

Commentary

December 8, 2009

The Future of Drug Policy in the United States

Drug policy discussions often start with the question, “Do you favor jail or treatment?” as if the future of drug policy rests on the answer. This is a false dichotomy. The future of drug policy is not a choice between the criminal justice system and substance abuse treatment. A better policy will be created by identifying new ways to reduce the demand for illegal drugs including more cost-effective ways for the criminal justice system to reduce crime and incarceration.

Over the last four decades, a balanced and restrictive U.S. drug policy has enjoyed strong bipartisan support from eight Presidents and from Congress, which has been controlled by both parties over this extended period of time. Consideration of the future of American drug policy starts with the recognition that illegal drug use fell nearly 43% between 1979 and 2008. Nearly half of the people in treatment for substance abuse are there because their treatment is compelled by the criminal justice system. Eliminating the criminal justice system from drug policy would cut treatment by nearly 50%.

The use of illegal drugs peaked in 1979 when 14% of Americans aged 12 and older used one or more illegal drugs within the past 30 days.ⁱ In comparison, 8.1% of Americans (20.1 million) used one or more illegal drugs in the past 30 days in 2008. Dwarfing this number are the total number of Americans aged 12 and older who consumed alcohol (129 million or 51.6%) and who smoked cigarettes (70.0 million or 28.4%) in the prior 30 days.ⁱⁱ The social costs of alcohol and tobacco each overshadow the total social costs, including the criminal justice costs, of all the illegal drugs combined.

The relative biological attractiveness of alcohol and tobacco compared to illegal drugs is seen in animal experiments.ⁱⁱⁱ It is difficult to get laboratory animals to drink alcohol or to smoke tobacco, whereas they are generally eager to use illegal drugs, and in some cases, when animals have free access to drugs, they consume these drugs until they die.

No one should be satisfied with the current American drug policies. While the policies developed in the past four decades have succeeded in containing the drug epidemic, they can be significantly improved. Encouraging this improvement is the mission of the Institute for Behavior and Health, Inc. (IBH).

A powerful new idea in drug policy is to leverage the criminal justice system to reduce the demand for illegal drugs among one of the largest and most problem-generating population of users – the 5 million Americans on probation and parole. HOPE Probation (Hawaii’s Opportunity Probation with Enforcement) offers a model to sharply reduce drug and alcohol use in this high-risk population with intensive monitoring linked to swift and certain – but not severe – sanctions for any use of alcohol or other drugs.^{iv} A similar program model developed in South Dakota, the 24/7 Sobriety Project, specifically targets the 1.4 million Americans arrested each year for Driving While Intoxicated (DWI).^v Both programs significantly reduce recidivism and incarceration.

While the routine use of long prison sentences is not a cost-effective way to reduce the demand for drugs, to abandon the role of the criminal justice system in drug policy is to lose one of the nation's best opportunities to reduce drug demand, to reduce crime, to promote recovery and to save lives.

Programs that utilize strategies similar to those in HOPE Probation and 24/7 Sobriety include the nation's Physician Health Programs (PHP) which link intensive, random drug testing for five years or longer to treatment.^{vi} The PHP programs have established a new standard for long-term outcomes for substance use disorders. Dealing with a population of substance users which is dramatically different from those served by HOPE Probation and 24/7 Sobriety, PHPs add to this growing body of evidence that points the way forward to significant improvements in the nation's substance abuse treatment system. Rather than assuming that relapse to drug and alcohol use is inevitable in substance abuse treatment, these programs use random drug testing with swift and certain consequences under a standard of zero tolerance for any use. They produce exceptional outcomes.

Drug abuse prevention is another opportunity to improve the nation's drug policy. Drug testing, a proven, effective deterrent to drug use, can be integrated into substance use prevention programs. Reducing the demand for drugs should start in schools, including Random Student Drug Testing (RSDT). Today there are over 4,000 schools in the U.S. – 14% of school districts in the country – which have implemented RSDT programs.^{vii viii} Integrated with other substance use prevention programs, these non-punitive programs deter students from using substances of abuse. They also identify drug-using students so that these students can become and stay drug-free. Random testing of students in public school has been ruled Constitutional^{ix x} by the U.S. Supreme Court. Contrary to opponents' arguments, RSDT does not put students out of school. Drug use does. RSDT keeps students in school. While it is not a stand-alone prevention program, RSDT is an essential part of a comprehensive drug prevention effort that includes, and does not compete with, drug education.

Reducing drugged driving will not only improve highway safety but it will reduce the demand for illegal drugs. Drugged driving is a serious highway safety problem that rivals the better known problem of drunk driving. Any detectable amount of an illegal controlled substance in a driver's body constitutes a *per se* violation of drugged driving laws just the way any alcohol in the body of a driver under the age of 21 is a *per se* violation of the law. The *per se* standard has been used successfully for illegal drugs for the nation's 12 million commercial drivers for the past two decades.

The future of American drug policy lies in creating new programs that are smarter, better-focused, and more cost-effective. Such programs not only will reduce the demand for illegal drugs, but they will also improve public health and public safety.

For more information on IBH and drug policy, please visit www.ibhinc.org.

Robert L. DuPont, M.D.

President, Institute for Behavior and Health, Inc.

First Director, National Institute on Drug Abuse (NIDA) 1973 to 1978

The Institute for Behavior and Health, Inc. (IBH) focuses on national drug abuse policies that emphasize prevention and investment in better treatment approaches. Established in 1978, IBH is a 501(c) 3 non-profit organization working to reduce substance abuse through the power of good ideas. IBH's websites include www.ibhinc.org, www.StopDruggedDriving.org, and www.PreventionNotPunishment.org.

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- ⁱ Substance Abuse and Mental Health Services Administration. (1999). *National Household Survey on Drug Abuse: Main Findings 1997*. (Office of Applied Studies). Retrieved November 30, 2009 from <http://www.oas.samhsa.gov/NHSDA/1997Main/toc.htm>.
- ⁱⁱ Substance Abuse and Mental Health Services Administration. (2009). *Results from the 2008 National Survey on Drug Use and Health: National Findings* (Office of Applied Studies, NSDUH Series H-36, HHS Publication No. SMA 09-4434). Rockville, MD.
- ⁱⁱⁱ DuPont, R. L., Madras, B. K. & Johansson, P. (In Press). Drug policy: A biological science perspective. In J. H. Lowinson & P. Ruiz (Eds.) *Substance Abuse: A Comprehensive Textbook* (5th ed.). Lippincott Williams & Wilkins.
- ^{iv} Hawken, A. & Kleiman, M. (2008, July). Research brief: Evaluation of HOPE Probation. Retrieved December 1, 2009 from http://www.pewtrusts.org/uploadedFiles/HOPE_Research_Brief.pdf.
- ^v Long, L. (2009). The 24/7 Sobriety project. *The Public Lawyer* (17), 2: 2-5.
- ^{vi} DuPont R. L., McLellan A. T., White W. L., Merlo L., and Gold M. S. (2009). Setting the standard for recovery: Physicians Health Programs evaluation review. *Journal for Substance Abuse Treatment*, 36(2), 159-171.
- ^{vii} Centers or Disease Control. (2007). SHPPS 2006: School Health Policies and Programs Study. *Journal of School Health*, 77(8).
- ^{viii} Ringwalt, C., Vincus, A.A., Ennett, S.T., Hanley, S., Bowling, J.M., Yacoubian Jr., G.S., et al. (2007). Random drug testing in US public school districts. *American Journal of Public Health*, 98(5):3-5.
- ^{ix} *Vernonia School District 47J v Acton*, 94-590 Sd (9th Cir 1995)
- ^x *Board of Ed. of Pottawatomie County v Earls*, 536US 822 (2002).