and more expensive. As failures have mounted, it has become clear that states need room to try innovative approaches. The best way to encourage states to do so is to repeal federal drug prohibition – or at least repeal federal marijuana prohibition – in the same way alcohol Prohibition was repealed. This would reduce unregulated criminal markets; generate tax revenue; make better use of scarce law enforcement resources; and allow state policymakers to regulate potency, establish age controls, and control use and availability. In addition to regulating and taxing marijuana like alcohol, cities and states should be free to enact a range of alternative drug policies, from supervised injection facilities to heroin-assisted treatment, which have proved remarkably effective<sup>65</sup> in other countries at saving lives and reducing crime and public nuisances.

As of May 2013, 18 states and the District of Columbia have legalized marijuana for medical use.<sup>66</sup> Voters in Colorado and Washington have legalized marijuana for personal use and are in the process of establishing a system for regulating its production, distribution and consumption for adults in a manner similar to alcohol. States have the right under both the Controlled Substances Act and the U.S. Constitution to eliminate local and state criminal penalties for manufacturing, possessing or distributing marijuana. Moreover, states can also regulate marijuana like alcohol, provided such regulations do not create a positive conflict with federal law. Yet the federal government can arrest marijuana law violators under federal law.<sup>67</sup>

Congress should amend the Controlled Substances Act to exempt people in compliance with their state marijuana laws from federal arrest and prosecution. The U.S. Attorney General also has the authority under the Controlled Substances Act to enter into written cooperative agreements with state law enforcement detailing what the federal priorities will be, what the state's priorities will be, and how both federal and state law can coexist to best protect both state and federal

interests. The federal government could, for example, agree not to prosecute people in full compliance with their state marijuana law in exchange for state governments taking certain steps (such as creating state/federal partnerships to focus on rogue operators and targeting violators trying to export marijuana to other states).<sup>68</sup>

Regardless of what actions the federal government takes, states cannot be forced to enforce federal law or adopt similar policies. They are free to regulate marijuana or have no marijuana laws at all. Public officials in Washington and Colorado have pledged to design responsible regulations; the federal government should aid them in the process.<sup>69</sup>

- **Support other countries setting their own drug policies and reform the U.N. treaties on narcotics drugs.**

Despite its dismal drug policy record, the United States has succeeded in constructing an international drug prohibition regime modeled after its excessively punitive approach. It has dominated the drug control agencies of the United Nations and other international organizations, and its federal drug enforcement agency was the first national police organization to work on an international level.<sup>70</sup> In the last term of President George W. Bush's administration alone, the U.S. criticized Britain,<sup>71</sup> Mexico<sup>72</sup> and Canada<sup>73</sup> for moving toward marijuana decriminalization.

The Obama administration has softened the U.S. stance with respect to public health and harm reduction,<sup>74</sup> but it has opposed even minor changes to the global drug prohibition regime.<sup>75</sup> For example, the U.S. lobbied other countries to oppose Bolivia's attempt in 2011 to amend the 1961 Single Convention on Narcotic Drugs to allow for the ancestral practice of coca-chewing – and again tried to mobilize opposition to Bolivia's return to the treaty with reservations in 2013 but was unsuccessful.<sup>76</sup> Rarely has one nation so successfully exported its own failed policies to the rest of the world.<sup>77</sup>

The United States should join the ranks of other countries seeking to reform the three United Nations drug conventions<sup>78</sup> – the 1961 Single Convention on Narcotics Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – which limit the ability of countries to regulate drugs.

Global drug prohibition has failed and nations need flexibility to try new approaches and do what is best for their citizens. In fact, many countries are already trying new drug policy approaches in ways they believe do not violate treaty obligations.<sup>79</sup>

Congress should hold congressional hearings on the applicability, benefits, and downsides of the treaties. It should also commission a review of the effects of the treaties on global health and safety. There is also room within the treaties allowing the U.S., and in particular U.S. states, to adopt reforms – a good subject for Congress to explore.

- **Reform the U.S. drug scheduling system.**

The U.S. Controlled Substances Act of 1970 created a five-category scheduling system for most legal and illegal drugs (although alcohol and tobacco were notably omitted). Depending on what category a drug is in, the drug is either subject to varying degrees of regulation and control – or completely prohibited and left to criminals to manufacture and distribute. Key decision-making on how to schedule various drugs was decided largely by Congress absent of a scientific process – with some strange results. For instance, while methamphetamine and cocaine are Schedule II drugs making them available for medical use, marijuana is scheduled alongside PCP and heroin as a Schedule I drug, which prohibits any medical use.

Even when Congress has let the regulatory process play out, the Drug Enforcement Administration (DEA), National Institute on Drug Abuse (NIDA), and HHS have obstructed the process.<sup>80</sup> Congress should overhaul the entire scheduling process to ensure that decisions on whether to criminalize a drug or not, and whether and how to regulate it, are decided by an objective, independent scientific process.

The scheduling system should also be reformed so that drugs are classified based on their relative risks and associated harms. In a report published in the esteemed *Lancet Journal*, researchers have proposed an alternative method for drug classification in the United Kingdom. This new system uses a nine-category matrix to assess the harms of a range of licit and illicit drugs. The new evidence-based classification system recognizes the fact that alcohol and tobacco cause far more individual and social harms than marijuana, LSD, and MDMA, which have less potential for harm relative to other legal and

illegal drugs.<sup>81</sup>

The current drug scheduling system is also structurally flawed. For instance, Schedule I is for drugs that are highly addictive and have no medical value, while the other schedules are for drugs with medical value but varying degrees of safety and addiction risks. There are no categories, however, for drugs that have no medical value but are not highly addictive either. Nor are there categories for drugs that have not been evaluated for medical value yet.

Congress should appoint an independent body, such as the National Academy of Sciences, to conduct a comprehensive evaluation of the drug scheduling system. This evaluation should determine if each drug is properly classified, the best way to assess the risks and benefits associated with current and emerging drugs, and how to best redesign the scheduling system.

## Further Reading

### Drug Scheduling

**Rolles, Stephen, and Craig McClure. *After the War on Drugs: Blueprint for Regulation*. Transform Drug Policy Foundation, 2009.**

Report/guide that outlines potential regulatory models for various psychoactive substances.

**Rolles, Stephen, "Analysis: An alternative to the war on drugs," *British Medical Journal* (2010): 341.**

A summary article presenting several basic regulatory alternatives to drug prohibition.

**David J. Nutt, et al. "Drug harms in the UK: a multicriteria decision analysis," *The Lancet* (November 2010).**

A study published in the United Kingdom's prestigious medical journal, *The Lancet*, which ranked the relative harms of legal and illegal substances – and listed marijuana below many common legal drugs and medications.

**Nutt, David, Leslie A. King, William Saulsbury, and Colin Blakemore. "Development of a Rational Scale to Assess the Harm of Drugs." *The Lancet*. 369. no. 9566 (2007): 1047-53.**

Written by the former chairman of the United Kingdom's Advisory Council on the Misuse of Drugs, this article uses a nine-category matrix of harm to rank a range of illicit and licit drugs in an evidence-based fashion.

**Savary, Jean-Felix, Chris Hallam, and Dave Bewley-Taylor. *The Beckley Foundation Drug Policy Programme, "The Swiss Four Pillars Policy: An Evolution from Local Experimentation to Federal Law."* May 2009.**

This briefing paper relates lessons learned from the implementation of the "Four Pillars" drug policy in Switzerland. Considered politically radical at its inception, the principle of harm reduction gradually gained wide public support. Switzerland's case demonstrates that it is possible for an integrated drug policy centered on health to overcome the ideological imperatives that motivate governing authorities to adopt

a criminalization-based approach to all drug use.

### Legal Regulation of Marijuana and Other Drugs

**Caulkins, Jonathan P, Angela Hawken, Beau Kilmer, and Mark AR Kleiman. *Marijuana Legalization: What Everyone Needs to Know*. Oxford: Oxford University Press, 2012.**

A non-partisan primer authored by respected drug policy analysts about the benefits and potential risks of legally regulating marijuana.

**Room, Robin, et al. *Cannabis Policy: Moving Beyond Stalemate*. Oxford University Press, USA, 2010.**

A comprehensive report from a distinguished panel of international experts describing the state of global marijuana policy, the potential harms of marijuana relative to other legal and illegal substances, various experiments with marijuana decriminalization and limited regulation and/or distribution, and possibilities for moving forward toward a new global marijuana regulatory regime.

**Kilmer, Beau, Jonathan P Caulkins, Brittany M Bond, and Peter H Reuter. *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?* Santa Monica: RAND Corporation, 2010.**

This RAND Corporation study about the possible impacts of legally regulating marijuana on drug revenues of Mexican drug trafficking organizations concludes that nationwide legalization and regulation could reduce their drug export revenues by as much as 25 percent.

**Kilmer, Beau, Jonathan P Caulkins, Rosalio Liccardo Pacula, and Peter H Reuter. "The US Drug Policy Landscape." RAND Corporation, 2012.**

This recent briefing paper by RAND provides an overview of the state of drug policy and drug policy reform.

Loayza, Norman V, and Naotaka Sugawara. "Would Liberalization Lead to Epidemic Cocaine Consumption?". *Applied Economics Letters* 19, no. 14 (2012): 1405-09.

This article demonstrates that cocaine use would not increase significantly if prohibitive laws were eased or removed.

MacCoun, Robert J., and Peter Reuter. *Drug War Heresies: Learning from Other Vices, Times, and Places*. Cambridge University Press, 2001.

This seminal book by noted drug policy researchers Peter Reuter and Robert MacCoun summarizes the benefits and shortcomings of various drug policies, while comparing regulation and prohibition of other substances and behaviors.

Miron, Jeffrey A. "Violence and the U.S. Prohibitions of Drugs and Alcohol." *American Law and Economics Review* 1, no. 1 (1999): 78-114.

Study of violence rates in the United States during alcohol Prohibition and modern-day drug prohibition, finding that, in both cases, violence spiked, while violence dropped significantly after the repeal of alcohol Prohibition.

### *Failures of Prohibition*

**The Vienna Declaration**  
[www.viennadeclaration.com/](http://www.viennadeclaration.com/)

Statement signed by hundreds of public health, medical and drug policy experts, calling for a public health based approach to drugs and drug misuse, including decriminalizing people who use drugs.

**The Alternative World Drug Report (Count the Costs 2012)**  
<http://www.countthecosts.org/alternative-world-drug-report>.

Report on the global impact of drug prohibition, highlighting the many costs and consequences of prohibitionist policies that are not captured in the United Nations Office on Drug and Crime (UNODC) World Drug Report, and recommending a set of public health centered drug policy alternatives.

# Civil Rights

- **Reduce the militarization of domestic law enforcement.**

Over the last several decades civilian law enforcement has increasingly become more militarized.<sup>82</sup> Encouraged to fight a ‘war’ against drugs and then provided military weaponry, the results have been predictably tragic. SWAT team raids, which were once rare and only used in hostage or other emergency situations, are now common – at least 40,000 per year – and most often used to serve drug warrants.<sup>83</sup> In many cases the suspect’s only offense is a nonviolent, low-level one. These no-knock SWAT raids escalate violence and put innocent civilians and law enforcement in harm’s way.<sup>84</sup> Police sometimes mistakenly engage in militarized drug raids against the wrong house, causing innocent people to suffer through having their door kicked in<sup>85</sup>, their dogs shot<sup>86</sup>, being thrown on the ground<sup>87</sup>, and having machine guns pointed at their children.<sup>88</sup> Even when a drug raid is against someone who has broken a law the raid is unnecessarily traumatic<sup>89</sup> and violent.<sup>90</sup>

Congress should end the Pentagon’s weapon giveaway (whereby the agency makes surplus military hardware available to local police departments for free or cheap), restrict the use of paramilitary police tactics by federal law enforcement agencies, prohibit the military from undermining Posse Comitatus by training or otherwise assisting civilian police, require strict liability when police mistakenly engage in forced-entry drug raids against the wrong house, and tighten search warrant standards to reduce the chances that innocent Americans become caught up in drug raids.<sup>91</sup>

- **Reform federal civil asset forfeiture laws.**

Civil asset forfeiture is a process that allows law enforcement agencies to seize money and property without the owner being convicted or even charged with a crime. Law enforcement agencies in many cases get to keep the proceeds of the forfeiture for their own budgets – distorting law enforcement priorities and creating the opportunity for civil rights abuses. While some states have laws designed to curb forfeiture abuses, local and federal police have devised a way through “equitable sharing” to avoid restrictions: local police unofficially seize money and property and “hold” it for a federal agency that then officially claims the property and returns the majority of proceeds to the local police

as a finder’s fee. In states where forfeiture proceeds are mandated to go to treatment, public schools or the general treasury, equitable sharing allows local police to circumvent state laws and divert proceeds from seized assets from their intended recipients to their own departments. It also allows them to bypass state laws requiring a person be convicted of a drug law violation before the government can keep their property. Federal law should be amended to require all state equitable sharing proceeds be distributed to the state’s general treasury.

- **Restore voting rights to formerly incarcerated individuals and people on parole or probation.**

A felony drug conviction can result in either temporary or permanent loss of the right to vote in most states. Forty-eight states and the District of Columbia prohibit inmates convicted of a felony offense from voting while incarcerated. Thirty-five of these states also prohibit voting by individuals on parole, and thirty states additionally prohibit voting by individuals on probation. Eleven states deny voting rights to some or all people with prior felony convictions, even after they have successfully completed their time behind bars or on probation or parole.<sup>92</sup> Furthermore, regaining the right to vote usually requires a cumbersome application process or multiple fees, which effectively excludes many ex-offenders. An estimated 5.85 million Americans – including roughly 13 percent of black men of voting age – are currently disenfranchised.<sup>93</sup> Congress should restore the right for all Americans to participate in federal elections.

- **Eliminate random, suspicionless drug testing of most federal employees and reform the Drug-Free Workplace Act.**

Approximately 400,000 federal jobs involve drug testing of applicants when they apply. Some continue to subject employees to random testing even after they are hired.<sup>94</sup> The estimated average cost to find each applicant who has used marijuana or another illegal drug in the recent past is \$77,000<sup>95</sup>. It would be cheaper and more effective to replace random, suspicionless drug testing for non-safety positions with impairment testing or a testing-for-cause policy. Requiring individualized suspicion would focus resources on employees whose use is demonstrably interfering with their work performance and save taxpayer dollars by eliminating unnecessary, occupation-wide tests. It also could increase workplace morale, as a lesser number of employees would be

subject to the invasive and demeaning process of urinating in the presence of another person.

The Drug-Free Workplace Act of 1988 requires some federal contractors and all federal grantees to agree that they will provide drug-free workplaces as a precondition of receiving a contract or grant from a federal agency. Although all contractors and grantees must maintain a drug-free workplace, the specific components necessary to meet the requirements of the act vary based on whether the contractor or grantee is an individual or an organization. The requirements for organizations are more extensive, because organizations have to take comprehensive, programmatic steps. Congress should amend the Drug-Free Workplace Act to only apply to safety sensitive positions, allowing most companies to avoid random drug testing if it is too costly or unnecessary.

- **Reform and limit the use of confidential informants.**

Confidential informants are often people charged with minor drug law violations who are coerced into their role by law enforcement officials using excessive sentencing schemes or offers of drugs or money as leverage.<sup>96</sup> Because police operations are often driven by arrest quotas, informants are primarily used to apprehend low-level, nonviolent drug offenders rather than to dismantle serious drug trafficking organizations.<sup>97</sup> Federal (and most state) laws do not require the corroboration of an informant's information to support a conviction.<sup>98</sup> As a result, the government's use of informants is largely secretive, unregulated and unaccountable.<sup>99</sup> Problems that have arisen in connection with this practice include the fabrication of evidence and testimony (either with or without the knowledge of law enforcement), allowing known serious offenders to remain free in exchange for continued cooperation of dubious value, and the false implication of innocent people.<sup>100</sup> To curtail these problems, the evidentiary standard that is required to convict a person for a drug law violation must be strengthened so that a conviction cannot occur unless the commission of the crime is supported by evidence other than the eyewitness testimony of a law enforcement official, or an individual acting on behalf of law enforcement officers.

- **Require that federal law enforcement agencies collect statistics on the race and ethnicity of people they stop, search or arrest.**

Although rates of drug use and selling among whites are similar to rates among blacks, and higher than rates among Latinos,<sup>101</sup> minorities are disproportionately arrested, convicted and incarcerated for drug law violations. Even though whites comprise 71 percent of individuals reporting lifetime illicit drug use and 66 percent of individuals reporting illicit drug use in the past year,<sup>102</sup> approximately two-thirds of all individuals in prison for drug law violations are minorities.<sup>103</sup> A U.S. Department of Justice study found that blacks and Latinos are more likely than whites to be searched in traffic stops.<sup>104</sup> People of color are disproportionately stopped, questioned and searched even though the average person of color is no more likely to be in possession of drugs than the average white individual.<sup>105</sup> The use of racial profiling can erode trust between law enforcement and the communities they serve, which in turn can disrupt crime reporting and solving capabilities. Congress should prohibit the use of profiling by federal law enforcement that results in the detainment, search or arrest of individuals based upon race or ethnicity, and require federal law enforcement to document detainment, searches and arrests by race or ethnicity so that the U.S. Attorney General can identify and stop profiling.

- **Require local and state law enforcement agencies receiving federal money to collect statistics on the race and ethnicity of people they stop, search or arrest.**

Federal Byrne/JAG grants and other federal subsidies to local and state law enforcement operate with very little oversight and often foster an environment in which racial profiling thrives.<sup>106</sup> In Arizona, analysis of data related to highway stops found that Native Americans were more than three times as likely to be searched as whites by officers of the Arizona Department of Public Safety.<sup>107</sup> Blacks and Latinos were 2.5 times more likely to be searched than whites.<sup>108</sup> Whites, however, were found to be more likely to be carrying contraband than Native Americans or Latinos.<sup>109</sup> Seizure rates of drugs, weapons or other illegal materials for whites and blacks were similar.<sup>110</sup> An analysis of the Los Angeles Police Department found that blacks are 127 percent more likely than whites to be stopped and searched.<sup>111</sup> The analysis found that the frisks and searches of blacks were less productive in terms of finding drugs or guns than



stopping and searching whites. Congress should require local and state law enforcement agencies that receive federal money through Byrne/JAG and other programs to ban racial profiling and collect statistics on the race and ethnicity of people they stop, arrest or search, and make the statistics available to the public.

- **Eliminate the crack/powder cocaine sentencing disparity.**

In 2010 Congress reformed the 24-year-old crack/powder sentencing disparity that punished crack cocaine offenses 100 times more severely than powder cocaine offenses. The reform only reduced the 100-to-1 disparity to 18-to-1 instead of eliminating it, even though the disparity perpetuates racial disparities, and despite the fact that crack and powder are pharmacologically identical and have similar physiological effects.<sup>112</sup> The changes were also not made retroactive; as a result, thousands of nonviolent offenders will serve out unnecessarily long and racially unjust sentences at great taxpayer expense. Congress should completely eliminate the crack/powder disparity by lowering penalties for crack offenses to equal those of powder offenses, and make the changes retroactive.

- **Limit the Drug Enforcement Administration's (DEA) authority over the practice of medicine.**

The DEA has in recent years arrested dozens of doctors who its agents deemed to be prescribing too much pain medications to patients.<sup>113</sup> Dozens of state Attorneys General have expressed concern on multiple occasions that the DEA is intruding into the practice of medicine, a realm that has long been under the authority of states to regulate.<sup>114</sup> Congress should change federal law to make clear that the U.S. Justice Department does not have the authority to determine what constitutes legitimate medical practice.<sup>115</sup> Such determinations should be made by doctors or state medical boards – not law enforcement officers.

- **Remove bureaucratic obstacles to medical marijuana research.**

The only way for marijuana (or any medicine) to be properly evaluated by the FDA is for privately-funded sponsors to conduct FDA-approved clinical trials. Yet since 1968, the DEA has effectively granted a monopoly to the National Institute on Drug Abuse (NIDA) for the production of marijuana for federally-approved research. It has also declined to grant production licenses to

independent research facilities, thus effectively preventing researchers from conducting scientific experiments to evaluate the therapeutic value of marijuana beyond small Phase I safety studies.<sup>116</sup> In contrast, researchers who want to study cocaine, methamphetamine, LSD or other drugs can obtain a DEA license to produce their own for clinical research. Congress should end NIDA's monopoly on marijuana for research and allow states, companies, universities and nonprofits to move forward on marijuana research.<sup>117</sup>

## Further Reading

**Alexander, Michelle.** *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* New York City: The New Press, 2010.

In this *New York Times* bestseller, a litigator-turned- legal scholar argues that the criminal justice system functions as a contemporary system of racial control by targeting black men and decimating communities of color despite ostensibly adhering to principles of colorblindness.

**Meghana Kakade et al.** “Adolescent Substance Use and Other Illegal Behaviors and Racial Disparities in Criminal Justice System Involvement: Findings from a US National Survey”. *Am J Public Health* (2012): e1–e4.

A national study found that black youth were less likely than whites to use or sell drugs but more likely to be arrested, concluding: “Racial disparities in adolescent arrest appear to result from differential treatment of minority youths and to have long-term negative effects on the lives of affected African American youths.”

**Justice Policy Institute,** “The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties.” December 2007.

The exceptional growth in the prison population, driven in large part by individuals incarcerated for drug offenses, has been disproportionately imposed on African Americans. Because local policies shape the day-to-day identification of drug users and their entry into the criminal justice system, this report describes the relationship between drug incarceration rates and the structural and demographic characteristics of counties, paying particular attention to racial disparities at the local level.

**United States Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy." 1995, 1997, 2002, 2007.**

In each installment of this report, the U.S. Sentencing Commission analyzed federal sentencing data as it pertains to powder and crack cocaine law violations; effects of use for different forms of cocaine; and trends in cocaine trafficking, price, and use. Also included are recommendations for Congress to consider in enacting further legislation.

**Marc Mauer, *Race to Incarcerate*, (New York, NY: The New York Press, 2006).**

Marc Mauer, executive director of The Sentencing Project, analyzes the main trends of America's war on drugs in the last two decades, showing how those policies have emphasized rigid control – through police and prisons – over drug treatment and economic development, resulting in an explosive increase in America's prison population. This book also describes the race-based inequities that are prevalent in drug-related prosecutions.

**American Bar Association Commission on Effective Criminal Sanctions and the Public Defender Service for the District of Columbia, "Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations." January 2009.**

This study collects and describes the collateral consequences of a criminal conviction on the availability of a wide range of benefits and opportunities, which in turn determines a person's likely ability to rebuild his or her life after a criminal conviction.

**Western, Bruce. Pew Charitable Trusts, "Collateral Costs: Incarceration's Effect on Economic Mobility." 2010.**

This report quantifies the financial effect that incarceration has over the course of an inmate's lifetime, not only on offenders but on their families and children.

**Mauer, Marc, and Meda Chesney-Lind, eds. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York, NY: New York Press, 2002.**

This collection of essays from leading scholars and advocates in criminal justice explores the far-reaching consequences of the "get tough on crime" policies that have resulted in the mass incarceration of American citizens. This book explores the tremendous impact these policies have not just on wrong-doers, but also on their families and communities.

**Human Rights Watch, "Decades of Disparity: Drug Arrests and Race in the United States." 2009.**

This report found that, despite similar rates of drug use and sales across racial and ethnic groups, blacks were arrested for drug law violations nationwide at rates 2.8 to 5.5 times higher than whites from 1980 to 2007.

**Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race in the United States* (New York: Human Rights Watch, 2008).**

Report showing that although rates of drug use and selling are comparable across racial lines, blacks are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than whites.

**Balko, Radley. The Cato Institute, "Overkill: The Rise of Paramilitary Police Raids in America." 2006.**

This paper offers a historical overview of the militarization of civilian law enforcement over the last 25 years, including the rise of use of paramilitary units to perform routine police work, especially to serve narcotics warrants to nonviolent offenders. Balko also presents a catalogue of abuses, mistaken raids, and dozens of needless deaths and injuries as a result of these practices.

## Deficit Reduction

- **Sunset drug war programs.**

Too many drug war programs continue year after year despite evidence that they are ineffective or even counterproductive. Sunsetting drug war programs so they expire every three to five years would require Congress to reexamine them regularly to decide if they are worth continuing.

- **Eliminate or cut subsidies to local law enforcement agencies.**

There is little to no evidence that providing federal subsidies to local law enforcement agencies prevents crime.<sup>118</sup> In fact, the most common outcomes associated with subsidizing local law enforcement are prison overcrowding and racial disparities.<sup>119</sup> Eliminating the two most expensive subsidy programs – the Byrne/JAG program and the Community Oriented Policing Services (COPS) program – would save taxpayers hundreds of millions of dollars a year. Organizations that have endorsed eliminating these programs include the American Conservative Union, Americans for Tax Reform, Citizens Against Government Waste, Heritage Foundation and the National Taxpayers Union.<sup>120</sup> The Office of Management and Budget has found no evidence that either the Byrne or COPS programs have been effective in reducing crime.<sup>121</sup>

- **Continue to zero out funding for the National Youth Anti-Drug Media Campaign and de-authorize the program.**

Congress has spent more than \$1.5 billion on the National Youth Anti-Drug Media Campaign since 1998,<sup>122</sup> making the Office of National Drug Control Policy one of the nation's largest advertisers. Eight separate government evaluations have concluded that the ads have had no measurable impact on drug use among youth.<sup>123</sup> Two of these studies found that the ads might even make some teenagers more likely to start using drugs.<sup>124</sup> A study by researchers at Texas State University at San Marcos found that 18-19-year-old college students who viewed the program's anti-marijuana TV ads developed more positive attitudes toward marijuana than those who did not.<sup>125</sup> Organizations that support eliminating the failed program include the National Taxpayers Union and Taxpayers for Commonsense. For several years in a row

Congress has eliminated funding for the program, saving around \$45 million a year, but the White House has continued to request funding for it. Congress should deauthorize the program.

- **Require the drug czar to decertify wasteful agency budget requests.**

The drug czar is required by law to decertify certain agency drug budget requests. Decertification is largely a symbolic gesture, but agencies generally comply. Congress should require the drug czar to decertify any agency budget request that fails to also provide funding for adequate research on the relative efficacy of its drug policies. It should also require the drug czar to decertify budget requests that ask for funding for wasteful or ineffective programs.

- **Reduce the federal prison population.**

The federal prison system is operating at 139 percent of capacity.<sup>126</sup> Roughly half of federal prisoners are incarcerated for drug law violations,<sup>127</sup> and most of those are low-level, nonviolent offenders.<sup>128</sup> Annual appropriations to the federal Bureau of Prisons is around \$6 billion. Billions of dollars could be saved by reducing the federal prison population by charging fewer people in federal court, reducing the pre-trial detention population, providing early-release options for low-risk offenders, or diverting people to treatment or other alternatives to incarceration. Cutting the federal prison population in half would save more than \$30 billion over ten years.

- **Alter the asset forfeiture equitable sharing ratio and shift where the money goes.**

Civil asset forfeiture is a process that allows law enforcement officers to seize and keep property without its owner ever being convicted or even charged with a crime. Some states have laws restricting the ability of local law enforcement officers to keep property seized in civil asset forfeitures. Local law enforcement can circumvent the few restraints on seizures by switching to a policy of federal equitable sharing, through which a local law enforcement organization turns over the seized assets to the federal government. These assets are then subject to federal, rather than state law. Under current practice, as much as 80 percent of the seized assets are returned to the local law enforcement agency. With a readjustment of the distribution of these assets, such as a truly equitable 50-50 split, distribution between the

federal government and local law enforcement would simultaneously reduce the incentive for the abuse of this policy and increase the federal government's return from seizures.

## Further Reading

**David Boyum, and Peter Reuter, *An Analytic Assessment of U.S. Drug Policy*, (Washington, DC: AEI Press, 2005).**

Using a market framework, this book evaluates law enforcement measures employed to tackle America's drug problems, looking at the impact these policies have on effectively reducing drug use.

**Miron, Jeffrey A., and Katherine Waldo. Cato Institute, "The Budgetary Impact of Ending Drug Prohibition." September 2010.**

This report by a Harvard Economics professor offers a conservative estimation of the likely economic impact of repealing drug prohibition in the U.S. Miron estimated that U.S. expenditures on prohibition enforcement – in terms of police, courts and corrections – total roughly *\$41.3 billion annually*, while annual marijuana tax revenues alone would total approximately \$8.7 billion nationally.

**Caulkins, J., Reuter, P. Iguchi, M.Y. and Chiesa, J. How Goes the "War on drugs"? An Assessment of US Problems and Policy (Santa Monica, RAND: 2005)**  
[http://www.rand.org/pubs/occasional\\_papers/2005/RAND\\_OP121.pdf](http://www.rand.org/pubs/occasional_papers/2005/RAND_OP121.pdf)

Presents a concise and objective assessment of the U.S. war on drugs, including its limited successes, its myriad failures and collateral consequences, as well as possible alternative policies.

## Enforcement

- **Establish an interagency taskforce to analyze enforcement options.**

The federal government should establish a taskforce or committee of experts in defense, law enforcement, treatment, harm reduction and other areas to analyze both the benefits and negative consequences of various enforcement options. Each time a drug law is enforced, there are negative consequences – such as increased prison population, racial disparities, etc. Moreover, arresting people who sell drugs and disrupting drug networks also has consequences – such as increased violence,<sup>129</sup> destabilization,<sup>130</sup> and in some cases increased drug-related harms.<sup>131</sup>

An interagency taskforce could describe and weigh the pros and cons of increased drug war spending in Mexico, eradication of poppy crops in Afghanistan, or disruption of drug networks in certain areas of the U.S. Such oversight would help ensure that enforcement measures do more good than harm.

- **Reform the High Intensity Drug Trafficking Areas (HIDTA) program.**

Congress established the HIDTA program in 1988 to disrupt major drug trafficking networks. It has grown from five original HIDTAs to covering 60 percent of the U.S. population. HIDTAs now exist in 45 states<sup>132</sup> – defeating the purpose of the program, which was to focus resources on top priority areas.

Congress should establish a grading system by which HIDTA programs are evaluated on how well they identify, infiltrate and disrupt major crime networks. They should lose points for wasting resources on low-level offenders and gain points for focusing on major criminals. This would ensure that HIDTA funding is prioritized effectively and not spread too thin.

Congress should also eliminate the statutory ban preventing HIDTAs from spending money on drug treatment. The Anti-Drug Abuse Act of 1988, which created the Office of National Drug Control Policy and the HIDTA program, allowed each regional HIDTA to decide how best to meet the needs of its region, including allowing the use of HIDTA funding on drug treatment.<sup>133</sup> Between FY1996 and FY1998 alone, approximately 6 percent of total HIDTA funds were

spent on treatment and prevention programs.<sup>134</sup> However, in the 1998 reauthorization of ONDCP, Congress banned the use of HIDTA funds for “the establishment or expansion of drug treatment programs.”<sup>135</sup> This undermines program flexibility and blocks access to treatment.

Finally, a strong case can be made that HIDTA should be eliminated or moved to the Justice Department and merged with the Organized Crime and Drug Enforcement Task Force as the Bush Administration proposed.<sup>136</sup>

- **Increase reporting requirements for the Department of Justice.**

Congress should require the Attorney General to report to Congress on the productivity of the Department of Justice in the prosecution of drug law violations. The report should break down federal drug arrests and prosecutions by level of offense, by drug, by each component of the department involved, and by each federal district. The report should also include any directives and programs of the Attorney General to increase the number of prosecutions of high-level traffickers and reduce the number of prosecutions of low-level prosecutions.

- **Raise threshold amounts for what constitutes a federal drug law violation.**

Although Congress intended federal prosecutors to apply mandatory minimum drug sentences to “kingpins” and high-level traffickers, most federal prisoners are serving time for low quantity levels. Raising the threshold amount of drugs it takes to constitute a federal drug law violation, or at least raising the amount it takes to trigger a mandatory minimum sentence, would encourage federal law enforcement agencies to focus on major drug traffickers that cross state or national boundaries – leaving the investigation, arrest and prosecution of low-level offenders to states.<sup>137</sup> Restoring judicial discretion in the length and type of sentence imposed would also save countless taxpayer dollars, as it costs roughly \$25,000 or more annually to incarcerate an individual,<sup>138</sup> compared to \$7,415 for outpatient methadone treatment, \$3,840 for residential drug treatment, or \$1,433 for outpatient, non-methadone treatment annually.<sup>139</sup>

- **Reform or eliminate federal law enforcement block grants to the states.**

Federal law enforcement grant programs, such as the Byrne-JAG program, are fueling over-incarceration at the local level, especially when they fund regional narcotics task forces that focus on low-level drug arrests.<sup>140</sup> These federal subsidies distort local law enforcement priorities and often leave state governments worse off financially.<sup>141</sup> Moreover, because many regional narcotics taskforces are funded through a combination of federal grant money and asset forfeiture, they can be unaccountable to local elected officials and prone to corruption and civil rights abuses.<sup>142</sup>

Congress should require local law enforcement agencies receiving federal money to document their arrests, traffic stops and searches by drug quantity, race and ethnicity so the Justice Department can identify and stop racial profiling. Congress should also require task forces to prioritize violent crime and major traffickers, not low-level, nonviolent drug offenders. Finally, given the abundant evidence that the Byrne-JAG and other federal law enforcement grant programs have no impact on overall crime rates,<sup>143</sup> Congress should consider eliminating the programs to save hundreds of millions of dollars a year.

- **Take evidence-based steps to reduce driving under the influence of marijuana and other drugs.**

Congress should invest in the research and development of a roadside impairment testing device that will help law enforcement better identify drivers impaired by alcohol, illicit drugs, and prescription substances. It should also facilitate Drug Recognition Expert (DRE) training for police and other law enforcement personnel, and create and develop better field impairment testing standards. Perhaps most importantly, Congress should task the National Academy of Sciences with determining authoritative blood impairment standards for substances other than alcohol. These standards should not be *per se* standards, but should serve as guidelines for law enforcement personnel and prosecutors to better identify and punish those who drive while under the influence of drugs.<sup>144</sup>

Congress should avoid enacting – or encouraging states to enact – arbitrary, non-scientific DUI *per se* standards, such as those that define any driver who possesses even trace levels of active drugs or inactive drug metabolites

as criminally impaired. In the case of marijuana, such trace levels of metabolites may be present on standard drug screens for days or even weeks after past consumption – long after any impairment has worn off.<sup>145</sup>

Finally, Congress should facilitate educational or public service campaigns discouraging drugged driving behavior. This campaign should particularly be aimed toward the younger driving population – age 16 to 25 – as this group is most likely to use illicit substances, especially marijuana, and report having operated a motor vehicle shortly after consuming these substances.

- **Prohibit federal agencies from undermining state marijuana laws.**

As of May 2013, eighteen states and the District of Columbia have legalized marijuana for medical use; two states (Colorado and Washington) have legalized marijuana for personal use. Yet possession of even a small amount of marijuana for any reason remains a federal crime. The Obama administration issued guidelines to federal prosecutors in 2009 urging them not to waste resources prosecuting people in compliance with their state’s medical marijuana law,<sup>146</sup> but the DEA continues to target medical marijuana dispensaries. As a result, both patients and caregivers live under legal uncertainty. The Justice Department has brought (or threatened to bring) asset forfeiture cases against innocent landlords who rent space to medical marijuana dispensaries,<sup>147</sup> the Treasury Department has pressured banking institutions to terminate business relationships with medical marijuana providers, the IRS has ruled that medical marijuana providers compliant with state law cannot deduct standard business expenses on their tax returns allowed by any other company,<sup>148, 149</sup> and the BATF has threatened to subject medical marijuana patients who own a firearm to ten years in federal prison.<sup>150</sup> With more states on the verge of legally regulating marijuana for medical or personal use, Congress should pass legislation that exempts people in compliance with their state’s marijuana law from federal arrest, prosecution and forfeiture. It should rewrite banking, tax and other rules to accommodate entities legal under state law.

- **Repeal the federal prohibition on hemp and let states set their own policy.**

Although it has no intoxicating properties whatsoever, industrial hemp is currently included in the definition of

marijuana under the Controlled Substances Act (CSA). While they come from related plants,<sup>151</sup> marijuana cultivated for psychoactive properties contains between 3 and 10 percent of the active ingredient tetrahydrocannabinol (THC). Industrial hemp is defined as having a concentration of not more than .3 percent – meaning it cannot produce an intoxicating effect.<sup>152</sup>

Industrial hemp prohibition inhibits American agricultural industry, as farmers are unable to profit from the millions of dollars' worth of hemp products that are sold in the United States annually. In Canada, one of the world's leading hemp producers alongside China and Europe, farmers report net profits of up to \$250 per acre, making it among the nation's most profitable crops.<sup>153</sup> This puts the value of industrial hemp on par with corn, which nets more than \$200 per acre in the United States.<sup>154</sup>

Manufacturers are forced to import a variety of industrial hemp products made outside the United States, including seed, oil and fiber, for the production of numerous legal goods sold domestically.<sup>155</sup> Available trade statistics estimate the value of these imports was \$10.5 million in 2010.<sup>156</sup> Importing industrial hemp products also subjects manufacturers to costly tariffs and other import fees. The hemp industry has grown rapidly over the past ten years, with food and fiber uses increasing dramatically.<sup>157</sup> In 2011, the domestic retail market for industrial hemp products was estimated at between \$350 and \$450 million.<sup>158</sup> Industrial hemp is used as a natural fiber in everything from clothing and textiles to automotive composites.<sup>159</sup> It is also an ingredient in many food products. Industrial hemp has long been a common ingredient in lotions, lip balms, conditioners, shampoos, soaps and shaving products.<sup>160</sup> In fact, industrial hemp was a vital agricultural product for America from colonial times through the Second World War.<sup>161</sup>

Currently, industrial hemp cultivation and production is legal in roughly 30 countries.<sup>162</sup> According to a 2007 Congressional Research Service report, "The United States is the only developed nation in which industrial hemp is not an established crop."<sup>163</sup> Several states<sup>164</sup> have removed barriers to the cultivation and research of industrial hemp. Unfortunately, the industry in these states continues to be hampered by federal prohibition, putting American farmers and manufacturers at a global disadvantage. Congress should reform the CSA and repeal federal hemp prohibition, allowing states to

decide for themselves whether to permit hemp cultivation.

- **Eliminate federal possession and paraphernalia laws.**

Despite the bipartisan consensus that drug use should be treated primarily as a health issue, rather than as a criminal justice issue, federal law still fails to reflect this. Moreover, federal law enforcement should focus on major crimes that cross state or international lines, not low-level offenses such as possession for personal use. Local and state governments are more than capable of deciding for themselves whether people who use drugs should be criminalized, helped or left alone.

## Further Reading

**Caulkins, Jonathan P., and Peter Reuter. "How Drug Enforcement Affects Drug Prices." *Crime and Justice* 39, no. 1 (2010): 213-71.**

Despite increased drug enforcement – and a significantly increased risk of arrest and incarceration for drug users and sellers, this article shows that drug prices have continued to decline over the past several decades.

**Williams, Marian, Jefferson Holcomb, Tomislav Kovandzic, Scott Bullock, "Policing for Profit: The Abuse of Civil Asset Forfeiture", Institute for Justice (2010).**

This report explains civil asset forfeiture and various abuses of it and rates states based on the level of abusiveness of the process in their state. It lays out recommendations for federal reform.

### Marijuana

**Congressional Research Service, *State Legalization of Recreational Marijuana: Selected Legal Issues*, <http://www.fas.org/sgp/crs/misc/R43034.pdf>.**

Congressional Research Service report that provides an overview of marijuana regulation in Washington (Initiative-502) and Colorado (Amendment 64), including the federal preemption and international treaty issues these state initiatives raise and possible responses of the federal government to the initiatives.

**Janet E. Joy, Stanley J. Watson, Jr., and John A. Benson, Jr., "Marijuana and Medicine: Assessing the Science Base," Division of Neuroscience and Behavioral Research, Institute of Medicine (1999).**

Commissioned by the White House, this report by the Institute of Medicine of the National Academy of Sciences evaluated the scientific data then available with respect to potential benefits of medical marijuana.

**California Center for Medicinal Cannabis Research, Report to the Legislature and Governor of the State of California presenting findings pursuant to SB847 which created the CMCR and provided state funding (2010).**

This is the final report of the University of California Center for Medicinal Cannabis Research, completed after a decade of randomized, double-blind, placebo-controlled clinical trials on the medical utility of inhaled marijuana, concluding that marijuana should be a "first line treatment" for patients with painful neuropathy and other serious and debilitating symptoms, who often do not respond to other available medications.

**Igor Grant et al., "Medical Marijuana: Clearing Away the Smoke," *The Open Neurology Journal* 6 (2012): 24; 18–25. doi:10.2174/1874205X01206010018.**

Another recent, authoritative review article summarizing the state of the research indicating smoked marijuana reduces symptoms of chronic/neuropathic pain, spasticity associated with multiple sclerosis, and other conditions – and does so with an acceptable safety profile. The article recommends that doctors be allowed to weigh the benefits against risks of medical marijuana therapy – just as they do with any other medicine, writing: "The classification of marijuana as a Schedule I drug as well as the continuing controversy as to whether or not cannabis is of medical value are obstacles to medical progress in this area. Based on evidence currently available the Schedule I classification is not tenable; it is not accurate that cannabis has no medical value, or that information on safety is lacking."

**Kepple, Nancy J., and Bridget Freisthler. "Exploring the Ecological Association Between Crime and Medical Marijuana Dispensaries." *Journal of Studies on Alcohol & Drugs*. 73, no. 4 (July 2012): 523-530.**

This study examines whether density of medical marijuana dispensaries is associated with increased violent or property crime in surrounding areas.

**Sam Harper et al, "Do Medical Marijuana Laws Increase Marijuana Use? Replication Study and Extension," *Annals of Epidemiology*. 22, 3(2012): 207-212.**

A recent research article replicates studies to establish whether medical marijuana laws lead to increased adolescent use of marijuana. Authors conclude, "Difference-in-differences estimates suggested that passing MMLs (medical marijuana laws) decreased past-month use among adolescents ... and had no discernible effect on the perceived riskiness of monthly use. ... [These] estimates suggest that reported adolescent marijuana use may actually decrease following the passing of medical marijuana laws."

**King, Ryan S., and Marc Mauer. *The Sentencing Project, "The War on Marijuana: The Transformation of the War on Drugs in the 1990s."* May 2005.**

To provide a framework for assessing the role of marijuana enforcement in the criminal justice system, the authors conducted a national analysis of marijuana offenders from 1990-2002, including an assessment of trends in arrest, sentencing, and incarceration, along with an evaluation of the impact of these developments on marijuana price and availability, and the use of crime control resources.

**Armentano, P. "Cannabis and Psychomotor Performance: A Rational Review of the Evidence and Implications for Public Policy." *Drug Test Anal* 5, no. 1 (Jan 2013): 52-6.**

Overview of the evidence on marijuana and impairment, concluding that, while marijuana clearly produces impairment, it does so to a far lesser degree than alcohol.



**Simons-Morton, B., W. Pickett, W. Boyce, T. F. ter Bogt, and W. Vollebergh. "Cross-National Comparison of Adolescent Drinking and Cannabis Use in the United States, Canada, and the Netherlands." *Int J Drug Policy* 21, no. 1 (Jan 2010): 64-9.**

A study comparing rates of teenage drinking and marijuana use in the Netherlands and U.S. found no difference in teen marijuana use rates, concluding: "Based on these findings, the case for strict laws and policies is considerably weaker for marijuana than for alcohol."

**Single, E. (1989). The Impact of Marijuana Decriminalization: An Update. *Journal of Public Health* 10: 456-466.**

Literature review and analysis of previously published studies, concluding: "In sum, 'decriminalization' laws in the U.S. were much less radical than their name implies. They merely involved the elimination of jail terms for first offenders, which had already been an unusual sentence for most cases. The so-called 'decriminalization' of marijuana does not appear to have had a major impact on rates of use, as many feared that it might have. On the other hand, it has resulted in substantial savings to Drug enforcement..." (p. 462).

**Nguyen, H., and P. Reuter. "How Risky Is Marijuana Possession? Considering the Role of Age, Race, and Gender." *Crime & Delinquency* 58, no. 6 (2012): 879-910.**

Study of the comparative risk of being arrested for marijuana possession, finding that young people and people of color are far more likely to be arrested.

**Lucas, Philippe, Amanda Reiman, Mitch Earleywine, Stephanie K. McGowan, Megan Oleson, Michael P. Coward, and Brian Thomas. "Cannabis as a Substitute for Alcohol and Other Drugs: A Dispensary-Based Survey of Substitution Effect in Canadian Medical Cannabis Patients." *Addiction Research & Theory* (2012): 1-8.**

A newly published article surveying medical marijuana patients in British Columbia, Canada, found that fully three-quarters of respondents report substituting "cannabis for at least one other substance," with more than 41 percent saying they use marijuana as a substitute for alcohol, more than 36 percent using marijuana as a

substitute for another illicit substance, over two-thirds (67.8 percent) using marijuana as a substitute for prescription drugs. According to the survey, "The three main reasons cited for cannabis-related substitution are "less withdrawal" (67.7%), "fewer side-effects" (60.4%), and "better symptom management" suggesting that many patients may have already identified cannabis as an effective and potentially safer adjunct or alternative to their prescription drug regimen." The study concluded that "in consideration of the growing number of studies with similar findings and the credible biological mechanisms behind these results, randomized clinical trials on cannabis substitution for problematic substance use appear justified."

**Abrams, Donald et al. "Cannabinoid-Opioid interaction in chronic pain," *Clinical Pharmacology & Therapeutics* (2011); 90 6, 844-851.**

Important recent study in the *Journal of the American Medical Association* found that not only is medical marijuana effective for treating chronic and intractable pain, but inhaled marijuana has also been found to complement prescription opioid pain medicines well, enhancing the efficacy of (and safely interacting with) these more powerful narcotic medications.

#### *Health Harms of Criminalization*

**The Global Commission on Drug Policy, "The War on Drugs and HIV/AIDS: How the Criminalization of Drug Use Fuels the Global Pandemic." 2012.**

This report describes the ways that prohibitionist drug policies fuel the spread of HIV/AIDS, as enforcement practices force users away from public health services. The report also describes the connection between mass incarceration and the spread of the disease, as high rates of people with or at risk for infection housed in correctional facilities are associated with HIV outbreaks.

**Friedman, Samuel R., Enrique R. Pouget, Sudip Chatterjee, Charles M. Cleland, Barbara Tempalski, Joanne E. Brady, and Hannah L. F. Cooper. "Drug Arrests and Injection Drug Deterrence." *American Journal of Public Health* 101, no. 2 (2011/02/01 2011): 344-49.**

Study finding that drug arrests – rather than preventing injection drug use, lead to increased risky practices associated with drug injecting.

**Justice Policy Institute, "Rethinking the Blues: How We Police in the U.S. and at What Cost." May 2012.**

This report examines the confluence of factors that have led to an increase in law enforcement expenditures in the last 20 years. These investments have resulted in increased arrests despite dropping crime rates. The authors examine whether these costs fulfill the promise of keeping communities safer and alternative models of law enforcement resource distribution.

**David M. Kennedy and Sue-Lin Wong, "The High Point Drug Market Intervention Strategy," Center for Crime Prevention and Control John Jay College of Criminal Justice.**

This report highlights the Drug Market Intervention Strategy employed in High Point, North Carolina and since adopted by other communities. The authors explore whether police can succeed in closing down open community drug markets and reducing violence associated with such markets by involving community leaders and applying focused law enforcement pressure on key drug market actors.

**Balko, Radley. The Cato Institute, "Overkill: The Rise of Paramilitary Police Raids in America." 2006.**

This paper offers a historical overview of the militarization of civilian law enforcement over the last 25 years, including the rise of use of paramilitary units to perform routine police work, especially to serve narcotics warrants to nonviolent offenders. Balko also presents a catalogue of abuses, mistaken raids, and dozens of needless deaths and injuries as a result of these practices.

**Werb, Dan, Greg Rowell, Gordon Guyatt, Thomas Kerr, Julio Montaner, and Evan Wood. "Effect of Drug Law Enforcement on Drug Market Violence: A Systematic Review." *International Journal of Drug Policy* 22, no. 2 (2011): 87-94.**

This systematic review finds that increased drug law enforcement aimed at disrupting drug markets is unlikely to diminish the violence associated those markets. "[T]he existing evidence base suggests that gun violence and high homicide rates may be an inevitable consequence of drug prohibition and that disrupting drug markets can paradoxically increase violence. In this context, and since drug prohibition has not meaningfully

reduced drug supply, alternative regulatory models will be required if drug supply and drug market violence are to be meaningfully reduced."

**Natapoff, Alexandra. *Snitching: Criminal Informants and the Erosion of American Justice*. New York, NY: New York University Press, 2002.**

This book looks at the growing role of confidential informants in police investigations, paying particular attention to the impact that the lack of judicial or public scrutiny has on exacerbating existing problems with transparency and accountability in the criminal process. The effect that extensive use of confidential informants has on low-income, high-crime communities is also examined, particularly with regard to the relationship between residents and law enforcement.

**Williams, Marian R, Jefferson E. Holcomb, Tomislav V. Kovandzic, and Scott Bullock. Institute for Justice, "Policing for Profit." March 2011.**

This report is the most comprehensive national study to examine the use and abuse of civil asset forfeiture and the first to grade the civil forfeiture laws of all 50 states and the federal government.

**Banta-Green, C.J., P.C. Kuszler, P.O. Coffin, and J.A. Schoeppe. Alcohol and Drug Abuse Institute, University of Washington "Washington's 911 Good Samaritan Law – Initial Evaluation Results." November 2011.**

This info brief offers an initial evaluation of Washington State's Good Samaritan Law, which provides immunity from prosecution for drug possession charges to overdose victims and bystanders who seek aid in an overdose event.

**Felbab-Brown, V. "Focused Deterrence, Selective Targeting, Drug Trafficking and Organized Crime: Concepts and Practicalities." International Drug Policy Consortium, 2013.**

Recent briefing paper on smarter law enforcement options for drug markets. Paper highlights the "focused deterrence" approach; in which law enforcement target the most violent traffickers – rather than all traffickers, per se – in order to make it more risky and costly and less profitable for traffickers to engage in violence, in the hope of changing the behavior of all participants in the drug markets towards less violence.

## Foreign Policy

- **Eliminate funding for fumigation and forced manual eradication in Colombia.**

Since 2001, the U.S. has spent more than \$8 billion on Plan Colombia, a significant portion of which was dedicated to aerial fumigation of coca crops and other eradication and anti-trafficking strategies.<sup>165</sup> Conflating counterinsurgency and counternarcotics operations creates fundamental difficulties in establishing clear metrics and goals – and may complicate situations where the goals may conflict. Moreover, fumigation and forced eradication have alienated economically disadvantaged farmers by taking away their only source of livelihood, exacerbated anti-American political forces in the region, and inflicted environmental damage on a country renowned for its rich biodiversity. Even where coca cultivation has been reduced in one country or region, these activities have simply been pushed into another country or region – a phenomenon known as the “balloon effect”.<sup>166</sup> It would be far more cost-effective to shift funding for eradication to domestic drug treatment instead.<sup>167</sup>

- **Lift the ban on trade for coca products.**

The leaves of the coca bush have been used for thousands of years by the indigenous people of the Andean region – making zero-tolerance eradication efforts not just an economic waste but arguably cultural suppression. Research around the world, including a 1996 study by the World Health Organization (WHO), has concluded that coca has medical value and little potential for abuse.<sup>168</sup> The nutritious leaf, containing only 1 percent of the alkaloid used to make cocaine,<sup>169</sup> is typically chewed or brewed in a tea, and often used to minimize the effects of living at very high altitudes.

The 1961 United Nations Single Convention on Narcotic Drugs, however, bans coca production, manufacture and trade for export.<sup>170</sup> This policy has led to a thriving illicit cocaine trade while the market for safe, low-potency coca-based products – like tea, candies, cookies, soaps, cooking oil, soft drinks and toothpaste – has struggled to survive. Allowing the importation of coca-based products into the U.S. and working to lift the U.N. ban would provide a global market for coca products, similar to the global market for coffee beans (which has similar effects as coca), and could provide indigenous populations with prosperous

alternatives to selling coca to traffickers who will use it to make cocaine. Bolivia recently left the 1961 U.N. Convention on Narcotics Drugs and subsequently rejoined the treaty in 2013 with a caveat noting that coca leaves will be legal within Bolivia.<sup>171</sup> The U.S. should allow the importation of Bolivian coca-based products.

- **Overhaul Merida funding.**

In 2008, the U.S. made a multi-year commitment to Mexico of hundreds of millions of dollars in drug war aid, known as the Merida Initiative. According to multiple reports by the Government Accountability Office (GAO), tracking Merida funding is extremely difficult because each of the three state bureaus that manage Merida use a different tracking method.<sup>172</sup> Difficulty in tracking funds is only one of many bureaucratic, implemental and procedural problems from which the Merida initiative suffers.<sup>173</sup> Other problems include insufficient numbers of staff, changes in governments, and funding allocation and availability.<sup>174</sup> In addition, only 15 percent of Merida Initiative monies are linked to any sort of human rights performance standards – yet the Mexican security forces receiving these monies have committed widespread, well-documented and grievous human rights violations in their pursuit of drug trafficking organizations, not unlike what has occurred in Colombia.<sup>175</sup> Moreover, supply-side eradication efforts almost always fail to reduce the supply of drugs or rates of drug use.<sup>176</sup> Merida funding should be shifted to drug treatment in the United States, which has proven far more cost-effective at reducing drug-related problems.<sup>177</sup> If Congress does decide to continue funding Merida it should establish system-wide metrics that move beyond measuring arrests and seizures to measuring the building of institutional capacity, and then shift overall funding towards institutional infrastructure (improving court systems, reducing police corruption, and better institutionalizing the rule of law), which would do more to reduce violence and corruption in the long-term than filling Mexican prisons with thousands of low-level drug offenders.<sup>178</sup>

## Further Reading

**Nadelmann, Ethan. *Cops across Borders: The Internationalization of U.S. Law Enforcement*. University Park, PA: Pennsylvania State University Press, 1993.**

Nadelmann details the history of how U.S. law enforcement spread throughout the world, especially after WWII. The book also explains how the Drug Enforcement Agency helped modernize European criminal justice systems and how the DEA copes with corruption in Latin America and the Caribbean.

**Latin American Commission on Drugs and Democracy, "Drugs and Democracy: Toward a Paradigm Shift." 2011.**

In the midst of the widespread violence and organized crime associated with the narcotics trade plaguing Latin American nations, this report calls for policymakers to open the debate on prohibitionist drug policies by acknowledging that current strategies have been ineffective. The authors call for an exploration of alternative approaches to reducing the harms associated with illegal narcotics to individuals and communities.

**Peter, Andreas, and Ethan Nadelmann. *Policing the Globe: Criminalization and Crime Control in International Relations*. New York: Oxford University Press, 2006.**

In this book, Andreas and Nadelmann explain how policing and prohibitions have extended across borders and challenge that notion that this growth is a natural and predictable response to increasing transnational crime in an age of globalization. The authors argue that the internationalization of policing is not only used for economic and political gain, but also reflects the imposition of Western morals on the rest of the world.

**Global Commission on Drug Policy, "Report of the Global Commission on Drug Policy." June 2011.**

A panel of former heads of state, scholars, and other policy experts – including former U.S. Secretary of State George Schultz, former Chairman of the U.S. Federal Reserve Paul Volcker, and the former heads of state of Brazil, Colombia, Greece, Mexico and Switzerland – examine the adverse impacts of the 40-year War on Drugs, calling for a paradigm shift in drug policy based on evidence-based investments in demand and harm

reduction.

**Costa, Antonio Maria. "Making Drug Control "Fit for Purpose": Building on the UNGASS Decade." Vienna: Commission on Narcotic Drugs, 2008.**

Statement of Antonio Maria Costa, former head of UNODC, that the global prohibition regime has not just failed to achieve its stated objectives, but has also created many serious, negative "unintended consequences, central among them an immense and violent black market." Costa described another "unintended consequence" of prohibition – a process of geographical displacement of drug trafficking routes and areas of drug production, writing, "It is often called the balloon effect because squeezing (by tighter controls) one place produces a swelling (namely, an increase) in another place, though it may well be accompanied by an overall reduction. This can be historically documented over the last half century, in so many theatres around the world."

**Bagley, Bruce. "Drug Trafficking and Organized Crime in the Americas." Woodrow Wilson International Center for Scholars, 2012.**

Recent briefing paper detailing the failure of anti-drug efforts in the region as a major cause of current levels of violence in Mexico and other countries, with historical background and recommendations.

**Shirk, David A. *The Drug War in Mexico: Confronting a Shared Threat*. Council on Foreign Relations Press, 2011.**

Report by director of the Trans-Border Institute, detailing the current security crisis in Mexico and recommending that "the federal government should permit states to legalize the production, sale, taxation, and consumption of marijuana," as part of a comprehensive strategy to aid Mexico.

Demombynes, Gabriel. "Drug Trafficking and Violence in Central America and Beyond." *Background paper to the world development report 2011*. (2011)  
<http://documents.worldbank.org/curated/en/2011/04/14266056/drug-trafficking-violence-central-america-beyond>

This background paper for the World Bank's World Development Report (WDR) on Conflict and Development 2011 examines the relationship between narcotics trafficking and violence in Central America, finding a strong association between trafficking and homicide rates. The author attributes this to competition among the drug traffickers and enforcement efforts to disrupt markets that ultimately increase violence. The report proposes regional and international reforms in addition to new national strategies.

Rydell, C Peter, and Susan S Everingham. *Controlling Cocaine: Supply Versus Demand Programs*. Vol. 331: Rand Corporation, 1994.

This seminal study found that drug treatment and demand reduction is far more cost-effective than supply-reduction policies like eradication, incarceration and interdiction.

Keefner, Philip, Norman Loayza, and Rodrigo R Soares. *Innocent Bystanders: Developing Countries and the War on Drugs* (World Bank, 2010).

This edited anthology analyzes – from the perspective of developing nations—the costs and benefits of prohibitionist policies – imposed by wealthy nations – on the economic development and political stability of developed countries. The volume concludes that there is no justification, from a developing country perspective – to maintain the prohibitionist status quo.

National Research Council, *Understanding the Demand for Illegal Drugs*. National Academy Press, 2010.

Major report by the National Research Council of the National Academies of Science to better understand illicit drug demand, which “despite continued heavy investment in drug control... continues to be substantial.”

Sidney Weintraub and Duncan Wood, Center for Strategic and International Studies (CSIS), Cooperative Mexican-US Antinarcotics Efforts (2010), <http://csis.org/blog/simon-chair-releases-mexican-us-antinarcotics-report>.

Report providing an overview of prohibition-related violence in Mexico, with recommendations to improve US-Mexico cooperation at fighting organized crime, including exploring regulatory options for drugs like marijuana.

Room, Robin and Peter Reuter, “How well do international drug conventions protect public health?” *Lancet* January 2012; 379: 84-91.

Article summarizing the failings of the international drug control system to curtail global drug production. It outlines various strategies that countries can take to pursue alternatives within and outside of the current system.

Carpenter, Ted Galen. *The Fire Next Door: Mexico's Drug Violence and the Danger to America*. Cato Institute, 2012.

This recent book details the extreme violence in Mexico – only made worse by the Merida Initiative – and recommends that the only solution is for the U.S. to “de-fund” the Mexican drug cartels by abandoning its failed prohibitionist drug policies.

Youngers, Coletta A. and Eileen Rosin, eds. *Drugs and Democracy in Latin America: The Impact of U.S. Policy*. Lynne Rienner Publishers, 2004.

Undertaken by the Washington Office on Latin America (WOLA), this book provides a systematic, region-wide analysis of the devastating consequences of the U.S. drug war in Latin America.

## Sentencing and Reentry

- **Repeal federal mandatory minimum sentencing.**<sup>179</sup>

In 1986 Congress enacted mandatory minimum sentencing laws, which force judges to deliver fixed – and usually very harsh – sentences to individuals convicted of a drug law violation. These laws completely ignore any mitigating factors such as culpability, or whether or not the offense was nonviolent. The result has been an explosion in the U.S. prison population,<sup>180</sup> a rapid expansion in racial disparities in the criminal justice system,<sup>181</sup> and an enormous price tag for federal taxpayers.<sup>182</sup> One study even suggested that mandatory minimum sentencing has led to significant increases in cocaine and heroin purity – and, as a result, to increased risk of overdose.<sup>183</sup> Although mandatory minimums were enacted to facilitate harsh punishments for high-level drug offenders, in practice the result has been the opposite.

A 2007 report to Congress, for instance, found that only 7.6 percent of federal powder cocaine prosecutions and 1.8 percent of federal crack cocaine prosecutions are against high-level traffickers.<sup>184</sup> A 2011 report to Congress produced similar findings: more than two-thirds of people convicted of federal drug offenses were low or mid-level offenders, and only 10 percent were “high-level” suppliers.<sup>185</sup> This is because the most culpable defendants are also the defendants who are in the best position to provide prosecutors with enough information to obtain sentence reductions – the only way to reduce a mandatory sentence. Low-level offenders often end up serving longer sentences because they have little or no information to provide the government. Eliminating or reforming mandatory minimums would return discretion to judges and ensure that more cost-effective measures, such as drug treatment, are available for low-level offenders.

- **Reform federal conspiracy laws.**

Under federal law an individual involved in a conspiracy to sell or distribute drugs can be sentenced not just for offenses they committed, but also for actions committed by others in the operation. This allows people to be punished for law violations in which they had no direct involvement or even knowledge, which in many cases allows low-level offenders to be sentenced for the offenses of high-level offenders. Moreover, the

uncorroborated testimony of another person is typically a sufficient basis on which to establish the essential elements of conspiracy, allowing people to be convicted for so-called “ghost drugs,” whereby someone testifies that another person committed a drug law violation sometime in the past but there is no real evidence that the person ever possessed or distributed drugs.

Reforms for Congress to consider include basing sentences on an individual’s role in the conspiracy rather than the weight of drugs involved, requiring that actual drugs be seized, weighed and tested for an individual to be convicted, and requiring that it be proven that the individual knowingly, actively and voluntarily engaged in an active part of a drug operation.

- **Reform drug courts and other treatment diversion programs.**

Treatment-instead-of-incarceration programs can significantly shrink the size and scope of the criminal justice system by diverting people to treatment and reducing recidivism. But unless they are implemented with care, they can also widen the criminal justice net and do more harm than good to people with substance misuse problems and their families.<sup>186</sup> For example, to be accepted into a drug court, many defendants waive their due process rights or are forced to plead guilty.<sup>187</sup> Defendants who relapse and use drugs again – a normal and anticipated aspect of recovery – can receive a prison sentence far longer than they would have received had they initially accepted a plea bargain sentence instead of treatment.<sup>188</sup> Moreover, clinical decisions about what treatment modality is appropriate for any given individual are often made by drug court judges – who often lack appropriate training or experience – rather than substance abuse or mental health professionals, resulting in inappropriate or substandard care.<sup>189</sup> Because they lack expertise in the treatment field, many drug court judges prohibit people from using methadone, buprenorphine or other effective treatments – making it very likely that those going through drug court will relapse and be sent to prison.<sup>190</sup>

The drug court system is also inconsistent, with each court operating under the rules and practices imposed by a particular judge and drug court team. As a consequence, drug courts vary widely, even within jurisdictions, in terms of the clients they accept, the treatment they offer, the sanctions they impose, and their requirements for successful completion.<sup>191</sup> Evidence shows that courts often “cherry-pick” clients

who seem most likely to succeed, thereby denying help to those who need it the most.<sup>192</sup> Furthermore, programs often rely on jail sanctions as a punishment for non-compliance, which have been linked with a higher likelihood of re-arrest and a lower probability of program completion.<sup>193</sup> And studies show that drug courts actually increase the number of individuals arrested and incarcerated for drug crimes.<sup>194</sup> Drug courts have also been found to be costly, serve relatively few clients because of their focus on drug possession offenses, and are no more effective than voluntary treatment.<sup>195</sup>

Drug courts receiving federal money should be required to allow the use of methadone, buprenorphine and other evidence-based replacement therapies. They should also be required to incorporate health measures – not simply abstinence – into program goals, so that people going through drug courts are rewarded for using less drugs, holding down a job, and improving their health, and are not punished simply for failing a drug test. Importantly, drug courts should be reserved for people charged with more serious offenses than merely drug possession, and should be designed to operate on a pre-plea, pre-adjudication basis. Congress should also fund pilot diversion programs that place treatment decisions within public health systems rather than the criminal justice system.<sup>196 197</sup>

- **Increase funding for the Second Chance Act.**

The Second Chance Act of 2007 authorizes Department of Justice grant programs to improve the treatment of inmates and to help offenders reenter communities after they have served their prison sentences. The Act also authorizes appropriations for Bureau of Prisons activities to prepare prisoners for successful reentry into the community. Extensive funding for these programs is needed to reduce recidivism and improve the lives of formerly incarcerated individuals. Nearly 700,000 people were released from state and federal prison in 2011 alone.<sup>198</sup>

- **Increase tax incentives for companies to hire formerly incarcerated people.**

Currently there are only two federal incentive programs available to employers who hire individuals with criminal histories: the Work Opportunity Tax Credit (WOTC) and the Federal Bonding Program. Under WOTC, employers who hire low-income people who have been convicted of a felony within one year of their conviction

or release from prison can reduce their federal income tax liability by up to \$2,400 per qualified new worker. To encourage more businesses to take advantage of this program, the tax incentives should be raised and the requirement that the individual's release must have occurred within the past year should be broadened.

The Bonding Program provides fidelity bonds of \$5,000 as protection for employers against theft or fraudulent actions of “at-risk” populations, including individuals with criminal records. These bonds are available at no cost for six months. Since they are provided free of charge, measures designed to increase awareness of the program and how to procure bonding would be useful.

- **Eliminate the federal provision that prohibits people with a felony drug conviction from receiving public assistance and food stamps.**

Individuals with a felony drug conviction are permanently prohibited from receiving Temporary Assistance to Needy Families (TANF) and food stamps, unless their state expressly opts out of the ban. This ban disproportionately affects women, punishes children, and denies a safety net to acutely vulnerable families. Denying basic needs such as food and housing can lead to a more difficult transition back into the community and may increase the likelihood of recidivism.<sup>199</sup> Fourteen states have fully opted out of the ban and 26 others (plus Washington, D.C.) have partially opted out, leaving only 10 states that have retained the full ban.<sup>200</sup> Congress should repeal the entire ban.<sup>201</sup>

- **Eliminate the federal provision that denies financial assistance and school loans to students convicted of drug law violations.**

Students who are enrolled in college at the time they are convicted of drug-related charges are rendered ineligible for federal loans, grants and work-study funds for one or two years for a first offense, and indefinitely for a second or third offense (depending on the circumstances). A student can lose aid for simple marijuana possession and similar infractions, yet individuals who commit violent offenses are not subject to any such penalties. Suspending federal aid to students deprives many of an education, hurting both them and society. Individuals with a bachelor's degree earn nearly twice as much as high school graduates with no college experience.<sup>202</sup> Since blacks and Latinos are disproportionately arrested and convicted for drug law violations<sup>203</sup> even though they use drugs at the same rate

as the general population,<sup>204</sup> minority students are more likely to be denied college aid and are at higher risk of suffering economic disadvantages. Congress should repeal the ban.

- **Restore access to Pell Grants for currently or formerly incarcerated individuals.**

The 1994 Violent Crime Control And Law Enforcement Act dismantled higher education in prison by eliminating eligibility for Pell Grants for those incarcerated in federal or state penal institutions (inmates incarcerated in local institutions are still eligible).<sup>205</sup> This was done despite overwhelming evidence that postsecondary education is a hugely successful and cost-effective method of preventing crime and recidivism.<sup>206</sup>

A 2011 report by the Council of State Governments (CSG) Justice Center highlighted the need to implement evidenced-based strategies to reduce recidivism, including providing education to those who are incarcerated.<sup>207</sup> A review by the Washington State Institute of Public Policy of more than 500 studies of correctional programs across the nation found that basic or postsecondary education programs reduce recidivism rates by 8.3 percent.<sup>208</sup>

- **Reform federal provisions prohibiting former drug offenders from accessing public housing, and prohibit public housing authorities from punishing entire families for the actions of one family member.**

Federal public housing law contains provisions that permit housing authorities to deny Section 8 and other federally-assisted housing to people who have been convicted of a drug law violation or who are engaging in drug-related activity.<sup>209</sup> Local housing authority policies are often highly restrictive, and individuals are routinely denied housing for a wide range of alleged drug-related activities that may not even involve a conviction. Public housing authorities are also permitted to evict an entire household if one or more members of the household have engaged in drug-related activity.<sup>210</sup> Federal law requires public housing authorities to bar those previously evicted from public housing for drug-related activity from re-applying for at least three years after the eviction.<sup>211</sup> In the absence of stable and affordable housing, individuals are at high risk of becoming homeless, which may put them at increased risk for recidivism and substance misuse.<sup>212</sup>

- **Eliminate federal licensing restrictions and encourage states to also do so.**

State licensure requirements vary, but generally contain both a competency and character component. Based on these factors, a felony conviction acts as a significant barrier to obtaining an occupational license.<sup>213</sup> And under federal law, a criminal conviction may disqualify an individual from obtaining employment or identifying credentials such as a license.<sup>214</sup> Governments at all levels should amend statutes that deny occupational licenses to those with a criminal conviction. At the very least, they should limit such prohibitions to offenses with a direct relationship to the occupation to be licensed.<sup>215</sup> Laws should also be amended to permit administrative agencies to consider mitigating factors in a felony conviction – such as pardons, rehabilitative efforts and the length of elapsed time between the offense and the license application.<sup>216</sup> Licensing provisions could also be incorporated into anti-discrimination statutes. For example, Wisconsin, Hawaii and New York have antidiscrimination statutes that prohibit employment and licensing restrictions based on criminal convictions.<sup>217</sup>

- **Eliminate discrimination against firearm owners who use marijuana or other drugs.**

Under federal law, anyone who uses marijuana or other illegal drugs is prohibited from possessing a firearm and can be subject to up to ten years in federal prison for doing so. In rare cases, people who abuse alcohol can be prohibited from owning a firearm but they are generally not. The Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) recently sent letters to firearm dealers in the state of Montana threatening to fine or prosecute people who sold firearms to cancer, AIDS and other medical marijuana patients, even though marijuana is legal for medical use in that state.<sup>218</sup> The agency also threatened to arrest medical marijuana patients who own firearms. This policy, which does not apply to patients who use any other doctor-recommended medicine, threatens the 2<sup>nd</sup> Amendment rights of tens of thousands of people in the 18 states that have legalized marijuana for medical use. While it may make sense to deprive certain individuals in certain instances of the right to own or otherwise possess a firearm, Congress should ensure that such policies are fair and consistent. In the same way people who use marijuana or other drugs should not be deprived of housing, school loans or other benefits allowed to people who misuse alcohol, they should not be subject to different firearms rules either.



- **Allow sealing of records and expungement of drug convictions.**

Individuals with a federal drug conviction face a wide spectrum of punitive policies that limit their access to employment opportunities, public housing, welfare benefits and student loans.<sup>219</sup> These collateral consequences persist long after completion of their sentence and pose substantial barriers to an individual's social and economic advancement.<sup>220</sup> For many of these people, a first arrest starts a tragic cycle of recidivism, as the stigmatization of a conviction and prison sentence denies them access to employment, housing and education upon release, pushing them into the illicit drug trade.<sup>221</sup>

Congress should require sealing of records for those participating in treatment diversion programs, and allow for arrest or conviction records to be expunged upon successful completion of the diversion program. Further, because a drug conviction should not, in effect, translate into a life sentence, those who commit a nonviolent federal drug offense should become eligible to have their records expunged after several years, provided they are not convicted of any new crime within that time period. This would allow people who are clearly not heavily involved in the drug trade a better chance at finding employment and moving forward with their lives.

- **Direct the Office of National Drug Control Policy to study and make policy recommendations about the economic and social impacts of collateral consequences.**

Individuals with a felony drug conviction are often locked out of many employment opportunities, including U.S. military service and many jobs that require an occupational license.<sup>222</sup> In addition, employers routinely deny jobs because of accreditation requirements regardless of how much time has elapsed since the drug law violation occurred. Such restrictions impede the ability of individuals to obtain employment in at least nine out of the twenty industries that the Department of Labor found have the fastest projected growth.<sup>223</sup> Although many prisons have work-readiness programs, individuals often experience long delays in obtaining or restoring their occupational licenses after release from prison. In addition, some states suspend driver's licenses for up to two years for any drug conviction (including simple possession or charges unrelated to impaired motor vehicle operation).

Additionally, for five years after a felony drug conviction, individuals are ineligible to be a foster or adoptive parent.<sup>224</sup>

- **Support justice reinvestment to reduce federal prison spending and increase public safety.**

In the past 20 years, federal prison spending has skyrocketed. Federal criminal justice spending increased even more dramatically, from approximately \$4.2 billion in 1982 to \$41 billion in 2006.<sup>225</sup> Despite this increased expenditure, recidivism rates remain high: Bureau of Justice Statistics data indicate that more than half of individuals released from state prison were incarcerated again within three years,<sup>226</sup> with more than 12 percent of parolees returning to prison within one year.<sup>227</sup> Further, in every state, there are a handful of "high-stakes" communities to which most people released from prison return; these are also the communities where taxpayer-funded programs are disproportionately focused.

Justice reinvestment initiatives provide grants to state and local governments to design and advance data-driven, consensus-based strategies to reduce corrections spending and increase public safety. The process is designed to help jurisdictions analyze criminal justice trends; develop tailored policy options to reduce corrections expenditures and increase the effectiveness of current spending; implement the proposed policies and programs; and measure the impact of these changes and develop accountability measures. In areas where such programs have been implemented, jurisdictions have saved hundreds of millions of dollars in corrections spending, reinvesting a portion of the savings in strategies designed to increase public safety and improve conditions in neighborhoods where most people from prison return.<sup>228</sup>

- **Reduce Bureau of Prisons overcrowding by implementing a risk assessment to determine appropriate placement, including community confinement.**

The Bureau of Prisons is operating at 139 percent capacity, and, according to officials, the severe increase in the federal prison population has negatively impacted staff and prisoners.<sup>229</sup> Harsh drug sentences such as mandatory minimums, coupled with the abolition of federal parole in the 1980s, have often led to lengthy prison sentences for individuals convicted of nonviolent drug offenses. States like California, Texas, New York and Ohio have successfully implemented public safety

risk assessment models to identify the rehabilitative programming needs for prisoners to successfully transition from a higher security classification to a lower one upon successful completion of such programming.<sup>230</sup>

- **Expand time credits for good behavior.**

The federal prison system’s method of calculating earned credit reduces a prisoner’s sentence to a maximum credit of 47 days per year – 7 days below the 54 days intended – because the Bureau of Prison calculates the credit based on time served and not on the sentence received. This decision results in unnecessary increases in prison sentences at significant cost.

Congress should clarify that the intent of the statute is to provide offenders the full 54 days of good time credit per year, saving an estimated \$41 million in the first year alone.<sup>231</sup> Congress should also implement a Department of Justice proposal<sup>232</sup> creating a new good time credit that can be earned for successful participation in recidivism-reducing programs, such as educational or occupational programming.<sup>233</sup>

- **Expand the mandatory minimum safety valve provision.**

The U.S. Sentencing Commission (USCC) has urged Congress to expand the statutory mandatory minimum safety valve, which exempts certain people from harsh mandatory minimum sentences. USSC sentencing guidelines have their own safety valve, which directs the court to reduce a sentence by two levels if the defendant meets the statutory safety valve criteria.<sup>234</sup> In 2010, only 13 percent of all drug defendants received guideline safety valve relief and almost 24 percent received the mandatory minimum safety valve.<sup>235</sup>

Congress should expand the safety valve provision to include all federal offenses carrying a mandatory minimum penalty. It should also expand the five-part test to allow a judge to tailor a sentence more closely to the actions and facts of the case and defendant, while taking into account the mandatory minimum sentence’s effect on public safety and the impact on the defendant.

- **Enhance elderly prisoner early release programs.**

The average cost of housing elderly prisoners is approximately three times that of younger prisoners.<sup>236</sup>

At the same time, aging is correlated with diminishing risk of recidivism.<sup>237</sup> Incarcerating elderly, nonviolent inmates who no longer pose a threat to the community wastes enormous sums of federal resources and these costs will continue to rise as the elderly prison population grows. Forty-one states have already enacted some version of a limited early release program for elderly inmates. Congress should reauthorize and expand the provision of the Second Chance Act that included a pilot program to allow for the early release of elderly prisoners.

- **Create a review process to consider modification of sentence after a period of years.**

Congress should enact legislation to authorize a judicial panel or other judicial decision-making authority to hear and rule upon applications for sentencing modification from prisoners who have served a substantial number of years, similar to a proposal currently under consideration by the American Law Institute. Such a “second look” policy will reduce overcrowding and costs, while also creating additional incentives for inmates to engage in service, education and vocational activities.

## Further Reading

### *Decriminalization*

**Hughes, Caitlin Elizabeth, and Alex Stevens, “A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs,” *Drug and Alcohol Review* 31 (2012): 101–113.**

Article evaluating competing claims about Portugal’s decriminalization policy, concluding that, on balance, there “is ample evidence of a successful reform.”

**Hughes, Caitlin Elizabeth, and Alex Stevens, “What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?” 50 *British Journal of Criminology* (2010): 999–1022.**

This independent evaluation of Portugal’s decriminalization law examines the impact of Portugal’s public health approach to drug use, concluding that “contrary to predictions, the Portuguese decriminalization did not lead to major increases in drug use. Indeed, evidence indicates reductions in problematic use, drug-related harms and criminal justice overcrowding.”

Artur Domoslawski, *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use* (Open Society Foundations, August 2011)  
[http://www.soros.org/initiatives/drugpolicy/articles\\_publications/publications/drug-policy-in-portugal-20110829](http://www.soros.org/initiatives/drugpolicy/articles_publications/publications/drug-policy-in-portugal-20110829).

Report describing Portugal's policy, based on literature review and independent stakeholder interviews.

Ari Rosmarin and Niamh Eastwood, *A Quiet Revolution: Drug Decriminalisation Policies in Practice across the Globe* (Release, 2012),  
<http://www.release.org.uk/downloads/publications/release-quiet-revolution-drug-decriminalisation-policies.pdf>

Report describing over 20 countries' varied approaches to decriminalizing possession of marijuana and, in many cases, all drugs.

Vuolo, M. "National-Level Drug Policy and Young People's Illicit Drug Use: A Multilevel Analysis of the European Union." *Drug Alcohol Depend* (Jan 5 2013).

A new study of European Union countries found that countries like Portugal that have decriminalized drug use have not experienced increases in rates of monthly drug use – and in fact have lower rates of use than countries with punitive policies.

### Mandatory Minimums

Marc Mauer, "The Impact of Mandatory Minimum Penalties in Federal Sentencing," *Judicature*, 944, no. 1 (2010): 6-8, 40.

In this brief, the author seeks to identify the impact that federal mandatory minimum penalties have had on public safety, as well as examining to what extent these penalties have intensified existing racial disparities within the criminal justice system.

Wright, Valerie. *The Sentencing Project*, "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity in Punishment." November 2010.

This briefing paper provides an overview of criminological research on the relative impacts of "tough on crime" policies that impose substantial terms of

imprisonment for felony convictions, exploring whether enhanced sanctions provide additional deterrent benefits.

United States Sentencing Commission, "Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System." 2011.

This report analyzes the impact that mandatory minimums have had on federal sentencing. It covers a wide variety of topics including the history of mandatory minimums, differing policy positions, statistical overviews of the effect of mandatory minimums on federal prisons, and recommendations for congressional consideration.

Caulkins, Jonathan P., et al. *Rand Drug Policy Research Center*, "Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?" 1997.

Continually cited as the most thorough evaluations of the cost-effectiveness of mandatory minimum sentences, this research paper analyzes the success and cost-effectiveness of mandatory minimum sentences at reducing drug consumption and drug-related crime relative to other enforcement measures.

Bellamy, Jennifer, Dan Zeidman, and Amshula Jayaram. *The American Civil Liberties Union*, "Promising Beginnings: Bipartisan Criminal Justice Reform in Key States." February 2012.

At both a national and state level, efforts are being made to address our incarceration crisis and enhance fairness in the system through initiatives such as revising ineffective sanctions, increasing diversion programs, and strengthening supports for safe, positive reintegration. This report highlights key reforms from a diverse group of states that have cultivated bipartisan support for reform measures that are cost-effective and improve public safety through new programmatic initiatives and smarter sentencing guidelines.

### Alternatives to Incarceration

Stevens, Alex. "The Ethics and Effectiveness of Coerced Treatment of People Who Use Drugs." *Human Rights and Drugs* 2, no. 1 (2012): 7-16.

Research article arguing coercive treatment is unethical for people who use drugs and "is unlikely to have large

effects on population levels of drug use and crime.”

**Drug Policy Alliance, “Drug Courts Are Not The Answer.” March 2011.**

This report examines the efficacy of drug courts in terms of reducing arrests, incarceration, costs, and problematic drug use, while also considering whether they positively impact the public safety. Drug courts are also contrasted with other policy approaches to drug use.

**United States Government Accountability Office, “Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts.” December 2011.**

This study collects data from the Department of Justice on 32 federally-funded adult drug courts to examine the effectiveness of these programs.

**Orr, Cynthia et al. National Association of Criminal Defense Lawyers, “America’s Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform.” September 2009.**

This report seeks to redefine the discussion of drug enforcement policy by challenging the criminal justice lens through which drug-related issues are evaluated, positing that this approach legitimizes drug courts while ignoring other effective and economic approaches. The authors also examine the evolution of drug courts and evaluate their effectiveness.

**National Institute of Justice, “Multisite Adult Drug Court Evaluation.” 2011-2012.**

These four reports explain the impact of adult drug courts on drug and alcohol use, criminal recidivism, employment and other functional outcomes. They also explore other factors which may predict these outcomes, such as offender and program characteristics, when asking whether cost savings are attributable to drug court programs.

**Matusow, H., S. L. Dickman, J. D. Rich, C. Fong, D. M. Dumont, C. Hardin, D. Marlowe, and A. Rosenblum. “Medication Assisted Treatment in Us Drug Courts: Results from a Nationwide Survey of Availability, Barriers and Attitudes.” [In Eng]. *J Subst Abuse Treat* (Dec 3 2012).**

National survey finding that, while nearly all drug courts received participants who were opioid dependent, fewer than half offered methadone or buprenorphine.

**Pollack, Harold, E Sevigny, and Peter Reuter. “If Drug Treatment Works So Well, Why Are So Many Drug Users Incarcerated?”: Controlling Crime: Strategies and Trade-Offs, Chicago: NBER, University of Chicago Press, 2011.**

This paper examines the effectiveness of drug courts to reduce the size of the incarcerated drug-offending population, and finds that drug courts do not reduce incarceration because they accept very few people. The paper concludes, “The policy implication is that drug courts and other diversion programs require substantial redesign if they are to contribute to a reduction in the incarcerated population.”

*Effects of Sentencing Reform on Drug Use Rates*

**Degenhardt, Louisa, Wai-Tat Chiu, Nancy Sampson, Ronald C Kessler, James C Anthony, Matthias Angermeyer, Ronny Bruffaerts, et al. “Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys.” *PLoS medicine* 5, no. 7 (2008): e141.**

A World Health Organization (WHO) study of lifetime drug use rates among 17 countries, which found that the U.S. had the highest drug use rates by a wide margin, despite its punitive drug policies. The WHO researchers concluded that decriminalization has little or no effect on rates of consumption. They write: “The US, which has been driving much of the world’s drug research and drug policy agenda, stands out with higher levels of use of alcohol, cocaine, and cannabis, despite [more] punitive illegal drug policies... than many comparable developed countries. Clearly, by itself, a punitive policy towards possession and use accounts for limited variation in nation-level rates of drug use.”

**Craig Reinerman, Peter D. A. Cohen, and Hendrien L. Kaal, “The Limited Relevance of Drug Policy: Cannabis in Amsterdam and in San Francisco,” *Am J Public Health*. 2004;94:836–842).**

Comparative study finding that decriminalization of marijuana in Netherlands city (Amsterdam) did not lead to higher use rates of marijuana or other drugs than a US city (San Francisco) where use was still criminalized.

# Treatment and Prevention

- **Ensure that drug treatment is available to all who need it, whenever they need it, and as often as they need it.**

Of the many ways to expand access to treatment, three stand out:

- 1) Increase federal funding for the Substance Abuse Prevention and Treatment (SAPT) Block Grant and other treatment programs. Treatment should include mental health services, as well as services for sexual abuse, domestic abuse and child abuse, which can contribute to or exacerbate addictive behavior.
- 2) Provide people in need of treatment with vouchers redeemable for treatment services through the program of their choice. The Bush administration established a model program, *Access to Recovery*, which provides block grants to states for distributing vouchers to those who need treatment.
- 3) Provide tax credits to people who pay for drug treatment for themselves or others.

- **Ensure the Patient Protection and Affordable Care Act's (ACA) essential health benefit rule guarantees access to evidenced-based drug treatment options, such as methadone and buprenorphine, in the plans offered in the individual and small group markets, both inside and outside the ACA Exchanges.**

The Patient Protection and Affordable Care Act (as modified by the Health Care and Education Reconciliation Act of 2010) upholds and expands federal mental health and substance use disorder parity requirements. The ACA provisions require that mental health and substance use disorder services must be offered on par with covered medical and surgical benefits in the individual and small group markets' plans, both inside and outside the Exchanges.

For true parity to be realized in these plans and markets, the Department of Health and Human Services (HHS) must ensure, through rulemaking, that the comprehensive packet of items and services, known as essential health benefits, cover a sufficient continuum of addiction services to address specific substance use

disorders, such as opiate addiction. There is concern, however, that HHS' currently proposed essential health benefit rule lacks sufficient guidance to ensure this continuum of services is accessible.

Congress should insist that the final essential health benefit rule explicitly require a continuum of evidenced-based addiction services, including medication-assisted therapies such as methadone and buprenorphine.

- **Ensure that treatment programs meet the needs of populations that have historically confronted barriers to accessing treatment, such as women, people of color, lesbian, gay, bisexual and transgendered (LGBT) individuals, and rural populations.**

Women face unique obstacles to recovery, ranging from being the primary caretaker of their children to having been physically, emotionally or sexually abused. Yet, a 2013 U.S. government study found that only 32 percent of treatment facilities in the U.S. have unique programs for women, and only 13 percent have special programs for pregnant or postpartum women.<sup>238</sup> There is a strong need for expanded access to treatment for women, including daycare, transportation and other indirect treatment services that improve the likelihood that women succeed in treatment.

Blacks and Latinos are less likely to have access to drug treatment than are whites.<sup>239</sup> The Office of National Drug Control Policy has noted that, "as a result of managed care and changes in the welfare and health-care system, much-needed [drug treatment] services may be less available to vulnerable populations, including racial and ethnic minorities like African-Americans, Native Americans, Alaskans, [and] Asian American/Pacific Islanders."<sup>240</sup> Since 2000, SAMHSA and CSAT have operated the "Targeted Capacity Expansion Program," a grant designed to provide comprehensive community-based treatment services in areas with well-documented, severe substance abuse problems. This money is intended to reach minority communities with large treatment gaps.<sup>241</sup> It should be expanded.

A report by the Gay and Lesbian Medical Association found that "[p]sychosocial pressures – including homophobia, discrimination, fear, loss and stigma resulting from HIV/AIDS, and a public discourse which denigrates the 'lifestyle choices' of LGBT persons, same-sex marriage, and equal rights – often result in internalized homophobia, feelings of low self-worth and

depression, and these conditions increase susceptibility to drug addiction in some individuals.<sup>242</sup> Yet, even in major urban areas with large LGBT populations, there is a lack of specialized substance abuse programs. The 2013 National Survey of Substance Abuse Treatment Services (N-SSATS) revealed that only six percent of surveyed facilities offered specialized programs for LGBT clients.<sup>243</sup> Congress should develop a treatment funding stream for LGBT populations.

Rural residency can be a significant barrier to accessing treatment.<sup>244</sup> For example, only 10.7 percent of hospitals in rural areas offer substance abuse treatment services compared to 26.5 percent of metropolitan hospitals.<sup>245</sup> Only 6.6 percent of rural substance abuse treatment providers hold a specialization in alcohol or other drug abuse, as opposed to 17.8 percent of providers in urban areas.<sup>246</sup> SAMHSA/CSAT administers “Grants to Expand Substance Abuse Treatment in Targeted Areas of Need – Technology Assisted Care (TCE-TAC).” The goal of the program is to expand the capacity of providers to serve clients who lack access to treatment, due to transportation concerns or a lack of programs, through services that utilize advanced technology.<sup>247</sup> This program should be expanded, and more needs to be done to expand treatment for people in rural areas.

- **Invest in pharmacotherapy, lift restrictions on methadone, and expand research on stimulant and opiate replacement therapies.**

Under replacement therapy, doctors prescribe one or more pharmaceutical drugs to people with drug-related problems to eliminate or reduce their problematic use of drugs and improve their mental and physical well-being. Two well-known replacement therapies are nicotine patches for people who smoke cigarettes and methadone for people who use heroin. Many cigarette smokers cannot successfully quit smoking without the help of the patch,<sup>248</sup> and methadone maintenance is widely regarded as the most effective treatment for heroin addiction.<sup>249</sup> Access to methadone, however, is extremely restricted in the U.S.; many people who need it cannot obtain it.<sup>250</sup> Only 9 percent of substance abuse treatment facilities in the United States offer specialized treatment of opioid dependence with methadone or buprenorphine.<sup>251</sup>

Methadone should be available by prescription and through doctors’ visits, as it is in Canada and most of Western Europe.<sup>252</sup> It should also be available to veterans, members of the Armed Services and their families (currently the VA’s insurance system,

CHAMPVA,<sup>253</sup> and the Department of Defense’s insurance, TRICARE,<sup>254</sup> explicitly prohibit coverage of methadone and buprenorphine treatment)<sup>255</sup> and made widely available in the criminal justice system, including in jails and prisons.<sup>256</sup>

The federal government should also establish pilot programs to treat people who use methamphetamine or cocaine with existing stimulant medications. Emerging research suggests that several medications already in use for the treatment of other conditions could serve as potential replacement therapies for illegal stimulant dependence, including dexamphetamine,<sup>257</sup> methylphenidate,<sup>258</sup> modafinil<sup>259</sup> and other psychostimulants.<sup>260</sup> The literature on these medications for treating dependence to both cocaine<sup>261</sup> and methamphetamine<sup>262</sup> is quite favorable and growing.<sup>263</sup> For example, a study funded by the Justice Department concluded, “The replacement of...dextroamphetamine for methamphetamine would ideally reduce problems related to crime, injection practices, family and economic issues, and health problems related to escalating illegal use.”<sup>264</sup> Congress should also commission the Institute of Medicine to do a comprehensive report and global literature review of the effectiveness of agonist and antagonist drugs in the treatment of stimulant abuse more broadly.

Finally, Congress should allow heroin-assisted treatment (HAT) to move forward. These programs enable people addicted to street heroin who have not succeeded in other treatment programs to be prescribed pharmaceutical heroin as part of a broader treatment regimen. While currently the gold-standard treatment for opioid dependence, methadone and other conventional narcotic replacement therapies do not work for everyone.<sup>265</sup> HAT trials have now been conducted in six countries – Switzerland,<sup>266</sup> Netherlands,<sup>267</sup> United Kingdom,<sup>268</sup> Germany,<sup>269</sup> Spain<sup>270</sup> and Canada.<sup>271</sup> Denmark recently decided to skip pilot projects and go straight to offering heroin-assisted treatment for those who need it because the evidence from elsewhere was so conclusive.<sup>272</sup>

Peer-reviewed studies around the world<sup>273</sup> have concluded that HAT is associated with reductions in crime, overdose fatalities, risky behavior and other problems as well as improvements in physical and mental health, employment and social relations.<sup>274</sup> Cost-benefit studies demonstrate that the cost of heroin-assisted treatment is more than covered by reductions in criminal justice and health care costs.<sup>275</sup> Some of these

results were reported in an evaluation of the Canadian research trial (known as NAOMI – the North American Opiate Medication Initiation) published in the *New England Journal of Medicine*, which reported a two-thirds (67 percent) reduction in illicit drug use or other illegal activity among those receiving HAT.<sup>276</sup> Similar reductions in illicit heroin use were reported from HAT trials in the UK (72 percent)<sup>277</sup> and Germany (69 percent).<sup>278</sup>

A recent, systematic review of HAT trials concluded, “Each study found a superior reduction in illicit drug use in the heroin arm rather than in the methadone arm...the measures of effect obtained are consistently statistically significant.”<sup>279</sup> HAT is not only more effective at reducing street heroin (and other drug) use than methadone,<sup>280</sup> but it has also proven to be more cost-effective.<sup>281</sup> While HAT has been restricted to those who do not respond to methadone, evidence now shows it is effective even for people with no previous maintenance experience – suggesting it could be scaled up.<sup>282</sup> Many HAT participants freely choose to move on to another form of treatment (like methadone) or to abstinence,<sup>283</sup> while others continue to receive HAT on a long-term basis, with lasting positive results.<sup>284</sup> In contrast, few reports can be found in refereed scientific journals demonstrating any significant failures or harmful consequences of HAT. An exploratory analysis of the benefits of implementing HAT in Baltimore, Maryland, concluded, “Enough evidence has emerged in the last 10 years to merit reconsideration of its potential for Baltimore, and the US more generally.”<sup>285</sup>

Researchers, harm reduction advocates and health departments in the U.S. have expressed interest in seeing if HAT would work in the U.S.,<sup>286</sup> but zero tolerance policies and federal law have stood in the way of this evidence-based method of treatment. Congress should amend federal law to make clear that cities that want to conduct trial HAT programs can do so without federal interference. Ideally, it would fund domestic pilot projects, or at least encourage U.S. cities to test new approaches.

- **Direct the Department of Health and Human Services (HHS) to coordinate a federal cross-agency response to fatal drug overdoses.**

Accidental drug overdoses have increased more than 150 percent over the past decade and are now the second leading cause of injury-related death behind motor vehicle crashes.<sup>287</sup> More Americans now die every year

from overdose than from many other common preventable causes of death, including injuries sustained in falls, fires or homicides.<sup>288</sup> Prescription opioid medications have been involved in more overdoses than illicit drugs, though illicit drug overdoses are also on the rise.<sup>289</sup> HHS should conceive and coordinate a federal overdose reduction strategy that (1) emphasizes and integrates overdose prevention and prescription of naloxone, the antidote to opiate overdoses, in medical and drug treatment settings; (2) educates health providers, opioid analgesic patients, enlisted military personnel and veterans, and other people who are using drugs about overdose risk and prevention methods; (3) improves overdose surveillance and reporting, and (4); implements a public health campaign targeting at-risk populations to increase awareness of signs and symptoms of overdose and improve understanding of the steps that individuals can take to save a life of someone who is experiencing an overdose.<sup>290</sup>

- **Provide the Food and Drug Administration (FDA) with the authority and resources needed to accelerate the development and approval process of over-the-counter naloxone.**

Accidental overdoses from opioid prescription medications and opiates can be reversed with naloxone. Currently, naloxone is only available by prescription. Having naloxone available over-the-counter would greatly increase the ability of parents, caregivers and other bystanders to intervene and provide first aid to a person experiencing an opiate overdose. Even though naloxone has been approved by the FDA since 1971, is highly effective, has no pharmacological effect if administered to a person who has not taken opiates, and has no potential for abuse,<sup>291</sup> pharmaceutical companies have not sought to develop an over-the-counter product.<sup>292</sup> FDA approval of over-the-counter naloxone is predicated on research that satisfies efficacy and safety data requirements. Federal funding is needed to meet these requirements because naloxone is an off-patent, generic medication not considered to be a lucrative investment by major pharmaceutical companies. The FDA should actively support research and programmatic action on overdose education and naloxone access; Congress should provide the necessary resources.

- **Direct the Food and Drug Administration (FDA) to mitigate an acute and persistent shortage of naloxone in the United States.**

The FDA should exercise its discretion to import naloxone on a temporary basis and alleviate an ongoing critical shortage of naloxone supply in the United States that compromises the ability of public health authorities to save lives.

- **Instruct the Department of Defense (DoD) and Department of Veterans Affairs (VA) to address overdose.**

The DoD and VA should integrate overdose prevention and naloxone prescription into military treatment facilities and cover such services through TRICARE and veteran health care services to reduce fatal overdose amongst active-duty and veteran populations. In recent years, military personnel returning from combat zones have experienced elevated overdose risk.<sup>293</sup> According to a 2010 investigation, an average of one active-duty service member each week is found dead from an accidental overdose.<sup>294</sup>

- **Establish federal funding for state, county, tribal and non-profit recipients who provide overdose prevention training and resources to communities.**

Over the past decade, health authorities have implemented overdose prevention programs to educate and equip people who may experience or witness an overdose. Central to these programs has been the provision of naloxone, and training that explains how to administer naloxone and provide rescue assistance to an overdose victim. These trainings should be provided to emergency response workers, law enforcement and medical professionals, as well as anyone else in the community who may be in a position to help.

- **Repeal the federal syringe funding ban.**

In 2009, Congress repealed the long-standing bans prohibiting states and the District of Columbia from using their share of federal HIV/AIDS prevention money on syringe exchange programs (the DC ban also prohibited the city from even using locally-raised funding on syringe exchange). These bans were responsible for hundreds of thousands of Americans contracting HIV/AIDS or hepatitis C.<sup>295</sup> In 2011 Congress restored the ban on using federal funding for

syringe exchange. The ban should be repealed again. States and the District of Columbia should be free to spend their share of federal prevention dollars in the way that is best for their community – and syringe availability has been proven to reduce the spread of HIV/AIDS and hepatitis C without increasing drug use;<sup>296</sup> in fact, syringe exchange programs are often a bridge to drug treatment.<sup>297</sup> According to ONDCP Director Gil Kerlikowske, “Needle exchange programs have been proven to reduce the transmission of blood-borne diseases..., do not increase drug use...[and] when implemented in the context of a comprehensive program that offers other services such as referral to counseling, healthcare, drug treatment, HIV/AIDS prevention, counseling and testing, are effective at connecting addicted users to drug treatment.”<sup>298</sup>

- **Allow supervised injection facilities to move forward.**

A significant and growing body of evidence indicates that supervised injection facilities – controlled clinical settings where people inject drugs under medical supervision and receive healthcare information, counseling and referrals to social services – are effective in reducing the harms associated with injection drug use, and in improving the health and well-being of both people who use drugs and their surrounding communities without creating new problems. An estimated 92 supervised injection facilities currently operate in 62 cities in eight countries worldwide.<sup>299</sup> To date, several dozen methodologically rigorous studies on the impact of supervised injection facilities have been published in leading peer-reviewed medical journals.<sup>300</sup> These studies demonstrate that supervised injection facilities “are associated with reductions in needle and syringe sharing, overdoses, public injecting, and numbers of publicly discarded syringes, increased uptake of drug detoxification and addiction treatment programs and have not led to increases in drug-related crime or rates of relapse among former drug users.”<sup>301</sup> And yet, while countries around the world have successfully implemented supervised injection facilities, and while jurisdictions in the United States have expressed interest in exploring this policy option,<sup>302</sup> the U.S. has discouraged or blocked such programs domestically. At a minimum, Congress should commission the National Academy of Sciences to evaluate research on the efficacy of supervised injection facilities around the world. Ideally, it would fund domestic pilot projects – or at least encourage U.S. cities to test new approaches.



- **Increase funding for after-school programs.**

The single most effective way for policymakers to prevent substance misuse among youth is to increase funding for after-school programs. Research shows that most dangerous adolescent behavior (including drug use) occurs during the unsupervised hours between the end of the school day and parents' return home in the evening.<sup>303</sup> Students who participate in extracurricular activities are less likely to develop substance abuse problems, less likely to engage in other dangerous behavior such as violent crime, and more likely to stay in school, earn higher grades, and set and achieve more ambitious educational goals.<sup>304</sup>

- **Increase funding for youth-oriented drug treatment programs.**

Recent prevalence estimates indicate that each year more than 1.7 million youths aged 12 to 17 exhibit levels of substance use consistent with the DSM-IV diagnostic criteria for either abuse or dependence.<sup>305</sup> Once adolescent substance use rises to clinically significant levels, such use is unlikely to naturally subside over time and will typically carry over into adulthood.<sup>306</sup> Therefore, early intervention is critical to prevent or minimize the host of social and personal harms that stem from advanced levels of dependence. To accomplish this, investment and research is needed into programs specifically tailored to address substance misuse and addiction among adolescents.

- **Prohibit states from using their share of Safe and Drug-Free grant money on programs proven to be ineffective, including D.A.R.E. and student drug testing.**

Despite D.A.R.E.'s special status as the most widespread school-based prevention program in the country, 20 years of studies,<sup>307</sup> including a 2003 U.S. General Accountability Office evaluation, have consistently concluded that D.A.R.E. has no significant impact on student drug use.<sup>308</sup> Moreover, some studies conclude that the program may actually be backfiring, with students becoming even more likely to use drugs the longer they are in the program.<sup>309</sup> A recent evaluation of the "new" D.A.R.E. found mixed results.<sup>310</sup>

According to experts in the fields of medicine, adolescent development, education and drug treatment, random drug testing undermines the trust between teenagers and adults, while deterring students who have

drug-related problems from participating in extracurricular activities – an intervention shown to best prevent drug use.<sup>311</sup> The largest national study on student drug testing found no difference in rates of student drug use between schools that have drug testing programs and those that do not.<sup>312</sup> A two-year randomized experimental trial concluded that random drug testing targeting student athletes did not reliably reduce past-month drug use.<sup>313</sup> In fact, drug testing produced attitudinal changes among students that introduced new risk factors for future substance use. A recent study from a team of international researchers published in the *Journal of Youth and Adolescence* found that drug testing had almost no effect on drug use and may in fact have a detrimental effect on students who already feel negatively about their school.<sup>314</sup> Moreover, mandatory drug testing disrupts the delicate balance of trust and honesty that educators try to establish with their students. And, despite claims that drug testing is used primarily as a preventative or rehabilitative tool, a national survey published in 2009 in the *Journal of School Health* found that 45% of U.S. school districts surveyed responded punitively to a positive test result – even to a student's first positive test.<sup>315</sup> Rather than attempting rehabilitation, many school districts have simply reported the student to law enforcement, or subjected the pupil to disciplinary actions, including suspension or expulsion.

Congress should reform the Safe and Drug-Free School grant program to ensure that the money is spent on evidence-based programs and not wasted on ineffective programs like D.A.R.E. and student drug testing.

- **Discourage punitive, zero tolerance programs in schools and focus scarce resources on professional, counseling, intervention and therapy.**

Most American high schools fail to offer either effective drug education or appropriate interventions to assist students struggling with misuse of alcohol or other drugs. Instead, school-based prevention efforts overly rely on the threat of the "big four" consequences – exclusion from extracurricular activities, transfer to another school, suspension and expulsion. Extensive research has shown, however, that these punishments are not likely to change students' behavior and can potentially compound the harms associated with drug misuse. The only factors proven to have a positive impact on adolescent health-risk behavior are school and family "connectedness."<sup>316 317</sup>

Federal funding incentives from the Safe and Drug-Free Schools program to the No Child Left Behind Act encourage the use of zero tolerance policies, despite evidence that children removed from their learning environment through suspension or expulsion are more likely to drop out, use drugs, and enter the juvenile justice system.<sup>318</sup> Federal money is better spent on practical education and restorative, not exclusionary, practices.

## Further Reading

**Drug Policy Alliance, *A Four-Pillars Approach to Methamphetamine*. 2008.**

Beginning with a brief history of methamphetamine, this report offers several suggestions for policymakers based on the four pillars approach to drug policy. Included are sections on effective prevention, treatment, law enforcement, and harm reduction strategies to address use, abuse, and addiction to methamphetamine.

**Drug Policy Alliance, *Healing a Broken System: Veterans and the War on Drugs*. 2012.**

This report examines the plight of returning veterans who struggle with incarceration and psychological wounds of war such as addiction and post-traumatic stress disorder – and suggests reforms that could improve the health and preserve the freedom of American soldiers returning from war zones and transitioning back to civilian life, including: alternatives to incarceration for nonviolent drug offenses, increased access to overdose prevention programs and medication-assisted therapy, and research evaluating innovative treatment modalities such as medical marijuana and MDMA-assisted psychotherapy.

**Drug Policy Alliance, *Expanding Access to Naloxone: Reducing Fatal Overdose, Saving Lives*, (April 11, 2012).**

Chief among today's highly effective available practices to halt and reverse the growing toll of accidental overdose fatalities is naloxone hydrochloride (also known as Narcan™), a low-cost medicine available generically that was first approved by the FDA in 1971. This policy brief details how naloxone is already saving lives and includes steps that policymakers and public health officials can take to further reduce fatal overdoses.

**Drug Policy Alliance, *Preventing Overdose, Saving Lives*, March 1, 2009.**

This report examines the nationwide opioid overdose epidemic and calls for immediate action to address this public health crisis. Evidence-based strategies already exist that can reduce overdose risk, protect Good Samaritans and medical professionals, streamline government response systems, and save lives. A national overdose prevention effort is urgently needed, and this report provides a clear way forward for policymakers seeking a public health approach to the overdose emergency.

### Medication-Assisted Treatment

**Drug Policy Alliance, *About Methadone and Buprenorphine*. 2006.**

The ideal resource for anyone interested in learning about methadone maintenance therapy and buprenorphine therapy, this booklet was designed for treatment providers, people in recovery, and their families.

**Connock, M., A. Juarez-Garcia, S. Jowett, E. Frew, Z. Liu, R. J. Taylor, A. Fry-Smith, et al. "Methadone and Buprenorphine for the Management of Opioid Dependence: A Systematic Review and Economic Evaluation." *Health Technol Assess* 11, no. 9 (Mar 2007): 1-171, iii-iv.**

Systematic review and analysis finding that methadone and buprenorphine are effective for treatment of opioid dependence and are cost-effective as well.

**Ferri, M., M. Davoli, and C. A. Perucci. "Heroin Maintenance for Chronic Heroin-Dependent Individuals." *Cochrane Database Syst Rev*, no. 12 (2011): CD003410.**

Systematic review article that reviews all the published studies to-date on heroin-assisted treatment, finding significant reductions in illicit drug use, crime and improvements in health across the board. In particular, the review found, "Each study found a superior reduction in illicit drug use in the heroin arm rather than in the methadone arm...the measures of effect obtained are consistently statistically significant."

Oviedo-Joekes, E., S. Brissette, D. C. Marsh, P. Lauzon, D. Guh, A. Anis, and M. T. Schechter. "Diacetylmorphine Versus Methadone for the Treatment of Opioid Addiction." *N Engl J Med* 361, no. 8 (Aug 20 2009): 777-86.

An important recent article on overwhelming success of Canada's HAT program in reducing drug use and crime. A key finding was that illegal heroin use was reduced by more than two-thirds among HAT recipients.

**Reuter, Peter.** *Can Heroin Maintenance Help Baltimore?: What Baltimore Can Learn from the Experience of Other Countries.* Abell Foundation, 2009.

A 2009 exploratory analysis of the benefits of implementing HAT in Baltimore, Maryland, concluding, "Enough evidence has emerged in the last 10 years to merit reconsideration of its potential for Baltimore, and the US more generally."

**P. Blanken et al., "Outcome of Long-Term Heroin-Assisted Treatment Offered to Chronic, Treatment-Resistant Heroin Addicts in the Netherlands,"** *Addiction* 105, no. 2 (2010): 300.

Study finding that "Long-term HAT is an effective treatment for chronic heroin addicts who have failed to benefit from methadone maintenance treatment. Four years of HAT is associated with stable physical, mental and social health and with absence of illicit heroin use and substantial reductions in cocaine use. HAT should be continued as long as there is no compelling reason to stop treatment."

**Strang, John, Nicola Metrebian, Nicholas Lintzeris, Laura Potts, Tom Carnwath, Soraya Mayet, Hugh Williams, et al.** "Supervised Injectable Heroin or Injectable Methadone Versus Optimised Oral Methadone as Treatment for Chronic Heroin Addicts in England after Persistent Failure in Orthodox Treatment (Riott): A Randomised Trial." *The Lancet* 375, no. 9729 (2010): 1885-95.

Randomized controlled trial of HAT in the UK reporting a 72 percent reduction in illegal heroin use among those receiving HAT treatment.

**Longo, M., W. Wickes, M. Smout, S. Harrison, S. Cahill, and J. M. White.** "Randomized Controlled Trial of Dexamphetamine Maintenance for the Treatment of Methamphetamine Dependence." *Addiction* 105, no. 1 (Jan 2010): 146-54

Randomized controlled trial of dexamphetamine for the treatment of methamphetamine dependence, which demonstrated that "daily sustained-release amphetamine dispensing under pharmacist supervision is both feasible and safe....[t]he increased retention...together with general decreases in methamphetamine use, degree of dependence and withdrawal symptom severity, provide preliminary evidence that this may be an efficacious treatment option for methamphetamine dependence."

**Hart, C. L., M. Haney, S. K. Vosburg, E. Rubin, and R. W. Foltin.** "Smoked Cocaine Self-Administration Is Decreased by Modafinil." *Neuropsychopharmacology* 33, no. 4 (Mar 2008): 761-8.

Study of the mild stimulant medication Modafinil for the treatment of cocaine-dependent people, finding "modafinil, in combination with individual behavioral therapy, was effective for increasing cocaine non-use days in participants without co-morbid alcohol dependence, and in reducing cocaine craving."

**Grabowski, John, Howard Rhoades, Joy Schmitz, Angela Stotts, Lee Ann Daruzska, Dan Creson, and F Gerard Moeller.** "Dextroamphetamine for Cocaine-Dependence Treatment: A Double-Blind Randomized Clinical Trial." *Journal of Clinical Psychopharmacology* 21, no. 5 (2001): 522.

The first random, double-blind controlled study of dexamphetamine for cocaine dependence, finding that "results point to improved retention & reduction in illicit drug use."

#### *Drug Prevention Education*

**Rosenbaum, Marsha.** Drug Policy Alliance, *Safety First: A Reality Based Approach to Teens and Drugs.* 2012.

This report provides an alternative to abstinence-only drug education for teens, emphasizing the need for safety and evidence-based education over fear-based tactics.

**American Psychological Association, “Are Zero Tolerance Policies Effective In Schools? An Evidentiary Review and Recommendations.” August 2006.**

In response to controversy surrounding the use of zero tolerance policies in U.S. schools, the APA reviewed 10 years of research to determine whether these policies have made schools safer without taking away students' opportunity to learn; whether they incorporated children's development as a factor in types of discipline administered; and whether educators referred juveniles to the justice system too often with costly consequences. The report also looks at how families and communities are affected by these policies.

**Kern, Jennifer, Fatema Gunja, Alexandra Cox, Marsha Rosenbaum, Judith Appel, and Anjali Verma, *Making Sense of Student Drug Testing*, Drug Policy Alliance and ACLU Drug Law Reform Project (2006).**

The experts agree, and the evidence is clear: random drug testing does not reduce drug use among young people. Spending extra millions on testing students' urine will only destroy relationships between youth and adults. This booklet demonstrates the key flaws in random student drug testing and outlines promising alternatives to the invasive and expensive practice.

**Kanof, Marjorie E. "Youth Illicit Drug Use Prevention: D.A.R.E. Long-Term Evaluations and Federal Efforts to Identify Effective Programs." Washington D.C.: Government Accountability Office, 2003.**

GAO evaluation finding the D.A.R.E. program to be ineffective.

**West, S. L., and K. K. O'Neal. “Project D.A.R.E. Outcome Effectiveness Revisited.” [In eng]. *Am J Public Health* 94, no. 6 (Jun 2004): 1027-9.**

A meta-analysis of the effectiveness of the D.A.R.E. program, with results that “support previous findings indicating that D.A.R.E. is ineffective.”

**Werb, Dan, Edward J Mills, Kora DeBeck, Thomas Kerr, Julio SG Montaner, and Evan Wood. “The Effectiveness of Anti-Illicit-Drug Public-Service Announcements: A Systematic Review and Meta-Analysis.” *Journal of epidemiology and community health* 65, no. 10 (2011): 834-40.**

Scientific review of published literature on effectiveness of anti-drug media and public service announcements, finding them to be ineffective at reducing drug use and youth attitudes toward drugs.

### *Supervised Injection Facilities*

**International Drug Policy Consortium, “Drug Consumption Rooms: Evidence and Practice” (June 2012)**

<http://idpc.net/publications/2012/06/idpc-briefing-paper-drug-consumption-rooms-evidence-and-practice>.

Briefing paper describing the 92 supervised injection facilities operating in 62 cities around the world in eight countries, all of which have had positive results in reducing injection risk behavior, overdose and other harms of drug misuse with no apparent negative community impact.

**Salaam Semaan et al., “Potential role of safer injection facilities in reducing HIV and Hepatitis C infections and overdose mortality in the United States,” *Drug and Alcohol Dependence* 118 (2011): 100– 110.**

This article demonstrates the positive impacts of SIFs, including increased uptake into addiction treatment, especially among those people who distrust the treatment system and are unlikely to seek treatment on their own; reduced public disorder and public injecting; increased public safety related to injection drug use; recruitment of a high risk population of people who inject drugs; reducing HIV and Hepatitis C risk behavior (i.e. syringe sharing, even unsafe sex,); reducing the prevalence and harms of bacterial infections; successfully managing hundreds of overdoses and reducing drug-related overdose death rates; cost savings resulting from reduced disease and overdose deaths, as well as need for emergency medical services; increased delivery of medical and social services; and no increases in community drug use, initiation into injection drug use, or drug-related crime.

**British Columbia Centre for Excellence in HIV/AIDS, *Findings from the Evaluation of Vancouver's Pilot Medically Supervised Safer Injection Facility – Insite* (2009)**  
[http://uhri.cfenet.ubc.ca/images/Documents/insite\\_report-eng.pdf](http://uhri.cfenet.ubc.ca/images/Documents/insite_report-eng.pdf)

Summary of dozens of peer-reviewed evaluations of Vancouver's SIF, InSite, the most extensively studied SIF in the world. This report examines its positive effects on a range of variables, from retention to treatment referrals to cost-effectiveness.

**Dagmar Hedrich et al (2010), “Drug consumption facilities in Europe and Beyond,” *Harm reduction: evidence, impacts and challenges* (Lisbon),**  
[http://www.emcdda.europa.eu/attachements.cfm/att\\_101273\\_EN\\_emcdda-harm%20red-mon-ch11-web.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_101273_EN_emcdda-harm%20red-mon-ch11-web.pdf).

Review of the impressive outcomes and modes of operation of SIFs in Switzerland, Germany, the Netherlands, Norway, Luxembourg, and Spain, with some discussion of SIFs in Australia and Canada as well.

### *Syringe Access*

**Hall, H. Irene et al., “Estimation of HIV incidence in the United States,” *JAMA* 300, no. 5 (2008): 520-9.**

Federally funded study in the *Journal of the American Medical Association* finding that syringe access has helped reduce HIV incidence among people who inject drugs in the U.S. by 80 percent in the past decade.

**Lurie P, Drucker E. “An opportunity lost: HIV infections associated with lack of a national needle-exchange programme in the USA.” *Lancet*. 1997; 349(9052):604-608.**

A 1997 estimate suggesting that if the United States had initiated a national syringe exchange strategy (as did Australia) instead of banning federal funding for syringe exchange program early on in the HIV epidemic, US HIV incidence could have been reduced by 15% to 33% between 1988-1995 – at a cost saving of between \$244 million and \$538 million. The federal ban persists to this day.

**Wodak A, Cooney A. “Do needle syringe programs reduce HIV infection among injecting drug users: a comprehensive review of the international evidence.” *Substance Use & Misuse*. 2006;41(6-7):777-813.**

The first international literature review conducted in 2006, finding that syringe access programs decrease HIV/AIDS infection rates. The authors conclude that “there is compelling evidence of effectiveness, safety, and cost-effectiveness, consistent with seven previous reviews conducted by or on behalf of U.S. government agencies...Authorities in countries affected or threatened by HIV infection among injecting drug users should carefully consider this convincing evidence now available for needle syringe programs with a view to establishing or expanding needle syringe programs to scale.”

**Hurley SF, Jolley DJ, Kaldor JM. “Effectiveness of needle-exchange programmes for prevention of HIV infection.” *Lancet*, 1997; 349(9068): 1797-1800.**

Review in the journal *Lancet* demonstrating that increasing access to sterile syringes through syringe exchange programs and non-prescription pharmacy sales is essential to reducing syringe sharing among injection drug users and decreasing rates of HIV/AIDS and hepatitis C transmission.

**World Health Organization, *Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users* (2004),**  
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Report of the World Health Organization calling for sterile syringe access as an integral element of fighting HIV/AIDS.

## Endnotes

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- growing facility for FDA-approved research. In 2007, DEA Administrative Law Judge Mary Ellen Bittner recommended that it would be in the public interest to grant Prof. Craker's request for a license to grow marijuana for federally regulated research. Yet on August 15, 2011, DEA issued its final order rejecting Judge Bittner's recommendation. The rejection preserves the monopoly held by the National Institute on Drug Abuse (NIDA) on the supply of marijuana for Food and Drug Administration (FDA)-regulated research. (In re Lyle E. Craker, Ph.D., Opinion and Recommended Ruling, 76 FR 51403-03, (August 18, 2011), 2011 WL 3607371; and Lyle E. Craker, Ph.D.; Order Regarding Officially Noticed Evidence and Motion for Reconsideration, US DOJ, DEA, Docket No. 05-16, [http://www.maps.org/mmj/dealsuit/DEA\\_final\\_order\\_15Aug11.pdf](http://www.maps.org/mmj/dealsuit/DEA_final_order_15Aug11.pdf). See also, Ted Hesson, "Does a Catch-22 Keep Marijuana Labeled a Dangerous Drug?", ABC News (January 24, 2013), [http://abcnews.go.com/ABC\\_Univision/News/catch-22-marijuana-labeled-dangerous-drug/story?id=18304494](http://abcnews.go.com/ABC_Univision/News/catch-22-marijuana-labeled-dangerous-drug/story?id=18304494);
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