

**DRUG LAW DECRIMINALIZATION:
PLANNING FOR THE FUTURE**

JOURNAL ARTICLE

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This Command College Independent Study Project is a FUTURES study of a particular emerging issue in law enforcement. Its purpose is NOT to predict the future, but rather to project a number of possible scenarios for strategic planning consideration.

Defining the future differs from analyzing the past because the future has not yet happened. In this project, useful alternatives have been formulated systematically so that the planner can respond to a range of possible future environments.

Managing the future means influencing the future -- creating it, constraining it, adapting to it. A futures study points the way.

The views and conclusions expressed in the Command College project are those of the author and are not necessarily those of the Commission on Peace Officer Standards and Training (POST).

INTRODUCTION

Several forces appear to be driving a potential shift in public thinking and government policy with respect to drug law enforcement. The use and prevalence of illicit drugs is continuing virtually unabated, despite unprecedented efforts at all levels of government to reverse this trend. Costs associated with current drug law enforcement policies have also continued to rise with little or no hope of cost reductions in the foreseeable future.

In some areas of the country, especially in California, prison and jail populations are increasing dramatically. The new Three Strikes Law in California, applicable to non-violent felony drug possession as well as violent crimes, has only been in effect for a little over a year. In some jurisdictions such as Los Angeles County, the courts are overloaded to the point of near gridlock. Demand reduction strategies, such as drug use prevention through education and treatment, have proven to be many times more cost effective than supply reduction strategies, especially foreign government involvement (i.e., crop eradication), and interdiction.

Emerging pro-legalization and decriminalization groups have seized upon the apparent inadequacies of current drug law policies and made persuasive arguments in favor of legalizing or decriminalizing certain illicit drugs. The validity of those arguments is not the issue here. The issue is whether or not the sum total of the various forces which are driving change may result in some form of drug law decriminalization. If this future is plausible, will law enforcement be adequately prepared?

The ability to address this issue in terms of the entire spectrum of illicit drugs is beyond the scope of this article. Consequently, it is necessary to limit the issue to a consideration of the impact of decriminalization of heroin and cocaine upon local law enforcement agencies. In the examination of this issue three immediate concerns arose.

The first major concern is the likelihood that the decriminalization of drug laws might increase the addict population. The second concern is the potential impact of drug law decriminalization on the police organizational structure and personnel, such as potential drug use by police applicants and police employees. The third area of concern is the impact that drug law decriminalization might have on the level of crime and on the criminal justice system in general.

It is not the purpose of this article to debate the pros and cons of drug law decriminalization. Enough has been written and said about this issue. The purpose is to advance a convincing argument that there has been a lack of strategic planning for a possible future in which, due to the perceived failure of current enforcement strategies, drug law decriminalization may occur. It may be possible to develop strategic plans today which, if implemented, would be more cost effective than current drug enforcement policies, particularly at the local level, and might actually forestall decriminalization itself.

DEFINING DECRIMINALIZATION

For the purpose of this article, "legalization" refers to a policy whereby selling and using [illicit] drugs is legal. (Few advocates of legalization propose that there should be no controls whatsoever on illicit drug possession and use.)¹

Drug "decriminalization" refers to the abolishment of criminal sanctions or penalties for the personal use or possession of small amounts of illicit drugs. This does not preclude the imposition of criminal sanctions when a person fails to participate in, or complete, a court mandated treatment program. It also does not preclude the prohibition of use/possession of illicit substances by juveniles or by occupational groups such as public safety personnel, airline pilots, and the like.

USE AND PREVALENCE OF ILLICIT DRUGS

There appears to be an unabated use and prevalence of illicit drugs in our society. A 1992 survey disclosed that more than 75 million persons in the U.S. household population [age 12 and older] had used illicit drugs in their lifetime, and that 12.6 million of those surveyed had used an illicit drug within a month prior to the survey.² More recently, a 1994 National Household Survey on Drug Abuse found that illicit drug use among all Americans remained at the same level in 1994 as it was in 1992, and that marijuana use among 12 to 17-year-olds doubled from 1992 to 1994.³ This may portend an even dimmer picture for the future as studies have identified a sequential pattern of involvement in drug use during

adolescence, such as the use of cigarettes and alcohol first, followed by marijuana and other illicit drugs.⁴

In a report commissioned by the Office of National Drug Control Policy (ONDCP) and covering the period from 1972 through 1992, the annual consumption of cocaine in the U.S. was shown to have decreased and leveled off since around 1982 at about 100 metric tons of (pure) cocaine for casual users, while hardcore users' consumption, during the same period, had risen slightly to just below 200 metric tons. A hardcore user was defined as someone who uses illicit drugs at least weekly and exhibits behavioral problems from this use.⁵ Taken together, the overall cocaine use for both hardcore and casual cocaine users represents an all-time high.

A State Department report issued in 1994 on international narcotics trafficking confirmed that heroin, "which cocaine displaced in the 1980's, was making a comeback everywhere".⁶ In another private study commissioned by the ONDCP to monitor the most current trends in drug use by surveying those on the "front lines" of the drug problem, it was generally found that there existed a "continued availability of high purity heroin and increased prevalence of inhalation"⁷ as a new and disturbing trend.

The U.S. State Department estimates that worldwide potential net production of opium increased from 2,590 metric tons to 3,699 metric tons, or by 43 percent, between 1988 and 1994.⁸ DEA experts warn that heroin production in Columbia could become the most significant drug story of the 1990s with the disclosure that nearly

one-third of all heroin seized in the United States last year originated in South America, particularly Colombia. Only five years ago there were virtually no reports of Latin heroin being seized in the United States.⁹

Colombian drug cartels are aggressively expanding their cocaine trade to Europe and the former Soviet Union while forging ties with groups like the Italian Mafia. Although recent efforts by the Colombian government at dismantling the Cali and Medellin drug cartels (seen as the most powerful cartels in Columbia) have met with some success, there are nearly a dozen other drug gangs scattered around the country waiting to take over, according to U.S. Ambassador to Colombia, Myles Frechette.¹⁰

ENFORCEMENT COSTS AND PRISON POPULATIONS

There is also an apparent unabated rise in societal costs associated with illicit drug use. The Office of National Drug Control Policy (ONDCP) estimates that in 1990 illegal drug consumers in the United States spent \$41 billion on illicit drugs (\$30 billion on cocaine and heroin).

The annual federal budget for drug activities surged from less than \$2 billion in 1981 to more than \$12 billion for the fiscal year 1992. The Bush administration alone spent more than \$40 billion to suppress illegal drug use over four years.¹¹ The years 1993 and 1994 saw Federal Drug Control budgets of \$12.3 and \$12.1 billion, respectively.¹² Federal anti-drug programs cost taxpayers \$13.2 billion in fiscal 1995, with supply reduction initiatives

consuming 64 percent of the drug-control budget. The President's budget request for fiscal 1996 would create the biggest drug-control budget ever, totalling \$14.6 billion.¹³

Added to the direct costs of illicit drug use are indirect costs such as those associated with providing for a burgeoning jail and prison population. Since 1980 the Nation's prison population more than doubled on a per capita basis. On December 31, 1994, the number of sentenced prisoners per 100,000 U.S. residents was 387 - up from 139 in 1980. The percentage of federal prisoners serving a drug sentence more than doubled, from 25% in 1980 to 60% in 1992. Nationally, the percentage of state prisoners serving a drug sentence more than tripled from 1980 to 1993 (6% to 22%).¹⁴

In California the state spent more than \$13 billion last year on its criminal justice system, which includes law enforcement, prosecution, probation, jails and prisons. According to California State Assemblyman Phil Isenberg the state prison population has gone from 28,000 in 1982 to 120,000 in 1994, and 10 prisons were built during that time frame. Further, 57 percent of all people in state prisons are there for non-violent crimes.¹⁵

More importantly, the recent surge in prison population was realized prior to enactment of three-strikes legislation which, according to the California Department of Corrections (CDC), will result in the need to construct over 15 new prisons by 1999 just to maintain existing levels of overcrowding.¹⁶ With the current cost of building a medium to maximum-security state facility averaging just under \$300 million, some estimate that three-strikes may

result in prison construction costs of as much as \$5 billion by the turn of the century.¹⁷

In Los Angeles County the impacts of the "Three Strikes and You're Out" criminal sentencing measure (AB 971) are still being assessed, but a preliminary report by the State Legal Analyst's Office in January of this year revealed a substantial backlog of court cases attributed directly to the new legislation. As of January, 1995, there were over 1,000 three-strikes inmates being housed in L.A. County jails that were awaiting trial. The District Attorney estimates that the number of jury trials will increase from about 2,410 in 1994 to 5,875 in 1995, an increase of 144 percent. More than half of this increase is expected to be third-strike cases.¹⁸

TREATMENT - THE MOST COST EFFECTIVE REMEDY

A new study by the Rand Corporation shows that demand reduction programs (i.e., counselling and treatment) are 15 times more effective at reducing the societal costs of illicit drug use, 7 times more effective at reducing the amount of illicit drugs consumed, and 4 times more cost effective at reducing the user population than domestic enforcement.¹⁹

A similar report just completed for the State of California determined that substance abuse treatment is not only cost effective, but that addiction to stimulants, and crack cocaine specifically (thought to be more resistant to treatment than more familiar drugs such as alcohol or heroin), is as amenable to

treatment as other forms of addiction.²⁰ Past research on criminal offenders has shown that substance abuse tends to increase criminal behavior - both property crimes and violent crimes. However, research has also shown that substance abuse treatment can be effective in reducing substance abuse and criminal activity while the client is in treatment and for some time thereafter.²¹

PRO-DECRIMINALIZATION/LEGALIZATION ARGUMENTS AND GROUPS

In April of 1988, at the United States Conference of Mayors, Baltimore Mayor Kurt Schmoke, one of several political figures favoring legalization, publicly proclaimed that legalization of illicit substances should be considered by law makers. Existing drug laws, according to Schmoke, were ineffective and failed to serve as a deterrent to crime.²² Pro-legalizers include some high visibility supporters, such as former Secretary of State George Schultz.

Conservative political leaders such as economist Milton Friedman and William F. Buckley have also spoken out in favor of legalization. Others that either support legalization, or that have raised questions about the damage resulting from law enforcement's efforts to suppress drugs, include organized crime expert Ralph Salerno, former New York City Police Commissioner Patrick Murphy, former Minneapolis Police Chief Anthony Bouza, and Joseph MacNamera, former Police Chief of San Jose and current fellow at the Hoover Institute at Stanford.²³

In April of 1994, a Los Angeles Times full-page ad was taken

out by the Drug Policy Foundation. The ad asserts that since 1981, well over 150 billion of U.S. tax dollars have gone to fight the war on drugs with another \$150 billion likely to be spent by 1997, but that the U.S. is not now, nor is it likely to be, any safer from the crime and violence brought about by the use of illegal drugs.²⁴ The Foundation does not advocate total drug legalization, but rather the need to study different drug control strategies such as decriminalization of certain substances.

In September, 1994 the television series "Twenty-Twenty" aired a segment dealing with the issue of drug legalization as an alternative to current policies. Similarly, in May of 1995, ABC News presented a one-hour special report in which "America's War On Drugs" was examined. The open use of drugs in Amsterdam, and the British system of medicalization of heroin - frequently pointed to by pro-legalizers as model systems - were presented as a possible alternative approach to criminalization policies.²⁵

In September of this year, representatives of Californians for Compassionate Use (CCU) filed a petition with the State Attorney General's Office to begin the process of putting the "Compassionate Use Initiative" on the ballot. If sufficient signatures are collected the initiative may qualify for the November 1996 ballot. The initiative would legalize possession and cultivation of marijuana for personal medical use by patients with a physician's prescription. CCU's campaign is supported by a coalition of AIDS and senior citizen's groups, medical marijuana patients, doctors, nurses and drug reformers. Among others, CCU's medical board

includes former Senator Alan Cranston.²⁶

STRATEGIC PLANNING

Although none of these forces for change would appear to independently cause a significant impact on the current status of drug criminalization, when taken collectively, there is sufficient reason to believe that some change may occur. One of those changes, the decriminalization and/or legalization of certain illicit drugs, is a distinct possibility in the foreseeable future. If this were to occur, three potential consequences were identified that have serious implications for law enforcement and the criminal justice system, and for which strategic planning may be necessary.

The first area of concern was the likelihood that the addict population would increase resulting in increased addict-related crime such as driving under the influence of drugs. Open use of drugs might also create blighted areas, where criminal activity such as prostitution might flourish. Family violence may increase as the result of drug decriminalization, especially with respect to cocaine use.

The second concern is the potential impact of decriminalization on the police organizational structure and personnel. The ability to attract and hire police applicants who have had no recent use of illicit drugs may be severely compromised in an environment of increased public tolerance toward drug use. Once hired, keeping employees drug-free, and avoiding incidents of on-duty drug use may present significant challenges to law

enforcement agencies. Police agency drug prevention programs may also be adversely affected by decriminalization as young people rationalize that drugs cannot be that detrimental if they are legal to use.

The third area of concern is the impact that decriminalization might have on the level of crime and the criminal justice system. To what extent will the preoccupation of law enforcement personnel with a burgeoning addict population detract from other law enforcement responsibilities? Will other types of crime traditionally associated with drug use such as theft and burglary overwhelm the courts and other related resources?

Strategies can be developed and implemented to mitigate the potential adverse consequences of decriminalization. These strategies include: (1) the expansion of DARE to junior high and high school grade levels, (2) the development of other school-age drug use prevention and education programs (i.e., red ribbon week in which corporate sponsors reward young people for pledging to stay off drugs), (3) the implementation of a drug court program and increased involvement of the line officers in recognizing and referring appropriate cases to drug court, (4) the possible expansion of a drug court to include juvenile offenders, (5) the implementation of a law enforcement agency employee drug testing program, and (6) the drafting of local ordinances that make open use of heroin and cocaine unlawful in the event decriminalization of these drugs occurs.

DRUG COURT

Of all the aforementioned strategies, the implementation of a drug court may be the most significant and cost effective solution to drug use and criminality. Drug court is perhaps one of the best examples of the synergistic relationship that can exist between drug criminalization and treatment. Drug court programs bring the full weight of all intervenors (the judge, probation officers, correctional and law enforcement personnel, prosecutors, defense counsel, drug testing, rehabilitation and treatment specialists, educators, etc.) to bear, forcing the offender to deal with his/her substance abuse problem or suffer the consequences [incarceration].²⁷

An evaluation of the Miami Drug Court sponsored by the National Institute of Justice shows a 60% program success rate while a Department of Corrections study showed a 57% retention rate for the Portland Drug Court. An Oakland Drug Court evaluation showed a 54% program success rate. Reductions in the rate of recidivism were substantial with Miami reporting a 33% reduction over an 18-month period, Oakland showing a 35% reduction over a 48-month period, and Portland a 72% reduction over a 12-month period. Incarceration of drug-using offenders costs a minimum of \$20,000 per year, yet the most comprehensive drug court system costs less than \$2,000 annually for each offender.²⁸

In September of this year, the Senate Appropriations subcommittee voted to eliminate the \$1 billion drug court program.²⁹ Although some of this money may still come back to the

States in the form of "block grants", there is a danger the integrity of the program may be lost as money may be diverted to other more pressing needs.

CONCLUSION

Research of the driving forces behind a potential decriminalization of certain drug laws has revealed that such a possibility may very well become a reality within the next ten years. The principle driving forces behind such an occurrence may be fueled by economic concerns, rather than by arguments over individual rights to privacy. Jail overcrowding, the public expectation of more government efficiency, increased diversity in the role and function of law enforcement, the cost-effectiveness of treatment and education (demand reduction) programs, versus supply reduction programs, are but a few of these forces that portend change in the status quo.

An effort has been made to determine what impact the decriminalization of drug laws related to heroin and cocaine might have on law enforcement within the next ten years. In considering this question it was determined that decriminalization would likely increase the addict population, and a corresponding rise in addict-related crime could be expected. Difficulties may also arise in attracting, hiring, and retaining officers due to a more drug-use tolerant society. Law enforcement agencies that are unprepared for this change may find themselves overtaxed by the new burdens placed upon them, especially at a time of ever increasing work loads, and

limited financial support.

An examination of the potential negative consequences for law enforcement, should decriminalization occur, reveals that planning for such an eventuality is necessary. Many of the alternative strategies (i.e., officer drug testing programs, juvenile drug courts, expanded and enhanced drug use education/prevention programs), represent options that, if implemented, would be beneficial regardless of whether or not decriminalization actually occurs.

The better law enforcement, the criminal justice system, and the community become at implementing successful demand reduction programs, the less ground advocates of legalization or decriminalization will have upon which to stand. It is important to recognize that, even if decriminalization were to occur, the drug court concept can be applied to other criminal activity when committed in concert with drug abuse. Although this would still be an option, the far better approach is to stop drug abuse before addicts become further involved in criminal activity. To that end, criminalization of drug use becomes an important element, one that may be preserved if proper strategies are implemented.

WHAT FURTHER QUESTIONS NEED TO BE ANSWERED

Due to the complexity and breadth of this issue, a number of other related issues that came to the forefront during the research were not studied. Some of those areas of concern included: (1) What impact will the future development and use of other controlled

substances (i.e., designer drugs) have on law enforcement?; (2) What role will the medical community play in managing drug abuse if decriminalization or legalization occurs?; (3) What impact will technologies, such as virtual reality have on illicit drug use?; (4) What effect would a major scientific advancement in the field of drug addiction have on drug laws?; (5) Would the legalization, distribution and taxing of drugs by the government be a cost effective approach to drug abuse? (6) How will the apparent disparities in minority group prosecution for drug offenses impact potential decriminalization?

ENDNOTES

1. California Narcotic Officer's Association In Cooperation With The California Attorney General's Bureau of Narcotic Enforcement, The Myths of Drug Legalization, 1994, p. 1 .
2. Bureau of Justice Statistics, Drugs, Crime and the Justice System, December, 11992, p. 26
3. Washington Crime News Services, "Latest Survey Shows Upsurge in Marijuana Use By Teens As Nation's Drug Woes Increase", Crime Control Digest, September 22, 1995, Vol. 29, No. 38, p.3
4. Bureau of Justice Statistics, Drugs, Crime and The Criminal Justice System, December, 1992, p.23
5. Office of National Drug Control Policy, National Drug Control Strategy, April, 1994, (preface)
6. Peter Maas, "The Menace of China White", Parade Magazine, September 18, 1994, P. 4
7. Office of National Drug Control Policy, Pulse Check, National Trends in Drug Abuse, March 1994, P. 8
8. Samantha Stainburn, "Drug Bust", Government Executive, November, 1995, p.49
9. Washington Crime News Service, "Heroin Market No Longer Run By Southeast/Southwest Asian Drug Cartels, Says The DEA", Crime Control Digest, July 21, 1995, Vol. 29, No. 29
10. Genevieve Lynn, "Drug Traffickers Rule the Country" , USA Today, July 24, 1995
11. John Hogan, "A Kinder War", Scientific American, July 1993, P. 26
12. Office of National Drug Control Policy, National Drug Control Strategy, April, 1994, p. 35
13. Samantha Stainburn, "Drug Bust", Government Executive, November, 1995, p.50
14. U.S. Department of Justice Office of Justice Programs, "Prisoners in 1994", Bureau of Justice Statistics Bulletin, August 1995, P. 1
15. Danielle Starkey and Vic Pollard, "The Prison Dilemma", California Journal, April, 1994, Vol. 25, No. 4, p. 11

16. Ibid., p. 6
17. Phoebe Gifford, "The Prison-Industrial Complex", California Journal, October, 1995, P. 32
18. David Esparza, Bernie Orozco, and Craig Cornett, "The 'Three Strikes and You're Out' Law - A Preliminary Assessment", Status, Legislative Analyst's Office, January 6, 1995, P. 5
19. Peter C. Rydell and Susan S. Everingham, Controlling Cocaine, Supply Versus Demand Programs, Rand, et. al., 1994, P. xiv
20. National Opinion Research Center, Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment (CALDATA) General Report, State of California Department of Alcohol and Drug Programs, April 1994, p. v
21. H.K. Wexler, G.P. Falkin, D.S. Lipton, A.B. Rosenblum and L.P. Goodloe, "A Model For Prison-Based Drug Treatment: An Evaluation of the 'Stayn Out' Therapeutic Community, Narcotic and Drug Research, Inc. NIDA RESEARCH GRANT R18DA03310, 1988
22. Michael D. Lyman and Gary W. Porter, Drugs in Society, Causes, Concepts, and Control, Anderson Publishing Co., Cincinnati, Ohio, 1991, p. 321
23. Ibid., P. 322
24. The Drug Policy Foundation, "Will The Next \$150 Billion Make You Safer?" The Los Angeles Times, April 19, 1994
25. American Broadcasting Companies, Inc., "America's War On Drugs: Searching For Solutions", ABC News, 1994
26. National Organization for the Reform of Marijuana Laws, "CCU Files Medical Marijuana Initiative", California NORML Reports, Vol. 19, No. 3, October, 1995, p 1
27. National Assn. of Drug Court Professionals, "NADCP Congressional Kit", 1995, p. 4
28. Ibid., p. 5
29. Washington Crime News Services, "Drug Policies: What a Mess!", Crime Control Digest, September 22, 1995, Vol. 29, No. 38, p.3