

A Policy Analysis for Decision Makers

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WINNING THE DRUG WAR: WHAT THE STATES CAN DO

INTRODUCTION

Despite huge increases in resources devoted to tackling the drug problem in recent years, the use of illegal drugs in the United States remains widespread. This drug use has led to increased street crime, health problems, industrial accidents, and many other costs to society.

About 23 million Americans, or one in ten, use an illegal drug at least once a month; six million use cocaine.¹ Perhaps most disturbing, drug use is most prevalent among children and young adults.

Up to 15 percent of highway fatalities involve drug use, and between 25 percent and 40 percent of Americans serving time in federal prisons admit they were using drugs at the time they committed their crimes.

Reducing Demand. Public opinion polls find strong support for tough actions, such as drug testing, to deal with drug use. Yet mounting evidence suggests that if additional resources are to be committed to fight drugs, these would best be used to reduce demand, rather than to block the supply. The fact is that dramatic increases in seizures of drugs entering the U.S. have had no discernable impact on the availability of drugs on America's streets.

Recognition of the need for policies to reduce the demand for drugs has in recent years prompted changes in drug policy at state and federal levels. The Anti-Drug Abuse Act of 1988, (PL 100-690), for example, establishes new "measured response" penalties aimed at drug users, including civil fines and revocation of eligibility for federal benefits. In addition, the federal

1 U.S. Department of Health Services, National Institute of Drug Abuse, *National Household Services, National Institute on Drug Abuse: Population Estimates 1985*, (Washington, D.C.: Government Printing Office, 1987), pp. 10 and 14.

government has stepped up the use of drug testing, imposing testing requirements on the transportation industry and on some federal contractors, as well as on federal workers in “sensitive” jobs.

State and local governments also have taken aggressive actions to curb drug demand. New Jersey and Oregon legislation, for example, revokes or suspends the drivers’ licenses of drug users. But too many state policies are inadequate, or even counterproductive, because they do not focus on demand. Some states even are placing barriers against private efforts to curb drug use: several restrict drug testing by private employers, despite the proven success of this tool in curbing drug use.

Powerful New Tools. The Anti-Drug Abuse Act of 1988 provides powerful new federal tools to encourage states to crack down on drug use. The new law includes mandatory life sentences for drug offenders convicted twice in a state court. The law allows certain federal benefits to be denied those convicted in a state court.

Successful state and local policies, meanwhile, may provide models for other states wishing to get tough in the war against drugs. In particular, experience at the state level strongly suggests that states and local governments should:

- ◆ design “measured response” penalties for drug possession, such as withholding of government benefits and drivers permits;
- ◆ repeal marijuana decriminalization laws;
- ◆ encourage private sector drug testing;
- ◆ redesign rehabilitation programs; and
- ◆ implement user accountability policies in the schools.

The war on drugs is going badly. But there is a growing recognition that behind this failure is an undue emphasis on interception and education and an insufficient focus on discouraging the demand for drugs. To start rectifying this skewed emphasis, recent federal legislation offers new tools to states wishing to tackle the demand side of the drug equation. Creative state strategies provide models that could be used in other states and cities. The tools are there to do the job; all that is required is for states and cities to use them.

TRENDS IN THE PREVALENCE OF DRUG USE

According to the National Institute on Drug Abuse (NIDA), about 23 million Americans currently use illegal drugs at least monthly. Among these, about 18 million use marijuana, and about six million use cocaine. Use is most common among the young: 22 percent of Americans aged 18-25 use marijuana, for example, compared with only six percent of the Americans

over 25. An estimated 21 percent of all high school seniors use illegal drugs at least once a month.²

Variations in use among different groups is smaller than generally believed. The proportion of college-bound high school seniors using drugs is only about 20 percent higher than among non-college bound.³ Similarly, use in the large cities is only about 20 percent higher than in suburban and rural areas.⁴ And use among black Americans is only about 30 percent higher than use among the population as a whole — a smaller margin than media coverage suggests — while use by Hispanics actually is slightly lower than the population average.⁵

Doctors and Truckers. The data also suggest that drug use is fairly evenly distributed among different occupational groups. A 1986 article in the *New England Journal of Medicine*, for example, reports that more than 40 percent of doctors in hospitals use illicit drugs.⁶ A 1987 study by the insurance industry finds that 17 percent of all truck drivers tested positive for drugs.⁷ And two-thirds of a group of applicants for the Fairfax County, Virginia, police force in 1986 were rejected after showing evidence of cocaine use.⁸

The evidence on trends in drug use is ambiguous. The government's annual survey of high school seniors indicates use dropped substantially in 1986, for the third year in a row. Nevertheless, the prevalence of cocaine use remains above the 1978 level, and the use of other drugs (such as LSD, inhalants, and stimulants) appears to be rising.⁹ Trends for the adult population appear to

2 See National Institute on Drug Abuse, *The 1988 National High School Survey*, January 1989, Table 12.

3 See U.S. Department of Health and Human Services, National Institute on Drug Abuse, *National Trends in Drug Use and Related Factors Among American High School Students and Young Adults, 1975-1986* (Washington, D.C.: Government Printing Office, 1987), pp. 36, 39-41, and 76.

4 *Ibid.*, pp. 38, 44-45, and 83.

5 U.S. Department of Health and Human Services, National Institute on Drug Abuse, *National Survey on Drug Abuse: Population Estimates 1985, 1987*, pp. 10-11 and 14-15.

6 William E. McCauliff, "Psychoactive Drug Use Among Practicing Physicians and Medical Students," *The New England Journal of Medicine* (September 25, 1986), p. 805.

7 Richard D. Blomberg, Adrian K. Lund, David F. Preusser, and Alan F. Williams, "Drug Use by Tractor-Trailer Drivers," Insurance Institute for Highway Safety, Washington, D.C., June 1987, pp. 8 and 19.

8 See Patricia Davis, "Suspected Drug Use Thins Ranks of Police Applicants," *The Washington Post*, September 28, 1986.

9 *The 1988 National High School Survey*, *op. cit.*

be similar to those for high school students. Overall, though drug use is down from the late 1970s, it remains widespread.

THE COSTS TO SOCIETY OF DRUG USE

Drug use exacts a substantial and rising cost from American society. Consider, for example, the number of drug-related deaths reported by the Drug Abuse Warning Network (DAWN), which draws data from 117 counties. These data do not include deaths from drug-related crime, yet still show reported deaths from drug use in the U.S. rising from 2,825 in 1981 to 4,138 in 1986, an increase of 46 percent.¹⁰ While the overall number of drug-related emergency room admissions remained approximately constant, at about 120,000, between 1981 and 1986, the DAWN survey found the number of cocaine-related emergency room admissions rose more than five-fold, to over 24,000.¹¹

Link to Teenage Suicide. The costs of drug abuse include deaths on the highway, workplace accidents, and teenage suicides. The U.S. Department of Transportation has estimated that 10 percent to 15 percent of all highway fatalities involve drug use.¹² Other studies find that drug users are three times as likely to be involved in on-the-job accidents, are absent from work twice as often, and incur three times the average level of sickness costs as non-users.¹³ Moreover virtually all experts see a strong link between teenage suicide and use of illegal drugs.¹⁴

The connection between drug use and crime is well-documented, and drug use among criminals appears to be increasing. The National Institute of Justice reports that nearly three quarters of all individuals arrested in the

10 U.S. Department of Health and Human Services, National Institute on Drug Abuse, *1981 Annual Report: Data From the Drug Abuse Warning Network*, Series 1, No. 6, p. 81.

11 *Ibid.*, pp. 22 and 26, respectively.

12 U.S. Department of Transportation, National Highway Traffic Safety Administration, "The Incidence of Driving Under the Influence of Drugs 1985: An Update of the State of Knowledge," December 1985, p. vi.

13 See Mark S. Gold, MD, Peter Bensinger, Arnold Washton, Ph.D., and Lawrence Chilnick, *Drugs in the Workplace, Facts vs. Myths* (New York: Random House, 1986), p. 4, and Peter Bensinger, "Drugs in The Workplace: Employers' Rights and Responsibilities," Washington Legal Foundation/Texas District, 1984, p. 1. See also William F. Maloney, "Substance Abuse and Its Solution" (A Report to the Construction Industry Institute, University of Texas at Austin, December 1987). Maloney estimates the cost of drug-related injuries and productivity loss at \$8 billion-\$11 billion in the construction industry alone.

14 See, for example, Constance Holden, "Youth Suicide: New Research Focuses on a Growing Social Problem," *Science*, August 22, 1986, pp. 839-841.

District of Columbia tested positive for drug use in 1986, compared with 56 percent in 1984. In New York City, the percentage of arrested individuals testing positive for cocaine nearly doubled between 1984 and 1988, from 42 percent to 83 percent.¹⁵

The Research Triangle Institute placed the total economic costs of drug abuse on society at approximately \$60 billion in 1983, and the Department of Justice estimates this figure had risen as high as \$100 billion by 1986.¹⁶ These estimates do not, of course, attempt to measure pain and suffering or other intangible costs of drug abuse.

TRENDS IN FEDERAL POLICY

Until recently, federal drug policy concentrated almost exclusively on three areas: reducing supply, educating the public, and providing rehabilitation and treatment for drug users.

Table 1
Increase in Federal Drug Policy Outlays
1981-1990
(in current \$ millions)

Category	1981	1988	1990*	Percent Increase	
				1981-1988	1988-1990
Drug Law Enforcement	806.0	2,703.5	3,913.0	+ 235	+ 45
Drug Abuse Prevention	117.0	501.0	969.0	+ 328	+ 93
Drug Abuse Treatment	205.8	393.8	661.0	+ 91	+ 68
Total	1,128.5	3,598.3	5,543.0	+ 219	+ 54

Source: Office of Management and Budget. Figures for 1990 based on Bush Administration budget proposals. See Executive Office of the President, *Building a Better America*, February 19, 1989, pp. 65-79.

15 See Mary G. Graham, "Controlling Drug Abuse and Crime: A Research Update," *NIJ Reports — Drug and Crime*, March/April 1987, p. 2., and National Institute of Justice, "Drug Use Forecasting: April-June 1988 Data," November 1988, p. 12.

16 The Research Triangle Institute estimated the cost of drug abuse in the workplace at \$46.9 billion in 1980. When the study was updated in 1983, the estimate had grown to \$59.75 billion. According to Assistant Attorney General Richard K. Willard, "Current estimates range from \$70 to \$100 billion in lost productivity for 1986 alone." (From "Remarks by Richard K. Willard before the Small Business Legislative Council," November 21, 1986, p. 1.)

Resources devoted to all three areas have grown dramatically since 1981, as shown in Table 1.

1) Attacking the Supply of Drugs

Efforts to reduce the supply of drugs into the U.S. have produced some highly visible successes. A three-fold increase of Customs Service and Coast Guard outlays for drug interdiction activities between 1981 and 1987 led to a 27-fold rise in seizures of cocaine.¹⁷ Similarly, beefed-up domestic enforcement efforts have increased arrests and convictions dramatically.¹⁸

Yet, despite these efforts, drugs continue to be widely available throughout the U.S. In submitting the State Department's 1989 drug eradication report, Secretary of State James Baker admitted that the global war against narcotics "is clearly not being won" and may even be "slipping backwards."¹⁹ Nor have interdiction efforts reduced substantially the amount of drugs entering the U.S. A 1988 Rand Corporation study estimates that cocaine imports more than doubled between 1981 and 1985, and marijuana imports remained roughly constant.²⁰ Similarly a 1987 Department of Health and Human Services study concludes that "substantial evidence exists to suggest that cocaine is becoming more widely available throughout the United States and that its price has been going down while its purity has been going up."²¹

While continued efforts to reduce supply are an important component of any sensible overall anti-drug strategy, recent history teaches that even increased efforts to limit supply will not by themselves, substantially reduce the availability of drugs or significantly reduce drug use.

2) Drug Education Programs

Government programs aimed at reducing the demand for drugs through public education campaigns also have met with little success to date, suggesting that new strategies are needed.

Drug education policies, in general, are designed to provide information about the hazards of drug use and thereby to persuade Americans (especially the young) not to use drugs. As the need to reduce drug demand has become more apparent, the emphasis on such programs has increased. Indeed, federal spending on drug education and prevention programs has been the

17 See Jonathan Cowe, Gordon Crawford and Peter Reuter, *Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction* (Santa Monica: The RAND Corporation, 1988) p.66, and National Drug Policy Board, *Progress Report, 1987*, July 1988, p. 39.

18 See *Progress Report, op. cit.*, and U.S. Department of State, Bureau of International Narcotics Matters, *International Narcotics Control Strategy Report*, March 1989.

19 See Michael Isikoff, "Opium, Cocaine Crops Rose Sharply in 1988," *Washington Post*, March 2, 1989.

20 *Sealing the Borders, op. cit.*, p. 74.

21 U.S. Department of Health and Human Services, *Second Triennial Report to Congress*, Washington: U.S. Government Printing Office, 1987), p.18.

fastest growing component of the federal drug budget, up 328 percent between 1981 and 1988. It is scheduled to grow by an additional 83 percent between 1988 and 1990.

Encouraging Drug Experimentation. The available evidence fails to show, however, that merely providing information about the dangers of drug abuse can reduce drug demand significantly. A 1987 report by the National Institute of Justice concludes that “there is no consistent evidence that drug education programs either decrease or increase the likelihood that students will use drugs,” noting further that “programs that address only the negative aspects of drug use, especially those that exaggerate these aspects, tend to be disbelieved. The unfortunate result is that young people may become more rather than less likely to experiment with drugs.”²²

In evaluating such approaches, it is important to distinguish between drug education programs and drug programs in the schools. Some anti-drug programs in the schools – particularly those focussing on individual accountability and parental involvement – have been quite successful in reducing drug use in the schools. Increased knowledge about the negative effects of drug use, moreover, is a significant factor in an individual’s decision not to use drugs. Yet, it is also true that official education programs at best provide only part of the information used to make these decisions. Much, perhaps most, of what Americans know about the effects of drugs is learned from contacts with those who use or sell drugs. This may explain why public education programs appear to be effective only when they are combined with programs that punish users and sellers and so help to take the “glamour” out of drugs.

3) Efforts to Rehabilitate Drug Users

Past efforts at treating and rehabilitating drug users also have produced disappointing results. A 1988 Rand Corporation study of drug treatment programs in the District of Columbia, for example, finds that drug users completing rehabilitation programs ranged from a maximum of 50 percent for marijuana users to a just 20 percent of heroin users. The study then notes that, “even those who initially succeed in treatment often slip back into drug use. Nationwide studies indicate that a majority of those treated for heroin or heavy cocaine abuse once again are using drugs on at least a weekly basis within a year after leaving treatment.”²³

While the history of drug treatment programs is not encouraging, there is some hope for treatment approaches being developed. For example, low-cost, private outpatient programs such as Narcotics Anonymous have shown increased success rates relative to earlier programs, and supervised

22 Michael S. Goodstadt, “Drug Education,” (U.S. Department of Justice, National Institute of Justice, 1987), pp. 2-3. This conclusion is supported by D.J. Hanson, “Drug Education: Does it Work?” in F.R. Scarpetti and S.K. Datesman, *Drugs and Youth Culture* (Sage Publications, 1980), p. 263.

23 “Drug Use and Drug Programs in the Washington Metropolitan Area: An Assessment,” (Executive Summary published by the Greater Washington Research Center), February 1988, pp. 20-23.

probation/rehabilitation programs, which rely on urine testing to monitor use, seem effective in rehabilitating drug offenders. Yet these programs can only help a minority of drug users. Rehabilitation and treatment can reach only those users who choose or are forced to undergo treatment.

NEW DEVELOPMENTS IN FEDERAL POLICY

The dismal record of anti-drug efforts has led some federal policymakers to seek new ways to address the problem. Nevertheless, the emphasis of the federal government is still on the failed strategies of the past.

1) The 1988 Omnibus Drug Bill

The 1988 Anti-Drug Abuse Act (ADAA), typifies the confused direction of federal drug policy. As shown in Table 2, the thrust of changes Congress made in 1988 was to increase funding for current programs, especially rehabilitation and education.

Still, the legislation does change the law affecting the sale and use of drugs. This may signal an important change in approach. Among the provisions:

Tougher Penalties for Drug Dealers: ADAA creates a federal death penalty for murders committed in connection with drug felonies, and for murders of law enforcement officers. The new “three-time-loser” rule will have even broader impact. Under this provision, third-time drug felons convicted in federal court will receive mandatory life sentences without possibility of parole, even if the first two convictions were at the state level.

“User Accountability”: Under ADAA, individuals convicted of drug possession may now, for the first time, lose their eligibility for such federal benefits, as student and small business loans, government grants, and other “unearned” federal benefits.²⁴ Drug users also face civil fines up to \$10,000.

A Drug-Free Workplace: Federal contractors are required under ADAA to establish policies to ensure workers remain drug free while on the job. Proposals to bar from future contracts any company whose employees are convicted of drug possession, unless the company can show it had made a good faith effort to stop employee drug use, were dropped from the final legislation.

Commission on Measured Responses to Achieve a Drug-Free America: Recognizing the importance of state policies, Congress included a provision to create a Commission on Measured Responses. The Commission is to work with states to design and provide a model state drug statute.

Creation of a Federal “Drug Czar”: A Director of National Drug Policy was created by ADAA to coordinate federal drug policy efforts. Former

²⁴ Excluded from this last are Social Security benefits, Veterans benefits, and other federal benefits deemed to have been “earned” by the recipient.

Table 2
Impact of the Anti-Drug Abuse Act of 1988
on Outlays for Drug Programs
(in current \$ millions)

Category	1988	1988 Drug Bill Supplement	1989 Total*	Percent Increase 1988-1989
Drug Law Enforcement	2,703.5	195.1	3,187.8	+ 18
Drug Abuse Prevention	501.0	98.7	679.8	+ 36
Drug Abuse Treatment	393.8	129.5	533.4	+ 35
Total	3,598.3	423.3	4,401.0	+ 22

Source: Office of Management and Budget.

*1989 figures include action on regular appropriations bills as well as the 1988 drug bill.

Education Secretary William Bennett has been chosen by George Bush for this position.

These provisions in ADAA provide several powerful tools and incentives to the states. First, the mandatory life sentence for third-time drugy felony offenders convicted in federal court, even if the first two convictions occur in state courts, should give state prosecutors a strong incentive to convict first - and second-time offenders, and to refer third-time offenders to federal prosecutors for prosecution under federal law and imprisonment in the federal prison system.²⁵ Second, the creation of a model state drug code, based on experiences around the nation, will give states an opportunity to improve their own laws. In addition, permitting state courts to revoke eligibility for federal benefits gives state courts reasonable, but effective, new penalties against drug users.

2) Federally Mandated Workplace Drug Testing

In addition to these initiatives in the 1988 legislation, another important departure from past drug policies has been the federal government's recent emphasis on workplace drug testing. Thanks to Ronald Reagan's Executive Order 12564 in 1986, most federal agencies have randomly test for days those employees holding "sensitive" positions — about 5 percent of all

²⁵ State and federal law enforcement authorities have agreements outlining the circumstances in which offenders are referred to federal courts. These agreements may need to be modified to provide for referral of third-time offenders.

government employees. In addition, the Department of Defense has introduced mandatory random testing for employees of some Defense Department contractors.

Guarding Civil Liberties. While random drug testing programs raise legitimate concerns about the potential infringement of civil liberties, the agency programs introduced so far appear to meet these concerns by restricting testing to individuals in sensitive positions.²⁶ For example, the Department of Transportation's decision to impose testing on railroad employees followed a period in which one out of five serious train accidents showed evidence of drug involvement.

Drug testing appears to be a highly effective means of reducing drug use. The Department of the Navy, for example, reports that after random drug testing began in 1981, drug use among Navy personnel dropped from 33 percent in 1980 to 10 percent in 1985. The Navy expects its 1988 drug survey to show a further drop.²⁷ Similar results have been achieved in a wide variety of private and public sector.²⁸

STATE AND LOCAL DRUG POLICY

State policies range from explicit decriminalization of marijuana and *de facto* tolerance of other drugs, to very tough penalties for even minor drug possession offenses. While this diversity in state and local drug efforts makes

26 The constitutionality of the Customs Service's pre-employment testing program for its employees, and the Transportation Department's post-accident testing program for railroad workers, was upheld by the Supreme Court in March 1989. See *National Treasury Employees Union, et al. v. Railway Labor Executives' Association, et al.* (57 U.S.L.W. 4324, March 21, 1989). While the constitutionality of the government's random testing programs has not yet been decided by the Court, former Assistant Attorney General Richard Willard believes that the two cases decided in 1989 strongly suggest that random testing will meet the court's approval. See Richard K. Willard, "Supreme Court Gives 'Green Light' to Workplace Drug Testing," Washington Legal Foundation, *Legal Backgrounder*, April 21, 1989.

27 See U.S. Navy, Naval Military Personnel Command, "Navy Urinalysis Drug Screening Program," March 1988.

28 See J. Michael Walsh and Stephen J. Yohay, *Drug Testing in the Workplace*, (Washington: National Foundation for the Study of Equal Employment Policy, 1987), p. 113. See also "Drug Use in Military Drops; Pervasive Testing Credited," *New York Times*, April 23, 1987; and Federal Railroad Administration, "Random Drug Testing, Final Rule," *op. cit.*, 53 *Federal Register* 47103-4, and Robert L. Du Pont, "A Doctor's Case for Random Drug Testing," *Policy Review*, Spring 1989, pp. 52-57.

it is difficult to draw general conclusions, some important trends can be identified. Among them.

1) The criminal justice system is under strain. The state and local criminal justice systems have failed to carry out their responsibilities to enforce existing drug laws. Data from the FBI's Uniform Crime Reporting Program indicate that fewer than five percent of all regular drug users will be arrested during the coming year, and fewer than one-half of one percent of users will be incarcerated.²⁹ Such low rates of detection and punishment seem unlikely to deter drug use significantly.

The enforcement problem appears to be worst in the major cities. The General Accounting Office reports that in New York City individuals arrested for drug trafficking spend an average of less than 18 hours in the criminal justice system, from arrest to release. Fewer than five percent spend more than 30 days in jail.³⁰ Not surprisingly, law enforcement officials complain bitterly that even repeat drug offenders often receive virtually no punishment.³¹ Police frustration with this situation may well account for the surprisingly low proportion of local police officers assigned to narcotics work. According to a survey by the International Association of Chiefs of Police, full-time narcotics personnel in local police departments constitute only one to five percent of the total force.³²

Buckling Under. In short, the state and local criminal justice system is buckling under the weight of the drug war. If drug users are to be deterred, and dealers punished, it will be necessary to upgrade substantially every aspect of that system, from police to prisons. While some policy makers argue that this would be too expensive, the fact is that less than three percent of all government spending in the U.S. supports civil and criminal justice activities.³³ Thus, even a substantial increase in spending on drug enforcement would have only a negligible impact on overall government spending.

29 Author's estimates, based partly on unpublished Department of Justice data on state and federal drug arrests and admissions to state and federal prisons; includes arrests and imprisonments for drug trafficking as well as drug use. See Bureau of Justice Statistics, "Prison Admissions and Releases, 1983" (March 1986), and *Idem.*, *Sourcebook of Criminal Justice Statistics, 1987* (Washington: U.S. Government Printing Office, 1988).

30 *Controlling Drug Abuse: A Status Report*, Special Report from the Comptroller General of the United States (GAO/GGD-88-39, 1988), p. 22. Similar, if less dramatic, problems were reported in the other major cities studied in the report.

31 An extreme case, reported by the General Accounting Office, involved one New York City drug dealer arrested 68 separate times, but each time released after serving little or no time in jail. See General Accounting Office, *op. cit.*, p. 22. The Bureau of Justice Statistics reports that drug trafficking was the least likely of seven felony crimes studied to result in prison sentences. See Bureau of Justice Statistics, "Felony Sentencing in 18 Local Jurisdictions," May 1985. See also Richard Abell, "Beyond Willie Horton," *Policy Review*, Winter 1989, pp. 32-35.

32 See *Reducing Crime By Reducing Drug Abuse: A Manual for Police Chiefs and Sheriffs* (Gaithersburg, Maryland: International Association of Chiefs of Police, June 1988), p. 64. These data confirm findings by the General Accounting Office (*op. cit.*, p. 21) as well as unpublished data from the Department of Justice.

33 See "War on Drugs Held Burdening Justice," *The New York Times*, December 5, 1988.

The challenge for the states is to come to terms with the impact of the drug problem on the criminal justice system. While there may be some federal role in helping the states to cope with this burden, the primary responsibility falls on states and localities to provide sufficient police, prosecutors, courts, and penal resources to create a strong disincentive to drug use and drug trafficking. Innovative solutions, including lower-cost prisons built and operated by the private sector³⁴, and perhaps even temporary courts devoted specifically to drug cases, should be explored as a way of addressing this problem.

2) State and local governments are sending mixed signals on drugs. Many state and local officials send an unclear message to suppliers and users. When public officials discuss the merits of decriminalization, for instance, or are associated with suspected drug dealers (as seems the case in Washington, D.C.), they appear to condone drug use and thereby contribute to the problems faced by law enforcement officials. Even more damaging are programs providing intravenous needles to drug addicts, like the one in New York City.³⁵ These programs turn the government into an accomplice in the crime of drug possession and use.

3) Policies on drug testing are unclear. States also send confusing signals in the area of drug testing. Ten states have passed statutes regulating the use of drug testing by private employers and six of these either eliminate or severely restrict the right of employers to conduct random testing.³⁶ Other states prohibit the use of drug testing even in connection with physical examinations for employees, and two permit such testing only if companies give employees up to four weeks advance notice.³⁷ As former Assistant Attorney General Richard Willard notes in a recent article, the only apparent purpose of these advance notice provisions is to permit drug users to escape detection.³⁸

Other states and local governments, however, are using sensible drug testing procedures to detect drug users in a variety of settings. In Hawkins, Texas, for example, junior and senior high school students are required to

34 Dana Joel, "A Guide to Prison Privatization," Heritage Foundation *Backgrounder* No. 650, May 24, 1988.

35 See Lawrence K. Altman, "Needle Program is a Small One to Test Concept," *The New York Times*, November 8, 1988.

36 The ten states restricting random testing are: Connecticut, Iowa, Maryland, Minnesota, Montana, Nebraska, Oregon, Rhode Island, Utah, and Vermont. Of these, Iowa, Montana, Rhode Island, and Vermont prohibit random testing altogether, while Connecticut and Minnesota permit it only for safety-sensitive jobs or in connection with employee assistance programs.

37 Connecticut, Montana, Rhode Island, and Vermont prohibit such tests altogether; Iowa and Minnesota permit them only with 30 and 14 days advance notice, respectively.

38 See Richard Willard, "Achieving a Drug Free Workplace," in *AIDS, Alcoholism and Drug Abuse: Dilemmas in the Workplace* (Washington, D.C.: National Legal Center in the Public Interest, 1989) pp. 61-98. The preceding paragraph draws heavily on this article, especially pp. 82-85.

undergo random drug testing as a condition of participating in any extracurricular activities. By combining accurate drug testing technology with the “measured response” penalty of mandatory participation in a rehabilitation program, the program has produced a largely drug-free school system.³⁹

Other jurisdictions have applied drug testing within the criminal justice system, both to ensure drug-free police forces and to discourage drug use by individuals who are on probation or free but awaiting trial. Of 33 local police departments surveyed by the Department of Justice in 1986, 73 percent indicated they had some form of drug testing program in place for police officers. Usually these involve pre-employment tests, but many also incorporate random or periodic testing for at least some officers.⁴⁰ In the District of Columbia, a pre-trial drug testing program for those released on bail has been in operation since March 1984,⁴¹ In Georgia, drug testing has played a key role in the state’s Intensive Probation Supervision program, in which even drug offenders who participated had a 90 percent success rate in staying free of both drugs and other crime for 18 months or more.⁴²

4) Better-designed penalties are being introduced.⁴³ Several states have imposed new, more effective penalties on drug users. In Oregon, juveniles (ages 13-17) convicted of alcohol or drug offenses automatically lose their drivers licenses for up to one year; those under age 16 at the time of conviction lose the right to apply for a license until they are 17.⁴⁴ Since the law was passed in 1983, approximately 1,500 youths have lost driving privileges each year.⁴⁵

Similar legislation, applying also to adults, was signed by New Jersey Governor Tom Kean in January 1987. This New Jersey law suspends drivers licenses for six months for anyone convicted of a drug offense. Part of this legislative package is a complete set of “measured response” penalties, ranging from fines based on the value of the drugs confiscated to mandatory community service requirements for those convicted of a drug offense on or near a school.⁴⁶

39 See Michael Ryan, “The Town that Said ‘No,’” *Parade Magazine*, August 14, 1988, pp. 8-10.

40 Barbara A. Manili, *et al*, *Police Drug Testing* (Washington: National Institute of Justice, May 1987).

41 See John A. Carver, “Drugs and Crime: Controlling Drug Use and Reducing Risk Through Testing,” *NIJ Reports*, September/October 1986. See also James K. Steward, “Quid Pro Quo: Stay Drug-Free and Stay on Release,” *George Washington Law Review* 57:1, November 1988.

42 See Billie S. Erwin and Lawrence A. Bennett, “New Dimensions in Probation: Georgia’s Experience with Intensive Probation Supervision,” National Institute of Justice, January 1987.

43 “Measured response” penalties involve alternatives to incarceration, such as fines or loss of government privileges, which are sufficient to deter drug use among most people, if imposed with relative certainty. For further explanation see Jeffrey A. Eisenach, “Why America Is Losing the Drug War,” Heritage Foundation *Backgrounder* No. 656, June 9, 1988.

44 See *Oregon Vehicle Code*, Sec. 809.26-28.

45 Based on press releases from the Oregon Department of Motor Vehicles dated March 2, 1988, January 9, 1987, and January 16, 1988.

46 See *New Jersey Statutes*, Title 2C, Chapters 35, 36, 36A; Title 2A; and Title 24.

Measured response penalties have been applied with great success in the schools. Example: the U.S. Department of Education reports on an Anne Arundel County, Maryland, program under which any student caught possessing drugs automatically is suspended, and both the student and his or her parents must participate in a drug rehabilitation program as a condition of re-admission to school.⁴⁷ The result: a 60 percent drop in the number of drug offenses.

RECOMMENDATIONS FOR THE STATES

The trend toward user accountability, and the increased emphasis on domestic law enforcement throughout the country, have important implications for state and local policy. To give momentum to this trend, state and local officials should:

◆ **Beef up their criminal justice systems. The inadequacy of current law enforcement resources has resulted in the *de facto* decriminalization of drug possession and, to a lesser extent, of drug dealing as well.** States have a moral as well as legal responsibility to see that laws are enforced and that those committing drug crimes are punished appropriately. States and localities thus need to beef up resources devoted to police, prosecutors, the courts and the prisons to see that this responsibility is met.⁴⁸

◆ **Design measured-response penalties.** These include withholding drivers licenses and revoking eligibility for government benefits. They are a low-cost means of levying appropriate punishment on first-time drug offenders. At the same time, states need to examine their drug codes and introduce penalties that judges will be willing to impose and the public will support.

◆ **Repeal decriminalization laws.** Eleven states⁴⁹ treat marijuana possession as either a minor misdemeanor or a civil offense. These laws, relics of the mistaken 1970's belief that marijuana use is both harmless in itself and unlikely to lead to more potent drugs, are obsolete. They have been overtaken by the increasing potency of the marijuana now on the market, and by new research showing the significant adverse health effects of marijuana and its tendency to lead to other drug use. These laws should be repealed and replaced with new statutes that treat possession as a serious misdemeanor and impose significant measured-response penalties.

◆ **Encourage private sector drug testing.** States actively should encourage private employers to test employees on both a pre-employment and random basis, and to develop effective employee assistance programs for current employees who test positive. Specific measures could include: clarifying state law to make clear that drug testing is permitted, offering tax credits or other

47 See Department of Education, *What Works: Schools Without Drugs* (1986), p. 20.

48 Joel, *op. cit.*

49 Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, and Oregon.

tax preferences for these activities, and working with private employers to develop effective testing programs.

◆ **Rethink rehabilitation programs.** The overwhelming body of evidence suggests that most current drug rehabilitation programs are ineffective. At the same time, there is growing evidence that low-cost, private sector programs like Narcotics Anonymous help many drug users. States thus should reconsider their current strategies and look to private sector alternatives as a means of providing rehabilitation services.

◆ **Introduce user accountability provisions in the schools.** Education programs that attempt to teach students about the dangers of drugs are only effective if backed by tough actions when drugs are discovered. State and local school boards thus should adopt policies requiring mandatory suspension of students found with drugs on school property (or convicted of drug possession in the courts), involving parents in rehabilitation and treatment programs, testing those students for drugs who have been suspended for drug use as a condition of readmission, and expelling of students found to be involved in drug dealing. In cases of where there is evidence of a especially significant drug problem, drug testing of all students should be considered.

CONCLUSION

The amount of federal resources devoted to drug policy has increased rapidly this decade; further increases appear certain. Most of those resources continue to be targeted at interdiction, public education, and rehabilitation — policies which have had little impact on reducing drug use.

Shifting the Emphasis. The challenge for the federal government is to switch its emphasis to user accountability. The one strategy that appears to show results — catching and penalizing those who violate the drug laws — is still very underfunded.

In the meantime, state policies warrant a mixed review. On the negative side, inadequate resources have crippled the local criminal justice system. Drug users can be certain of almost never being arrested, let alone punished. Even professional drug dealers face a relatively low risk of incarceration. In addition, state and local governments send ambiguous signals about the drug problem and its solution.

Promising Initiatives. On the positive side, some states have developed strategies that should serve as a model. In particular, “measured response” penalties, limited drug testing programs, and “get tough” approaches to drugs in the schools have achieved promising results. These initiatives show promise for achieving a substantial drop in drug use. They serve as a model for other states in which current efforts are showing little or no impact — and as a guide for more effective steps at the federal level.

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