THE DECRIMINALIZATION OF ILLEGAL DRUGS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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THE DECRIMINALIZATION OF ILLEGAL DRUGS

TUESDAY, JULY 13, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Barr, Hutchinson, Ose, Mink, Kucinich, and Cummings.

Also present: Representative Sam Johnson of Texas.

Staff present: Sharon Pinkerton, staff director and chief counsel; Gil Macklin and Sean Littlefield, professional staff memebers; Michael Yeager, minority counsel; and Jean Gosa, minority staff assistant.

Mr. MICA. I would like to call this meeting of the Criminal Justice, Drug Policy, and Human Resources Subcommittee to order. This morning the hearing is entitled ''The Decriminalization of Illegal Drugs.''

We have other Members who will be joining us, I understand the ranking member is on her way, but we will begin so that we can finish on a timely basis. I will start with an opening statement, yield to others for their opening statements, I believe we have three panels today.

Today, our Subcommittee on Criminal Justice, Drug Policy, and Human Resources will examine the controversial topic of the decriminalization of our narcotics laws. This hearing is one of a series of hearings that we intend to hold to examine our national drug control policy and also to determine its effectiveness.

Last month, the subcommittee heard testimony from a number of important witnesses on the topic of narcotics legalization. Witnesses at that hearing included the Director of the Office of National Drug Control Policy, General Barry McCaffrey; the Director of the National Institute of Drug Abuse, Dr. Alan Leshner, and Donnie Marshall from the Drug Enforcement Administration.

Additionally, we heard from the new Florida drug czar, also a former member of and staffer with the National Drug Control Policy Office, and a number of other nongovernmental witnesses who have testified before our subcommittee on this subject.

Today's hearing should help buildupon that record begun last month. Some proponents of decriminalizing our drug laws have

claimed that many of those in our jails and prisons today are incarcerated for minor drug use or for simple possession. Others claim that those in prison have a health problem versus a criminal problem and should be treated accordingly.

As we have examined the effects of illegal narcotics, it is clear that drugs destroy lives. They help produce the felonious behavior and conduct we have seen: overdoses, fatal accidents, and death by criminal homicide. Drug overdose deaths continue to plague our metropolitan areas, both our suburbs and our inner cities, and our schools at every socioeconomic level today.

Drug use is soaring among our young people. The latest national survey found that more than 50 percent of 12th graders had tried an illicit drug and more than one in four are current users. If the laws are evenly applied and enforced, half our young people would be eligible for jail time.

The American public should understand the policy implications of decriminalization. Despite all the media hype, however, most young drug users, and for that matter very few drug use offenders, ever see the inside of a prison cell.

In fact, one of the most recent studies analyzing the New York State prison population indicates that you really have to work hard to be in prison for drug use. The facts—and we want to deal with the facts today—also show that most of those in our State and Federal prisons are, in fact, repeat felony offenders or those have trafficked in large quantities of hard narcotics.

Should Congress change the laws to take the criminal penalties out of these narcotic-related felonies? Today we will hear from a number of witnesses on this subject. We will hear from two witnesses who have important stories to tell about drug programs that appear to be producing results in New York State and in the State of Arizona. We will also hear from some nongovernmental witnesses who represent differing viewpoints on this issue.

It is the contention of some that drug laws in this Nation are sending first time offenders to prison. The statistics tell, in fact, another story. In fact, virtually all convicted criminals who go to prison are violent offenders, repeat offenders, or violent repeat offenders. It is a simple myth, in fact, that our prison cells are filled with people who don't belong there, or that we somehow would be safer if fewer of these people were in prison.

A scientific survey of State prisoners conducted by the U.S. Department of Justice found that 62 percent of the prison population has a history of violence, and 94 percent of our State prisoners committed one or more violent crimes or served a previous sentence of incarceration. Between 1994 and 1996, over 90 percent of all State prisoners were violent offenders or recidivists.

The closer one looks into the criminal conviction history of prisoners, the clearer it becomes that there are almost no petty, nonviolent, or first time felons behind bars who pose no real threat to our public safety and who simply do not deserve to be incarcerated.

According to another study, in 1994, California's prison population rose to over 125,000 inmates. Numerous experts and journalists insisted that the State's prisons were overflowing with first time offenders and harmless parole violators.

The results of the California Department of Corrections' analysis of randomly selected felony offenders admitted to the State's prisons in 1992 and classified as nonviolent, revealed that 88.5 percent of these offenders had one or more prior adult convictions. The average number of prior convictions in fact was 4.7, and a fifth of these so-called nonviolent felons had been committed to prison once or twice before.

A 1996 study of individuals imprisoned in Wisconsin found that about 91 percent of the prisoners had a current or prior adult or juvenile conviction for violent crime. None were sentenced solely for possession or as drug users, and fewer than 2 percent were first time drug or property offenders. Of these prisoners, 82 percent were eligible for discretionary parole within a few years.

It is true that many of those in our State and Federal prisons are there because of drug-related offenses. Some have murdered, robbed or physically assaulted others while under the influence of hard drugs or while trafficking in significant quantities of deadly narcotics.

Do we let these felons out of prison? Do we have adequate treatment for drug abusers and addicts who commit felonies while under the influence of drugs? Is this just a public health problem that medical professionals can solve?

These and many other questions will be asked today as we address the topic of decriminalization. I look forward to today's hearing on this important topic. I want to thank our witnesses for taking the time to participate.

That concludes my opening statement. I am pleased to yield at this time to Mr. Kucinich.

[The prepared statement of Hon. John L. Mica follows:]

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Opening Statement of
Chairman John L. Mica
Subcommittee on Criminal Justice, Drug Policy and Human Resources
"The Decriminalization of Illegal Drugs"
July 13, 1999

Today, the Subcommittee on Criminal Justice, Drug Policy and Human Resources will examine the controversial topic of the decriminalization of our narcotics laws.

This hearing is one more in a series of hearings we have held, and will continue to hold, into examining our nation's national drug control policy and its effectiveness.

Last month, the Subcommittee heard testimony from a number of important witnesses on the issue of narcotic legalization. Witnesses at that hearing included the Director of the Office of National Drug Control Policy, General Barry McCaffrey; the Director of the National Institute on Drug Abuse, Dr. Alan Leshner; and Donnie Marshall from DEA.

Additionally, we heard from the Florida Drug Czar and a number of non-governmental witnesses.

Today's hearing should help build upon the record we started last month.

Some proponents of decriminalizing our drug laws have claimed that many of those in our jails and prisons are incarcerated for minor drug use or simple possession.

Others claim that those imprisoned have a health, versus a criminal problem, that should be treated accordingly.

As we examine the effects of illegal narcotics it is clear that drugs destroy lives. They help produce felonious behavior, overdoses, fatal accidents and death by criminal homicide.

Drug overdose deaths continue to plague our metropolitan areas, suburbs and schools. Drug use is soaring among young people. The latest national survey found that among 12th graders more than 50% of them had tried an illicit drug and more than one in four are current users.

If the laws are evenly applied and enforced, half our young people could be eligible for jail time.

The American public should understand the policy implications of decriminalization. Despite all the media hype, however, most young drug users, and for that matter very few drug use offenders, ever see the inside of a prison cell.

In fact, one of the most recent studies analyzing the New York State prison population indicates that you really have to work hard to be imprisoned for drug use.

The facts also show that most of those in our state and federal prisons are repeat felony offenders or have trafficked in large quantities of hard narcotics.

Should Congress change the laws to take the criminal penalties out of these narcotic related felonies?

Today we will hear from a number of witnesses on this subject. We will hear from two witnesses who have important stories to tell about drug programs that appear to producing results in New York and Arizona. We will also hear from some non-governmental witnesses who represent differing viewpoints on the issue.

It is the contention of some that the drug laws in this nation are sending first-time offenders to prison. The statistics tell another story.

In fact, virtually all convicted criminals who go to prison are violent offenders, repeat offenders, or violent repeat offenders. It is simply a myth that our prison cells are filled with people who don't belong there, or that we would somehow be safer if fewer people were in prison.

A scientific survey of state prisoners conducted by the U.S. Department of Justice found that 62 percent of the prison population had a history of violence, and that 94 percent of the state prisoners had committed one or more violent crimes or served a previous sentence of incarceration of probation.

Between 1974 and 1996 over 90 percent of all state prisoners were violent offenders or recidivists.

The closer one looks into the criminal and conviction histories of prisoners, the clearer it becomes that there are almost no petty, non-violent, or first-time felons behind bars who pose no real threat to public safety and who simply do not deserve to be incarcerated.

In 1994, California's prison population rose to over 125,000 inmates. Numerous experts and journalists insisted that the state's prisons were overflowing with first-time offenders and harmless parole violators.

The results of a California Department of Corrections analysis of randomly selected felony offenders admitted to the state's prisons in 1992 and classified as "nonviolent" reveals that 88.5 percent of these offenders had one or more prior adult convictions.

The average number of prior convictions was 4.7 and a fifth of these "nonviolent" felons had been committed to prison once or twice before.

A 1996 study of individuals imprisoned in Wisconsin found that about 91 percent of prisoners had a current or prior adult or juvenile conviction for a violent crime.

None were sentenced solely for possession or as drug users and fewer than 2 percent were first-time drug or property offenders. Of these prisoners 82 percent were eligible for discretionary parole within a few years.

It is true that many of those in our state and federal prisons are there because of drug related offenses. Some have murdered, robbed, or physically assaulted others while under the influence of hard drugs or while trafficking in significant quantities of deadly narcotics.

Do we let these felons out of prisons? Do we have adequate treatment for drug abusers and addicts who commit felonies while under the influence of drugs?

Is this just a public health problem that medical professionals can solve? These, and many other questions will be asked today as we address the topic of decriminalization.

I look forward to today's hearing on this important topic and I want to thank today's witnesses for taking the time to come before us today.

Mr. KUCINICH. Thank you very much, Mr. Chairman, and thank you again for holding hearings which focus on this important question. And to that, I would just like to simply add a question, because I don't know if I am here today with any answers.

My question is, what is it about our society or individual experience which causes people to seek an altered reality? What is going on with our world that people try to find ways of escaping it through the use of drugs? I think that is a question worth pondering, whether it is going to be pondered in this particular setting or not.

Thank you.

Mr. MICA. I thank the gentleman. I would yield now to Mr. Hutchinson.

Mr. HUTCHINSON. I thank the chairman, and I just want to express my appreciation for you holding this hearing. I believe it is an extraordinarily important subject that we need to hear about, but also to provide a tool of education for people in America to really look at this head-on and see the problems of moving in this particular direction.

I also want to take the opportunity to welcome Mr. Constantine and express appreciation for the work that he has done as administrator of the DEA. I look forward to hearing his testimony on this very important subject.

I yield back.

Mr. MICA. I thank the gentleman, and we will turn now to our first panel, which consists of one individual who is known to all of us, Tom Constantine, who served an incredibly distinguished tenure as the Administrator of our Drug Enforcement Agency.

I just want to say a few things while he is before us today, as I introduce him. During his 5 years as the head of DEA, he did, in fact, do a superb job of bolstering our national drug control efforts. He not only improved the quantity of agents that we have working but also the quality of the organization, the modernization of the agency's intelligence operation.

He has been referred to as a law enforcement officer who has been applauded by almost every State, local, national and international organization for his incredible efforts. He has only been out of office a few days now, but already his presence and his leadership are missed.

We are indeed privileged to have him before us today as a retired, former administrator. I think hearing his perspective, too, having served in that important drug enforcement position, will be especially enlightening.

Again, sometimes when you come before us as a public servant, as the head of an agency, there are some constraints, there is some tempering, although I have never known Tom to temper his comments too much to us. He has always been frank and candid. But he is in a different role now, and we are delighted that he would voluntarily come back and testify. The topic before us is a difficult topic, but there has been much public discussion about decriminalization, and I think it is important that our subcommittee and Congress hear his perspective.

Having been before us, Mr. Constantine, I think you know this is an investigations and oversight panel, so if you wouldn't mind,

sir, even though you are no longer the Administrator, we are still going to swear you in.

[Witness sworn.]

Mr. MICA. With nothing but accolades for your past performance, your great service to our country and the drug enforcement agency, let me welcome you back, sir, and recognize you for your testimony today.

STATEMENT OF THOMAS A. CONSTANTINE, FORMER ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

Mr. CONSTANTINE. Congressman, thank you very much for your kind comments. They are very flattering, and I wish that half the things that have been said over the last 3 or 4 weeks were true, and then I would feel that I had been successful.

However, I very seldom have been involved in discussions or debates on the legalization or decriminalization issue. The reason being, I always had a concern that it would be similar to deciding how much domestic violence we would tolerate, how much drunken driving we would tolerate, how much child abuse we would tolerate, and we would wind up compromising positions on the edges of the argument, and the eventual losers would be the young people of the United States.

Unfortunately, during my 39-year career in law enforcement, both with the State Police of New York and now with the Drug Enforcement Administration, I have seen this cycle come one time before at least. When I first began my career in the 1960's, drug abuse was a little-known problem within the United States. Very few people utilized drugs. It was not a burden on our criminal justice system, our social system. The individuals who were using narcotics tended to be addicted to heroin of low-level purity, in very small numbers.

During the 1960's, I saw a great change occur in our society. I saw young people become involved in the use of all types of drugs, originally the so-called soft drugs—marijuana, hashish, hallucinogenic drugs—and there became almost a cultural divide between my generation and the generation that followed.

Unfortunately, I watched as leading people in many of our universities and opinion leaders started to address narcotics and the use of narcotics as if it was a rite of passage, and in many ways that it was something that was a civil right, that people could do what they wanted with their own bodies. The availability of drugs in so many segments of our society over the last 30 years has created profound damage, I believe, not only to individuals, families, neighborhoods, but entire cities and sometimes our entire society.

I think we have to make very, very clear the discussions and the arguments that are taking place. If you look at opinion survey after opinion survey over the last 30 years, continually, U.S. citizens are diametrically opposed to the legalization of drugs. So now we begin to hear words like "decriminalization" and "harm reduction," and when we start to consider those approaches, I think it is important to understand the ultimate goal of some of the advocates of legalization when they say "harm reduction."

Last night, when I was going over my papers, I found a letter that had been sent to me by Mr. Ethan A. Nadelmann, who is from

the Lindsmith Center in New York City, working for the Open Society Institute with Mr. George Soros as the president. He asked that I review an article he had published in the Foreign Affairs magazine that might be useful in my thinking about drug policy issues.

One paragraph caught my eye, and I recall the term "harm reduction" something that I think you will hear again and again because it is a euphemism for legalization. Here is what Mr. Nadelmann thinks, and I read his own words, "harm reduction" means: "Harm reduction innovation includes efforts to stem the spread of HIV by making sterile syringes readily available and collecting used syringes; allowing doctors to prescribe oral methadone for heroin addiction treatment, as well as prescribe heroin and other drugs for addicts who would otherwise buy them in the black market; establishing safe injection rooms so that addicts do not congregate in public places or dangerous 'shooting galleries.'"

The last interesting comment caught my attention, obviously, quite vividly. Mr. Nadelmann recommends employing drug analysis units to be stationed at large dance parties called "raves" to test the quality and potency of the MDMA and Ecstacy drugs and other drugs that patrons buy and consume. He also recommends decriminalizing, but not legalizing, possession and retail sale of marijuana, and in some cases possession of small amounts of hard drugs, and integrating "harm reduction" policies and principles into community policing strategies.

That, I think, is a fairly clear indictor of some of the arguments that have been made and will be made. But there are some things that are obvious to me over all of this experience, that is, the advocates of decriminalization and legalization are mostly affluent, well-educated, and socially distant from the potential victims of their experiment. The legalization movement is well-financed, and has been spawned in the salons of the Upper East Side of New York and country clubs on both coasts of the Nation, locations remote from the realities of drug addiction, despair and the social decay that accompany drug use.

The people who are always excluded from the legalization debate, and this is no accident, I think, are the mothers of addicted children, religious leaders, and the loved ones of those who have been victimized by crime and addiction. Law enforcement officials are also absent from the ranks of those who are calling for legalization, not because we have a vested interest in enforcing the drug laws of the United States—nothing could be further from the truth—but because we have seen how dangerous and devastating drug use and trafficking have been, and unfortunately, in those very communities that suffer the most from social problems.

I would like to make several points during my presentation today to show some additional insight as to just how misguided the legalization argument is. In order to do this as succinctly as possible, I would like to address head-on some of the issues that are pertinent to this debate. Because of my extensive experience in law enforcement, the majority of my comments will be focused in this area.

First, it is important to recognize that the drug supply often drives the demand. Second, the enforcement of drug laws can and

has had a significant impact on reducing the crime rate in the United States. And, third, there are far too many questions that remain unanswered by legalization advocates about the practical implementation of their social experiment.

Often, legalization advocates claim that drugs should be legalized in order to satisfy what they characterize as America's insatiable demand for drugs. From my experience and the experience of the vast numbers of law enforcement officials that I deal with, it is clear that it is drug availability that often leads to increased usage.

At the current time, communities in the United States are often being targeted by powerful international drug syndicates, presently from Colombia and Mexico. They have brought to the United States, cocaine in massive tonnage amounts, heroin of very high purity, and methamphetamine, a drug that was virtually unknown in the United States until about 6 years ago. All of it offered at low prices and high purity until such time as individuals become addicted to the usage of the drug, and then demand does perpetuate the source of supply.

Today's heroin mortality rates are the highest ever recorded, exceeding even those of the mid-1970's when deaths reached a high point of just over 2,000 per year. Close to 4,000 people died in each of the last 3 years from heroin-related overdoses. That has taken a toll on a wide range of communities such as Baltimore, MD, which has unfortunately become the heroin capital of the United States, or Orlando, FL, and suburban cities such as Plano, TX, in the West, Seattle and San Francisco.

The fact that increased drug supply leads to increased drug demand is also demonstrated by the skyrocketing surge in methamphetamine abuse throughout the United States. Before there became a large amount of methamphetamine available, there were over 4,900 emergency room episodes in 1991. As the drug became more prevalent and available, in 1997, we had 17,400 emergency room episodes, a 280 percent increase, and this is spread across the entire United States.

Second is the impact of aggressive law enforcement. Much is said about the issue of law enforcement and their ability to direct resources to focus on these problems of crime and violence. I watched, Congressman, as the State which I live in and am very proud of, New York State, went through a period from 1960 to 1990 where the violent crime rate deteriorated to levels that were almost unimaginable.

In the city of New York, there were about 400 murders in 1960. By the time we had gotten to 1990, there were over 2,250 murders in that city. The armed robberies went from 7,000 to 120,000.

All of that changed in 1990. In the fall of 1990, a young man from Provo, UT was murdered in front of his parents in a subway station in Manhattan, and there immediately became a reaction to the problem.

Previously, we were told in law enforcement that our strategies would not work, we could not arrest our way out of the problem, that prison was not the answer to these situations, nor were arrests. However, with added police resources in the city of New York, the arrests doubled over a period from 1994 to 1998.

When that occurred, we watched the crime rate drop, so where there was 2,250 murders in New York City in 1990, the murders had gone down to just a little over 600 last year. If you add those homicide victims up cumulatively from 1990 to 1998, if they had continued to be murdered at the rate that they were being murdered at in 1990, there are approximately 6,700 people alive today in New York City who would not be alive had it not been for the active, aggressive use of law enforcement in that city, in that State.

Even more amazing to me is the reduction in the so-called index crimes. We have a uniform crime reporting system in the United States, that all law enforcement agencies have to file the incidents that occur within their communities. It is murder, robbery, rape, manslaughter, assault, burglary, car theft, and I believe, arson.

In New York City, and I have met with the leaders of the New York City Police Department, they focused on the violent drug gangs that were causing these immense problems within that city, and they doubled their arrests. They went from 64,000 drug arrests in 1994 to over 130,000 drug arrests in 1998.

What is the result? The index crimes have been cut in half. They went from 400,000 index crimes in 1994 to 200,000 index crimes in 1998. That means in that 1 year alone, in 1998, there are 200,000 less crime victims in the city of New York than there would have been if there had not been immediate use of law enforcement resources directed to that area.

In fact, I am very proud to say that city, and that State which is my home, and as I said, I am very proud of it, has led the entire Nation in the reduction of crime. It has become one of the safest cities in the Union. A lot of that work is the responsibility of very professional, very active law enforcement.

We also have done similar things within DEA. We have gone from community to community throughout the United States and targeted violent drug traffickers. I think it's important for everybody to understand, there is a nexus between drug use and violence, and drug trafficking and violence. Over 70 percent of all of the felons in most of our major cities who are arrested, are under the influence of drugs at the time of their arrest and during the commission of their crime.

Second, those groups competing with each other in the violence that occurred, that have engaged in an enormous amount of homicides and assaults, in our program, we are able to demonstrate a 12 percent reduction in homicides in less than 6 months. That means in just these small communities throughout the rural, suburban areas of the United States, over 130 less crime victims, 2,000 less robbery victims, 2,000 less assault victims.

We believe that drug abuse, along with the combination of violent crime and social decay that accompany it, can be prevented. Too many people in the United States sometimes seem resigned to the inevitability of rampant drug abuse. However, effective prevention programs, effective law enforcement programs, and effective rehabilitation programs can improve that drastically, as we have been able to demonstrate over the past 7 or 8 years.

Now, the reality is, the legalization opponents are telling Americans that drugs are not dangerous; that increased addiction is not a significant threat to America; and that the people living in the

poor neighborhoods of our cities and communities will be better off because it is drug dealing, not drug use, that is the problem.

There was a report released at 10 o'clock this morning by the National Center on Addiction and Substance Abuse at Columbia University. I read portions of the report last night. It is the most impressive treatise that I have seen on the entire area of the use of marijuana and the impact on young people.

It finds that more teens age 19 and younger—and this is very important—enter treatment for marijuana abuse and dependence than any other drug, including alcohol. In fact, nearly as many teens and children were admitted to treatment for marijuana as were admitted for abuse and dependence on all other substances combined. So that most vulnerable segment of our society, teenagers up to the age of 19, are being admitted for therapy and rehabilitation and counseling for marijuana more than any other substance combined, including alcohol.

They find that of the 181,000 teens and children who entered treatment in 1996, nearly half, 87,000 of them were admitted for abuse or addiction to marijuana alone; 35,000 were admitted for alcohol with a secondary drug; 21,000 for alcohol use. More than half the teens in treatment for marijuana were between the ages of 15 and 17.

The paper goes on in a great deal of depth, and time does not allow me to present it all, and I probably would not be able to give it the appropriate treatment that it deserves.

But it discusses in depth the issue of who goes to prison, who gets arrested, and what is the real story on individuals arrested for the possession of marijuana and other drugs, and I think you will see that it is an infinitesimal number of people in the Federal prison system and in the State prison system who have, as a first offense, nonviolent drug usage. In fact, in DEA, our marijuana cases, the average amount of marijuana per defendant convicted is over 300 pounds of marijuana.

So the legalization advocates unfortunately are not telling the truth about the consequences of their proposal. It is not that they are purposely misleading Americans, but rather, they are not providing all of the information that is necessary for us to make a sound judgment on the issue.

The logistics of legalization of drugs are overwhelming. Take legal pharmaceuticals, for example. Despite tough regulations and strict controls, these powerful and addicting legalized drugs, that have been tested again and again by the major pharmaceutical corporations, remain the most widely abused drugs in the country. Surely the same would happen if we were to legalize heroin, cocaine, and methamphetamine.

There are many tough questions to ask legalization advocates. I believe many cannot be answered adequately. Some of these include: Will all drugs be legalized? Will we legalize marijuana, Ecstacy, hashish, hallucinogenics, cocaine, heroin, methamphetamine?

Will we knowingly make dangerous, mind-altering addictive substances like crack cocaine and methamphetamine and heroin available to everyone? Will we, as a society, willingly and knowingly addict our citizens to a lifelong dependency on drugs, regardless of

their age, regardless of their health, regardless of their profession, regardless of their past criminal record?

How will we address the black market that will inevitably spring up to provide newer, purer, more potent drugs to those now addicted who cannot be satisfied with the product that they obtain by the government or the private sector?

Simply, if we start to allow people to use heroin, as a government, and we know that they become addicted and they need more and more, in the sense of their dependency on that substance, will we continue to give as much heroin as they want, as often as they want? Once we say no, there is a limit that we will place on the amount of heroin we will give them, we now have an addicted junkie who wants more heroin than the government will provide, and as a result will be looking to many outside sources.

Given the fact that our record with cigarettes and alcohol in this country is not very good, how will we limit the abundance of dangerous drugs to 18 or 21-year-olds? Who will pay for the health costs and the social costs which will accrue as a result of increased drug usage? Or do we have a store in the middle of the block that makes drugs available to people who want them, and then on the corner at the other end of the street, will we need a rehabilitation center and a therapy center, both of which are paid for by the government?

Who will pay for the loss in productivity and the absenteeism in our society as a whole? Whose taxes will pay for the thousands of babies who are born addicted to drugs? What responsibility will our society have for these children as they grow and have problems as a result of their drug usage?

Where will we set up these drug centers? I talked to a mayor of a major city in this country who I thought put the problem as succinctly as I have ever heard it placed.

He said if the advocates for legalization think this is such a very good idea, why don't they start off with their family first and see, after a year or two, the impact of their family utilizing these substances? If then, they feel it has been productive and will be successful, let them then move to their own childrens schools or their own neighborhoods before there are any experiments that go further.

Last but not least, if we are going to have a place that distributes and dispenses drugs, please do not place it back in my city, which has all of the social burdens that we have today. See how that will work in some of the trendy suburbs or some of the areas in the Upper East Side of Manhattan where many of these individuals live.

Most legalization experts cannot answer this question: Can we set up a legalization pilot program in your neighborhood?

These are all questions we should ask, and these are answers that we should demand. Granted, we have not effectively addressed all of the drug problems facing our Nation today, but we have made substantial progress and improved dramatically.

From 1979 to 1992, the violent crime rate in this country has dropped at a rate that most would not have imagined 5 or 6 years ago. If we could be as successful in reducing violent crime as we have been with the other diseases, the communicable diseases, can-

cer and heart conditions, whoever was responsible for that reduction in crime would probably be a recipient of the Nobel prize.

We must also realize the drug issue is a very complex problem. It has been with us for decades. It will take more time for us to see our way clear. Despite this realization, it is astounding to me that legalization proponents advocate surrender.

Our Nation is faced with other problems beside drug abuse—AIDS, declining educational standards, homelessness—but we do not hear cries for us to abandon our efforts and surrender to inaction on these issues. Why is the drug issue different? We do not advocate giving up on our schools or negating everything we have done to date to find a cure for cancer, even though we have spent billions of dollars on research and we've not yet found a cure.

In closing, I would have to say, as a sergeant with the New York State Police, a lieutenant, a captain, a major, I went from neighborhoods and eventually to cities and entire communities throughout our State. When I went to those communities that were suffering the most as a result of the drug problem, never once did I have a mother, a sister, a priest, a teacher come to me and say, "Sergeant Constantine, Lieutenant Constantine, Major Constantine, what our community needs more than anything is drugs that would be available to our children in a legalization scheme, because that will improve our schools, it will improve their work habits, it will improve their study habits."

I think, because these parents have all the wisdom of generations and know that more drugs, freer drugs, more accessible drugs, will only lead to more addiction, more problems. They do not have a lot of the resources within their family wealth, their family background, to be able to solve those problems. We have a responsibility, those of us who have been very fortunate in life, some very successful, to make sure that our first and No. 1 priority is to take care of those who have been less successful and have limited resources.

Thank you very much.

[The prepared statement of Mr. Constantine follows:]

Remarks by

Thomas A. Constantine

Former Administrator
Drug Enforcement Administration
United States Department of Justice

before the

House Government Reform Committee: Subcommittee on Criminal Justice, Drug Policy, and Human Resources

regarding

The Drug Decriminalization Movement in America

Room 2154
Rayburn House Office Building
Washington, D.C.
July 13, 1999

NOTE: This is the prepared text and may not reflect changes in actual delivery

Statement
Thomas A. Constantine
Former Administrator
Drug Enforcement Administration
Before the
Subcommittee on Criminal Justice, Drug Policy and Human Resources
U.S. House of Representatives
July 13, 1999

Mr. Chairman and Members of the Subcommittee: It is a pleasure for me to appear before the subcommittee today to discuss the subject of drug legalization and decriminalization both of which amount to liberalization of drug laws. During my 39-year career in law enforcement, in my positions as Superintendent of the New York State Police and as Administrator of the Drug Enforcement Administration, and now as I return to private life, I have passionately believed that legalizing drugs is wrong, immoral, and suicidal for our society. Having seen first-hand the devastation that drug use and

availability have had on many segments of our society over the past thirty years, I know deep in my heart that any effort to make more drugs available to the American people including our children and the poor --- which, make no mistake is what legalization advocates are suggesting --- will have devastating consequences for our entire nation.

When I look at just who is proposing drug legalization I am struck by several things, including the fact that they are mostly affluent, well-educated and socially distant from the potential victims of their experiment. The legalization movement is well-financed and has been spawned in salons in the Upper East side of New York, country clubs on both coasts of the nation, and in locations remote from the realities of drug addiction, despair and the social decay that accompany drug use. The people who are missing from the legalization debate, and this is

no accident, are mothers, religious leaders, and the loved ones of those who have been victimized by crime and addiction. Law enforcement officials are also absent from the ranks of those who are calling for legalization, not because we have a vested interest in enforcing the drug laws of the United States, but because we have seen how dangerous and divesting drug use and trafficking have been, particularly in poorer urban and rural areas of our country.

In my brief statement today, I wish to make several points, which I hope will provide the Subcommittee with some additional insight into just how misguided the legalization argument is. In order to do this as succinctly as possible, I would like to address head-on some of the issues that are pertinent in this debate. Because of my extensive experience in law enforcement, the majority of my comments will be focused in

this area. **First**, drug supply drives demand; **second,** the enforcement of drug laws has had a significant impact on reducing the crime rate; and **third**, too many questions remain unanswered by legalization advocates about the practical implementation of their social experiment.

The Equation Between Supply and Demand

Many legalization advocates claim that drugs should be legalized in order to satisfy what they characterize as "America's insatiable demand for drugs." From my experience, and the experience of the vast majority of law enforcement officials, it is clear that drug availability leads to increased drug use.

At the current time, American communities are being targeted by powerful international drug trafficking organizations based

overseas with headquarters in Colombia and Mexico. These organizations are responsible for sending all of the cocaine, and the majority of the marijuana, heroin, and methamphetamine available in U.S. communities. Beginning in the 1970's, when Colombia-based trafficking organizations eclipsed American organized crime groups as the pre-eminent force in drug trafficking, drug users in the United States were supplied with marijuana, and then cocaine from groups based in Medellin and Cali. We know now as we suspected then, that the goal of these ruthless organizations was to flood the United States with their poisonous drugs. They saturated U.S. cities with multi-ton quantities of cocaine and created an unprecedented demand. This was a clear case of supply driving demand.

I'd like to go right to the heart of this debate and address an issue that we could spend countless hours discussing: how does supply

influence demand? I have always believed that supply not only influences, but *creates* demand. It is not only the quantity of cocaine or heroin that influences usage, but more importantly, the available supply.

Let me give you an example. A few years back, Colombian traffickers decided to diversify into the heroin market and made a strategic marketing decision to push heroin as an alternative to cocaine. They were, unfortunately, very successful, and today, 75 percent of heroin sold in the United States is smuggled in from South America. Their savvy marketing techniques included the bundling of heroin along with cocaine and providing "free samples" to hawk to potential buyers. Also, brand names of heroin were created and certain dealers only provided those brands to instill customer loyalty and brand-name recognition. Ultimately, they created a stronger, cheaper, and

more appealing product. Purity levels increased from single digits to today's heroin that ranges from 40 to 90 percent pure. As a result, it can be snorted and smoked, rather than injected, thus enticing a whole new generation of users who would otherwise be turned off by needles.

As a result of this combination of higher purity, lower prices, and ready availability in open drug markets, the United States is experiencing a dramatic increase in heroin abuse. Today's heroin mortality figures are the highest ever recorded, exceeding even those of the mid 1970s, when deaths reached a high point just over 2,000. Close to over 4,000 people died in the last three years from heroin-related overdoses. Heroin abuse has taken a toll on a wide range of American communities such as Baltimore and Orlando in the East and suburban cities such as Plano, Texas, in the west.

The fact that drug supply leads to increased drug demand is also being demonstrated by the skyrocketing up-surge in methamphetamine abuse in our country. Methamphetamine, which had appealed to a relatively small number of American users, has reemerged as a major drug of choice.

Historically controlled by outlaw motorcycle gangs, methamphetamine production and trafficking is now controlled by sophisticated organized crime drug groups from Mexico, operating in that country and in California. These groups systematically increased both the production and distribution of methamphetamine, and as a result, statistics illustrate that methamphetamine use and availability has dramatically increased to epidemic proportions throughout the United States in a short period of time. The Drug Abuse Warning Network

(DAWN) indicates that emergency room episodes involving methamphetamine increased from 4,900 in 1991 to 17,400 in 1997, an increase of 280%. The areas hardest hit by the methamphetamine epidemic are Dallas, Denver, Los Angeles, Minneapolis, Phoenix, San Diego, San Francisco, and Seattle.

Methamphetamine trafficking and abuse are spreading across the United States at an alarming rate. With their primary methamphetamine production headquartered in remote areas of California, the surrogates of Mexican organized crime groups are also establishing a presence in cities in the Midwest, the deep South and the East Coast. Barely heard of a decade before in the nation's heartland, methamphetamine has taken hold of Des Moines, Iowa, and many other Midwestern cities. Trafficking gangs from Mexico introduced this highly addictive stimulant to citizens there, and the problem has become so significant that

meth has been cited as a contributing factor in an estimated 80 percent of the domestic violence cases in Iowa.

By these examples, I do not mean to imply in the least that demand is not a critical factor in the equation. I want to stress, however, that supply definitely generates increased drug use. America's two current drug epidemics—heroin and methamphetamine--support this thesis. Legalization would only make a bad situation more dangerous.

The Impact of Aggressive Law Enforcement

I believe that the application of aggressive law enforcement principles and techniques, rather than drug legalization/decriminalization, is the most successful way to dismantle international drug trafficking organizations and reduce

the number of drug users in this country. America's drug enforcement policies are working: from 1979 to 1994, the number of drug users in America dropped by almost half.

Aggressive law enforcement has also reduced the levels of violent crime so often associated with drug abuse and drug trafficking. Within the last several years, it has become very clear that the recent reductions in the violent crime rate within the United States in places like New York, Los Angeles and Houston --now at levels not seen since the 1960's--are due in large part to aggressive law enforcement at all levels. The New York City example is perhaps the most compelling illustration of this point. In the early 1990's after three decades of rapidly increasing levels of violent crime which were exacerbated by the crack epidemic, the City of New York embarked upon an ambitious program to enhance its law enforcement capabilities.

City leaders increased the police department by 30%, adding 8,000 officers. Arrests for all crimes, including drug dealing, drug gang activity, and quality of life violations which had been tolerated for many years, increased by 50%. The capacity of New York prisons was also increased. The results of these actions were dramatic: the total number of homicides in 1998--633-- was less than the number of murders in 1964. Over an eight-year period the number of homicides was reduced from 2262 to 633--a reduction of more than 70%.

DEA has also been aggressive in developing and implementing programs to reduce violent narcotics-related crime. One enforcement program, the Mobile Enforcement Teams, lends support to local and state law enforcement agencies that are experiencing problems arising from violent drug related crime in their communities. The results of this program over the past four

years indicate that aggressive law enforcement of drug laws does have a lasting impact on reducing crime and improving the quality of life for the residents of communities across the nation. Statistics indicate that on average, communities participating in the MET program have seen a 12% reduction in homicides. But just as important to me have been the scores of letters the DEA has received from leaders in these communities recognizing this decrease in crime and thanking us for helping achieve a more peaceful way of life for citizens.

Drug abuse, along with the combination of violent crime and social decay that accompany it, can be prevented. Too many people in America seem resigned to the inevitability of rampant drug use. However, effective law enforcement programs make a difference, and we must stay the course.

The Reality of Legalization

Legalization proponents are telling Americans that drugs are not dangerous, that increased addiction is not a significant threat to America, and that inner cities will be better off because it is drug dealing ---- not drug use --- that is the problem.

The legalization advocates are not telling the truth about the consequences of their proposal. It is not that they are purposely misleading Americans, but rather they are not providing all of the information necessary for us to make a sound judgment on the issue. The logistics of legalizing drugs are overwhelming. Take pharmaceuticals for example. Despite tough regulations and strict controls, these powerful and addicting legalized drugs remain the most widely abused drugs in the country. Surely the

same would happen with legalized heroin, cocaine, and methamphetamine.

There are many tough questions to ask legalization advocates. I believe many cannot be answered adequately. Some of these include:

Will all drugs be legalized? Will we knowingly make dangerous, mind-altering, addictive substances--- PCP, LSD, crack, methamphetamine --- available to everyone --- regardless of their health? profession? age? past criminal record?

How do we address the black market that will inevitably spring up to provide newer, purer, more potent drugs to those now addicted who cannot be satisfied with the product they obtain from the government or the private sector?

Given the fact that our record with cigarettes and alcohol is not very good, how will we limit the abundance of dangerous drugs to 18 or 21 year olds?

Who will pay for the health costs and social costs which will accrue as a result of increased drug use? Who will pay for the losses in productivity and absenteeism ?

Whose taxes will pay for the thousands of babies born drug-addicted?

What responsibility will our society have to these children as they grow and have problems as a result of their drug use?

Will drug centers be located in the inner cities, or will drug distribution centers be set up in the suburbs?

And most legalization experts cannot answer this question: Can we set up a legalization pilot program in your neighborhood?

These are all questions we should ask and answers we should demand. Granted, we have not yet effectively addressed all of the drug problems facing our nation today, but we must also realize that the drug issue is a very complex problem that has been with us for decades. It will take more time for us to see our way clear.

Despite this realization, it is astounding to me that legalization proponents advocate surrender. Our nation is faced with other major problems besides drug use: AIDS, declining educational

standards, homelessness--yet we do not hear cries for us to abandon our efforts and surrender to inaction on these issues. Why is the drug issue different?

We do not advocate giving up on our schools, or negating everything we've done to date to find a cure for cancer -- even though we have spent billions of dollars on research and we have not yet found a cure.

In closing, I ask each of you to think about these questions, and to ask yourself if we in fact would be better off as a society freely dispensing drugs to anyone who wanted them. Given the enormous challenges our nation faces in the years ahead, I cannot honestly envision a world where our surgeons, pilots, or children are given license by our government --- which has an

obligation to protect and defend all of us --- to take dangerous and addictive drugs.

I thank you for allowing me the opportunity to testify today. I'd be happy to answer any questions you may have.

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Mr. MICA. I thank the gentleman.

Moving to our ranking member, do you have an opening statement at this time?

Mrs. MINK.

[The prepared statement of Hon. Patsy T. Mink follows:]

Statement of Representative Patsy Mink, Ranking Member
Subcommittee on Criminal Justice, Drug Policy, and Human Resources
Hearing on Drug Decriminalization
July 13, 1999

I would like to thank Chairman Mica for holding this hearing today, which will feature witnesses with very different perspectives on the decriminalization of marijuana and possibly other illicit drugs. It is the second of two hearings held so far to examine the fundamental basis of our current drug policy. All too often we focus on the minutiae of programs without taking a step back and considering the larger policy questions. I commend the chairman for taking that step back today.

It is difficult to look at the question of drug decriminalization without placing it in some factual context. It is one thing to discuss the merits of wholesale decriminalization of heroin or methamphetamine and quite another to discuss marijuana, particularly decriminalization of marijuana for controlled medical use. They are quite different issues, with different implications for public health, safety, and the productivity of our workforce. Our witnesses today come from a range of backgrounds – law enforcement at the local, state, and federal level, academia, and private advocacy organizations – and each will be able to illuminate different aspects of this broad debate.

Before we begin to hear from our distinguished witnesses today, I would like to take a moment to offer an especially warm welcome to Tom Constantine, who very recently retired as Administrator of the Drug Enforcement Administration. He has devoted his professional life to public

service as a deputy sheriff, the superintendent of the New York State Police, and finally as head of the country's preeminent drug law enforcement agency. He is a public servant of the highest distinction, and I hope we will continue to hear from you and benefit from your experience.

Again, a warm welcome to all of our witnesses. I look forward to hearing your testimony today.

Mr. MICA. Also, we have been joined by Mr. Ose from California, and I see Mr. Johnson is here. Welcome, and I think you are going to introduce one of our next panelists.

With that, I do have some questions for you, Mr. Constantine. First of all, again we thank you for stepping out and coming forward to testify today.

Obviously, you come from the tough law enforcement side. You had some statistics that you have used before, particularly with New York City and the dramatic change in crime there. However, we're hearing more and more that this is not a comparable problem, that this is similar to Prohibition, when they tried to stop alcohol, it was made illegal in this country, and that it wasn't possible to enforce the laws.

Can you tell us, do you view this as a valid analogy? We have had some reputable folks in the last set of hearings that we had from the CATO Institute, I believe it was, who said to legalize heroin, cocaine, and sell it like cigarettes or alcohol, that is controlled and regulated.

Is this a prohibition problem that we're never going to solve, like alcohol?

Mr. CONSTANTINE. I think the ultimate solution obviously is prevention programs. All of the studies that I have looked at, those that are most impressive claim the answer lies in the family. It lies in an intact family, it lies in established standards for children, it lies in communication. It's the responsibility of parents to talk to their children continually about their concerns about the dangers of drug abuse and utilization.

And where all of those things are intact, the studies that I have read, which are very reliable, point out that 9 times out of 10, that young person will not become involved in using drugs in that vulnerable period between 13 or 14 up until 18 or 19. If you get that far, you are pretty well satisfied that they will not become involved in the use of drugs, as they have a more mature outlook to life.

So I have always supported, I am a great believer in the Partnership for a Drug-Free America. I am a great believer in Mr. Califano and the CASA Center at Columbia. I think they provide a major service to the people of the United States, and whatever we can do in the way of resources and assistance to help with prevention programs, I think over the long haul, 10, 15, 20 years, will help us to improve this problem.

In the meantime, we have a responsibility in law enforcement to make our communities safe. We have a responsibility to citizens who come to us and say, "My son or daughter was sold drugs by individuals at a certain location who are profiting from this criminal enterprise," and "My son or daughter is addicted and has been harmed, perhaps irreparably."

We have a responsibility as a society to bring those individuals to justice and to make sure, if they are found guilty, that they're sanctioned commensurate with the pain they've caused other people. I think that aspect of the strategy has been the most successful in this dramatic reduction of violence.

But the long-term usage of drugs, people who are addicted to drugs, I believe, is a prevention program. I do not see the analogy

with prohibition. It is a vastly different substance; it is a vastly different cultural issue.

Mr. MICA. The other thing that prevails today is this belief that behind Federal prison walls, State prison walls, and local jails, are countless people who are there for simple possession of marijuana or some other substance, and that is why they are incarcerated.

You had given us some statistics. I think you said something about the quantity of, for example, marijuana seized from Federal prisoners, averages 300 pounds. Geraldo Rivera did a piece a couple of days ago that showed a woman in tears who was in prison for only having 4 ounces of cocaine, I guess, and trafficking 4 ounces of cocaine.

Is this a myth, or have we imprisoned innocent mothers and folks who possessed small quantities of drugs?

Mr. CONSTANTINE. Let me address it from two perspectives. One, as the head of DEA, a Federal law enforcement agency, for the last 5½ years, virtually all of our investigations are geared to individuals who sell drugs at enormous profit, and we are trying always to reach the highest level of those criminal organizations.

The only time that we tend to go for lower-level individuals is if these individuals tend to be involved in murders, robberies or assaults as part of their drug trafficking issue. So all of our defendants that we have are, for the most part, major dealers in narcotics. They fit the pattern.

Mr. MICA. So in the Federal prison we would find what person, you know, charged with possession?

Mr. CONSTANTINE. The actual figures, I presently don't have. They are in this report, by the way, from the Center on Addiction and Substance Abuse. I saw the figures last night. I don't want to quote them without reading them, and I don't know if I can find them fast enough for you, for this presentation. But as I recall, possession was like 1, maybe 1 percent, 1.5 percent, mere possession.

Mr. MICA. And some of those had——

Mr. CONSTANTINE. My experience in New York State as superintendent of the State Police was, as I always said, it would be easier for a kid to get into Harvard, Princeton or Yale than it would be to get into the State prison system.

When I worked on a sub-cabinet in the Governor's office, there was a second felony offender law in the State of New York, whereby individuals with a second felony conviction would have to go to State prison. There was a movement, for financial reasons and for a number of other reasons, to make that a third felony offender law.

All I said was that we had better start telling these police officers that it is not serious until we get to the individuals who were the second felons who were going to get sentenced. They had 15 previous arrests, 9 or 10 misdemeanors, 4 or 5 felonies, and that they fled to all different types of diversion programs to try to avoid putting them in prison before it became impossible to do that any longer.

So I have had many interviews with individuals who were reporters and came to me, and I said, "Look, if you find a prisoner in Attica who is serving time for a sole possession of marijuana, an ounce or 2 ounces or 100 marijuana cigarettes, I will buy you din-

ner in the best restaurant in Washington, DC." And I have yet to buy a dinner for any reporter.

Mr. MICA. You also said that the drug supply drives demand, and you cited the problem of growing addiction where there is a liberal policy. I think in the past you have used Baltimore as an example. Maybe you could explain the difference between Baltimore and your New York experience?

Mr. CONSTANTINE. In Baltimore in the 1950's, there were approximately 300 heroin addicts for 950,000 people. In 1998, there were about 39,000 heroin addicts in Baltimore for about 650,000 people. The population has been reduced by 300,000 in the city. The eventual heroin addicts have gone from 300 to about 39,000. As I recall the figures, in the 1950's, there was one heroin addict for every 3,161 people in Baltimore. By the time we got to 1998, there was one heroin addict for every 17 people in the city of Baltimore.

To give you a sense of what that looks like, the overdose death rate for heroin in Baltimore is five times that of New York City. The homicide rate in Baltimore is six times that of New York City.

I don't believe it is coincidental that the mayor of Baltimore has espoused the legalization of drugs; that there is a very soft attitude on the arrest or prosecution of low-level drug traffickers that has caused Baltimore to be a magnet for drug addicts and drug traffickers.

Mr. MICA. So a very liberalized thought that essentially the problem goes away——

Mr. CONSTANTINE. I mean, if somebody indicates that because it has been more lenient and more acceptable in Baltimore, that has solved the drug and crime problem, I don't think the experiment worked.

I think it is important to note, too, that New York, along with a number of other States, decriminalized marijuana in the 1970's. It, in essence, became, for low-level arrests for possession of marijuana, what was called an adjournment in contemplation of dismissal. If the individual did not get involved in other criminal activity for about 6 months, the charge was dismissed; and if they were younger, they could have that criminal record expunged and sealed.

Now, I have to tell you, if that was the concept, that by decriminalizing marijuana in the 1970's, we would not have a more significant drug problem in the 1980's, the experience is exactly the opposite. We wound up with a huge drug problem in the 1980's, the State of New York, along with other States, I suspect.

Mr. MICA. Thank you.

Mrs. Mink.

Mrs. MINK. Thank you very much. Welcome to our hearing today, Mr. Constantine.

The subject of law enforcement is something that I am very, very committed to. It seems to me that the problem has to be dealt with harshly, and that the Congress and the Federal Government in general have to support stringent law enforcement activity in order to get to the nub of the problem, and so I certainly support the thesis that you have presented to the committee today.

What troubles me is a city like Baltimore that you have just described, and the suggestion that perhaps the advocacy alone of

more liberal policies toward marijuana has produced an even greater problem than they had two decades ago. My question goes to the fact that even if the city officials and others were moving toward a more liberal policy, wasn't the responsibility of the Federal Government the same there as in New York City or any other place?

Mr. CONSTANTINE. Well, it was more than an espousing of a philosophy, which I think is—everybody is entitled to talk about, obviously, certainly, elected officials more than anybody else. That's their role in life.

But this became an implementation of policy. The prosecutor would not prosecute individuals with under 29 dosage units of whatever the drug might be, so as a result, the police community had little role left to make arrests for low-level operations.

People on the street, in the narcotics trafficking industry, pick that type of policy up in a strategy very quickly. When there is an absence of enforcement, it becomes apparent to them that there is no legitimate sanction.

We have doubled the number of people that we had in the Baltimore office, trying to deal with, as I mentioned, we try to focus as often as we possibly can on the highest level dealers of heroin trafficking, as it would be in Baltimore, and the mid-level. The lower level street operations, there are just not enough resources in the Federal Government to be able to do that, other than to take it away from perhaps the bigger criminal organizations.

Now, we did in Baltimore—I have a personal admiration for the police chief, I have worked with Chief Frazier a number of times—and we lent two of our MET teams, our Mobile Enforcement Teams, in the city to go after the violent drug trafficking organizations within the city of Baltimore, to try to assist them. And I think we do have a role, and obviously, as a city starts to suffer more than perhaps neighboring jurisdictions.

It is important for me to note that not all of the addicts, by the way, are living in the city of Baltimore. What has happened, you now have middle class young people from the affluent suburbs of Carroll County and Harford County who are going into the city of Baltimore to purchase their drugs. So the industry has become something that is attractive to all types of people from different sites.

My concern is that if you announce to drug traffickers that drugs should be legalized, if you adopt a strategy that you will not enforce the law at certain levels, I don't think it is coincidental—now, that obviously is a decision for the people who live in the city of Baltimore, not my decision—but I don't think it's coincidental that you wind up with these tremendous heroin problems, a homicide rate six times that of New York, and an overdose death rate five times that.

Mrs. MINK. What was the level of success of the DEA enforcement activities in Baltimore, going after the big traffickers and those who were warehousing the drugs, if there was a lenient policy toward the people on the street and those who were using it, and you maintained a tough policy with reference to the big dealers? Couldn't or wouldn't that have made some impact on the distribution, if you were successful? Or did the local authorities impede your successes at the higher levels of distribution?

Mr. CONSTANTINE. No, no. They did not impede, they cooperated, and the relationship between the police department, the DEA and other Federal agencies is very, very good. We went after every major trafficker that we could identify.

Usually these big organizations that were responsible—in Baltimore much of the heroin comes down from New York City. It is Colombian heroin, it comes from Colombia usually to the Washington Heights area of New York City. Then it is brought down to Baltimore. We continually have tried to impact that by enforcement against those groups. Obviously, the problem still continues.

I have always felt that to have an effective enforcement strategy, it has to touch all of the components, because if you just do one and then leave the others, if you were just to work low level and not work the mid level or high level, I don't think you are going to be successful.

I believe the experience that I have seen in other cities throughout the United States, if you could focus on those drug trafficking organizations in the neighborhoods of Baltimore who are causing all this problem, I have no reason to believe that you would not be just as successful in Baltimore as they have been in New York City.

It is not a magic strategy. It is not something that had to be invented in a laboratory. It was merely the identification of traffickers, block by block, neighborhood by neighborhood, and going after them and arresting them, and having reasonable sanctions or some type of rehabilitation if that is the appropriate strategy to be able to improve the situation. There is no reason why one city should have a homicide rate six times that of another city, and an overdose death rate five times that of another city. I think those problems can be addressed.

Will that address the problem of people who are addicted to heroin? I think that is a prevention/rehabilitation issue that I am not an expert on, but I believe in both strategies.

Mrs. MINK. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman.

Could you tell me the number of deaths, all categories, per year due to drug use? I saw the number on heroin of about 1,300, 1,400 a year over the last 3 years. What about——

Mr. CONSTANTINE. I believe it is 4,000 per year in each of the last 4 years. All drugs, cocaine, heroin, I don't have that exact figure available at the present. I can get that back to you.

Mr. OSE. Rough, is it 5,000, 10,000?

Mr. CONSTANTINE. I don't have that exact number presently. I would rather get back to you than——

Mr. OSE. The reason I ask the question is that those who are a little older than me went through a period of time in the 1960's where we were losing roughly 5,000 or 6,000 young people a year in the war in Vietnam, and I don't quite understand this sense of legalization of a product that equates to that kind of a mortality rate. I think you probably share that. If Vietnam was such a fiasco, why do people close their eyes to this and suggest legalization? Do you have any feedback on that?

Mr. CONSTANTINE. I never looked at it from that particular perspective, but most of my feelings and impressions and thoughts on drug use and legalization are really from dealing with people in neighborhoods who are living behind three locks on their door, are afraid to go out to the corner grocery store, are afraid to go to a PTA meeting, have not a lot of money, and they can't send their child to some prep school in New England. Their child will have to get their education at the public school three blocks away, and if the drug traffickers, as they have, have taken control of those corners in many neighborhoods in various cities, those people are living as virtual prisoners.

So all of my analysis of the legalization issue is, why would we want to visit more problems on people who, in my opinion, have far too many problems, and far too many problems that have not been addressed already by society, let alone to bring them down to the depths of further concerns for their children and themselves?

Mr. OSE. I appreciate what you are saying, truly. I want to go on to the next item.

On page 10 of your testimony you comment that drug use related to methamphetamine in Iowa contributes to an estimated 80 percent of the domestic violence cases in Iowa. Am I correct? I mean, there is a nexus you can draw there?

And if that is the case, why wouldn't we ask a question similar to that one I just asked about Vietnam, why would we legalize a product that not only diminishes one's individual capabilities on a day-to-day basis but also contributes to 80 percent of the domestic violence? Why would I, as a lawmaker, ever agree to that?

Mr. CONSTANTINE. Well, Iowa is, I think, a classic example of how supply creates demand. If you were to talk to anybody in Iowa in law enforcement 10 years ago about a methamphetamine problem in the State of Iowa, it would be nonexistent. People would talk about maybe some motorcycle gangs on the West Coast or a Hell's Angels club in the southern tier of New York.

Now we find there are organized criminal groups out of Mexico and then California, operating out of California, who were able to get large amounts of precursor drugs and begin to sell methamphetamine at very low cost, relatively, and high purity. Then, as a result of the meat packing industry, in which very decent, hard-working people came from Mexico to earn money and send it back to their family, drug traffickers came in behind them and started selling methamphetamine at very low prices throughout the State of Iowa.

There are now—if that last figure that you mentioned doesn't capture people's interest, then this one may—there are more methamphetamine arrests in the city of Des Moines, IA, than there are drunken driving arrests. I think all of us know someone, family or friends or neighbors, who have been arrested for drunken driving.

One-third of all the children in Marshalltown High School—which is a rural county northeast of Des Moines, I have met with all of the fantastic people from this community—have experimented or tried methamphetamine. They have a huge addiction problem that was created by increased supply, and that has been, to a degree, part of my perception of this issue.

If we make methamphetamine more available to more people, more accessible, there is no doubt that more people would utilize these drugs. I have never, never used any of them. I have talked to doctors, I have talked to people who have been in this business. They say the patients tell them that these drugs are the most pleasurable experience that you could ever imagine when they first begin to use them, and it is not unreasonable to think that people, with those drugs accessible, will use more of them in the future.

Those are all of the reasons why I argue against legalization, or what they now call "harm reduction," which is really the same thing.

Mr. OSE. I need a professional person's response to the following question. That is, if we increase the supply of methamphetamine, either through legalization or otherwise, are we going to see an equivalent increase in the amount of domestic violence?

Mr. CONSTANTINE. I can't tell you. I can't tell you if there would be a straight line correlation. With methamphetamine I think you would see significant increases in domestic violence, because the properties of that particular drug and the physiological impact of that drug on people is different than anything we had seen before, even more exacerbated than crack cocaine. People tend not to eat or sleep, they become delusional, paranoid, and incredibly violent. It is a problem for police officers trying to arrest individuals, either on routine traffic stops or in domestic violence situations. Yes, I think you would see a fairly dramatic increase in domestic violence where that drug was used more freely.

Mr. OSE. Mr. Chairman, as usual, you have been very generous, and I thank you.

Mr. MICA. Thank you. We have been joined on the panel by Mr. Johnson from Texas.

Mr. JOHNSON OF TEXAS. Would you allow me to ask a question, Mr. Chairman?

Mr. MICA. Without objection, go right ahead.

Mr. JOHNSON OF TEXAS. Thank you. I would just like to ask a couple or three quick questions. You have been talking about the major cities. I think your last answer was an eloquent reply as to why we don't need to legalize these drugs, based on what you just said.

But I am thinking of the border areas which you haven't mentioned, at least I haven't heard you. I have been down there. It is a veritable sieve, where drugs are coming through, not just in Texas, but in Arizona, New Mexico and California.

I am told that—as an ex-DEA guy, maybe you can tell me—Customs and the Border Patrol don't really coordinate and work together down there very well. Is there a problem with split police or enforcement down there?

Mr. CONSTANTINE. Well, it is tough to say historically what happened. Before I got to Washington, I heard many of the same concerns on the part of people, of Federal law enforcement agencies not cooperating with one another, and I made one of my No. 1 goals, as the administrator of DEA, to improve our relationship and cooperation with not only the other key Federal agencies but State and local law enforcement, and I think a lot of those areas have passed now.

We see the Border Patrol as very important. They act as a tremendous resource for the seizure of narcotics, especially at the checkpoints they set up away from the border, because a lot of the substances are coming right across the river, and then eventually the checkpoints, because they have to move it in bulk. We also see this Operation Pipeline where we have the highway interdiction that is very, very effective in seizing a lot of these substances.

We actually have Border Patrol officers stationed in DEA offfices, to be almost, from my view of things, like the uniformed force to help all of the detective agencies, Customs and DEA and the FBI. We have co-located our offices with the FBI in El Paso, which is the hub crossing from Juarez and very, very important.

I signed an agreement to cross-designate over 1,000 Customs agents, and for the first time, the DEA and FBI signed a memorandum of understanding to make sure all of these cases are coordinated one with the other. I don't see it as the problem that it was once reported to be. I think they have been very effective and very successful.

Mr. JOHNSON OF TEXAS. Are we stopping it at all? I mean, you know, we talk about the war on drugs, and I am not convinced that we are fighting it as a war.

Mr. CONSTANTINE. Well, two things. I have testified before Congress, the use of the term "war" is an analogy that for somebody who grew up as a young boy in World War II, and at least watched some of it, over 12 million of our young people volunteered or were drafted into the service; that people who stayed home went without various food and cars and commodities. There was a belief that we were united in many ways against a common enemy.

In those indications, people who would have talked about giving up in World War II, in essence capitulating to a dangerous adversary, would obviously have been either have been considered a treasonous or certainly placed in a situation where nobody would want to deal with them.

Now, we have in essence, an adversary. The adversary is drug traffickers and drugs, and we still have some people who would like to surrender, would like to capitulate. I am not sure we have made the sacrifices that we need as a society to be able to improve the situation.

You may not have been here earlier. I testified that the key component to protect young people in the area of drug abuse is the family, a strong, intact family. Unfortunately, I am not so sure everybody wants to sacrifice, even at the family level, all that they need to sacrifice in order to make sure that kid gets a great chance at life.

Mr. JOHNSON OF TEXAS. I hear you.

Mr. CONSTANTINE. So I have always tried to stay away from the "war" analogy. Our seizures have gone up dramatically along the border. We have gone from 105 tons of marijuana in 1992 to about 858 tons of marijuana in 1998. But the key is not seizing drugs alone, because they are really an infinite commodity. It is overproduced for the amount that can be utilized. What's not infinite are the criminals and the criminal organizations, so we try to focus on them as our priority.

Mr. JOHNSON OF TEXAS. Yes, that is where I think you should be. Can you tell me, in your opinion, if our HIDTA's are doing any good?

Mr. CONSTANTINE. Yes, we have HIDTA's in virtually every location throughout the country right now. We have DEA supervisors who work on that. We have intelligence centers.

We just opened our new academy about a month and a half ago. We have—I am sure that my successor will continue that—we have dedicated 50 beds in that academy for intelligence training. A lot of that will go for intelligence officers assigned to HIDTAs. So we have a universal system of analyzing this problem and our reaction to it.

So, yes, they have been successful. They are different. If you go to New England and ask what the HIDTA looks like, it is going to be dramatically different from the HIDTA on the border, but I think it reflects the concerns of that community.

Mr. JOHNSON OF TEXAS. Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Johnson.

Do you have any questions of Mr. Constantine?

[No response.]

Mr. MICA. We want to thank you for coming forward today and providing your perspective, Mr. Constantine. We have enjoyed working with you, and look forward to your future participation and your incredible knowledge on the subject of drug enforcement. We will probably be asking you to come back and provide our subcommittee with assistance in the months and years to come, so thank you again for your service and for your testimony.

Mr. CONSTANTINE. Thank you very much, all of you, for the gracious treatment I have received these past 5 years.

Mr. MICA. Thank you.

I would like to call our second panel this morning, Chief Bruce Glasscock, the chief of police from Plano, TX, and we will have a further introduction in just a minute.

We have Sandra Bennett, president of Drug Watch International. We have Mr. R. Keith Stroup, executive director of the National Organization for the Reform of Marijuana Laws. And we have Mr. Robert MacCoun, who is a professor of public policy and law at the University of California at Berkeley. I see three. Mr. Stroup.

Let me explain the ground rules. I think most of you are new in testifying here. This is an investigations and oversight subcommittee of Congress, and we swear in our witnesses, so the first order will be, if you don't mind, to stand and be sworn.

[Witnesses sworn.]

Mr. MICA. The witnesses answered in the affirmative, and we are pleased to have each of you here. We only had one individual in our first panel so we didn't run the timing light, but if you have a lengthy statement or additional information or data that you would like submitted for the record, within reason, we will do that by unanimous consent request. And if you will just ask, we will grant that.

We have Mr. Johnson here, who is a Representative, of course, a Congressman from Texas and the Plano area, and I will let him, if he would, introduce his witness.

Mr. JOHNSON OF TEXAS. Thank you, Mr. Chairman. It is indeed a pleasure to introduce Chief Bruce Glasscock. He is head of the police department in my home town, which is Plano, TX, and the chief has run the Plano Police Department since August 1990. Prior to that he served as chief of police for Fort Collins, CO, and as an officer in both Lakewood, CO, and St. Petersburg, FL.

Overall, Chief Glasscock has spent over 30 years of his life serving in the field of law enforcement. He holds a Bachelor's degree in criminal justice management from the Metropolitan State College in Denver, and a Master's degree in public administration from the University of Colorado.

Apart from his current duties serving the citizens of Plano, TX, Chief Glasscock is also the current vice president of the International Association of Chiefs of Police. As the head of law enforcement in a city that has seen the all too tragic effects of drug use by our Nation's teenagers, Chief Glasscock, I think, offers a unique perspective, and I am grateful that he has agreed to share his experience and expertise with this committee.

We have had some terrible problems in the city of Plano, and thanks to his leadership and guidance, along with the other city officials, and the State and local officials in the surrounding cities, and the fact that we have established a HIDTA in the Dallas area now, we have helped solve some of the problems. So I would like to welcome him here today, and thank you for having him as a witness, Mr. Chairman.

Mr. MICA. Thank you, Mr. Johnson. And we welcome you, Chief Glasscock. We will hear from you first. We have two folks who are on the pro, and two I guess on the con side of this issue on this panel, and we will recognize you first, chief, for 5 minutes. Welcome.

STATEMENTS OF BRUCE D. GLASSCOCK, CHIEF OF POLICE, PLANO, TX; SANDRA S. BENNETT, PRESIDENT, DRUG WATCH INTERNATIONAL; R. KEITH STROUP, ESQ., EXECUTIVE DIRECTOR, THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS; AND ROBERT J. MacCOUN, PROFESSOR OF PUBLIC POLICY AND LAW, UNIVERSITY OF CALIFORNIA AT BERKELEY

Chief GLASSCOCK. Good morning, Mr. Chairman, members of the subcommittee, and thank you, Congressman, for the kind comments. I am pleased to be here this morning to share my experience in combating drug abuse and my views on the question of drug legalization.

The issue of drug legalization is of great concern to those of us in the law enforcement community. It is my belief the nature of our profession provides law enforcement officials with a unique insight into the ravages caused by the abuse of narcotics and other dangerous drugs. These experiences have clearly demonstrated to me that this Nation should not be considering legalizing drugs, but rather we should increase our efforts to combat drug traffickers and assist those individuals who have become addicted to drugs to break the cycle of addiction.

Over the last few years, my position as chief of the Plano Police Department has provided me with a first-hand look at the prob-

lems and dangers that accompany drug abuse. The recent heroin overdose death of former Dallas Cowboy Mark Tuinei received extensive national media coverage. Unfortunately, it was not the first such occurrence in Plano. Our community was faced with a series of events involving heroin overdoses which resulted in our taking an aggressive plan of action in dealing with drug abuse.

In June 1995 the city of Plano experienced its first heroin-related death. Additionally, between 1995 and 1996, our detectives noticed an increase in burglaries being committed by heroin addicts to support their addictions. During this same time period, local hospitals reported seeing about six overdoses a week, some of which resulted in death.

Between 1995 and year to date 1999, there have been 18 heroin overdose deaths related to Plano in some fashion. We had one in 1995, three in 1996, nine in 1997, three in 1998, and two deaths so far in 1999. The victims of these deaths were not your stereotypical drug addicts. The average age was 20 years, with a range of 14 to 36, and if you were to take the high and low, the average was about 18 to 19. Most were young adolescent white males; most considered your average all-American kid.

Because of the rise of incidences of heroin overdoses, in early 1997, the Plano Police Department adopted a multifaceted strategy to attack the heroin crisis. First, we undertook aggressive enforcement action to identify and prosecute those responsible for supplying the heroin. The police department joined with the DEA, FBI, Texas Department of Public Safety and other local agencies in a coordinated effort.

Because of this effort, 29 individuals were indicted on Federal charges of conspiring to distribute heroin and cocaine, as well as charges of contributing to heroin overdose deaths. Another of our enforcement actions involved an undercover operation in our senior high schools, which resulted in the arrest of 37 individuals on 84 cases of narcotics violations. We believe our enforcement actions have greatly reduced the amount of heroin being sold in the Plano community and the number of heroin overdoses.

The second part of our strategy involved using education as a means to reduce the demand for heroin. The DEA's demand reduction specialist, who provided us with guidance in demand reduction, spoke at community meetings and helped utilize the media effectively, assisted us in this effort.

During this time, our department hosted several community meetings, the largest occurring in November 1997. This meeting was attended by more than 1,800 citizens and was televised and covered by the national and local media as well as the city cable television network.

Our education efforts would not have been successful if it were not for the cooperation of our Community Task Force, Plano's Promise, and many other community organizations not affiliated with the police department. These community organizations provided education programs within our high school groups, PTAs, neighborhood associations, church and parent groups.

In addition to the above-mentioned strategies, our department is involved with several organizations that are working to continue

the fight against drug abuse. These organizations strive to prevent drug usage through education as well as intervention.

The department is currently involved with Kick Drugs Out of America, a school-based program designed to teach children the skills needed to resist drug and gang pressure. This program is in addition to our department-run D.A.R.E. program, which also teaches elementary school children the risk of drugs and how to resist peer pressure.

We are currently working with a nonprofit organization in Florida that offers home drug testing kits to families. This organization offers a free and anonymous way for parents to find out if their children are using drugs. If the child tests positive for drugs, Drug Free America provides the family with support organizations in or near the community to help with intervention efforts.

Our statistics show a clear reduction in the number of heroin overdose deaths, as well as hospitals reporting a reduction of in overdose cases, which leads to the conclusion that our strategy is working. Our continuing investigations also show a reduced availability of heroin on the streets in our community.

Unfortunately, the battle is not over. Our drug risk assessment continues to show the north Texas area is a major hub for shipment and distribution of a variety of illegal drugs by Mexican drug traffickers. These drugs include methamphetamine, heroin, cocaine, and marijuana.

The porous Texas-Mexico border has 1,241 miles of frontier that challenge all of our resources. Since the enactment of NAFTA, the major ports of entry have experienced approximately a 30 percent increase in legitimate commercial and passenger traffic. The number of vehicles inspected has increased, but the overall inspection rate has decreased, affording new opportunities for smuggling. Our statistics also show that since the passage of NAFTA in 1992, Texas has the highest volume of drug trafficking in the Nation. All of this directly impacts local communities located along the NAFTA transportation corridors, and will continue to do so in the future.

This massive effort represents what just one city faces and has gone through to combat the flow of drugs into its community in order to protect its citizens. Plano is not unique. Similar scenarios are being repeated in communities throughout our Nation. Combined strategies like the one I have just described to you are expensive, complex to manage, and sometimes controversial. However, they are working.

Unfortunately, if those who favor legalization have their way, our efforts to reduce crime and protect our children from the horrors of drug abuse will be wasted. It is a simple fact: Increased drug abuse and increased crime go hand-in-hand. It makes no difference whether the user can purchase their drugs legally or not, they must still find a way to pay for them, and the way most drug addicts finance their habit is through crime. Eventually, they will do one of two things, they will either steal or deal.

This is not just speculation on my part. A 1996 study conducted by NIJ clearly demonstrated drug users are more likely to be involved in criminal activities. Findings indicated that a median 68 percent of arrestees test positive for at least one drug at arrest, and in 1995, the study revealed that 31 percent of both male and

female arrestees reported they were under the influence of drugs or alcohol when they committed their crime. It also indicated that 28 percent of inmates arrested for homicide were under the influence of drugs when they committed their crime.

In 1986, during the midst of the crack epidemic, violent crime reached a level of 617 violent crimes per 100,000 citizens. As we experienced a continuing escalation of drug-related violence, this figure rose in 1993, to 746 violent crimes for every 100,000 citizens. In response, an outraged public joined together with government leaders to challenge the escalating violent crime.

As a result of these efforts, new enforcement programs were implemented in the 1990's that began to reverse this trend. In recent years, we have seen a decrease in the violent crime rate in many communities—such as New York, Boston and Houston—attributable to aggressive law enforcement efforts and the incarceration of criminals. We know vigorous law enforcement actions aimed at criminal activity, including illegal drug use, can have a material effect on reducing violent crime.

After making progress against violent crime during the last several years, we should not erode these gains by instituting policies such as the legalization of drugs which we know will increase drug use and drug-related crime.

In addition, aside from the fact that legalization will lead to an increase in the level of crime and violence in our communities, it also has terrible consequences on our citizens in other ways. Drug-related illness, death and crime are estimated to cost Americans $67 billion a year. That translates into every American having to pay $1,000 per year to carry the cost of health care, extra law enforcement, car crashes, crime, and lost productivity.

Drug use also impacts on the productivity of America's workers. Seventy-one percent of illicit drug users are 18 or older and employed. In a study conducted by the U.S. Postal Service, the data collected shows that among drug users, absenteeism is 66 percent higher and health benefits utilization is 84 percent greater in dollar terms when compared against other workers.

Public safety is another critical factor. The National Highway Traffic Safety Administration reported 18 percent of 2,000 fatally injured drivers in seven States had drugs other than alcohol in their systems.

I trust it is clear by now why other law enforcement officials and I believe the legalization of drugs is wrong. It is a wrong course for our Nation to take. Drug legalization will lead to increased crime, a decline in economic productivity, significantly increased burden on an already strained health care system, danger to those traveling on our highways, and perhaps most tragically, it sends a message to our children that drug use is acceptable.

A recent study by the Partnership for a Drug Free America showed that as young Americans perceive that drugs are dangerous, drug use drops proportionately. Conversely, as young Americans get the message that social disapproval drops, as they hear in the legalization debate, drug use increases.

Drug use in America was reduced significantly between the year 1985 to 1992. Since 1992, and until just recently, the amount of antidrug messages has decreased. As recently retired DEA Admin-

istrator Constantine once said, "As a Nation we took our eye off the ball and began to get complacent about drugs." Drug use among our young people began to rise again in 1992.

The legalization movement and the growing destigmatization of drugs, along with the confusing message we are giving our young people, will result in further decreases in the perceptions of risk, and I believe a concurrent increase in drug use among our youth. Within this atmosphere, it is very difficult, if not impossible, to reach children and convince them that doing drugs is bad.

We must not make it easier or more acceptable for today's young people to start down the slippery slope from drug experimentation to drug addiction. We, as a Nation, must continue to clearly and unequivocally state that drug use is dangerous, drug use is unhealthy, and drug use is illegal.

This concludes my statement, Mr. Chairman. I thank you for the opportunity to appear here today, and I will be happy to answer any questions that you have.

[The prepared statement of Chief Glasscock follows:]

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

TESTIMONY

STATEMENT OF BRUCE D. GLASSCOCK

CHIEF OF THE PLANO, TEXAS POLICE DEPARTMENT

AND

2ND VICE PRESIDENT

OF THE

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY

AND HUMAN RESOURCES

U.S. HOUSE OF REPRESENTATIVES

JULY 13, 1999

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Good Morning Mr. Chairman and Members of the Subcommittee;

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Over the last few years, my positions as Chief of the Plano Police Department has provided me with a first hand look at the problems and dangers that accompany drug abuse. The recent heroin overdose death of former Dallas Cowboy Mark Tuinei received extensive national media coverage, unfortunately, it was not the first such occurrence in Plano. Our community was faced with a series of events involving heroin overdoses which resulted in our taking an aggressive plan of action in dealing with drug abuse. In June 1995 the City of Plano experienced its first heroin related death. Additionally, between 1995 and 1996, our detectives noted an increase in burglaries being committed by heroin addicts to support their addictions. During this same time period local hospitals reported they were seeing about 6 overdoses a week, some of which resulted in death. Between 1995 and YTD 1999, there were 18 heroin overdose deaths related to Plano in some fashion - 1 in 1995; 3 in 1996; 9 in 1997; 3 in 1998; and 2 deaths so far in 1999. The victims of these deaths were not your stereotypical drug addicts. The average age was 20 years old (range 14-36); most were young adolescent white males; most considered your average "All American Kid".

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Our statistics show a clear reduction in the number of heroin overdose deaths, as well as hospitals reporting a reduction in overdose cases, which leads to the conclusion - our strategy is working. Our continuing investigations also show a reduced availability of heroin on the streets in our community.

Unfortunately, the battle is not over. Our drug risk assessment continues to show the North Texas area is a major hub for shipment and distribution of a variety of illegal drugs by Mexican Drug traffickers. These drugs include methamphetamine, heroin, cocaine and marijuana.

The porous Texas/Mexico border has 1,241 miles of frontier that challenges all our local, state and federal resources. Since the enactment of the North American Free Trade Agreement (NAFTA) the major ports of entry have experienced approximately a 30% increase in legitimate commercial and passenger traffic. The number of vehicles inspected has increased, but the overall inspection rate has decreased, affording new opportunities for smuggling. Our statistics show, since passage of NAFTA in 1992, Texas had the highest volume of drug trafficking in the nation. All of this directly impacts local communities located along the NAFTA transportation corridors and will continue to do so.

This massive effort represents what just one city faces and has gone through to combat the flow of drugs into its community in order to protect its citizens. Plano is not unique, similar scenarios are being repeated in communities throughout the Nation.

Combined strategies like the ones I have just described to you are expensive, complex to manage and sometimes controversial. However, they are working.

Unfortunately, if those who favor legalization have their way, our efforts to reduce crime and protect our children from the horrors of drug abuse will be wasted. It is a simple fact: increased drug abuse and increased crime go hand in hand. It makes no difference whether the user can purchase their drugs legally or not, they must still find a way to pay for them. And the way most drug addicts finance their habits is through crime. Eventually they will do one of two things – "they will either steal or deal."

This is not just speculation on my part, in 1996 a study conducted by the National Institute of Justice clearly demonstrated drug users are more likely to be involved in criminal activities. The findings in this study indicated that a median 68 percent of arrestees test positive for at least one drug at arrest, and the same study conducted in 1995 revealed that 31 percent of both male and female arrestees reported that they were under the influence of drugs or alcohol at the time they committed crimes. That year's report also indicated that 28 percent of inmates arrested for homicides were under the influence of drugs when they committed that crime.

In 1986, during the midst of the crack epidemic, violent crime reached a level of 617 violent crimes per 100,000 citizens. As we experienced a continuing escalation of drug-related violence, this figure rose in 1993 to 746 violent crimes for every 100,000 citizens. In response, an outraged public joined together with government leaders to challenge the escalating violent crime. As a result of these efforts vigorous new enforcement programs were implemented in the 1990s that have begun to reverse this trend.

In recent years, we have seen a decrease in the violent crime rate in many communities—such as New York City, Boston and Houston—attributable to aggressive law enforcement efforts and the incarceration of criminals.

We know vigorous law enforcement actions aimed at criminal activity, including illegal drug use, can have a material effect on reducing violent crime in our communities.

After making progress against violent crime during the past several years, we should not erode these gains by instituting policies such as the legalization of drugs, which we know will increase drug use and drug-related crime.

In addition, aside from the fact that legalization will lead to an increase in the level of crime and violence in our communities, increased drug use has terrible consequences for our citizens in other ways.

Drug-related illness, death and crime are estimated to cost Americans almost $67 billion a year. That translates into every American having to pay $1,000 per year to carry the costs of health care, extra law enforcement, car crashes, crime and lost productivity due to drug use.

Drug use also impacts on the productivity of America's workers. 71 percent of all illicit drug users are 18 or older and employed. In a study conducted by the U.S. Postal Service, the data collected shows that among drug users, absenteeism is 66 percent higher and health benefits utilization is 84 percent greater in dollar terms when compared against other workers. Disciplinary actions are 90 percent higher for employees who are drug users, as compared to non-drug users.

Public safety is another critical area that is impacted by drug abuse. A 1993 National Highway Traffic Safety Administration study reported that 18 percent of 2,000 fatally injured drivers from seven states had drugs other than alcohol in their systems when they died.

I trust it is clear by now why other law enforcement officials and I believe the legalization of drugs is the wrong course for our Nation to take. Drug legalization will lead to increased crime; a decline in economic productivity; significantly increase the burden on an already strained health care system; endanger those traveling on our

roadways; and perhaps most tragically, sends a message to our children that drug use is acceptable.

The Partnership for a Drug Free America reported the results of a recent survey showed that as young Americans perceive that drugs are dangerous, drug use drops proportionately. Conversely, as young Americans get the message that social disapproval drops, as they hear in the legalization debate, drug use increases. Drug use in America was reduced significantly between the year 1985 through 1992. Since 1992, and until recently, the amount of anti-drug messages has decreased. As recently retired DEA Administrator Tom Constantine once said – "as a nation we took our eye off the ball and began to get complacent about drugs – drug use among young people began to rise again in 1992."

The legalization movement and the growing de-stigmatization of drugs, along with the confusing message we are giving our young people will result in further decreases in the perceptions of risk, and I believe a concurrent increase in drug use among our youth.

Within this atmosphere it is very difficult – if not impossible – to reach children and convince them that doing drugs is bad. We must not make it easier or more acceptable for today's young people to start down the slippery slope from drug experimentation to drug addiction. We, as a Nation, must continue to clearly, and unequivocally, state - that drug use is dangerous, - drug use is unhealthy - and drug use is illegal.

This concludes my statement. I thank you for the opportunity to appear here today and I will be happy to answer any questions you may have.

THE WASHINGTON POST

SUNDAY, MAY 16, 1999 D1

Tuinei's Death Casts Pall in Dallas

Drug Overdose Saddens Friends

By LEONARD SHAPIRO
Washington Post Staff Writer

IRVING, Tex.

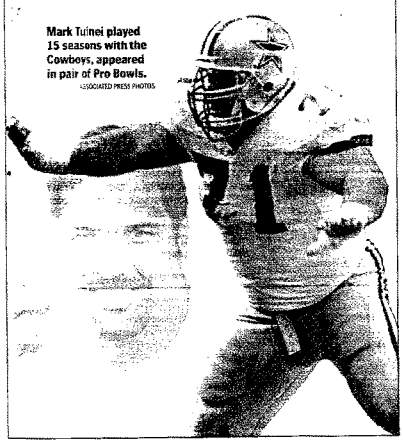
Calvin Hill had not been expected at the Dallas Cowboys' Valley Ranch training and office complex earlier this week, until the totally unexpected had been announced Monday. Mark Tuinei, the team's longtime offensive tackle until he retired last year, had died four days earlier, and toxicology reports confirmed the cause of death as a drug overdose.

Tuinei, a 15-year veteran, mixed himself a fatal cocktail on the evening of May 5 that included an injection of heroin—the first time he had used it, according to the Collin County medical examiner—and the designer drug known as Ecstacy.

The 39-year-old was scheduled to return to his native Hawaii the next day to become an assistant football coach at his old high school in Honolulu. Married and with no children, he was determined to finish about 50 credits and earn his bachelor's degree from the University of Hawaii.

"They were planning a big celebration at the high school for him," said Hill. "He was a hero to all those kids. Now, they're going to his funeral."

See TUINEI, *D9, Col. 1*



Mark Tuinei played 15 seasons with the Cowboys, appeared in pair of Pro Bowls.
ASSOCIATED PRESS PHOTOS

TUINEI, *From D1*

A Washington-based Yale graduate and a star running back for the Cowboys in the 1970s, Hill has served as a consultant to the team for the past two years, trying to reverse the damage from a series of widely publicized off-field transgressions ranging from drug and alcohol abuse to players bringing prostitutes to a group house funded by several teammates.

When Hill heard the cause of Tuinei's death, he headed to Dallas to provide advice and counsel to Tuinei's grieving friends on the team, as well as team officials once again trying to cope with yet another budding scandal—although Tuinei did not play last season, he was with 24-year-old reserve fullback Nicky Sualua the night he died.

"When someone dies, you're shocked and surprised," Hill said. "But I've had so many shocks and surprises with drugs that it doesn't shock me any more. It was incomprehensible to me that [Cleveland Browns defensive back] Don Rogers would die from an overdose [in 1986] a week after it killed Len Bias. What always amazes me is that guys know what can happen from this stuff, and they continue to use it."

The somewhat bizarre circumstances of Tuinei's death have been front page news in Dallas for days since May 6. Police in Plano, the Dallas suburb where he lived and died, said Tuinei had been using the drug Ecstacy, a mood enhancer and stimulant related to amphetamines and mescaline, for at least two weeks. Wednesday night, he also reportedly injected himself with heroin in a North Dallas apartment complex.

He had been accompanied that partying night by Sualua, a Samoan who quickly became fast friends with Tuinei when he joined the team as a rookie in 1997. Tuinei lost consciousness and stopped breathing in the apartment almost immediately after injecting the heroin he had purchased earlier that evening.

Sualua allegedly performed CPR and managed to get Tuinei breathing again. He told police he then dragged his 6-foot-5, 314-pound friend down to his car and drove back to Tuinei's Plano home. He went into Tuinei's home to retrieve two blankets, then slept with him in the car, a restored 1933 Ford, for about six hours. When Sualua awoke, Tuinei was not breathing. He then called 911, but Tuinei was pronounced dead at 6:54 a.m. at the Medical Center of Plano.

"A healthy individual took one shot of heroin and basically dropped dead as a result," Plano Police Chief Bruce Glasscock said at a news conference Tuesday. "We have a very sad situation here where we have an individual who is a role model for youth. If anything it will also send a message that here is a person who used heroin one time, and he ended up dead as a result of it."

Sualua has made no comment in the days since Tuinei's death, and Glasscock has declined to comment on whether any charges will be filed against him. Hill said Sualua is devastated by his friend's death and blames himself for not getting him immediate medical help after Tuinei initially lost consciousness.

"Mark was his idol, a big brother to him," Hill said. "Psychologically and emotionally he's in great pain. We're providing as much support for him as we can. Think about what he's dealing with. He was there. And people are saying we have to cut him from the team, as if he did it. B he's not the one who put that Mark's veins."

Some people also are onc again pointing an accusatory fi ger at the Cowboys' organizatic in general and team owner Jer Jones in particular. This is a tea with a well-documented rece history of drug and alcohol pro lems among several prominer players, including wide receiv Michael Irvin, defensive tack Leon Lett and offensive tack Erik Williams, all of whom hav been to the Pro Bowl. Lett facing a possible lifetime ba after failing a recent drug test part of his involvement in th NFL's drug treatment program.

"A lot of people have bee talking about the team's respons bility in this," said Chuck Coope stein, host of a popular Dall radio sports talk show. "In th case, I really don't think that fair. I've been as critical of the in the past as anyone, but I real think they're making a legitima effort to get these problems fixe

THE WASHINGTON POST
PROFESSIONAL FOOTBALL
SUNDAY, MAY 16, 1999 D9

Untimely Death of Tuinei: 'It's Just Such a Shame, Such a Waste'

BY GRACE SABINE—ASSOCIATED PRESS

Cowboys quarterback Troy Aikman, left, departs memorial service for Mark Tuinei, who died at 39 of drug overdose.

"The team was arranging for him to go back to school. They were helping the guy. It's the kind of thing Jerry was accused of not doing before. Here, he brings in Calvin Hill, he brings in [former Cowboys fullback] Robert Newhouse. They're doing all these things to help them while they're playing and after they're through with football. Jerry does everything right, and it still blows up in his face."

Jones clearly has been shaken by Tuinei's death. He said in an interview Tuesday: "I'm still taken aback with the tragedy of his death. It will affect people who knew him and loved him and a lot of other people because of the sports figure he was. It just puts even more emphasis on why we want to continue to have players in our game and on the Cowboys educated and sensitive to the dangers of substance abuse. . . . This is something none of us should tolerate."

By all accounts, Tuinei was popular among his teammates, a talented amateur artist who often drew caricatures of players and coaches. He was not a high-profile media star, merely a mostly gentle giant, a practical joker in the locker room who also loved to play in the street with neighborhood children, both in Dallas and back home in Hawaii.

"He was the kind of guy who looked out for everyone else," said Babe Laufenberg, Dallas sportscaster and former Cowboys quarterback who played with Tuinei for two seasons. "If a rookie needed a ride back to his hotel, he'd say, 'Jump in.' He was always taking care of other people. On that night, he needed somebody to care about him."

Tuinei had no history of drug abuse, though he was arrested several times for drunken brawling during his college days at UCLA. He also was in the league's substance abuse program in the early 1990s, again for alcohol related problems. His older brother Tom played linebacker in the Canadian Football League for six years before a drug problem ended his career and led to a short stretch in jail.

Mark Tuinei had spent three months at the Oahu Correctional Center in Hawaii in 1982 after leaving UCLA at the school's request but seemed to have straightened out his life before he joined the Cowboys as a free agent in 1983, playing both offensive and defensive line his first three years. He moved into a starting offensive tackle spot in 1986 and stayed there for the next 11 seasons until retiring in 1997. He played on three Super Bowl championship teams and in two Pro Bowls in Honolulu, where he received a hometown hero's reception.

For the past three years, he had donated a $10,000 scholarship to his high school, the prestigious Punahou School in Honolulu, to pay tuition for a student from his old neighborhood, a working class community at the far northwest corner of Oahu. He was going back to be an assistant football coach at Punahou and planned to coach and eventually teach there once he earned his degree.

"It's just such a shame, such a waste," Hill said. "We tell them about these things, we bring people in, we give them literature, we offer them counseling, anything we can do to get out the message. Anyone who doesn't know that these things can kill you. . . . But it still doesn't seem to stop it."

Mr. MICA. Thank you, and we will withhold questions until we have heard from all of the witnesses.

We will hear next from R. Keith Stroup, executive director of the National Organization for the Reform of Marijuana Laws. Mr. Stroup, you are recognized, and welcome.

Mr. STROUP. Thank you, Mr. Chairman, and members of the committee. NORML, for nearly 30 years, has been a voice for those Americans who oppose marijuana prohibition. We are a not-for-profit, public interest lobby, and we attempt to represent the interests of the millions of otherwise law-abiding Americans who smoke marijuana responsibly.

As I have summarized in my written testimony, when Congress first outlawed marijuana in 1937, it was the result of a campaign of extraordinary misinformation and ignorance in which it was alleged that marijuana caused insanity and violence and turned average people into savage killers who knew no fear and lost all inhibitions. This claim of ''reefer madness'' continued for decades, and can still be heard from some quarters today, including occasionally from this Congress.

It is time for Congress to move beyond the ''reefer madness'' phase of marijuana policy, where elected officials simply try to frighten the American public into supporting the status quo by exaggerating the dangers presented by marijuana. Most Americans know the difference between marijuana and more dangerous drugs, and most Americans oppose spending $25,000 a year to lock up otherwise law-abiding marijuana smokers.

In fact, if marijuana were truly dangerous, we would know it today. There is a sizable segment of our population who are current recreational marijuana smokers, and there would be epidemiological evidence of the harm to our citizens. No such evidence exists, despite millions of people who have smoked marijuana for years and years.

So, while of course we need to fund more research on marijuana, it should be directed toward marijuana's potential to alleviate pain and suffering for seriously ill patients. We certainly know enough now to know that marijuana is relatively harmless when it is used responsibly by adults.

It is time for Congress to get beyond ''reefer madness,'' to end what has really been a crusade against both marijuana and marijuana smokers, and to begin discussing this subject in a rational manner. In particular, we need to expand the parameters of the discussion in Congress on marijuana policy to include, first, decriminalizing the marijuana smoker; and, second, legalizing and regulating the sale of marijuana to do away with the black market.

Let me speak for a moment about who smokes marijuana today in America. It is time to put to rest the myth that marijuana smoking is some sort of fringe or deviant activity engaged in only by those on the margin of society. In reality, marijuana smoking is extremely commonplace, and it is the recreational drug of choice for millions of middle class, mainstream Americans.

According to the government's own surveys, as many as 70 million Americans have smoked marijuana at some time in their lives; 18 to 20 million have smoked within the last year. Marijuana is the

third most popular recreational drug of choice in this country, exceeded in popularity only by alcohol and tobacco.

Like most other Americans, the vast majority of marijuana smokers are otherwise law-abiding citizens who work hard, raise families, contribute to their communities, and pay taxes. They are indistinguishable from the their non-marijuana-using peers except for their use of marijuana.

Thirty-two percent of the eligible voters in this country acknowledge they have smoked marijuana at some point in their lives. This includes many successful business people and professional leaders, including many State and Federal elected officials. Many Members of Congress have conceded they have smoked marijuana: former Speaker Newt Gingrich; the President of the United States; the Vice President of the United States.

It is time to reflect that reality in the legislation that Congress passes on marijuana. Congress needs to acknowledge this constituency exists, and stop legislating as if marijuana smokers were dangerous people. In fact, marijuana smokers are simply average citizens who happen to smoke marijuana.

Unfortunately, our current enforcement policies seem to target marijuana smokers. According to the FBI, in 1997, the last year for which data is available, there were nearly 700,000 Americans arrested on marijuana charges, 694,000. Of those, 87 percent were for simple possession, not for sale. Right now, we have a marijuana smoker arrested every 45 seconds in this country, and 43 percent of all of the drug arrests that occur in this country are for marijuana.

Despite criticism from some in Congress, and I believe from some on this committee, that President Clinton has somehow been soft on crime, in fact the data suggest that the Clinton administration has waged the most aggressive war against marijuana smokers of any Presidency in history. Marijuana arrests have doubled since President Clinton took office, and at the same time there has been a 51 percent decline in the arrest of cocaine and heroin sellers.

Now in 1972, there was a blue ribbon panel created by former President Richard Nixon. It was chaired by former Republican Governor Raymond Shafer from Pennsylvania. The commission recognized that more harm was being caused by marijuana prohibition than by the use of marijuana itself. They recommended that State and Federal laws be changed to eliminate penalties for marijuana smokers and for small transfers of not-for-profit amounts. This report served instantly as a basis for the decriminalization laws that were passed during the 1970's in 11 States.

What former President Jimmy Carter said in 1976 to Congress still holds true today: "Penalties against drug use should never be more damaging to an individual than the use of the drug itself. Nowhere is this more clear than in the laws against possession of marijuana in private for personal use."

Led by Oregon in 1973, 11 American States adopted modified versions of decriminalization, where a citation and a small fine were substituted for an arrest and jail. Approximately 30 percent of our population in this country live under decriminalization laws, so we have experience. We know what happens with decriminalization.

And the only Federal study that has ever been done to compare usage rates in those 11 decriminalized States, versus the States where they still arrest and jail marijuana smokers, concluded that decriminalization had absolutely no impact on usage rates. It did not lead to an increased use of marijuana.

Decriminalization laws are also popular with the voters, as evidenced by a State-wide vote in Oregon in 1998, in which Oregonians voted 2 to 1 to reject a law previously passed by their State legislature which would have reimposed criminal penalties against marijuana smokers. Clearly and resoundingly, the voters in Oregon said, "We don't want to spend our tax dollars arresting and jailing marijuana smokers."

In conclusion, it is time that we adopted a marijuana policy in this country that recognizes the distinction between use and abuse, and which recognizes and reflects the importance we have always placed in this country on the right of the individual to be free from the overreaching power of the State. Most would agree that the government has no business knowing what books we read, what music we listen to, the subject of our telephone conversations, or how we conduct ourselves in the privacy of our bedrooms.

Similarly, whether one smokes marijuana or drinks alcohol when we relax is simply not an appropriate area of concern for the government. By stubbornly defining all marijuana smokers as criminals, including situations in which adults are simply smoking marijuana in the privacy of their home, government is wasting valuable law enforcement and prosecutorial resources, we are clogging our courts, we are filling our jails and prison cells with nonviolent drug offenders, and most importantly, we are needlessly wrecking the lives and careers of hundreds of thousands of genuinely good citizens every year in this country.

It is time that Congress acknowledges what millions of Americans already know: There is absolutely nothing wrong with the responsible use of marijuana by adults, and it should be of no interest or concern to the government. In the final analysis, this debate is only incidentally about marijuana. It is really about personal freedom.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Stroup follows:]

NORML ...working to reform marijuana laws...

Testimony of R. Keith Stroup, Esq.
Executive Director, NORML
before the
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives
July 13, 1999

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Executive Director

R. Keith Stroup, Esq.

The National Organization for the Reform of Marijuana Laws (NORML) has been a voice for nearly 30 years for Americans who oppose marijuana prohibition. A nonprofit, public-interest lobby, NORML represents the interests of the millions of otherwise law-abiding citizens who smoke marijuana responsibly.

Official NORML Position

(a) Complete Decriminalization

NORML supports the removal of all penalties for the private possession and responsible use of marijuana by adults, cultivation for personal use, and the casual nonprofit transfers of small amounts. This model, generally called "decriminalization," greatly reduces the harm caused by marijuana prohibition by protecting millions of consumers from the threat of criminal arrest and jail. It represents a cease fire in the war against marijuana smokers; smokers would no longer be arrested, although commercial sellers would be.

(b) Regulation and Legalization

NORML also supports the development of a legally controlled market for marijuana, where consumers could buy marijuana for personal use from a safe, legal source. This model is generally called "legalization". The black market in marijuana, and the attendant problems of crime and violence associated with an uncontrolled and unregulated black market, could be eliminated, as was the case when alcohol prohibition was ended in 1933, by providing consumers with an alternative legal market.

National Organization for the Reform of Marijuana Laws

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NORML is a nonprofit public interest lobby. Because we lobby Congress and state legislatures, contributions to NORML are not tax-deductible.

(c) Responsible Use

Most importantly, marijuana smoking is not for kids and must be used responsibly by adults. As with alcohol consumption, it can never be an excuse for misconduct or other bad behavior. Driving or operating heavy equipment while impaired from marijuana should be prohibited. In addition, we recommend that responsible smokers adhere to emerging tobacco smoking protocols in public and private settings. The NORML Board of Directors has adopted the attached "Principles of Responsible Cannabis Use", also available on our web site (www.norml.org), discussing acceptable conduct.

Brief History of Marijuana Prohibition

Marijuana cultivation in the United States can trace its lineage some 400 years. For most of our nation's history, farmers grew marijuana -- then known exclusively as hemp -- for its fiber content. Colonialists planted the first American hemp crop in 1611 near Jamestown, Virginia. Soon after, King James I of Britain ordered settlers to engage in wide scale farming of the plant.[1] Most of the sails and ropes on colonial ships were made from hemp as were many of the colonists' bibles, clothing, and maps.[2]

According to some historians, George Washington and Thomas Jefferson cultivated marijuana and advocated a hemp-based economy.[3] Some colonies even made hemp cultivation compulsory, calling its production necessary for the "wealth and protection of the country."[4] Marijuana cultivation continued as an agricultural staple in America through the turn of the 20th century.

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[1]Lester Grinspoon, M.D., *Marijuana Reconsidered* (second edition) (San Francisco: Quick American Archives, 1994), p.11

[2]Grinspoon, p. 11; "The Hemp Industry in the United States" in *USDA Yearbook* (Washington, DC: U.S. Government Printing Office, 1901, pp. 541-2.

[3]Grinspoon, p. 12; John Roulac, Industrial Hemp:Practical Products -- Paper to Fabric to Cosmetics (ojai, California: Hemtech Publishing, 1995), p. 8; Rowan Robinson, The Great Book of Hemp (Rochester, Vermont: Park Street Press, 1996 pp. 129-133.

[4]Wayne D. Rasmussen, ed., *Readings in the History of American Agriculture* (Urbana, Illinois: University of Illinois Press, 1969), p. 296; Roulac, p.7.

Marijuana first earned recognition as an intoxicant in the 1920s and 1930s. Recreational use of the drug became associated primarily with Mexican-American immigrant workers and the African-American jazz musician community. During this time, hemp was renamed "marihuana" and the plant's longstanding history as a cash crop was replaced with a new image: "The Devil's Weed."

In 1930, the federal government founded the Federal Bureau of Narcotics (FBN), headed by Commissioner Harry Anslinger. The group launched a misinformation campaign against the drug and enrolled the services of Hollywood and several tabloid newspapers. Headlines across the nation began publicizing alleged reports of marijuana-induced insanity and violence. Exaggerated accounts of violent crimes committed by immigrants reportedly intoxicated by marijuana became popularized. Once under the influence of the drug, criminals purportedly knew no fear and lost all inhibitions. For example, a news bulletin issued by the FBN in the mid-1930s purported that a user of marijuana "becomes a fiend with savage or 'cave man' tendencies. His sex desires are aroused and some of the most horrible crimes result. He hears light and sees sound. To get away from it, he suddenly becomes violent and may kill."[5]

Similar reports swept the country. A widely publicized issue of the *Journal of Criminal Law and Criminology* asserted that marijuana users are capable of "great feats of strength and endurance, during which no fatigue is felt. ... Sexual desires are stimulated and may lead to unnatural acts, such as indecent exposure and rape. ... [Use of marijuana] ends in the destruction of brain tissues and nerve centers, and does irreparable damage. If continued, the inevitable result is insanity, which those familiar with it describe as absolutely incurable, and, without exception ending in death."[6] A *Washington Times* editorial published shortly before Congress held its first hearing on the issue argued: "The fatal marihuana cigarette must be recognized as a deadly drug and American children must be protected against it."[7] This steady stream of propaganda influenced 27 states to pass laws against marijuana in the years leading up to federal prohibition and set the stage both culturally and politically for the passage of the "Marihuana Tax Act in 1937."

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[5]Grinspoon, p. 17.

[6]Robinson, p. 147.

[7]U.S. Congress, House Ways and Means Committee, *Taxation of Marijuana, Hearings on H.R. 6385*, 75th Congress, 1st Session, April 27, 1937, statement of Clinton Hester.

Rep. Robert L. Doughton of North Carolina introduced the Act in Congress on April 14, 1937 to criminalize the recreational use of marijuana through prohibitive taxation. The bill was the brainchild of Commissioner Anslinger who later testified before Congress in support of the bill.

Congress held only two hearings, totaling one hour of testimony, to debate the merits of marijuana prohibition.[8] Federal witness Harry Anslinger testified before the House Ways and Means Committee that "this drug is entirely the monster-Hyde, the harmful effect of which cannot be measured." He was joined by Assistant General Counsel for the Department of the Treasury, Clinton Hester, who affirmed that the drug's eventual effect on the user "is deadly." These statements summarized the federal government's official position and served as the initial justification for criminalizing marijuana smoking.[9]

The American Medical Association (AMA) represented the lone voice against marijuana prohibition before Congress. AMA Legislative Counsel Dr. William C. Woodward testified, "There is no evidence" that marijuana is a dangerous drug. Woodward challenged the propriety of passing legislation based only on newspaper accounts and questioned why no data from the Bureau of Prisons or the Children's Bureau supported the FBN's position. He further argued that the legislation would severely compromise a physician's ability to utilize marijuana's therapeutic potential. Surprisingly, the committee took little interest in Woodward's testimony and told the physician, "If you want to advise us on legislation, you ought to come here with some constructive proposals ... rather than trying to throw obstacles in the way of something that the federal government is trying to do."[10]

After just one hearing, the Ways and Means Committee approved the "Marihuana Tax Act." The House of Representatives followed suit on August 20 after engaging in only *90 seconds* of debate.

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[8]Richard J. Bonnie, *The History of the Non-Medical Use of Drugs in the United States: A Speech to California Judges Association 1995 Annual Conference*, (reprinted not for profit by Iowa NORML, 1997).

[9]U.S. Congress, House Ways and Means Committee, *Taxation of Marijuana, Hearings on H.R. 6385,* statements of Harry Anslinger and Clinton Hester.

[10]U.S. Congress, House Ways and Means Committee, *Taxation of Marijuana, Hearings on H.R. 6385*, statements of William C. Woodward and Rep. Robert L. Doughton.

During this abbreviated floor "discussion," only two questions were asked. First, a member of Congress from upstate New York asked Speaker Sam Rayburn to summarize the purpose of the bill. Rayburn replied, "I don't know. It has something to do with a thing called marijuana. I think it is a narcotic of some kind." The same representative then asked, "Mr. Speaker, does the American Medical Association support the bill?" Falsely, a member of the Ways and Means Committee replied, "Their Doctor Wharton (sic) gave this measure his full support ... [as well as] the approval [of] the American Medical Association."[11] Following this brief exchange of inaccurate information, the House approved the federal prohibition of marijuana without a recorded vote.

Doughton's bill sailed though the Senate with the same ease. The Senate held one brief hearing on the bill before overwhelmingly approving the measure. President Franklin Roosevelt promptly signed the legislation into law on August 2, 1937. The "Marihuana Tax Act" took effect on October 1, 1937.

Thus began the criminal prohibition of marijuana that remains in place today. It was surely not a thoughtful or considered process that led to the federal prohibition of marijuana, and that tradition persists today when marijuana policy is occasionally revisited.

Marijuana Prohibition: A Costly Failure That Must Be Ended

Current marijuana policy is a dismal and costly failure. It wastes untold billions of dollars in law enforcement resources, and needlessly wrecks the lives and careers of millions of our citizens. Yet marijuana remains the recreational drug of choice for millions of Americans.

Congress needs to move beyond the "reefer madness" phase of our marijuana policy, where elected officials attempt to frighten Americans into supporting the status quo by exaggerating marijuana's potential dangers. This is an issue about which most members of Congress are simply out of touch with their constituents, who know the difference between marijuana and more dangerous drugs, and who oppose spending $25,000 a year to jail an otherwise law-abiding marijuana smoker.

In fact, if marijuana smoking were dangerous, we would certainly know it; a significant segment

[11]U. S. Congress, House of Representatives, *Congressional Record*, 75th Congress, 1st session, June 14, 1937, p. 5575.

of our population currently smoke marijuana recreationally, and there would be epidemiological evidence of harm among real people. No such evidence exists, despite millions of people who have smoked marijuana for years. So while we do need to fund more research on marijuana, especially research regarding medical uses -- which, by the way, has been delayed by the federal government for years -- we certainly know marijuana is relatively safe when used responsibly by adults.

It's time for Congress to let go of Reefer Madness, to end the crusade against marijuana and marijuana smokers, and to begin to deal with marijuana policy in a rational manner. The debate over marijuana policy in this Congress needs to be expanded beyond the current parameters to include consideration of (1) decriminalizing the marijuana smoker and (2) legalizing and regulating the sale of marijuana to eliminate the black market.

(a) Millions of Mainstream Americans Have Smoked Marijuana

It is time to put to rest the myth that smoking marijuana is a fringe or deviant activity engaged in only by those on the margins of American society. In reality, marijuana smoking is extremely common and marijuana is the recreational drug of choice for millions of mainstream, middle class Americans. Government's surveys indicate more than 70 million Americans have smoked marijuana at some point in their lives, and that 18-20 million have smoked during the last year.[12] Marijuana is the third most popular recreational drug of choice for Americans, exceeded only by alcohol and tobacco in popularity.

A national survey of voters conducted by the American Civil Liberties Union (ACLU) found that 32% -- one third of the voting adults in the country -- acknowledged having smoked marijuana at some point in their lives.[13] Many successful business and professional leaders, including many state and federal elected officials from both political parties, admit they used marijuana. It is time to reflect that reality in our state and federal legislation, and stop acting as if marijuana smokers are part of the crime problem. They are not, and it is absurd to continue spending limited law enforcement resources arresting them.

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[12]Substance Abuse and Mental health Services Administration Office of Applied Studies, *1997 National Household Survey on Drug Abuse* (Washington, DC: U.S. Department of Health and Human Services, 1998).

[13]American Civil Liberties Union, *National Survey of Voters' Opinions on the Use and Legalization of marijuana for Medical Purposes* (Washington, DC: March 31, 1995 - April 5, 1995).

Like most Americans, the vast majority of these millions of marijuana smokers are otherwise law-abiding citizens who work hard, raise families and contribute to their communities; they are indistinguishable from their non-smoking peers, except for their use of marijuana. They are not part of the crime problem and should not be treated like criminals. Arresting and jailing responsible marijuana smokers is a misapplication of the criminal sanction which undermines respect for the law in general.

Congress needs to acknowledge this constituency exists, and stop legislating as if marijuana smokers were dangerous people who need to be locked up. Marijuana smokers are simply average Americans.

(b) Marijuana Arrests Have Skyrocketed

Current enforcement policies seem focused on arresting marijuana smokers. The FBI reports that police arrested 695,000 Americans, the highest number ever recorded, on marijuana charges in 1997 (the latest year for which data are available), and more than 3.7 million Americans this decade; 83% of these arrests were for simple possession, not sale.[14] Presently one American is arrested on marijuana charges every 45 seconds. Approximately 44% of all drug arrests in this country are marijuana arrests. Despite criticism from some in Congress that President Clinton is "soft" on drugs, annual data from the Federal Bureau of Investigation's (FBI) Uniform Crime Report demonstrate that Clinton administration officials are waging a more intensive war on marijuana smokers than any other presidency in history. Marijuana arrests have more than doubled since President Clinton took office. This reality appears to conflict with recent statements by White House Drug Czar Barry McCaffrey that America "can not arrest our way out of the drug problem."

Unfortunately, this renewed focus on marijuana smokers represents a shift away from enforcement against more dangerous drugs such as cocaine and heroin. Specifically, marijuana arrests have more than doubled since 1990 while the percentage of arrests for the sale of cocaine and heroin have fallen 51%. Drug arrests have increased 31% in the last decade, and the increase in marijuana arrests accounts for most of that increase.

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[14]Federal Bureau of Investigation Uniform Crime Reports, *Crime in the United States: 1997* (Washington, DC: U.S. Government Printing Office, 1997- 1998.

(c) Marijuana Penalties Cause Enormous Harm

Marijuana penalties vary nationwide, but most levy a heavy financial and social impact for the hundreds of thousands of Americans who are arrested each year. In 42 states, possession of any amount of marijuana is punishable by incarceration and/or a significant fine. Many states also have laws automatically suspending the drivers' license of an individual if they are convicted of any marijuana offense, even if the offense was not driving related.

Penalties for marijuana cultivation and/or sale also vary from state to state. Ten states have maximum sentences of five years or less and eleven states have a maximum penalty of thirty years or more. Some states punish those who cultivate marijuana solely for personal use as severely as large scale traffickers. For instance, medical marijuana user William Foster of Oklahoma was sentenced to 93 years in jail in January 1997 for growing 10 medium-sized marijuana plants and 56 clones (cuttings from another plant planted in soil) in a 25-square-foot underground shelter.[15] Foster maintains that he grew marijuana to alleviate the pain of rheumatoid arthritis. Unfortunately, Foster's plight is not an isolated event; marijuana laws in six states permit marijuana importers and traffickers to be sentenced to life in jail.[16]

Federal laws prohibiting marijuana are also severe. Under federal law, possessing one marijuana cigarette or less is punishable by a fine of up to $10,000 and one year in prison, the same penalty as for possessing small amounts of heroin and cocaine. In one extreme case, attorney Edward Czuprynski of Michigan served 14 months in federal prison for possession of 1.6 grams of marijuana before a panel of federal appellate judges reviewed his case and demanded his immediate release.[17] Cultivation of 100 marijuana plants or more carries a mandatory prison term of five years. Large scale marijuana cultivators and traffickers may be sentenced to death.

Federal laws also deny entitlements to marijuana smokers. Under legislation signed into law in 1996 states may deny cash aid (e.g., welfare, etc.) and food stamps to anyone convicted of felony

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[15]Adam Smith, "Pot of Trouble," *Reason Magazine*, May 1997, pp. 47-48.

[16]Morgan and Zimmer, *Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence* (New York City: Lindesmith Center, 1997).

[17]"Thou Hath No Shame: The Cruprynski Affair." *The Champion*, September/October 1995, pp. 27-29.

drug charges. For marijuana smokers, this includes most convictions for cultivation and sale, even for small amounts and nonprofit transfers. More recently, Congress passed amendments in 1998 to the Higher Education Act which deny federal financial aid to any student with any drug conviction, even for a single marijuana cigarette. No other class of offense, including violent offenses, predatory offenses or alcohol-related offenses, carries automatic denial of federal financial aid eligibility. While substance abuse among our young people is a cause for concern, closing the doors of our colleges and universities, making it more difficult for at-risk young people to succeed, is not an appropriate response to a college student with a minor marijuana conviction.

Even those who avoid incarceration are subject to an array of punishments that may include submitting to random drug tests, probation, paying for mandatory drug counseling, loss of an occupational license, expensive legal fees, lost wages due to absence from work, loss of child custody, loss of federal benefits, and removal from public housing. In some states, police will notify the employer of people who are arrested, which frequently results in the loss of employment.

In addition, under both state and federal law, mere investigation for a marijuana offense can result in the forfeiture of property, including cash, cars, boats, land, business equipment, and houses. The owner does not have to be found guilty or even formally charged with any crime for the seizure to occur; 80% of those whose property is seized are never charged with a crime. Law enforcement can target suspected marijuana offenders for the purpose of seizing their property, sometimes with tragic results. For example, millionaire rancher Donald Scott was shot and killed by law enforcement officials in 1992 at his Malibu estate in a botched raid. Law enforcement failed to find any marijuana plants growing on his property and later conceded that their primary motivation for investigating Scott was to eventually seize his land.[18]

State and federal marijuana laws also have a disparate racial impact on ethnic minorities. While blacks and Hispanics make up only 20 percent of the marijuana smokers in the U.S., they comprised 58 percent of the marijuana offenders sentenced under federal law in 1995.[19] State

[18]Daryl Kelley, "Investigation of Deputy Urged in Fatal Drug Raid," *Los Angeles Times,* March 31, 1993, p. B4.

[19]Morgan and Zimmer, *Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence* (The Lindesmith Center: New York, 1997).

arrest and incarceration rates paint a similar portrait. For example, in Illinois, 57 percent of those sent to prison for marijuana in 1995 were black or Hispanic.[20] In California, 49 percent of those arrested for marijuana offenses in 1994 were black or Hispanic.[21] And in New York state, 71 percent of those arrested for misdemeanor marijuana charges in 1995 were nonwhite.[22]

Arresting and jailing otherwise law-abiding citizens who smoke marijuana is a wasteful and incredibly destructive policy. It wastes valuable law enforcement resources that should be focused on violent and serious crime; it invites government into areas of our private lives that are inappropriate; and it frequently destroys the lives, careers and families of genuinely good citizens. It is time to end marijuana prohibition.

Decriminalization Is A Common Sense Option

In 1972, a blue-ribbon panel of experts appointed by President Richard Nixon and led by former Pennsylvania Governor Raymond Shafer concluded that marijuana prohibition posed significantly greater harm to the user than the use of marijuana itself. The National Commission on Marijuana and Drug Abuse recommended that state and federal laws be changed to remove criminal penalties for possession of marijuana for personal use and for the casual distribution of small amounts of marijuana.[23] The report served as the basis for decriminalization bills adopted legislatively in 11 states during the 1970s.

A number of other prestigious governmental commissions have examined this issue over the last 25 years, and virtually all have reached the same conclusion: the purported dangers of marijuana smoking have been greatly overblown and the private use of marijuana by adults should not be a

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[20]Ibid; Illinois Department of Corrections, personal communications with Drs. Morgan and Zimmer, October 1, 1996.

[21]Ibid.; California Department of Justice, *Crime and Delinquency in California, 1994* (Sacramento, 1995).

[22]Ibid.; New York State Division of Criminal Justice Services, *Characteristics of 1995 Adult Arrestees for Marijuana* (New York City, 1996).

[23]National Commission on Marijuana and Drug Abuse, *Marijuana A Signal of Misunderstanding*, (Washington, DC: U.S. Government Printing Office, 1973).

criminal matter.[24] What former President Jimmy Carter said in a message to Congress in 1977, citing a key finding of the Marijuana Commission, is equally true today: "Penalties against drug use should not be more damaging to an individual than the use of the drug itself. Nowhere is this more clear than in the laws against possession of marijuana in private for personal use."[25]

(a) Favorable Experience with Decriminalization in the US

Led by Oregon in 1973, 11 states adopted policies during the 1970s that removed criminal penalties for minor marijuana possession offenses and substituted a small civil fine enforced with a citation instead of an arrest.[26] Today, approximately 30% of the population of this country live under some type of marijuana decriminalization law, and their experience has been favorable. The only U.S. federal study ever to compare marijuana use patterns among decriminalized states and those that have not found, "Decriminalization has had virtually no effect on either marijuana use or on related attitudes about marijuana use among young people."[27] Dozens of privately

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[24] New Zealand Parliamentary Health Select Committee, "Inquiry into the Mental Health Effects of Cannabis," Parliament House, Wellington, New Zealand, 1998; Canadian Centre on Substance Abuse National Working Group on Addictions, "Cannabis Control in Canada: Options Regarding Possession," Toronto, 1998; Connecticut Law Review Commission, "Drug Policy in Connecticut and Strategy Options: Report to the Judiciary Committee of the Connecticut General Assembly," Hartford, CT, 1997; Drug & Alcohol Services Council (South Australia), Monitoring, Evaluation & Research Unit, "The Effects of Cannabis Legislation in South Australia on Levels of Cannabis Use," Parkside, South Australia, 1991; California Research Advisory Panel, "Twentieth Annual Report of the Research Advisory Panel," Sacramento, CA, 1989; Committee on Substance Abuse and Habitual Behavior, Commission on Behavioral and Social Sciences on Education, National Research Council, "An Analysis of Marijuana Policy," National Academy Press, Washington, D.C., 1982, California Legislature Senate Select Committee on Control of Marijuana, "Final Report: Marijuana: Beyond Misunderstanding," Sacramento, CA, 1974; First Report of the National Commission on Marihuana and Drug Abuse, "Marijuana: Signal of Misunderstanding (The Shafer Report)," U.S. Govt. Printing Office, Washington, D.C. 1972; Le Dain Commission, "Report of the Commission of Inquiry into the Non-Medical Use of Drugs," Queens Printer, Ottawa, Canada, 1972; Advisory Committee on Drug Dependence, "Cannabis: Report by the Advisory Committee on Drug Dependence (The Wooten Report)," Her Majesty's Stationary Office, London, 1968.

[25] Message to Congress, August 2, 1977.

[26] Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, Oregon.

[27] Johnson, L.D., O'Malley, P.M., and Bachman, J.G. "Marijuana Decriminalization: The Impact on Youth 1975-1980," Monitoring the Future, Occasional Paper Series, paper 13, Institute for Social Research, University of Michigan, 1981.

commissioned follow up studies from the U.S. and abroad confirm this fact.[28]

Decriminalization laws are popular with the voters, as evidenced by a 1998 state-wide vote in Oregon in which Oregonians voted 2 to 1 to reject a proposal, earlier adopted by their legislature, that would have reimposed criminal penalties for marijuana smokers. Oregonians clearly wanted to retain the decriminalization law that had worked well for nearly 30 years.

Since the Shafer Commission reported their findings to Congress in 1972 advocating marijuana decriminalization, *over ten million Americans have been arrested on marijuana charges*. Marijuana prohibition is a failed public policy that is out of touch with today's social reality and inflicts devastating harm on millions of citizens.

Conclusion

It is time we adopted a marijuana policy that recognizes a distinction between use and abuse, and reflects the importance most Americans place on the right of the individual to be free from the overreaching power of government. Most would agree that the government has no business knowing what books we read, the subject of our telephone conversations, or how we conduct ourselves in the bedroom. Similarly, whether one smokes marijuana or drinks alcohol to relax is

[28] National Academy of Sciences Institute of Medicine, "Marijuana and Medicine: Assessing the Science Base," National Academy Press, Washington, D.C., 1999; Australian Institute of Criminology and the University of New South Wales Department of Politics, "Marijuana in Australia, patterns and attitudes," Monograph Series No. 31, Looking Glass Press (Public affairs), Canberra, 1997; Connecticut Law Review Commission, "Drug Policy in Connecticut and Strategy Options: Report to the Judiciary Committee of the Connecticut General Assembly;" 1997; Donnelly, N., Hall, W. and Christie, P. "The effects of partial decriminalization on cannabis use in South Australia, 1985 to 1993," *Australian Journal of Public Health* 19 (1995); National Drug and Alcohol Research Centre, "Patterns of cannabis use in Australia," Monograph Series No. 27, Australian Government Publishing Service, Canberra, 1994; Theis, C. and Register, C. "Decriminalization of Marijuana and the Demand for Alcohol, Marijuana and Cocaine," *The Social Sciences Journal* 30 (1993); Drug & Alcohol Services Council (South Australia), Monitoring, Evaluation & Research Unit, "The Effects of Cannabis Legislation in South Australia on Levels of Cannabis Use," 1991; Single, Eric "The Impact of Marijuana Decriminalization: an Update," *Journal of Public Health Policy* 10 (1989); Johnson, L.D., O'Malley, P.M., and Bachman, J.G. "Marijuana Decriminalization: The Impact on Youth 1975-1980," 1981; Malloff, Deborah, "A Review of the Effects of the Decriminalization of Marijuana," *Contemporary Drug Problems* (1981); Saveland, W. and Bray D., "American Trends in Cannabis Use Among States with Different and Changing Legal Regimes," Bureau of Tobacco Control and Biometrics, Health and Welfare, Ottawa, 1980; California State Office of Narcotics and Drug Abuse, "A First Report on the Impact of California's New Marijuana Law," Sacramento, CA, 1977; Stuart, R.B., Guire K., and Krell M., "Penalty for the Possession of Marijuana: An Analysis of Some of Its Concomitants," *Contemporary Drug Problems* 5 (1976).

simply not an appropriate area of concern for the government.

By stubbornly defining all marijuana smoking as criminal, including that which involves adults smoking in the privacy of their home, government is wasting police and prosecutorial resources, clogging courts, filling costly and scarce jail and prison space, and needlessly wrecking the lives and careers of genuinely good citizens.

It is time that Congress acknowledge what millions of Americans know to be true: there is nothing wrong with the responsible use of marijuana by adults and it should be of no interest or concern to the government.

In the final analysis, this debate is only incidentally about marijuana; it is really about personal freedom.

Attachments:

1. NORML's Principles of Responsible Cannabis Use
2. Decriminalization Endorsements From Government Commissions
3. NORML Statement on the Medical Use of Marijuana and H.R. 912

Principles of Responsible Cannabis Use

When marijuana is enjoyed responsibly, subjecting users to harsh criminal and civil penalties provides no public benefit and causes terrible injustices. For reasons of public safety, public health, economics and justice, the prohibition laws should be repealed to the extent that they criminalize responsible marijuana use.

By adopting this statement, the NORML Board of Directors attempts to define "responsible cannabis use."

I. ADULTS ONLY

Cannabis consumption is for adults only. It is irresponsible to provide cannabis to children.

Many things and activities are suitable for young people, but others absolutely are not. Children do not drive cars, enter into contracts, or marry, and they must not use drugs. As it is unrealistic to demand lifetime abstinence from cars, contracts and marriage, however, it is unrealistic to expect lifetime abstinence from all intoxicants, including alcohol. Rather, our expectation and hope for young people is that they grow up to be responsible adults. Our obligation to them is to demonstrate what that means.

II. NO DRIVING

The responsible cannabis consumer does not operate a motor vehicle or other dangerous machinery impaired by cannabis, nor impaired by any other substance or condition, including some medicines and fatigue.

Although cannabis is said by most experts to be safer than alcohol and many prescription drugs with motorists, responsible cannabis consumers never operate motor vehicles in an impaired condition. Public safety demands not only that impaired drivers be taken off the road, but that objective measures of impairment be developed and used, rather than chemical testing.

III. SET AND SETTING

The responsible cannabis user will carefully consider his/her set and setting, regulating use accordingly.

"Set" refers to the consumer's values, attitudes, experience and personality, and "setting" means the consumer's physical and social circumstances. The responsible cannabis consumer will be vigilant as to conditions — time, place, mood, etc. — and does not hesitate to say "no" when those conditions are not conducive to a safe, pleasant and/or productive experience.

IV. RESIST ABUSE

Cannabis use that it impairs health, personal development or achievement is abuse, and should be resisted by responsible cannabis users.

Abuse means harm. Some cannabis use is harmful; most is not. That which is harmful should be discouraged; that which is not need not be.

Wars have been waged in the name of eradicating "drug abuse," but instead of focusing on abuse, enforcement measures have been diluted by targeting all drug use, whether abusive or not. If marijuana abuse is to be targeted, it is essential that clear standards be developed to identify it.

V. RESPECT RIGHTS OF OTHERS

The responsible cannabis user does not violate the rights of others, observes accepted standards of courtesy and public propriety, and respects the preferences of those who wish to avoid cannabis entirely.

No one may violate the rights of others, and no substance use excuses any such violation. Regardless of the legal status of cannabis, responsible users will adhere to emerging tobacco smoking protocols in public and private places.

Adopted by the NORML Board of Directors
February 3, 1996 • Washington, DC

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Marijuana Decriminalization: Endorsements by Government Commissions

"It is acknowledged that cannabis prohibition enforced by traditional crime control methods has not been successful in reducing the apparent number of cannabis users in New Zealand. That the police are open-minded of the issue of the decriminalization of cannabis is an indication that thinking on this subject is changing. ...**We recommend that based on the evidence received, the government review the appropriateness of existing policy on cannabis and its use and reconsider the legal status of cannabis.**"

** New Zealand Parliamentary Health Select Committee, "Inquiry into the Mental Health Effects of Cannabis," Parliament House, Wellington, New Zealand, 1998.*

"The severity of punishment for a cannabis possession charge should be reduced. **Specifically, cannabis possession should be converted to a civil violation.** ...The available evidence indicates that removal of jail as a sentencing option would lead to considerable cost savings without leading to increases in the rates of cannabis use."

** Canadian Centre on Substance Abuse National Working Group on Addictions, "Cannabis Control in Canada: Options Regarding Possession," Toronto, 1998.*

"The Law Revision Commission has examined laws from other states that have reduced penalties for small amounts of marijuana and the impact of those laws in those states...Studies of [those] states found (1) expenses for arrest and prosecution of marijuana possession offenses were significantly reduced, (2) any increase in the use of marijuana in those states was less that increased use in those states that did not decrease their penalties and the largest proportionate increase occurred in those states with the most severe penalties, and (3) reducing the penalties for marijuana has virtually no effect on either choice or frequency of the use of alcohol or illegal 'harder' drugs such as cocaine. ...**Based on [our] review, the [Connecticut] legislature should review and further consider as a strategy option establishing the offense of infraction for adults twenty-one years of age or older who possess one ounce or less of marijuana.**"

** Connecticut Law Review Commission, "Drug Policy in Connecticut and Strategy Options: Report to the Judiciary Committee of the Connecticut General Assembly," Hartford, CT, 1997.*

"**It appears clear that ... a move toward more lenient laws for small scale cannabis offences ... will not lead to increased cannabis use.** Thus, we can limit cannabis use without harsh penalties. ... It may be that other governments, on reviewing the findings presented here and in other reports,

will see fit to consider a similar approach for dealing with small scale cannais offenses to the Cannabis Expiation [citation] System of South Australia."

** Drug & Alcohol Services Council (South Australia): Monitoting, Evaluation & Research Unit, "The Effects of Cannabis Legislation in South Australia on Levels of Cannabis Use," Parkside, South Australia, 1991.*

"An objective consideration of marijuana shows that it is responsible for less damage to the individual and society than are alcohol and cigarettes...A further consideration in forming a reaction to the wide use of marijuana is that it is a source of conflict between generations and of disrespect for the law...**The Panel therefore suggests that the law be changed to permit cultivation [of marijuana] for personal use."**

** California Research Advisory Panel, "Twentieth Annual Report of the Research Advisory Panel," Sacramento, CA, 1989.*

"We believe, further, that current policies directed at controlling the supply of marijuana should be seriously reconsidered. **The demonstrated ineffectiveness of control of use through prohibition of supply and the high costs of implementing such a policy make it very unlikely that any kind of partial prohibition policy will be effective in reducing marijuana use significantly below present levels."**

** Committee on Substance Abuse and Behavior, Commission on Behavioral Social Sciences on Education, and the National Research Council, "An Analysis of Marijuana Policy," National Academy Press, Washington, D.C., 1982.*

"Even assuming marijuana has some undesirable or harmful properties, prohibition through criminal law is not a proper approach in controlling these properties and effects. **... The [California] Legislature should adopt a program of decriminalization making simple possession of marijuana for private adult use an infraction, if anything."**

** California Legislature Senate Select Committee on Control of Marijuana, "Final Report: Marijuana: Beyond Misunderstanding," Sacramento, CA, 1974.*

"The Commission recommends only the following changes in federal law: **Possession of marihuana for personal use would no longer be an offense. ... Casual distribution of small amounts of marihuana for no renumeration, or insignificant renumeration not involving profit would no longer be an offense."**

** First Report of the National Commission on Maihuana and Drug Abuse, "Marihuana: A Signal of MIsunderstanding (The Shafer Report)," U.S. Goverment Printing Office, Washington, D.C., 1972.*

"The costs to a significant number of individuals, the majority of whom are young people, and to society generally, of a policy of prohibition of simple possession are not justified by the potential for harm of cannabis and the additional influence which such a policy is likely to have upon perception of harm, demand, and availability. **We, therefore recommend the repeal of the prohibition against the simple possession of cannabis.**"

** Le Dain Commssion, "Report of the Commission of Inquiry into the Non-Medical Use of Drugs," Queens Printer, Ottawa, Canada, 1972.*

"In considering the scale of penalties our main aim, having regard to our view of the known effects of cannabis, is **to remove for practical purposes, the prospect of imprisonment for possession of a small amount and to demonstrate that taking the drug in moderation is a relatively minor offense.**"

** Advisory Committee on Drug Dependence, "Cannabis: Report by the Advisory Committee on Drug Dependence (The Wooten Report," Her Majesty's Stationary Office, London, 1968.*

NORML Statement on the Medical Use of Marijuana and H.R. 912

Science Supports Amending Federal Law

"Federal authorities should rescind their prohibition of the medical use of marijuana for seriously ill patients and allow physicians to decide which patients to treat. The government should change marijuana's status from that of a Schedule I [prohibited] drug...to that of a Schedule II drug...and regulate accordingly."

—Dr. Jerome Kassirer
Editor, *New England Journal of Medicine*, January 30, 1997

Marijuana prohibition applies to everyone, including the sick and dying. Of all the negative consequences of prohibition, none is as tragic as the denial of medical marijuana to the tens of thousands of seriously ill patients who could benefit from its therapeutic use.

MARIJUANA'S MEDICAL VALUE

It is clear from available studies and rapidly accumulating anecdotal evidence that marijuana is therapeutic in the treatment of a number of serious ailments and is less toxic and costly than many conventional medicines for which it may be substituted.[1] Most recently, a federally commissioned report by the National Academy of Sciences (NAS) determined that, "Marijuana's active components are potentially effective in treating pain, nausea, the anorexia of AIDS wasting, and other symptoms" including the involuntary spasticity associated with multiple sclerosis.[2] In some cases, marijuana appears more effective than the commercially available drugs it replaces.[3]

The best established medical use of smoked marijuana is as an anti-nauseant for cancer chemotherapy. During the 1980s, researchers in six different state-sponsored clinical studies involving nearly 1,000 patients determined smoked marijuana to be an effective anti-emetic.[4] For many of these patients, smoked marijuana proved more effective than both conventional prescription anti-nauseants and oral THC (marketed today as the synthetic pill, Marinol).[5] Dr. John Benson, Jr., co-principle investigator for the latest NAS report, concluded that "short term marijuana use appears to be suitable in treating conditions like chemotherapy-induced nausea" for patients who do not respond well to other medications.[6] Currently, many oncologists are recommending marijuana to their patients despite its prohibition. [7]

Scientific and anecdotal evidence also suggests that marijuana is a valuable aid in reducing pain and suffering for patients with a variety of other serious ailments. For example, marijuana alleviates the nausea, vomiting, and the loss of appetite experienced by many AIDS patients without accelerating the rate at which HIV positive individuals develop clinical AIDS or other illnesses.[8] According to the National Institutes of Health (NIH), marijuana "increase[s] food enjoyment and the number of times individuals eat per day."[9] The March 1999 NAS report found cannabinoid drugs "promising for treating wasting syndrome in AIDS patients,"[10] and recommended those patients unresponsive to conventional AIDS medications smoke marijuana to combat the wasting syndrome.[11]

An earlier 1982 report by the National Academy of Sciences suggested that marijuana reduces intraocular pressure (IOP) in patients suffering from glaucoma, the leading cause of blindness in the United States.[12] A follow up 1994 report by the Australian federal government determined that, "There is reasonable evidence for the potential efficacy of THC in the treatment of glaucoma, especially in cases which have proved resistant to existing anti-glaucoma agents," and recommended the drug's use under medically supervised conditions.[13]

Clinical and anecdotal evidence also points to the effectiveness of marijuana as a therapeutic agent in the treatment of a variety of spastic conditions such as multiple sclerosis, paraplegia, epilepsy, and quadriplegia. Animal studies and carefully controlled human studies support marijuana's ability to suppress convulsions. In November 1998, England's House of Lords Science and Technology Committee said they were "convince[d]...that cannabis...certainly does have genuine medical applications...in treating the painful muscle spasms and other symptoms of MS," and recommended legalizing medical use of the drug.[14] The latest NAS report also noted that marijuana alleviates muscle spasms associated with MS.[15]

Many patients and older Americans use marijuana therapeutically to control chronic pain. NAS researchers found that, "The available evidence from both animal and human studies indicates that cannabinoids can produce a significant analgesic effect."[16] Several recent scientific studies performed by researchers at the University of San Francisco and elsewhere demonstrate that compounds in marijuana modulate pain signals in much the same way as morphine and other opiates.[17] This new research led the Society of Neuroscience to pronounce that, "Substances similar to or derived from marijuana, known as cannabinoids, could benefit the more than 97 million Americans who experience some form of pain each year."[18]

New research indicates that marijuana constituents appear to protect brain cells during a stroke. Scientists at the National Institute for Mental Health called compounds in marijuana potent antioxidants.[19] Doctors rely on antioxidants to protect stroke victims from toxic levels of a brain chemical called glutamate. Head trauma and strokes cause the release of excessive glutamate, often resulting in irreversible damage to brain cells. Marijuana compounds performed better in laboratory studies than traditional antioxidants like vitamins C and E.[20]

PUBLIC AND STATE SUPPORT FOR LEGAL ACCESS

Between 1978 and 1996, legislatures in 34 states and the District of Columbia passed laws recognizing marijuana's therapeutic value.[21] Twenty-three of these laws remain in effect today.[22] Most recently, voters in Alaska, Oregon, Nevada, and Washington overwhelmingly adopted initiatives exempting patients who use marijuana under a physician's supervision from state criminal penalties.[23] These states joined voters in Arizona and California who passed similar initiatives recognizing marijuana's medical value in 1996. These laws do not legalize marijuana or alter criminal penalties regarding the possession or cultivation of marijuana for recreational use. Nor do they establish a legal supply for patients to obtain the drug. They merely provide a narrow exemption from prosecution for defined patients who use marijuana with their doctor's recommendation.

Clearly, the American public distinguish between the medical use and recreational use of marijuana, and a majority support legalizing medical use for seriously ill patients.[24] A March 26, 1999 Gallup poll reported that seventy three percent of American support making marijuana available to doctors so they may prescribe it.[25] Basic compassion and common sense demand that we allow America's seriously ill citizens to use whatever medication is most safe and effective to alleviate their pain and suffering.

ADMINISTRATIVE RULING SUPPORTS MEDICAL USE

NORML first raised this issue in 1972 in an administrative petition asking federal authorities to move marijuana from Schedule I to Schedule II of the federal Controlled Substances Act so doctors may prescribe it. After 16 years of legal battles and appeals, in 1988 the Drug Enforcement Administration's own administrative law judge, Francis Young, found: "Marijuana has been accepted as capable of relieving distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary and capricious for DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record."[26] Young recommended "that the Administrator transfer marijuana from Schedule I to Schedule II, to make it available as a legal medicine."[27] The DEA Administrator overruled Judge Young, and the Court of Appeals allowed that decision to stand, denying medical marijuana to seriously ill patients. Congress must act to correct this injustice.

FEDERAL MEDICAL USE BILL (H.R. 912)

Representative Barney Frank (D-Mass) recently reintroduced legislation in Congress to provide for the medical use of marijuana.[28] House Bill 912, the "Medi-

cal Use of Marijuana Act," would move marijuana from Schedule I to Schedule II under federal law, thereby making it legal for physicians to prescribe. The rescheduling would remove cannabis from the list of drugs alleged to have no valid medical use, such as heroin and LSD, and put it in the same category as Marinol, morphine and cocaine. Frank's bill awaits action by the House Commerce Committee, Subcommittee on Health and the Environment.

House Bill 912 is not a mandate from Washington and would not require any state to change its current laws. It is a states' rights bill that acknowledges the will of the American people and would allow states to determine for themselves whether marijuana should be legal for medicinal use. It is a common-sense solution to a complex issue and would provide a great deal of relief from suffering for a large number of people. NORML implores Congress to support this compassionate proposal to protect the ten of thousands of Americans who currently use marijuana as a medicine and the millions who would benefit from its legal access. Many seriously ill patients find marijuana the most effective way to relieve their pain and suffering and federal marijuana prohibition must not, in good conscience, continue to deny them that medication.

END NOTES

1. House of Lords Select Committee on Science and Technology, "Ninth Report," London: United Kingdom (1998); American Public Health Association, Resolution 9513: Access to Therapeutic Marijuana/Cannabis, Washington, DC: APHA Public Policy Statements (1995); Commonwealth Department of Human Services and Health, The health and psychological consequences of cannabis use, Canberra, Australia: Australian Government Publishing Service (1994): 185-199; Federation of American Scientists, Medical Use of Whole Cannabis, Washington, DC: Statement of the FAS (1994); Lester Grinspoon, M.D. et al., Marihuana, The Forbidden Medicine (second edition), New Haven, Connecticut: Yale University Press (1997); John Morgan, M.D. et al., Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence, New York City: Lindesmith Center (1997): 17-25.

2. Institute of Medicine News, March 17, 1999; National Academy of Sciences Institute of Medicine, Marijuana and Medicine: Assessing the Science Base, Washington, DC: National Academy Press (1999); http://www.normi.org/medical/IOM_Report/iomiv.htm.

3. Lester Grinspoon, M.D., et al., Marihuana, The Forbidden Medicine.

4. R.C. Randall, Cancer Treatment & Marijuana Therapy, Washington, DC: Galen Press (1990): 217-243; Kevin Zeese, Marijuana: Medical Effectiveness Is Proven By Research, Falls Church, Virginia: Common Sense for Drug Policy (1997); "Annual Report: Evaluation of Marijuana and Tetrahydrocannabinol in Treatment of Nausea and/or Vomiting Associated with Cancer Therapy Unresponsive to Conventional Anti-Emetic Therapy: Efficacy and Toxicity," Board of Pharmacy, State of Tennessee, (1983); McNeil, Robert P., "The Lynn Pierson Therapeutic Research Program: A Report on Progress to Date," Behavioral Health Services Division, Health and Environment Department, State of New Mexico, (1983); "Seventeenth Annual Report of the Research Advisory Panel," prepared for the Governor and Legislature by the California Research Advisory Panel, San Francisco, California, (1986); "Michigan Department of Public Health Marijuana Therapeutic Research Project, Trial A 1980-81," Department of Social Oncology, Evaluation Unit, Michigan Cancer Foundation, (1982), Kunter, Michael H., "Evaluation of the Use of Both Marijuana and THC in Cancer Patients for the Relief of Nausea and Vomiting Associated with Cancer Chemotherapy After Failure of Conventional Anti-Emetic Therapy: Efficacy and Toxicity," as prepared for the Composite State Board of Medical Examiners, Georgia Department of Health, Emory University, Atlanta, Georgia (1983); "Annual Report to the Governor and Legislature on the Antonio G. Olivieri Controlled Substances Therapeutic Research Program," New York State Department of Health, (1986) as it appeared in Cancer Treatment and Marijuana Therapy, (1990).

5. "Annual Report: Evaluation of Marijuana and Tetrahydrocannabinol in Treatment of Nausea and/or Vomiting Associated with Cancer Therapy Unresponsive to Conventional Anti-Emetic Therapy: Efficacy and Toxicity," Board of Pharmacy, State of Tennessee; "The Lynn Pierson Therapeutic Research Program: A Report on Progress to Date," Behavioral Health Services Division, Health and Environment Department, State of New Mexico; "Seventeenth Annual Report of the Research Advisory Panel," prepared for the Governor and Legislature by the California Research Advisory Panel; Vincent Vinciguerra, et al., "Inhalation marijuana as an antiemetic for cancer chemotherapy," New York State Journal of Medicine, (1988): 525-527.

6. Institute of Medicine News, March 17, 1999.

7. Rick Doblin, et al., "Marihuana as Anti-emetic Medicine: A Survey of Oncologists' Attitudes and Experiences," Journal of Clinical Oncology, (1991): 1275-80; John Morgan, M.D. et al., Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence, 20.

8. Commonwealth Department of Human Services and Health, The health and psychological consequences of cannabis use, 195; Richard Kaslow, M.D., et al., "No Evidence for a Role of Alcohol or Other Psychoactive Drugs in Accelerating Immunodeficiency in HIV-1 Positive Individuals," Journal of The American Medical Association, (1989): 3424-29.

9. National Institues of Health, "Workshop on the Medical Utility of Marijuana, Report to the Director," Washington, D.C. (1997): 4.

10. National Academy of Sciences Institute of Medicine, Marijuana as Medicine: Assessing the Science Base, 4.22.

11. Institute of Medicine News, March 17, 1999. National Academy of Sciences Institute of Medicine, Marijuana and Health, Washington, DC: National Academy Press (1982): 140-151.

[12] National Academy of Sciences Institute of Medicine, Marijuana and Health. Washington, DC: National Academy Press (1982): 140-151.

[13] Commonwealth Department of Human Services and Health, The health and psychological consequences of cannabis use, 199.

[14] House of Lords Select Committee on Science and Technology, "Ninth Report," Associated Press, November 12, 1998.

[15] Institute of Medicine News, March 17, 1999.

[16] National Academy of Sciences Institute of Medicine, Marijuana and Medicine: Assessing the Science Base, 4.9.

[17] "Synthetic marijuana-like drug eases pain - study," Reuters News Service, September 23, 1998; "Study Explains How Marijuana Kills Pain," San Francisco Chronicle, September 24, 1998; "Easing the Agony: Marijuana does more than merely make you stoned," The New Scientist (United Kingdom). September 26, 1998; "Cannabinoid Anagesia Explained," The Lancet, September 26, 1998; "How Does Marijuana Kill Pain," Associated Press, October 4, 1998.

[18] Society for Neuroscience, Press Conference: Marijuana & Analgesia, October 26, 1997.

[19] A. Hampson, et al., "Cannabidicl and delta-9-tetrahydrocannabinol are neuroprotective antioxidants," Proceedings of the National Academy of Sciences 95 (1998): 8268-8273; "Cannabis is stroke hope," The Guardian (United Kingdom), July 4, 1998; "MarijuanaÕs Healing Properties," Associated Press, July 5, 1998.

[20] Ibid.

[21] Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Iowa, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Vermont, Washington, Wisconsin, West Virginia.

[22] Alabama (S. 559); Connecticut (H.B. 5217); District of Columbia (Bill No. 4-123); Georgia (H.B. 1077); Iowa (S.F. 487); Illinois (H.B. 2625); Louisiana (H.B. 1187); Massachusetts (H. 2170); Minnesota (H.F. 2476); Montana (H.B. 463); New Hampshire (S.B. 21); New Jersey (A.B. 819); New Mexico (H.B. 329); New York (S.B. 1123-6); Rhode Island (H.B. 79.6072); South Carolina (S.B. 350); Tennessee (H.B. 314); Texas (S.B. 877); Vermont (H.B. 130); Virginia (S.B. 913); Washington (S.B. 6744); West Virginia (S.B. 366); Wisconsin (A.B. 697); http://www.norml.org/medical/states.html.

[23] http://www.norml.org/medical/pets98.html.

[24] http://www.norml.org/medical/polls.html.

[25] "Americans Oppose General Legalization of Marijuana, but Support Use for Medicinal Purposes," Gallup Poll News Service, Volume 63, No. 44, March 26, 1999.

[26] In the Matter of Marihuana Rescheduling Petition, Docket 86-22, Opinion, Recommended Ruling, Findings of fact, Conclusions of Law, and Decision of Administrative Law Judge, September 6, 1988 (Washington, DC: Drug Enforcement Administration, 1988).

[27] Ibid.

[28] http://www.norml.org/laws/HR912.html.

Mr. MICA. Thank you for your testimony, and now I would like to recognize Mr. Robert MacCoun, professor of public policy and law at the University of California at Berkeley. Welcome, and you are recognized. I hope I pronounced that correctly?

Mr. MACCOUN. MacCoun, that is correct.

Mr. MICA. Thank you.

Mr. MACCOUN. Thank you for the opportunity to testify. I ask that my written testimony, which is longer, be entered into the record.

Mr. MICA. Without objection, that will be made part of the record.

Mr. MACCOUN. My name is Robert MacCoun. I am from the University of California at Berkeley. My collaborator is Peter Reuter of the University of Maryland.

I am here today to summarize some conclusions from our study of drug control alternatives funded by a grant from the Alfred Sloan Foundation to the Rand Corp.'s Drug Policy Research Center. Rand is a nonprofit institution that helps improve policy and decisionmaking through research and analysis. The opinions and conclusions expressed today are my own, and should not be interpreted as representing those of Rand or any other agency sponsoring the research.

I should also mention an earlier statement by the Chair suggested that there were two pro and two cons here. I am not here in an advocacy role today. My purpose today is to try to inform the debate by talking empirically about what we know about these policies.

Mr. MICA. Well, thank you. I just made that——

Mr. MACCOUN. That is quite all right. It is understandable.

Mr. MICA [continuing]. Comment and I stand corrected. It never happened before, but you are the first.

Mr. MACCOUN. Thank you. I am proud to be part of that first.

The empirical base is strongest for analyzing marijuana decriminalization, weaker for marijuana legalization, and quite weak for the legalization of cocaine or heroin, so I will focus today mostly on what we know about marijuana.

Decriminalization refers to the elimination or substantial reduction of penalties for possession of modest drug quantities. In a decriminalization regime, the sale and manufacture of the drug remains illegal. Marijuana has been decriminalized in 11 United States States, in some regions of Australia, and in the Netherlands, Italy, and Spain.

The available evidence suggests that marijuana decriminalization has either no effect or a very small effect on marijuana use. Survey analyses in decriminalizing States have found either no change in marijuana use or an increase that was slight and temporary. Cross-State comparisons have found no difference in adolescent marijuana use in decriminalizing versus non-decriminalizing States. The conclusion that marijuana decriminalization has little or no effect is bolstered by studies finding no effect of decriminalization in South Australia and in the Australian Capital Territory.

Our statements about marijuana decriminalization should not be generalized to marijuana legalization. Legalization goes beyond the

decriminalization of user possession to allow some form of legally regulated sale and distribution. We know of only one contemporary example that comes close, and that is the Dutch model.

In compliance with international treaty obligations, Dutch law states unequivocally that cannabis is illegal, yet in 1976, the Dutch adopted a formal written policy of nonenforcement for violations involving possession or sale of up to 30 grams. That has been reduced to 5 grams in 1995. Not only are prosecutors forbidden to act against users, but a formal written policy regulates the technically illicit sale of those small amounts in licensed coffee shops and nightclubs.

The Dutch decriminalization of possession per se had no detectable effect on marijuana use, consistent with evidence from the United States and from Australia. But in the mid-1980's there was a significant increase in the number of tolerated commercial sales outlets for marijuana.

We believe this shift from mere decriminalization to de facto legalization was associated with rapid growth in the number of users, an increase that was not mirrored in other nations during that same time period. That increase might have been coincidental, but it's consistent with other evidence that commercial promotion of a vice will increase consumption of that vice.

Dutch heroin and cocaine use numbers are not particularly high by European standards, and a smaller fraction of marijuana users go on to use those drugs in the Netherlands than in the United States. There's no evidence that Dutch cannabis policy has resulted in any increase in property crime or violence, and claims that it has are simply not credible.

The Dutch have made a policy choice: less black market activity at the retail level, and less police intrusiveness into ordinary life, in exchange for higher levels of marijuana use. Whether that is the right choice depends upon one's views about the dangers of marijuana. At any rate, it seems likely that the Dutch might have achieved their goals with a less extreme policy. For example, South Australia allows home cultivation of small quantities of marijuana but not commercial sales or promotion.

Much less is known about the consequences of alternative drug laws for heroin or cocaine. On the one hand, legalization would probably reduce the harmfulness to the user, and to others, of the average drug-taking episode. On the other hand, legalization would increase the number of those drug-taking episodes. At present, there's no firm basis for predicting the relative size of those two effects. Thus, legalization is a very risky strategy for reducing drug-related harm.

But the drawbacks of legalization do not imply that our current version of prohibition is the optimal drug strategy. It may well be possible to implement prohibition in less harmful ways.

Thank you very much.

[The prepared statement of Mr. MacCoun follows:]

Testimony Before The House Government Reform And Oversight Committee
Subcommittee On Criminal Justice, Drug Policy, And Human Resources
Tuesday, July 13, 1999

Robert J. MacCoun*
Peter Reuter**

Thank you for the opportunity to testify. I ask that my written statement be entered into the record.

Professor Reuter and I have spent almost a decade analyzing the likely consequences of alternative legal regimes for the currently illicit drugs. We have examined (a) data on policies and outcomes in Western Europea and Australia;; (b) historical American experiences with legal cocaine and heroin, and with the prohibition of alcohol; and (c) experiences controlling other vices, including gambling, prostitution, tobacco, and alcohol. Our research will be published in a book next year by Cambridge University Press.[1]

Decriminalization, legalization, and harm reduction are three distinct concepts. Unfortunately, these terms are often used interchangeably in the policy debate. From a policy standpoint it is unhelpful to blur these distinctions because these three strategies differ in their likely benefits and their likely risks. The empirical base for projecting consequences of a change in law is strongest for marijuana decriminalization, weaker for marijuana legalization, and quite weak for the decriminalization or legalization of cocaine or heroin. There is a fairly sizeable body of evidence regarding needle exchange, a form of harm reduction, but we will not discuss that topic due to time limitations.

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[1] MacCoun, R., & Reuter, P. (to be published in 2000). *Alternatives to the drug war: Learning from other times, places, and vices* (working title). Cambridge University Press. This work was funded by a grant from the Alfred P. Sloan Foundation to RAND's Drug Policy Research Center. The views expressed here are our own and are not intended to represent the views of RAND or the Sloan Foundation.

Marijuana Decriminalization in the United States and Australia

In brief, decriminalization refers to the elimination or substantial reduction of penalties for possession of modest quantities of the drug in question. Depending on the jurisdiction, possession may or may not be punished by a civil fine; multiple offenses or serious offenses may trigger criminal prosecution. But it is important to emphasize that in a decriminalization regime, the sale and manufacture of the drug remains illegal and is criminally prosecuted. Marijuana has been decriminalized in 11 U.S. states,[2] in some regions of Australia, and in the Netherlands, Italy, and Spain. Italy and Spain have also decriminalized possession of heroin and cocaine; the Netherlands and Australia have not.

Several lines of evidence—on the deterrent effects of marijuana laws,[3] and on decriminalization experiences in the United States, the Netherlands, and Australia—suggest that eliminating (or significantly reducing) criminal penalties for first-time possession of small quantities of marijuana has either no effect or a very small effect on the prevalence of marijuana use.

There are several statistical analyses of survey data on marijuana use in decriminalization and non-decriminalization states.[4] Survey analyses in decriminalizing states have found either no change in marijuana use, or an increase that was slight and temporary. Decriminalization was not associated with any detectable changes in adolescent attitudes toward marijuana. Most cross-state comparisons have found no difference in adolescent marijuana use in decriminalization vs. non-decriminalization states.[5]

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[2] Alaska, California, Colorado, Maine, Minnesota, Missippi, Nebraska, New York, North Carolina, Ohio, and Oregon.

[3] Reviewed in MacCoun, R. J. (1993), "Drugs and the law: A psychological analysis of drug prohibition," *Psychological Bulletin, 113,* 497-512.

[4] See Johnston, L. D., O'Malley, P. M., & Bachman, J. G. (1981), *Marijuana decriminalization: The impact on youth, 1975-1980* (Ann Arbor, MI: Institute for Social Research); Maloff, D. (1981), "A review of the effects of the decriminalization of marijuana," *Contemporary Drug Problems, Fall,* 307-322; National Governor's Conference (1977), *Marijuana: A study of state policies and penalties* (Washington, DC. U.S. Government Printing Office); Single, E. (1989), "The impact of marijuana decriminalization: An update," *Journal of Public Health Policy, 10,* 456-466; Dinardo, J., & Lemieux, T. (1992), "Alcohol, marijuana, and American youth: The unintended consequences of government regulation" (NBER Working Paper 4212); Thies, C., & Register, C. (1993), "Decriminalization of marijuana and the demand for alcohol, marijuana, and cocaine," *Social Science J., 30,* 385-399.

[5] One exception is an unpublished analysis in 1995 reporting somewhat higher levels of use in decriminalization states. This study differs in several respects from previous analyses (a different survey instrument, a different time period, inclusion of adults in the sample, and different statistical techniques), any one of which might account for the

These actual changes in marijuana laws and their enforcement were fairly subtle; arrest rates for marijuana possession are the same in those U.S. states that decriminalized and those that did not, though in the decriminalization states the penalties are presumably less severe. When MacCoun asks his undergraduate students at Berkeley whether they are in favor of California removing penalties for the possession of small amounts of marijuana about two thirds say yes and the rest are opposed. Almost none know that it already occurred 25 years ago.

But the conclusion that cannabis decriminalization in the U.S. had little or no effect is bolstered by evidence from a similar policy change in two regions of Australia. Studies of decriminalization in South Australia[6] and in the Australian Capital Territory[7] report no changes in marijuana use associated with this legal change, and no differences in marijuana use between these regions and non-decriminalization regions of Australia.

Dutch Cannabis Policy

Our statements about marijuana decriminalization should not be generalized to marijuana legalization. Legalization goes well beyond the decriminalization of user possession to allow some form of legally regulated sales or distribution. We know of only one contemporary example that comes close to marijuana legalization, and that's the Dutch model of de facto legalization.

Dutch cannabis policy and its effects are routinely mischaracterized by both sides in the U.S. drug debate. Much of the confusion hinges on a failure to distinguish between two very different aspects of Dutch policy—decriminalization of personal possession vs. the non-prosecution of commercial sales and promotion.

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discrepancy with the published literature. See Saffer, H., & Chaloupka, F. (1995), "The demand for illicit drugs," NBER Working Paper No. 5238. Another study found a small increase in mentions of marijuana in emergency room records in decriminalization states; this may indicate increased consumption by current users, or increased willingness to acknowledge marijuana use. That same study found a decrease in emergency room incidents involving hard drugs following decriminalization. See Model, K. E. (1993), "The effect of marijuana decriminalization on hospital emergency room drug episodes: 1975-1978," *Journal of the American Statistical Association, 88,* 737-47.

[6] Christie, P. (1991), *The effects of cannabis legislation in South Australia on levels of cannabis use* (Adelaide: Drug and Alcohol Services Council); Donnelly, N., Hall, W. & Christie, P. (1995), "The effects of partial decriminalisation on cannabis use in South Australia 1985–1993," *Australian Journal of Public Health, 19,* 281–287.

[7] McGeorge, J., & Aitken, C. K. (1997), "Effects of cannabis decriminalization in the Australian Capital Territory on university students' patterns of use," *Journal of Drug Issues, 27,* 785-793.

In compliance with international treaty obligations, Dutch law states unequivocally that cannabis is illegal. Yet in 1976 the Dutch adopted a formal written policy of non-enforcement for violations involving possession or sale of up to 30 grams (5 grams since 1995) of cannabis—a sizable quantity, since one gram is probably sufficient for three joints. Not only are prosecutors forbidden to act against users but a formal written policy regulates the technically illicit sale of those small amounts in licensed coffee shops and nightclubs. The Dutch implemented this system of quasi-legal commercial availability to avoid excessive punishment of casual users and to weaken the link between soft and hard drug markets; the coffee shops allow marijuana users to avoid street dealers, who may also traffic in other drugs.

In a 1997 article in Science magazine,[8] we argued that Dutch policy evolved from a decriminalization regime (mid-1970s to mid-1980s) to a commercialization regime (mid-1980s to 1995), and that these two phases appear to have had quite different consequences. The initial decriminalization phase had no detectable impact on levels of cannabis use, consistent with evidence from the U.S. and Australia. Survey data showed literally no increase in youth or adult use from 1976 to about 1984, and Dutch rates were well below those in the U.S. Marijuana was not very accessible, being sold or traded in just a few obscurely placed outlets.

But between 1980 and 1988, the number of coffeeshops selling cannabis in Amsterdam increased tenfold; the shops spread to more prominent and accessible locations in the central city and began to promote the drug more openly. Coffeeshops now account for perhaps a third of all cannabis purchases among minors, and supply most of the adult market. As commercial access and promotion increased, the Netherlands saw rapid growth in the number of cannabis users, an increase not mirrored in other nations. Whereas 15 percent of 18-20 year olds reported having used marijuana in 1984, the figure had more than doubled to 33 percent in 1992. That increase might have been coincidental—the data permit only weak inferences—but it is consistent with other evidence (from alcohol, tobacco, and legal gambling markets) that the commercial promotion of vice increases consumption. Since 1992 the Dutch figure has continued to rise but that growth is paralleled in the United States and most other rich Western nations despite very different drug policies—apparently another of those inexplicable shifts in global youth culture.

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[8] MacCoun, R., & Reuter, P. (1997), "Interpreting Dutch cannabis policy: Reasoning by analogy in the legalization debate," *Science, 278,* 47-52. See that article for a full reporting and documentation of the statistics described here.

The rise in marijuana use has not led to a worsening of the Dutch heroin problem. Though the Netherlands had an epidemic of heroin use in the early 1970s, there has been almost no recruitment since 1976. Heroin and cocaine use are not particularly high by European standards and a smaller fraction of marijuana users go on to use cocaine or heroin in Holland than in the U.S. There is no evidence that the Dutch cannabis policy has resulted in any increase in property crime or violence, and claims that it has are simply not plausible.

The Dutch have made a policy choice; less black market activity at the retail level and less police intrusiveness in ordinary life in exchange for higher levels of marijuana use. Whether that is the right choice depends on one's views about the dangers of marijuana use. At any rate, it seems likely that the Dutch might have achieved their goals with a less extreme policy; e.g., South Australia allows home cultivation of small quantities of marijuana, but not commercial sales or promotion.

Alternative Policies for Heroin and Cocaine

Much less is known about the consequences of alternative drug laws for heroin or cocaine. There is no instance of legal commercial access to cocaine or heroin in a modern industrialized nation. Spain and Italy have decriminalized these drugs but do not produce suitable statistics for analysis.[9] Few British doctors exercise their privilege of prescribing heroin for addict maintenance; contrary to widespread claims, this program was already greatly curtailed before the heroin epidemic of the 1970s.[10] Switzerland reports significantly improved health and reduced criminality among participants of their heroin prescription program, though more rigorous testing is still needed.[11]

Thus we can offer only a theoretical analysis that highlights the tradeoffs involved in legalizing heroin or cocaine.

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[9] MacCoun, R. J., Model, K., Phillips-Shockley, H., & Reuter, P. (1995), "Comparing drug policies in North America and Western Europe" in G. Estievenart (ed.), *Policies and strategies to combat drugs in Europe* (pp. 197-220; Dordrecht, The Netherlands: Martinus Nijhoff).

[10] Strang, J. & Gossop, M. (eds.) (1994), *Heroin addiction and drug policy: The British system* (Oxford: Oxford University Press).

[11] Uchtenhagen, A., Gutzwiller, F., & Dobler-Mikola, A. (1997), *Programme for a medical prescription of narocites: Final Report of the Research Representatives* (Summary; University of Zurich).

Critics of current U.S. policies argue that many if not most of the harms associated with drugs are actually caused by our drug prohibition, or by the way it is enforced.[12] Defenders of prohibition counter that legalization would significantly increase drug use and drug addiction in American society. Both arguments are at least partially correct.

First, it is almost certainly true that many of the harms currently associated with heroin and cocaine are due to the fact that those drugs are illegal.[13] Prohibition deserves much of the blame for the crime and violence around illicit drug markets, for a large fraction of all drug overdoses and drug-related illnesses, and for corruption and violations of civil liberties.

Second, other harms are clearly due to the drugs themselves and the influence they have on the user's health and behavior. Legalization would eliminate the harms caused by prohibition, but it would not eliminate the harms caused by drug use.

And third, as we argued with respect to Dutch coffeeshops, we believe that legalization would significantly increase the number of drug users and the quantity of drugs consumed. We limit this conclusion to legalization in the form of commercial availability; the available evidence does not suggest that medical prescription, decriminalization, or harm reduction programs increase drug use to any appreciable degree.

So on the one hand, legalization would probably reduce the adverse consequences (to the user and to others) associated on average with each drug taking episode. And on the other hand, legalization would increase the number of incidents of drug use, by increasing the number of users and possibly by increasing the amounts they would use.[14]

Thus, the choice between drug control models involves a central tradeoff. If average harm went down under legalization <u>without an increase in use</u>, we'd clearly be better off than we are today.

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[12] See MacCoun, R. J., Kahan, J., Gillespie, J., & Rhee, J. (1993), "A content analysis of the drug legalization debate," Journal of Drug Issues, 23, 615-629.

[13] A detailed taxonomy of drug-related harms and their likely sources appears in MacCoun, R., Reuter, P., & Schelling, T. (1996), "Assessing alternative drug control regimes," Journal of Policy Analysis and Management, 15, 1-23.

[14] Legalization would probably increase the quantity consumed by heavy users by reducing drug prices; this effect would be offset somewhat by the fact that those new users under legalization who would not have used under prohibition are likely to have greater self control.

But if legalization produced a significantly large increase in total use, total drug harm would go up, even if each incident of use became somewhat safer. Because ***Total Drug Harm*** = ***Average Harm Per Use*** × ***Total Use***, total harm can rise even if average harm goes down.[15]

At present there is no firm basis for predicting the relative magnitude of these effects. Thus, legalization is a very risky strategy for reducing drug-related harm.

But it is unhelpful to dichotomize the debate into two polar extremes: Our current heavily punitive approach vs. an alcohol-type free adult market in drugs. In fact, there are a whole range of policy alternatives in between those extremes. For example, harm reduction interventions like needle exchange aim to reduce the harmful consequences of drug use. Contrary to recent claims, harm reduction does not imply legalization, and in fact many harm reduction advocates explicitly reject legalization. What is often overlooked is that in Europe, harm reduction is being implemented entirely within prohibition regimes. The drawbacks of legalization do not imply that our current version of prohibition is the optimal drug strategy; it may well be possible to implement prohibition in less harmful ways.[16]

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[15] See MacCoun, R. (1998), "Toward a psychology of harm reduction," *American Psychologist, 53,* 1199-1208.

[16] See Reuter, P. (1997), "Why can't we make prohibition work better? Some consequences of ignoring the unattractive," *Proceedings of the American Philosophical Society, 141,* 262-275.

Mr. MICA. Thank you for your testimony, and now I'll recognize the last witness on this panel, Sandra Bennett, president of Drug Watch International.

Ms. BENNETT. I have a statement here by one of our members, a 20-year-old member of Drug Watch, and could I submit this for——

Mr. MICA. Without objection, that will be made part of the record. Can you pull that as close as possible?

Ms. BENNETT. Thank you.

Mr. MICA. Great. You're recognized. Go right ahead.

Ms. BENNETT. Chairman Mica, members of the committee, thank you for inviting me to provide testimony on this critical issue, one that's so important to the welfare and strength of our Nation, and particularly important for the quality of the future we want for our children.

First and foremost, I'm a mother who, because of illicit drugs, has been subjected to every parent's worst nightmare and ultimate horror, the death of their child, and it's from that perspective that I'm going to address you today. Though it would seem that much of the public is still in the dark, the harmful effects of drugs on the body, the mind, an on society itself are well documented in scientific research and history. However, here we are again, for the umpteenth time over the past 20 years, being forced to debate this inanity.

It's been said, those who don't learn from their mistakes are doomed to repeat them. With this caveat in mind, I fervently pray that you'll do everything in your power to prevent this country from returning to the permissive drug policies of the 1970's which embraced responsible use of dangerous drugs.

It was in this permissive environment that drug use flourished, and decriminalization of marijuana became the mantra of the pot smokers. Drug use, particularly among students, ran rampant, and the United States raced far ahead of the rest of the world in consumption of illicit drugs.

Police Chief Reuben Greenberg of Charleston, SC, wrote, "With few exceptions, other than the drug traffickers themselves, faculties and administrations of our Nation's colleges and universities are the most hostile elements to the enforcement of our Nation's drug laws." It was this permissive campus drug environment that led to the death of our son Garrett.

My testimony today is for Garrett and all those young men and women whose lives have been irreparably damaged by drugs, or who did not survive their encounter with marijuana, cocaine, heroin, Ecstacy, and LSD. And it's for the parents of those children who must face the rest of their life knowing that their child's death or disability was a completely preventable tragedy, a tragedy that likely would not have happened had sanctions against drug use been enforced.

Decriminalization, as embraced by the drug culture, is simply the notion that those who use illicit drugs are blameless and that all criminal legal sanctions against use should be removed. As a bereaved parent, I can tell you that I would rather my son be shaken to his senses with a little jail time than have to lose him, have him lose his life or lead a useless, debilitated one.

Decriminalization is actually part of a back door effort to ease society into accepting legalization of all psychoactive and addictive drugs. "Harm reduction," a cover-all term coined by the legalizers, is a euphemism encompassing legalization and liberalization of drug policy, and can best be defined as a variety of strategies for making illicit drug use safer and cheaper for drug users at the expense of the rest of society, regardless of the cost.

Included in these strategies are decriminalization, medicalization of marijuana, industrial marijuana hemp, distribution of free needles to injecting drug users, free drugs to addicts, and a host of other tactics designed to enable and protect drug users. The media and our educational institutions are rife with "harm reduction" propaganda.

Speaking for the hundreds and thousands of parents who have lost children to drugs, I cannot understand how this country can listen for even one moment to those who advocate making illicit drugs easier to come by, particularly when most of the leaders of this effort are admitted drug users. Unfortunately, credibility is given to those disingenuous scofflaws when they are invited to the podium, paraded on TV, glorified on PBS, and asked to serve as consultants to government agencies and the media, who then parrot this misleading, deceitful and dangerous propaganda.

The pro-drug advocates are allowed to operate out of our universities with impunity, and their deceptive and dangerous rhetoric fills the Internet, where it is readily available even to our primary school children. The media, which could be part of the solution, are instead a tremendous part of the problem. They play a significant role in the way people think, whether it's about political, business, health or community issues.

Many journalists and commentators have bought into the notion that using psychoactive drugs is a personal right. Although adolescent drug use is half what it was in the late 1970's, the media echoes the claims of the legalizers that despite having spent billions of dollars fighting the war on drugs, it has failed and should be abandoned in favor of permissive drug policies.

Complaints about spending too much money on the war on drugs have no basis in fact. It's simply pro-legalization rhetoric, as espoused at a Drug Policy Foundation media workshop in 1992, where attendees were coached to "use economics, paint ridiculous extremes, then go for logical, moderate alternatives."

If spending billions to reduce drug use is such a waste, where is their outcry against the War on Poverty? Declared in 1964, the War on Poverty has already cost this country over $5 trillion, yet more than 20 percent of American children between the ages of 6 and 11 still live in poverty, a condition worsened by the impact of illicit drugs.

How does all of this relate to my son's death?

In 1980, President Carter's blue ribbon panel on drugs, the Drug Abuse Council, issued a report stating that America did not have a drug problem and that it was mostly hysteria, and it called for decriminalization of possession of small amounts of marijuana. The report went on to lament that by adhering to an unrealistic goal of total abstinence from use of illicit drugs, opportunities to encourage responsible drug-using behavior are missed.

Responsible use of an illicit drug? Is this akin to driving responsibly while drunk, or wearing boxing gloves to assault your spouse? One does not act responsibly under the influence of mind-altering drugs.

That same year, 1980, Lester Grinspoon, M.D., associate professor at Harvard and an outspoken proponent of drug legalization, wrote in the Comprehensive Textbook of Psychiatry, "Used no more than two or three times a week, cocaine creates no serious problems." Respected medical researchers believe this article fueled the rise in cocaine use in this country.

To my family and me, Grinspoon's statement is nothing short of criminal. Our son Garrett died of cardiac arrest, and though the only abnormality found during his autopsy was a trace of cocaine in his urine, we learned later that even a small amount of cocaine is known to trigger this sort of fatal cardiac arrest. Similar circumstances occurred in the deaths of professional athletes Len Bias, Reggie Lewis, and Mark Tuinei.

Lester Grinspoon is but one of many individuals and organizations that want to see drugs decriminalized as a first step toward full legalization. People like Grinspoon, Ethan Nadelmann, Rick Doblin, Eric Sterling, John Morgan, Kevin Zeese, Keith Stroup, Andrew Weil, Tony Serra, all of whom have publicly attested to their personal use of illicit drugs, are at the forefront of the drug legalization/decriminalization movement in America.

And let's not forget Mark Kleiman. Kleiman was a consultant to the Office of National Drug Control Policy. He not only advocates legalization of marijuana, but also indicated publicly that he agrees with Canadian psychiatrist John Beresford that everyone has the right to use LSD.

Eric Sterling, the admitted pot-smoking head of the Criminal Justice Policy Foundation, talking to a pro-legalization audience about how to legalize marijuana under the guise of medicalization, said "Packaging is important, and messages get packaged." In an article about the marijuana hemp movement, Sterling was quoted as saying, "It is the leaky bucket strategy. Legalize it in one area, and sooner or later it will trickle down into others." We are talking about legalization of all drugs.

This notion was taken up by international entrepreneur George Soros, who offered to fund the legalizers if they would target a few winnable issues like medical marijuana and the repeal of mandatory minimums. Consequently, the pro-drug lobby has cut up its agenda into a dozen smaller packages and is busy trying to dupe the public into accepting the whole pie, one bite at a time.

Perception of consequences or danger is key. When drug users suffer no consequences, the behavior appears safe, acceptable, and spreads unchecked, friend to friend, sibling to sibling, parent to child. Decriminalization of drugs? Not on your life. And please, not on the lives of our children.

Thank you very much.

[The prepared statement of Ms. Bennett follows:]

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House Subcommittee on Criminal Justice,
Drug Policy, and Human Resources
The Drug Decriminalization Movement in America

July 13, 1999

Testimony of Sandra S. Bennett
Director, Northwest Center for Health & Safety,
President, Drug Watch International

The organization I represent, Drug Watch International, together with its advisory division, the International Drug Strategy Institute, is an ALL volunteer organization composed of a worldwide group of recognized medical, legal, educational, and drug prevention activists and researchers. The members of Drug Watch are dedicated to providing accurate information on psychoactive and addictive drugs. As a part of this international drug research and policy network, I've had access to an extraordinary knowledge base relating to illicit drugs, and for this I'm extremely grateful.

First and foremost, however, I'm a mother who, because of illicit drugs, has been subjected to every parent's worst nightmare and ultimate horror, the death of their child. And it's from that perspective that I'm going to address you today.

Though it would seem that much of the public is still in the dark, the harmful effects of drugs on the body, the mind, and on society itself, are well-documented in scientific research and history. However, here we are again, for the umpteenth time over the past 20 years, being forced to debate this inanity.

It has been said that those who do not learn from their mistakes are doomed to repeat them. With this caveat in mind, I fervently pray that you will do everything in your power to prevent this country from returning to the permissive drug policy of the 1970's, a policy which embraced "responsible use" of dangerous drugs.

It was in this permissive environment that drug use flourished, and decriminalization of marijuana became the mantra of the pot smokers. Drug use, particularly among students, ran rampant, and the U.S. raced far ahead of the rest of the world in consumption of illicit drugs.

Chief Reuben Greenberg of Charleston, South Carolina, author of Let's Take Back Our Streets, wrote, "With few exceptions other than the drug traffickers themselves, faculties and administrations of our nation's colleges and universities are the most hostile elements to the enforcement of our nation's drug laws." It was this permissive campus drug environment that led to the death of our son Garrett, whose picture you see before, a fraternity photo taken three days before he died.

My testimony today is for Garrett and all those young men and women whose lives have been irreparably damaged by drugs, or who did not survive their encounter with marijuana, cocaine, heroin, ecstasy, LSD, and a host of other psychoactive and addictive drugs. And it is for the parents of those children who face the rest of their life knowing that their child's death or disability was a completely preventable tragedy. A tragedy that likely would not have happened had sanctions against drug use been enforced.

So, what is this "decriminalization" that has been embraced by the drug culture?

"Decriminalization" simply the notion that those who use illicit drugs are blameless and that all criminal legal sanctions against use should be removed. As a bereaved parent, I can tell you that I would rather my son be shaken to his senses with a little jail time, than to have him lose his life, or lead a useless debilitated one.

Decriminalization is actually part of a back door effort to ease society into accepting legalization of all psychoactive and addictive drugs.

"Harm Reduction," a cover-all term coined by the legalizers, is a euphemism encompassing legalization and liberalized drug policy, and can best be defined as "A variety of strategies for making illicit drug use safer and cheaper for drug users, at the expense of the rest of society, regardless of the cost"

Included in those strategies are decriminalization, medicalization of marijuana, "industrial" marijuana hemp, distribution of free needles to injecting drug users, free drugs to addicts, and a host of other tactics designed to enable and protect drug users. The media and our educational institutions are rife with harm reduction propaganda.

Speaking for the hundreds of thousands of parents who've lost children to drugs, I cannot understand how this country can listen, for even one moment, to those who advocate making illicit drugs easier to come by, particularly when most of the leaders of this effort are admitted drug users.

Unfortunately, credibility is given to these disingenuous scofflaws when they are invited to the podium, paraded on TV, glorified on PBS, and asked to serve as consultants to Government agencies and the media, who then parrot this misleading, deceitful and dangeorus propaganda.

The pro-drug advocates are allowed to operate out of our universities with impunity, and their deceptive and dangerous rhetoric fills the Internet, where it is readily available, even to our primary school children.

The media, which could be part of the solution, are, instead, a tremendous part of the problem. They play a significant role in the way people think, whether it is about political, business, health, or community issues. Many journalists and commentators have bought into the notion that using psychoactive and dangerous drugs is a personal right.

Although adolescent drug use is half what it was in the late 70s, the media echoes the claims of the legalizers that despite having spent billions of dollars fighting the war on drugs it has failed and should be abandoned in favor of permissive drug policies.

If spending billions to reduce drug use is such a "waste," where is their outcry against the War on Poverty? Declared in 1964 the War on Poverty has already this country over $5 trillion? Yet, more than 20% of American children between the ages of six and 11 STILL live in poverty...a condition worsened by the impact of illicit drugs. And, according to the Children's Law Center, 80% of child abuse cases are a result of drug using parents.

Complaints about spending too much money on the war on drugs have no basis in fact. It's simply pro-legalization rhetoric as espoused at a Drug Policy Foundation media workshop in 1992 where attendees were coached to "Use Economics . . . Paint ridiculous extremes, then go for logical moderate alternatives."

How does all this relate to my son's death?

In 1980, President Carter's Blue ribbon panel on drugs, the Drug Abuse Council, issued a report stating that America really did not have a drug problem, that it was mostly hysteria, and it called for decriminalization of possession of small amounts of marijuana. The report went on to lament that "By adhering to an unrealistic goal of total abstinence from use of illicit drugs, opportunities to encourage responsible drug-using behavior are missed." Responsible use of an Illegal Drug? Is this akin to driving

"responsibly" while drunk, or "wearing boxing gloves to assault your spouse? One does not act responsibly under the influence of a mind-altering drug!

That same year, 1980, Lester Grinspoon, M.D., associate professor at Harvard, an outspoken proponent of legalization of marijuana, wrote in the 3rd edition of the Comprehensive Textbook of Psychiatry, "Used no more than two or three times a week, cocaine creates NO SERIOUS PROBLEMS," Some medical researchers on drug use believe this article fueled the rise of cocaine use in this country. And he has repeated this nonsense many times over the years.

To my family and me Grinspoon's statement is nothing short of criminal. Our son, Garrett, died of heart failure, and though the only abnormality found on autopsy was a "trace of cocaine in his urine, we learned later than even a small amount of cocaine is known to trigger this sort of fatal cardiac event.

Lester Grinspoon is but one of many individuals and organizations that want to see drugs decriminalized as a first step toward full legalization. People like Grinspoon, Ethan Nadelmann, Rick Doblin, Eric Sterling, John Morgan, Kevin Zeese, Keith Stroup, Andrew Weil, Tony Serra, all of whom have publicly attested to their personal use of illicit drugs, are at the forefront of the drug legalization/decriminalization movement in America...

And let's not forget Mark Kleiman. Kleiman was a consultant to the Office of National Drug Control Policy. He not only advocates legalization of marijuana, but also indicated publicly that he agrees with Canadian psychiatrist John Beresford that "Everyone has the right to use LSD."

Eric Sterling, the admitted pot-smoking head of the Criminal Justice Policy Foundation, talking to a pro-legalization audience about how to legalize marijuana under the guise of medicalization, said "Packaging is important, and messages get packaged.

In an article about the movement to reintroduce marijuana hemp as an agricultural crop, Sterling was quoted as saying "It's the leaky bucket strategy. Legalize it in one area, and sooner or later it will trickle down into the others."

This notion was taken up by International Entrepreneur George Soros who offered to fund the legalizers if they would "target a few winnable issues, like medical marijuana and the repeal of mandatory minimums." Consequently, the pro-drug lobby has cut up its agenda into a dozen smaller packages and is busy trying to dupe the public into accepting the whole pie, one bite at a time.

Perception of consequences or danger is key. When drug users suffer no consequences, the behavior escalates. Others feel safe in mimicking that behavior and it spreads, unchecked, from friend to friend, sibling to sibling, parent to child.

Decriminalize drugs. Not on your life - and, please, not on the lives of our children! # # #

Mr. MICA. Thank you for your testimony. I will start with a couple of questions. First of all, Mr. MacCoun, did I hear the statistics correct about the Netherlands? Did you say the Netherlands had allowed up to 30 grams of cannabis until 1995, and then dropped it to 5?

Mr. MACCOUN. To 5 grams. That is, possession of up to 5 grams is not prosecuted.

Mr. MICA. Are you aware why they tightened this up? I wasn't aware of that.

Mr. MACCOUN. It was part of a general tightening up of the Dutch policy in response to international pressure, both from the United States and from the Dutch neighbors, France, Belgium, and Germany.

Mr. MICA. Mr. Stroup, you used the Netherlands as an example, I think. Is that the model that you would like to see in the United States? I guess that in the Netherlands it is still illegal but you can have a small quantity of marijuana.

Mr. STROUP. It is sort of a gray market, Mr. Chairman, where they allow adults to go to coffee shops, where they can buy small amounts of marijuana at the coffee shops.

Mr. MICA. They sell——

Mr. STROUP. That is correct. I don't think that is the perfect solution but I think it is a cease-fire, sort of middle ground for the moment. What it does is what decriminalization does generally. It removes the consumer from the threat of arrest and jail, but it maintains strong criminal sanctions against commercial sellers. So I think it is a good first step.

Mr. MICA. So your group would still advocate enforcement, then, of trafficking?

Mr. STROUP. What we would like to see——

Mr. MICA. Someone has to be involved in an illegal process to get the 5 grams to the coffee shop.

Mr. STROUP. What we would recommend, Mr. Chairman, is that the government legalize and regulate a market for marijuana so consumers would have a legal and a safe source to get it, but we recognize there may always be characters who would sell beyond that, just as there occasionally are bootleggers that still operate today, and that would still remain illegal. Unregulated commercial sales would remain a crime. Regulated sales would not.

Mr. MICA. Well, to date there have been 11 States, I think you testified, that have decriminalized or lowered the penalties. Should this be left up to the States, as opposed to having the Feds make some decision on this?

Mr. STROUP. Yes, sir. I believe we should follow the same sort of pattern we did at the end of alcohol prohibition in 1933. As you recall, the Federal Government got out of the business of enforcing alcohol prohibition. They removed Federal prohibition, but they did not demand that every State immediately legalize the sale of alcohol. Some counties in this country are still dry counties.

I think the correct procedure would be to remove the antimarijuana law that was passed in 1937 and let the States experiment with different models. It is the way our Federal system was designed to work.

Mr. MICA. Now, we have talked about marijuana in this panel mostly, although Ms. Bennett can certainly testify to the adverse effects of cocaine. Are you advocating taking the same position relating to heroin or cocaine?

Mr. STROUP. No. I believe that we have a right as a society to judge illicit drugs, to some degree, based on their potential for harm. Quite honestly, of the 13 million illicit drug users in this country, that is roughly the government figure, 10 million are just marijuana smokers. There are 3 million that use the more dangerous drugs, cocaine, amphetamines, and heroin, all the drugs I have heard talked about today, but 10 million are just marijuana smokers.

So if we simply decriminalized and legalized marijuana, we would reduce the drug problem in this country enormously, reduce the number of good, hard-working citizens who are being dragged through the criminal justice system needlessly, and then let's see how that system works.

What I do think about the other drugs, cocaine, heroin, amphetamines, is that for people who use those drugs, if they have a problem, it is a medical problem. It is not a criminal justice problem. So what I would suggest is that we legalize marijuana but that we medicalize the other drugs; that is, we don't create a market, we don't have a store that sells heroin or amphetamines, but that when someone is caught with those drugs, they are put into drug treatment, they are given help.

Mr. MICA. I think one of you cited, maybe it was you also, Mr. Stroup, that the cocaine—the decline in cocaine arrests, was that the Federal and State level?

Mr. STROUP. Yes, that is the combination of Federal and State cocaine and heroin sales arrests. There was a 51 percent decline in the last decade, at the same time that the emphasis was placed back on marijuana smokers.

Mr. MICA. The problem with that, I think, if you look at those statistics, is people have now gone from cocaine to heroin and methamphetamine.

Mr. STROUP. I would agree. I don't suggest that every law enforcement officer out there by any means goes out with the intention of looking for marijuana smokers, but I think when you have 10 million to 12 million people that smoke on a regular basis and 20 million marijuana smokers during the course of a year, the fact is, they are going to run across large numbers of otherwise law-abiding citizens who have got a marijuana joint in their pocket. So the result is, the people we end up arresting are predominantly marijuana smokers. They are not heroin addicts, they are not amphetamine sellers, they're marijuana smokers.

Mr. MICA. Mr. MacCoun, you said you did some studies. Was that in all 11 States that have changed their laws?

Mr. MACCOUN. Yes. There is a small literature now. A number of both cross-sectional and longitudinal studies have looked at the U.S. experience with the 11 States that decriminalized marijuana.

Mr. MICA. And you said that there was no difference in the number of people who went from one drug to another?

Mr. MACCOUN. No, that there was no difference between decriminalizing and non-decriminalizing States in the rates of marijuana use.

Mr. MICA. What about the question of marijuana being a gateway drug, as the drug czar testified in our previous panel? Is there any study or evidence to document that?

Mr. MACCOUN. There are two lines of evidence. One is U.S. research. Some people believe that there is a substitution, actually a substitution relationship between current marijuana use and current use of hard drugs, and that decriminalization of marijuana actually might bring about some reduction in hard drug use. That is controversial, and that is not accepted by everyone in the research community.

The other line of research that addresses that question—first let me say there is clearly a statistical association between cannabis use and hard drug use. Most people who use marijuana do not go on to hard drug use, but there is clearly a statistical association.

The Dutch cite that statistical association as the basis for their policy. The Dutch believe that the reason there is a statistical association between using cannabis and using hard drugs is because once people begin using cannabis, most cannabis users do not encounter serious health problems as a result. They also come into contact with drug dealers who sell hard drugs, and for those two reasons, people start moving on to harder drugs. What the Dutch wanted to do was separate those two markets by making cannabis not legally available but de facto legally available in these coffee shops, so that people would not come into contact with hard drug users.

In our research we have looked at that question. We do find some evidence that the probability of going on to hard drug use, given that you are a marijuana user, is lower in the Netherlands than in the United States. Whether that is a result of their policy is hard to say, but statistically fewer people go on to hard drug use in the Netherlands than in the United States.

Mr. MICA. Chief Glasscock, what do you think about legalizing marijuana?

Chief GLASSCOCK. Well, Mr. Chairman, I am not—I kid people and I say——

Mr. MICA. Decriminalizing it, or——

Chief GLASSCOCK. Decriminalizing it or legalizing it I guess is almost synonymous for me, and I tell people I am just a plain old chief from Plano, TX, and I am not a scientist or a researcher.

There are a few things that I do know. I am not aware of any reputable medical institution that recommends the use or the decriminalization or the legalization of marijuana. I think we have had a number of people who take the contrary.

The other is, I don't know of any—and we talk about it for medicinal purposes—I don't know of any medicine that we smoke, and I think we only have to look at our history with tobacco and what we have learned from that, and for us to go and tell, particularly tell our youth, that smoking marijuana is going to be OK, to me is indefensible.

I look at what we experience on the streets. Marijuana is the most commonly used illicit drug among youth. The most recent sur-

vey data that I have out of the Texas school survey shows that the average age is 13 for a young person to be starting to use marijuana.

My experience shows me that marijuana is a gateway drug. The 18 deaths that we have had to deal with in our community from heroin overdose, they all started with gateway drugs. They were poly drug users, and every one of them had a history of marijuana use.

It is just difficult for me to accept the concept of decriminalization or legalization of the use of marijuana, particularly in what we are seeing on the streets and among our young people.

Mr. MICA. Ms. Bennett, a final question: Did your son abuse any other drugs, other than cocaine, to your knowledge?

Ms. BENNETT. Actually, he did not smoke, and was chided because he did not like alcohol. So in this case, it was the perception all over the campus and probably throughout the State that cocaine was neither harmful nor addictive that made it seem safer than the other drugs, and there was no school policy against it and no fraternity policy against any sort of illicit drugs.

Mr. MICA. Thank you.

Mrs. Mink.

Mrs. MINK. Thank you, Mr. Chairman.

I want to address my question to Dr. MacCoun. The discussion is very confusing, because as an ordinary person, I have great difficulty in understanding this one sentence in your testimony which says that it is important to emphasize that in decriminalization, the sale and manufacture of the drug remains illegal and is criminally prosecuted.

Now, I don't understand how the sale and manufacture of a drug can remain illegal and criminally prosecuted, while at the same time saying that its use and possession is decriminalized. How do you get to use marijuana except after a sale and manufacture?

Mr. MACCOUN. Well, clearly in decriminalization regimes, the marijuana is changing hands through an illegal sale.

Mrs. MINK. Well, isn't the possession and product of something which is illegal also illegal? Isn't that what we are taught in law school?

Mr. MACCOUN. Well, possession is—I am not a lawyer, although I am a law professor—but possession is defined——

Mrs. MINK. Are you applauding, Mr. Ose?

Mr. OSE. The fewer attorneys, the better.

Mr. MACCOUN. Possession is defined as a separate legal offense from sale and manufacture, and that has been true——

Mrs. MINK. But it is traceable back to it, and so I don't understand this argument. I could understand it if you were arguing that sale and manufacture for personal use or something like that is perfectly legal and would not be prosecuted, but when you argue that under your concept the sale and manufacture remains illegal and is criminally prosecuted, it is absolutely confusing.

Mr. MACCOUN. I want to clarify, this—I am not arguing a concept. I am simply describing the state of the laws in 11 States.

Mrs. MINK. But I am trying to——

Mr. MACCOUN. I quite accept your point that there is an ambiguity there, and I find the Dutch policy even more ambiguous. The Dutch are willing to live with that ambiguity.

Probably the least ambiguous version of decriminalization would be the South Australia version, which was also the regime in Alaska for some years. That is, personal cultivation of small amounts was not criminalized. Again, trying to break up the black market by getting people to grow their own marijuana if they were going to use it.

I am not here to advocate that the policy should be ambiguous or not ambiguous. I am simply describing factually the state of law in 11 States in this country.

Mrs. MINK. The 11 States adhere to that ambiguity?

Mr. MACCOUN. Yes, that is right; 11 States adhere to that ambiguity. It is not an unprecedented ambiguity. We have similar ambiguity in our enforcement of other vices. Whether that is a good thing or a bad——

Mrs. MINK. But does that ambiguity then lead to even greater confusion among our young people, when we are trying to say to them that they ought not start this habit? Because I assume in your testimony that you are not advocating the use of marijuana, you are just analyzing the circumstances that exist——

Mr. MACCOUN. That is correct.

Mrs. MINK [continuing]. In our society. So wouldn't you also then conclude that this ambiguity creates even greater confusion in our teenage population when faced with this dichotomy?

Mr. MACCOUN. I think that is a very plausible argument. However, I think that empirically, if it were true that decriminalizing marijuana implied endorsement of marijuana, we would expect to see an increase in marijuana use in the decriminalizing States, and we didn't see any such increase.

Mrs. MINK. What about increases in the use of other illegal drugs as a result of this ambiguity with regard to marijuana in those 11 States?

Mr. MACCOUN. Those States do not have higher levels of hard drug use than nondecriminalizing States.

Mrs. MINK. Now, what accounted for the increase in the use of marijuana under the Dutch policy?

Mr. MACCOUN. Well, it's—the evidence I cited is correlational and not causal. Nevertheless, we believe—we contend in our analysis that the most likely explanation for the increase—and I want to be clear this is an increase that occurred during the 1980's—that it coincided with an increase in the number of commercial coffee shops selling cannabis.

We think that correlation is probably not a coincidence; that in fact commercial promotion led to an increase in use. Prior to that time, when the Dutch stopped incarcerating offenders for marijuana possession, but there weren't coffee shops, we saw no effect in Dutch cannabis statistics. Which leads us to the conclusion that the decriminalization aspect per se had little or no effect, but that the commercialization of cannabis has led to an increase in cannabis consumption in the Netherlands.

Mrs. MINK. As a researcher, would you be concerned at all about the statistics which were just released today by the National Cen-

ter on Addiction and Substance Abuse at Columbia University, which cites the fact that almost 88,000 teenagers were admitted for treatment for abuse or addiction to marijuana?

Mr. MACCOUN. Of course I am greatly concerned by that.

Mrs. MINK. Well, how would——

Mr. MACCOUN. I haven't seen the report, but I think that there is evidence that—I certainly would not contend that cannabis is not harmful, and I have not contended so today. There are risks associated with cannabis. We also know that most people who use cannabis do not get involved in serious, harmful consequences, so the risks are less serious than for cocaine or heroin, but cannabis is a harmful drug.

Mrs. MINK. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman. I would like to pursue the lawyer question——

Mrs. MINK. Careful, I am a lawyer.

Mr. OSE. Well, you are one of the good ones, though, of course.

First, I'd like to clarify something. Somebody, I don't recall who, made a comment about studies commissioned under President Nixon and ratified under Carter, and the current President and Vice President and former Speaker of the House making comments about marijuana use.

No. 1, I didn't vote for Nixon, who commissioned the initial study. I didn't vote for Carter, who ratified it, and I certainly didn't vote for President Clinton or Vice President Gore, who admitted to using it, and I never voted for former Speaker Gingrich, who also admitted using it. I want to be clear that that kind of an argument really doesn't hold water with me.

However, let me go on to the substance of my questions. If I understand correctly, Mr. Stroup, from your testimony, there's 18 to 20——

Mr. STROUP. Million people who have smoked in the last year.

Mr. OSE. Yes, 18 to 20 million who have smoked during the last year.

Mr. STROUP. Right.

Mr. OSE. Thirty-two percent of the voting adults acknowledging having smoked marijuana at some point in their lives. That means that there is roughly 230 or 240 million who haven't smoked during the last year, and roughly 68 percent of the voting adults in the country who haven't smoked marijuana at some point in their lives. I am just doing the simple math.

Mr. STROUP. I am not sure about your math, but at least it is true that if you have one-third of the eligible voters who have smoked, there are two-thirds who have not.

Mr. OSE. Right. Well, that is my point. So the question I come to is that when I look at your cover letter here, the third line describes you as a nonprofit public interest lobby, and I am trying to figure out what do those 230 or 240 million people, or those 68 percent of the voting adults—why should I subsidize an organization such as yours?

Mr. STROUP. Well, I think that if you believe the current policies are ineffective and costly and counter-productive, then there is an

obligation to look for alternative policies. We are simply suggesting that we can decriminalize marijuana, we can reduce the number of good, honest, hard-working Americans who are needlessly dragged through the criminal justice system, and there are no apparent down sides to that change.

Mr. OSE. I have learned in politics to never let an arguable position go unchallenged, and I would challenge you on your position that decriminalization has no negative impact. For instance, can you tell me whether or not NORML has any epidemiological data regarding the use of marijuana by pregnant women?

Mr. STROUP. No. There certainly has been research done by the Federal Government and others on that question, and there is no indication to date that marijuana smoking has any impact on pregnant women or on newborns that have been born to pregnant women who have smoked marijuana. It is not a smart thing to do. I think most of us would suggest that you not drink alcohol, smoke cigarettes or smoke marijuana when you are pregnant.

Mr. OSE. How can you say it is not a smart thing to do? You have no data on which to base that comment.

Mr. STROUP. Well, certainly. Smoking itself is unhealthy. We know that when pregnant women drink alcohol, for example, there is fetal alcohol syndrome. The suggestion would be that if there is any time when a person should be extremely healthful, it would be during pregnancy when you are carrying a child.

The idea here is not to turn on America or to increase the number of drug users in America; it is to minimize the harm of our current antidrug policies.

Mr. OSE. Actually, my objective here is to eliminate the drug use or abuse of any——

Mr. STROUP. Well, good luck, it has never happened in the history of mankind, and I suspect you will be frustrated.

Mr. OSE. It is all right, I am young.

Mr. STROUP. And optimistic.

Mr. OSE. Now, from where does NORML obtain its function for operations?

Mr. STROUP. Private contributions. We get people who agree with our position and who appreciate the work we do, and they contribute money. We are a 501(c)(4). It is not tax deductible. It is a contribution——

Mr. OSE. That was my next question.

Mr. STROUP. No, we are not. We do have a tax-exempt side, a 501(c)(3) NORML Foundation, but the NORML Foundation can do no lobbying. It is simply an educational foundation.

Mr. OSE. The activities that the foundation engages in range what gamut?

Mr. STROUP. Public education, primarily. We do some public advertising, some campaigns in which we try to get our viewpoint out. We also provide legal assistance to people who have been arrested on the marijuana penalties and need help either finding a good lawyer or raising a valid defense. In particular, most of the legal defense is provided to those who are medical users of marijuana but who have been prosecuted under State law.

Mr. OSE. So if I understand correctly, the 501(c)(3) organization does enjoy certain tax advantages that could arguably be used to

further the "agenda" that some of us, wherever we might sit today, find objectionable.

Mr. STROUP. Well, if we filed what is called a 501(h) election—I hate to be too technical, but that is the provision under the IRS Code where even a foundation can do a modest amount of lobbying—we would be entitled to do that. We have not filed a 501(h) election.

The NORML Foundation does no lobbying or policy work at all. We simply do research and education and legal support. Now, you might not agree with the legal support we are providing, I understand, but that is what is great about this country, is it is a free country.

Mr. OSE. I am trying to find out why I would agree to any such educational program, the consequence of which might be adverse to my 6 and 4-year-old, 5 years, 5 months, 5 days from now.

Mr. STROUP. I don't think that telling the truth about marijuana and marijuana policy is detrimental to anyone, including your 5 and 6-year-olds. We are trying to counter a "reefer madness" misinformation campaign that the State and Federal Governments have been involved in now for 60 years, and many of you in Congress are still involved in. So I don't think you should fear the facts.

Mr. OSE. Mr. Chairman, I see the red light. I regret my time has passed. However, I do want to again subscribe to the theory of letting no suggestion go unchallenged. I want to refute, as best I can today, simply that I am not a subscriber to the fact that marijuana has no adverse consequences. I happen to think it does have adverse consequences, and I appreciate the opportunity to participate today.

Mr. MICA. I thank the gentleman.

Mr. Cummings, did you have any questions for this panel?

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

I am always intrigued by your efforts to get away from the term "legalization." When did this term "decriminalization" first come into popular usage? Was it you that developed that for a euphemism?

Mr. STROUP. To me, Mr. Barr?

Mr. BARR. Yes.

Mr. STROUP. No. The first time I had heard of that word was in 1972, when the National Commission on Marijuana and Drug Abuse came out with it. In fact, I think for most of us it seemed like a strange term, and we weren't quite sure what they meant until we had read the report.

Mr. BARR. You embrace it now?

Mr. STROUP. I do embrace it. I think it is a common sense recommendation that has worked well in the 11 States that have had that policy in effect now for 25-plus years.

Mr. BARR. What are the other two States? There are nine of them listed here, in somebody's paper here.

Mr. STROUP. I have a foot——

Mr. BARR. It says 11, and then the footnote only lists nine: Alaska, California, Colorado, Maine, Minnesota——

Mr. STROUP. If you will look on footnote 3 of my statement, you will see 11 States listed there.

Mr. BARR. All right. Your colleague might want to check that out. He only has nine listed.

Mr. STROUP. Well, mine has 11.

Mr. BARR. OK. Maybe we will split the difference, I don't know. But this term "decriminalization," I mean, I can understand why you embrace it and like to use it, because it sounds like something less than "legalization." I do think it is sort of splitting hairs and is simply sort of a Clintonesque way of describing something to make it appear different from what it really is.

Mr. STROUP. Could I explain in one sentence the difference between——

Mr. BARR. The—sure.

Mr. STROUP. The difference in——

Mr. BARR. It means reducing penalties.

Mr. STROUP. No, no. There really is a subject matter difference, as well.

Mr. BARR. I was just quoting one of your papers here.

Mr. STROUP. On the first page of my statement, in fact, what we talk about is—decriminalization removes the user, the consumer, from the threat of arrest or jail. However, commercial sellers would still be subject to arrest and jail just like they are now. Legalization——

Mr. BARR. What would be the legal basis on which you could do that? Say somebody can use a substance, in this case marijuana, say, without any threat of any penalty, but the person that gives it to him or sells it to him would be subject to penalties.

Mr. STROUP. Well, the most obvious prohibition was alcohol prohibition from 1919 to 1933. You are young enough that you wouldn't remember that, I expect, but the reality is, it was never illegal to possess or drink alcohol during alcohol prohibition. It was illegal to sell it commercially. You were even allowed to make several—I forget the quantity, 50 pounds or something, of alcohol in your own home during alcohol prohibition, so there is precedent there.

Mr. BARR. Does there, in terms of that precedent, lie the fallacy of saying that decriminalization isn't, in and of itself—just if you characterize prohibition as decriminalization of alcohol from that standpoint, it didn't work, I presume.

Mr. STROUP. I am delighted to hear you say that, Mr. Barr.

Mr. BARR. This is all hypothetical, but I am certainly not arguing to, you know, change our alcohol laws. The use of alcohol, when it measurably and demonstrably impairs a person's ability to act and react to the work around them, is criminal.

Mr. STROUP. And so should marijuana remain.

Mr. BARR. Well, and therein, I suppose, lies the distinction, whether or not one can smoke some joints and not have their ability to react to the world around them impaired to the extent that it poses a danger, but I don't want to get into that debate. I would disagree with you on that, but I understand the distinction there.

But it seems to me that if you are saying, "Well, decriminalization didn't work with regard to alcohol back in the days of prohibition, but we want to try it now for marijuana," you probably would conclude that it is not going to work with marijuana either if we go that route. You are going to run into all sorts of, I suppose,

equal protection problems. You are going to run into all sorts of enforcement problems, and then the next step would be, "Well, let's, you know, legalize it. Let's just legalize it."

Mr. STROUP. In fact, on the first page of my statement, you will see that we do, in fact, favor eventual legalization of marijuana. By that I mean the distinction is, the government would actually legalize and regulate a market so consumers could buy marijuana in a safe setting.

Now, I think that is going to take some time before we are going to get there, but I think eventually we need to do that in order to deal with the attendant violence and crime associated with any unregulated and uncontrolled black market. The reason alcohol prohibition was such a failure, in addition to the fact that you had millions of citizens who wanted to drink whether or not the government wanted them to, was because of the crime associated with the prohibition, and the same thing is true with marijuana prohibition.

Most of the ills that result from marijuana prohibition are what bother everybody about marijuana. It is not the marijuana, it is the prohibition. When you have large amounts of money in a totally unregulated setting——

Mr. BARR. Well, no. I mean, that depends on who you talk to. When I talk to my colleagues and parents and people in my district, it is not the enforcement that bothers them, it is what it does to people's minds and the danger that it poses, because they do believe that there are dangers and adverse consequences that affect a person who smokes marijuana.

I was intrigued, though, by one comment you made in your answer, I think, to a question from my colleague from California regarding smoking. Would you concede—I wrote down here, and I extrapolated from something that you said—would you concede that smoking marijuana is at least as harmful as smoking tobacco?

Mr. STROUP. No. I think actually the research shows that it is not as harmful as smoking tobacco. However, I would concede that it is harmful to bring smoke into your lungs, and we should generally discourage those kinds of activities. But we don't have to pass a criminal law——

Mr. BARR. If we are going to decriminalize marijuana, then if smoking tobacco is even worse than that, then we ought to make smoking tobacco illegal.

Mr. STROUP. It sounds like many of you in Congress are heading that way, but I would certainly advise against it.

Mr. BARR. Not this Member.

Mr. STROUP. No, no. You are from Georgia, I know.

Mr. BARR. But, anyway, I appreciate you being here. It is a very interesting discussion. I doubt that I will convince you of anything, and vice versa, but I do appreciate you being here.

Mr. MICA. Did you have any additional questions?

Mrs. MINK. No.

Mr. MICA. I think today we have had several sides presented, and Mr. MacCoun has tried to present the facts as he sees them. We appreciate that. I don't know if we have reached any conclusions. Sometimes they try to portray, I guess, drug use as a right and drug abuse as a victimless crime. I think you would probably have to disagree with that, Ms. Bennett, wouldn't you?

Ms. BENNETT. Could I make one statement?

Mr. MICA. Yes. We will give you the last word.

Ms. BENNETT. I am from the Pacific Northwest, from Oregon, and I know, because I have been working in prevention since 1988, that drug use increased dramatically when marijuana was decriminalized, and California experienced an 81 percent increase after decriminalization, and in Alaska it became so bad after they legalized it that they recriminalized it a couple of years ago. So we are looking at a different set of facts, and there really can only be one set of facts. The rest of it is just balderdash.

And I would say one other thing: that if you got anyone in this room on the stand and asked them if they ever stole anything, I am sure most people in their youth have tried that once or twice. It doesn't mean that we abandoned the laws against—enforcing that there is no theft, that thievery and robbery is a crime. Just because as children we might have done that or made that mistake, does not mean that we should legalize it or decriminalize robbery.

And I think when we see these people who in their youth tried an illicit drug or did an illicit act, that it falls in that same category. It doesn't mean that we should go on to legalize bad behavior.

Mr. MICA. Thank you. Mr. Barr, you had one last question?

Mr. BARR. Just one question: Is Geraldo Rivera still on your advisory board?

Mr. STROUP. No, Mr. Barr. He was, at some time in the 1970's, but I have not actually seen or spoken to Mr. Geraldo for 15 years. He has not been for a long time.

Mr. BARR. Thank you.

Mr. MICA. Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I just have a very brief question and comment for Ms. Bennett.

Ms. Bennett, I agree with what you just said. I don't know if most of America—as a matter of fact, I know most of America doesn't see what I see in my neighborhood, and a lot of the young people in my neighborhood got started on drugs through marijuana and smoking.

And if you were to tour my neighborhood in Baltimore, you would see within a block of my house around about this time of day, maybe 100 people, young people, standing around in a stupor. Not in school, should be in school. And many of these young people I have known all their lives. Young girls at 14 and 15 years old who will commit any sexual act you request for $5. That is the part America doesn't see. Maybe that hasn't gotten to certain parts of America, but it can get there.

And, you know, when you talk about decriminalization, not you but just this whole idea of decriminalization and legalization and all of this, you know, there may be something to that for medical purposes. I don't know. But when I see the pain on the one hand, and what happens to people, and not just young people, and when I consider the pain, the pain to the families; our court systems being literally clogged. I mean, you can't even—you can barely get a civil case done because there are so many criminal cases, and 85 to 90 percent of them are because of drugs.

When I took a relative to the emergency room the other night, I mean, I literally sat there for about 5 hours, from about 1 o'clock a.m., to about 6, and I was just talking to the ambulance personnel as they were bringing people in, and the guy told me, he says, "You know, 85 to 90 percent of all the cases who come through this facility are drug-related."

And our society is paying a very, very high price, and I think it is very easy sometimes when we sit back and we make these philosophical statements about the legalization and decriminalization. But I am going to tell you, when you see the human toll, when you see the loss of life as you have seen and felt, when you go to the funerals like I do, because of folks arguing over who is going to sell drugs on what corner, when you see mothers cry, when you see classmates come, taking time out from their classes, to stand over caskets after people have been shot to death over drugs, I am telling you, it is not a pretty picture. It is a very painful picture.

And a lot of their lives are basically, their potential is being snuffed out. When I go to a high school graduation sometimes, I went to several this past June, and you know, when people get to a point where literally they almost explode over the fact that their children are graduating—in other words, they see so much hell coming at them, and they are able to get around all of these roadblocks and graduate from high school, it is almost like the highest religious experience you have ever had. And at one school it was only 20 percent of the kids who started in the 9th grade, who graduated by the end of the 12th.

And so my point is, that there is a lot of pain out here so if we are going to talk about decriminalization and all that kind of stuff, you know, I just want you to know that, I mean, I look at this thing as a health issue—the whole drug thing, we need more treatment, and I will say this over and over again, for people who may become addicted. But we also have to look at the pain that is brought upon communities.

Now, there was a time that people in the suburbs weren't talking about this. Let's be frank. And now that it has infiltrated every nook and cranny of this country. And I know about Plano, TX. They had a thing on one of the national shows not long ago, and I am telling you, I was spellbound. I mean, I just couldn't—as a matter of fact, Congresswoman Maxine Waters and I said maybe we need to go down there and try to help out, because we understand the pain.

So hopefully America will wake up and understand that what is happening is that we are snuffing out not a generation but generations of people. And I want to thank you for your testimony. I am sorry I missed it earlier, but I just wanted to say that. I mean, a lot of times people, they don't see. They don't see all that.

And sometimes—and then I will end with this, Mr. Chairman. You know, Martin Luther King, Sr., said something that is so special. He said you cannot lead where you do not go, and you cannot teach what you do not know. And I think sometimes when you

walk the path, as you have, and seen the pain and understood it, and then taken that pain and turned it around and used it as a passport to help other people, you ought to be applauded. And I thank you, and I just want you to know I am on your side.

[The prepared statement of Hon. Elijah E. Cummings follows:]

Congressman Elijah E. Cummings

Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources

July 13, 1999
2154 Rayburn House Office Building
10:00 am

Mr. Chairman,

I acknowledge your efforts in holding today's hearing to discuss the issue of decriminalizing illegal drugs in our country.

As many of my colleagues know, I am staunchly opposed to loosening penalties on those who are bringing drugs into our communities. However, I do believe that if we detain drug users and addicts, we must provide the drug rehabilitation and counseling services necessary to break the cycle of addiction. Simply "locking up" drug abusers does not solve our crime problem.

In New York state, the Drug Treatment Alternative-to-Prison Program -- also known as D-TAP -- has been used as an interesting alternative to jail time for drug users. The program provides resources for rehabilitation and job placement, AND places the responsibility of program participation and recovery on the addict. D-TAP has a one-year retention rate of 66% and a three-month retention rate of 80% which compares favorably with the other residential drug treatment and rehabilitation programs.

I hope that with my colleagues and the witnesses assembled today we will continue to have frank dialogue on this issue. We must work together to develop a solution to this daunting crisis in our communities.

Mr. MICA. Thank you, and I want to thank each of our panelists for being with us today, for participating in this discussion and providing us with testimony.

I might say, when I was a freshman in Congress, from 1993 to 1995, we had one hearing on national drug policy. So we at least have attempted to try to open the debate and the discussion here and hopefully enlightened both the Congress and the American people about this subject, and we appreciate your helping us in that regard.

Thank you. We will let this panel be excused.

I will call the third panel, consisting of Mr. Charles J. Hynes, the district attorney of Kings County, NY. I believe he is going to talk about the DTAP program.

Ms. Katherine Lapp, director of Criminal Justice, the Office of the Governor of New York, and I think New York has completed one of the most recent surveys relating to crime and incarceration.

Then we have Ms. Barbara Broderick, director of Adult Services of the Administrative Office of the Courts, and she is with the State of Arizona, and we are pleased to have her. There has been much discussion nationally about what is going on in Arizona, and I think this should be one of the most interesting panels that we have had in all of our sessions this year.

I am pleased that you are joining us. As I indicated, this is an investigations and oversight subcommittee of Congress. Please stand and be sworn in.

[Witnesses sworn.]

Mr. MICA. Thank you. Witnesses answered in the affirmative, and we would be glad to include lengthy statements in the record upon request. We do ask that you summarize. I got a little bit lax in the last panel, but we will try to ask you to summarize in 5 minutes or so, if you can, and that will leave us time for questions. But we do appreciate your being with us, and I will recognize first Mr. Charles J. Hynes, district attorney of Kings County, NY. You are recognized, sir, and welcome.

STATEMENTS OF CHARLES J. HYNES, DISTRICT ATTORNEY, KINGS COUNTY, NY; KATHERINE N. LAPP, NEW YORK STATE DIRECTOR OF CRIMINAL JUSTICE; AND BARBARA A. BRODERICK, STATE DIRECTOR OF ADULT PROBATION, ADMINISTRATIVE OFFICE OF THE COURTS, ARIZONA SUPREME COURT

Mr. HYNES. Thank you very much, Mr. Chairman, Mr. Mica, members of the committee, and good afternoon. I would respectfully submit my full statement for the record in addition to these charts which deal with employment and recidivism as a result of our drug treatment program, which is what I am going to talk about.

Mr. MICA. Without objection, they will all be made part of our record.

Mr. HYNES. Thank you. And I am very, very pleased to be with both Ms. Lapp and Ms. Broderick. We are all New Yorkers. Arizona stole Ms. Broderick, and we miss her in New York. Katie Lapp is, of course, the Governor's chief adviser in criminal justice and an old friend of mine.

I want to share some ideas I have with the committee on drug treatment alternatives to prisons and drug treatment alternatives to criminalization. But, first, just a brief moment on some background.

I became the district attorney in Kings County, Brooklyn, NY, more than 10 years ago. My county had become the fifth most violent municipality per capita in the United States. Our population of 2.3 million people witnessed the horror of the murders of between 750 and 800 men, women, and children between 1988 and 1992. In one particularly tragic year, 129 of our children, 17 years or younger, were murdered in Brooklyn. When we assessed the reasons for the carnage, it led immediately to the conclusion that drug-related crime, which rose from 15 percent of all arrests in 1975, in New York City, to nearly 85 percent in 1989, was directly responsible.

It is very clear that the proliferation of drugs always leads to the creation of profit-motivated drug gangs who arm themselves to protect their product. Out of that violence, every neighborhood, village, town, and city is soon threatened with the same crisis level that Brooklyn faced in the late 1980's and early 1990's when the phrase "drive-by shootings" became a common part of our lexicon.

To deal with the crisis, we considered several options, the goal of which was to reduce the demand for drugs. And I should add that we never considered decriminalization as an option for a host of reasons, not the least of which is the inevitability of an illicit drug market controlled by the same drug dealers who sell drugs today. But I will leave that for others to expand the reasons against decriminalization because the initiatives we formulated in Brooklyn, in my view, moots the issue. The bi-level option we did choose was, first, an aggressive prosecutorial approach to non-addicted drug traffickers. We throw the key away. If you get caught in my county and you are selling drugs and you are not a drug addict, we will send you to prison as long as we can. For example, if you are a trafficker caught selling more than 2 ounces of heroin or cocaine, you face a minimum period of 15 years to life in prison. But the second part of our option was to offer a treatment alternative prison to non-violent drug-addicted defendants who are facing sentences as high as 4½ to 9 years in prison as second felony offenders.

This second prong of our strategy, drug treatment, begun in late 1990, was the first ever prosecution controlled drug treatment program in the United States, and it is called DTAP, the Drug Treatment Alternative to Prison.

The program has been adopted by all five district attorneys of New York City and various counties in the other parts of New York State, and it identifies prison-bound, non-violent, second-felony offenders who commit drug crimes in order to support their habit. Facing mandatory prison time, these defendants are thus motivated to choose diversion into long-term treatment, and our office does the screening for suitability. We make the appropriate placement in a residential therapeutic community, and we monitor the progress. And if they succeed, generally, in a 2-year period, we dismiss the charges. Our office also takes control over getting them jobs and making sure they continue with their jobs.

But if they withdraw from the program, they are returned to the court by a special arrest team, and they are sentenced to State prison on the plea that they originally made in court—with no credit for time served in our program.

DTAP has a 1-year retention rate of 66 percent, which is considerably higher than the national average. Three years after treatment, only 23 percent of our graduates have been re-arrested, compared to 48 percent of those defendants who spent a comparable amount of time in prison on drug charges. Of our 398 graduates to date, we have saved New York State more than $14 million in reduced criminal justice costs, health costs, and welfare costs. What is more, the graduates pay taxes, an average of $2,000 in Federal, State, and local taxes every year.

Based on our experience in Brooklyn, now for nearly 10 years, I can tell you there is another way to use existing drug laws to accomplish beneficial results without decriminalization. I agree with the critics of New York State's so-called Rockefeller drug laws that it makes no sense to simply warehouse non-violent drug abuses with long prison sentences. But rather than continuing the never-ending debate over the efficacy of long prison sentences for junkies who recycle drugs to other junkies to support their habit, we can use these harsh laws to encourage addicts to opt for treatment. Indeed, these laws should be changed, in my view, only where treatment is mandated.

Today, we were asked by your staff, Chairman Mica, to put a face on this, and we brought a very, very fine face, a young man who joined our program in 1992 and is a proud 1995 graduate of DTAP, Mr. Frederick Cohen, who is with me. I hope you will give him a chance to say a few words sometime during this presentation.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Hynes follows:]

TESTIMONY OF CHARLES J. HYNES
District Attorney of Kings County, New York
House Subcommittee on Criminal Justice
Drug Policy and Human Resources
Hearing on Drug Decriminalization
Rayburn House Office Building 2154
Tuesday, July 13, 1999 10:00 A.M.

Chairman Mica, members of the Committee, and honored guests: I feel privileged to participate in a panel of such distinguished people as Secretary Joseph Califano, Dr. William Bennett, my old friend Tom Constantine, formerly the Administrator of the Drug Enforcement Agency, and Mayor Kurt Schmoke, and to share my ideas about drug decriminalization and drug treatment alternatives.

I would like to begin by telling you a few facts about Kings County, which is known to the world as Brooklyn, New York. With a population of 2.3 million people, Brooklyn is the sixth largest county in the United States. And if it were still a separate city, as it was 100 years ago, it would be the fourth largest city in the United States.

When I became District Attorney almost ten years ago, Brooklyn had become the fifth most violent municipality per capita in the United States. By the beginning of the decade, we had witnessed in horror the murders of between 750 and 800 men, women and children in each of several prior years. In one particularly tragic year, 129 children, 17 years or younger, were murdered in Brooklyn. Assessing the reasons for this carnage quickly led us to the conclusion that drug-related crime, which rose from 15 percent of all arrests in 1975 in New York City to nearly 85 percent by 1989, was directly responsible.

The proliferation of drugs always leads to the creation of profit motivated drug gangs who arm themselves to protect their product. Out of that violence, any venue soon reaches the

same crisis level as Brooklyn did in the late 1980's and the early 1990's, where "drive-by-shootings" became part of the lexicon.

To deal with this crisis, we considered several options, the goal of which was to reduce drug demand. However, I never considered decriminalization for a number of reasons.

First, I do not believe that decriminalization will take the profit motive out of drug dealing. Most authorities agree that the widespread state sponsorship of lotteries, OTB parlors and casinos has promoted gambling addiction. The result has been increased profits for organized crime from illegal gambling and sports betting. In the same way, there will always be an illicit market in drugs, run by the same kingpins and dealers who sell drugs now. Inevitably, there will be the same smuggling and money laundering, the same turf battles and the same violence that always accompanies drug trafficking.

My second reason for opposing decriminalization is that it will be a death sentence for many young people in our community. Even if we make it illegal to sell drugs or to give drugs to people under the age of 21, young people who wish to experiment with drugs will have no trouble getting them, just as they now have no trouble getting alcohol or tobacco. In fact, if drugs are illegal only for minors, drugs will become a powerful and highly desirable symbol of adulthood.

Drugs are highly addictive and their use causes bizarre and criminal behavior - as Joe Califano documented in his report last year, "Behind Bars: Substance Abuse and America's Prison Population." I believe it would be a terrible mistake to make any changes in the law that would make it easier for young people to have access to these poisons.

My third reason for opposing decriminalization is the myth that everyone who is convicted of a drug offense, however minor, goes to prison. In my county we neither seek nor expect jail time for simple first-time possessors or addicts. Nor do we send non-violent recidivists to prison who are suitable candidates for treatment. In fact,the stiff penalties mandated by our Rockefeller drug laws have been terrifically useful in inducing addicts to go into long-term treatment, to stay there, and stay straight after their release. I believe, therefore, that the decriminalization issue is essentially moot, because decriminalization is neither necessary nor helpful for a treatment-based approach.

In Brooklyn we draw a sharp line between non-addict drug traffickers and addicts who commit non-violent crimes, including small-scale drug dealing, to support their habit. The former are aggressively prosecuted. We offer no plea bargains to traffickers and seek the longest prison sentences we can obtain. At the same time, we offer treatment alternatives to prison to non-violent drug-addicted defendants.

In late 1990, I created the first prosecution-directed drug treatment alternative to prison program in New York State, called DTAP. This program, which has been replicated by other prosecutors both in New York City and in parts of New York State, identifies prison-bound non-violent second felony offenders who commit crimes primarily to support their habit. Facing mandatory prison time, these defendants are finally amenable to diversion into long-term treatment. Our office screens them for suitability; makes an appropriate placement in a therapeutic community; monitors their progress and reports regularly to the court. If the defendants succeed, generally after two full years of treatment, the charges against them are dismissed. Our office also takes responsibility for helping them find and keep jobs. If they fail, however, they

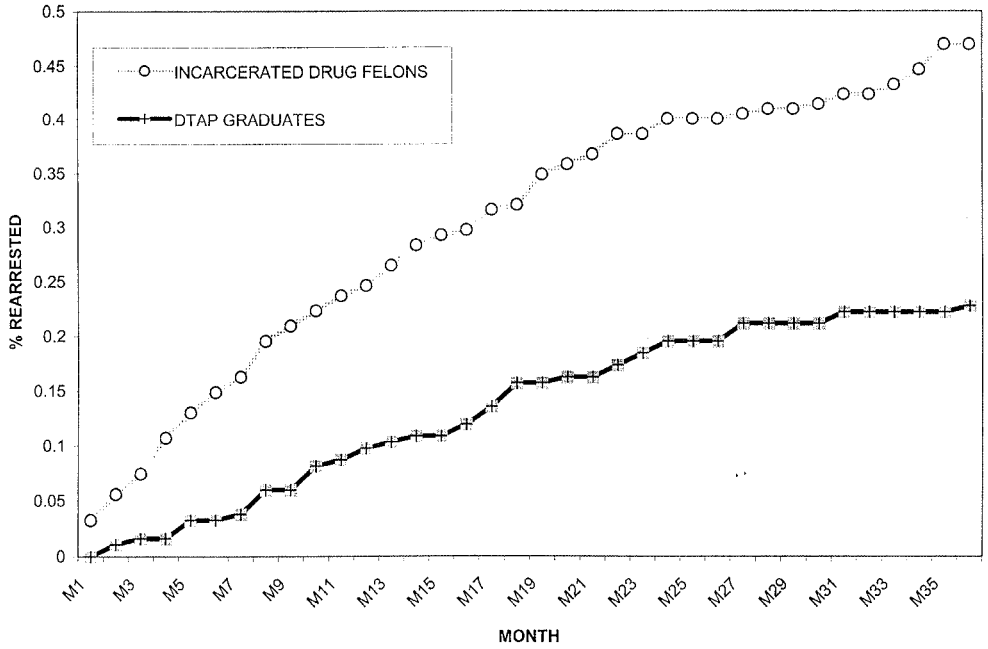
are returned to court by our special warrant squad and sentenced on their plea to the original charges - with no credit for time served in our program.

DTAP has a one-year retention rate of 66 percent, far higher than the average retention rate for treatment programs nationwide. Three years after treatment, only 23 percent of the graduates have been re-arrested, compared to 48 percent of defendants who spend a comparable amount of time in prison on drug charges. What is more, of those who are gainfully employed at the time of graduation, only 13 percent recidivate. Our 398 graduates to date have saved New York State over $14 million in reduced criminal justice costs and health and welfare costs. In addition, the graduates pay taxes; an average of $2,000 in federal, state and local taxes each year.

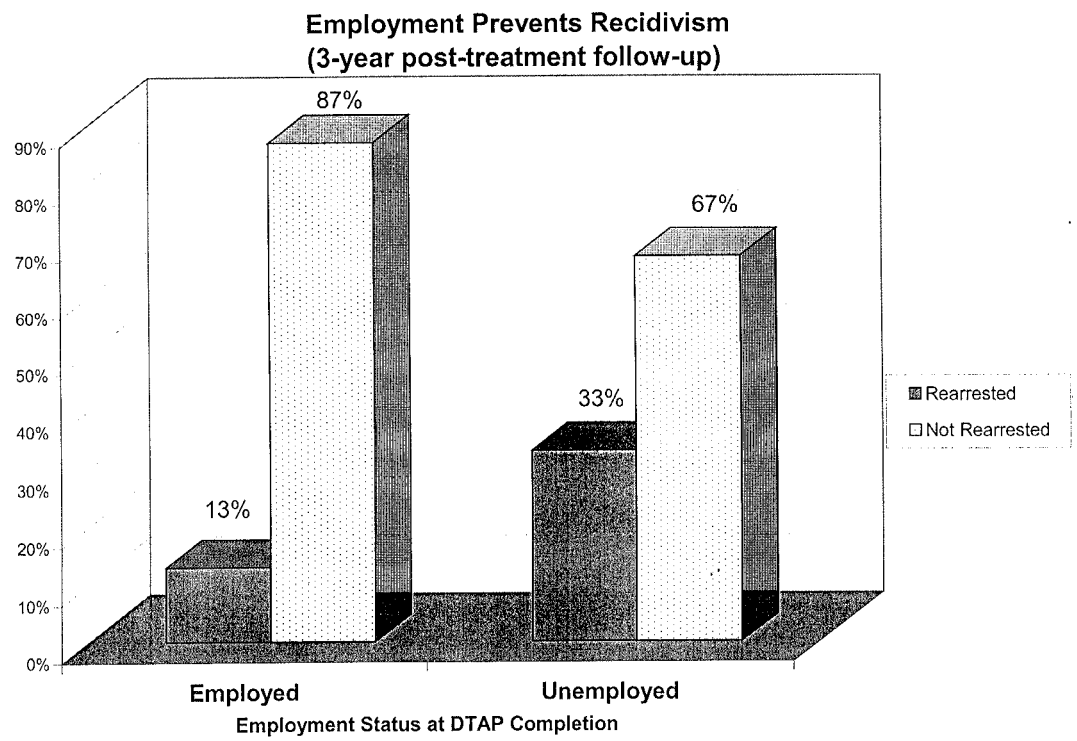
The lessons learned from DTAP encouraged me to support the opening of the Brooklyn Treatment Court, the largest drug court in New York State. This court also, whenever possible, provides treatment alternatives to drug addicts and has documented successes in rehabilitating many offenders.

Based on my experience in Brooklyn for nearly ten years, I believe that there is another way to use existing drug laws to accomplish beneficial results. I agree with critics of the Rockefeller drug laws that it makes no sense to simply warehouse non-violent drug abusers in state prisons. But, rather than relax the prohibitions against drugs, the penalties against their use can serve the constructive role of encouraging addicts to opt for treatment.

COMPARISON OF 3-YEAR RECIDIVISM
BETWEEN INCARCERATED DRUG FELONS AND DTAP GRADUATES



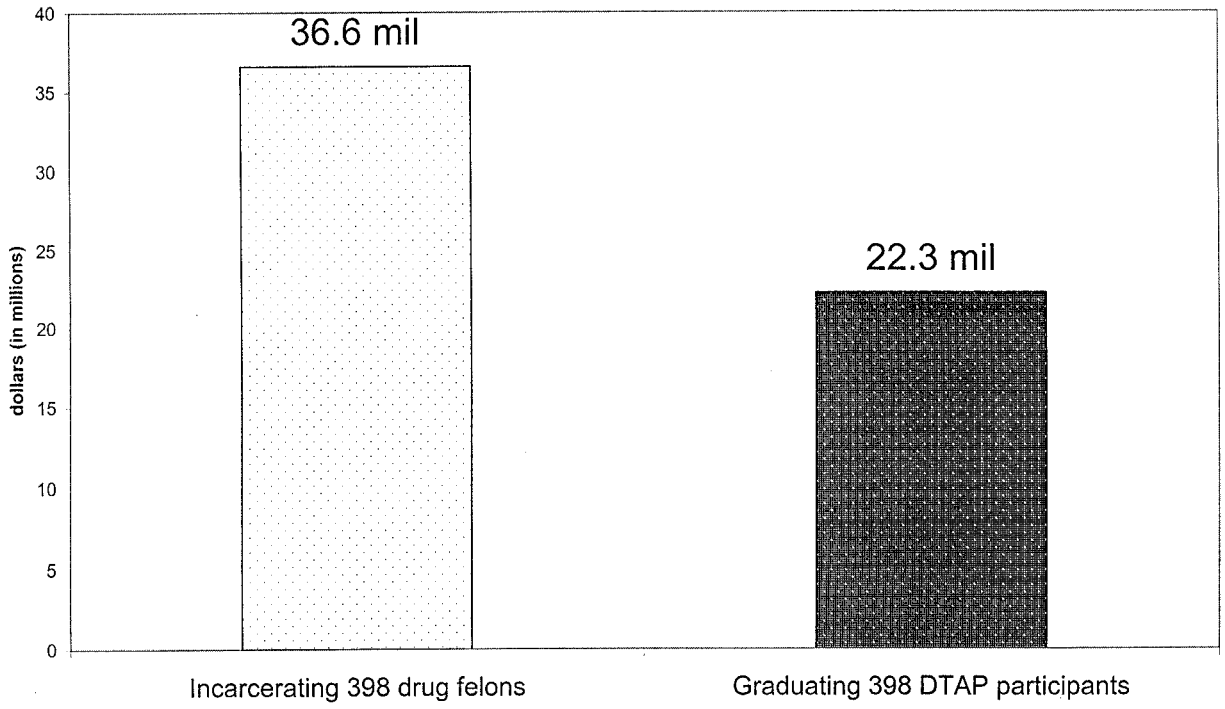
Sources: NYS DCJS Criminal History Database and KCDA Case-Tracking Database



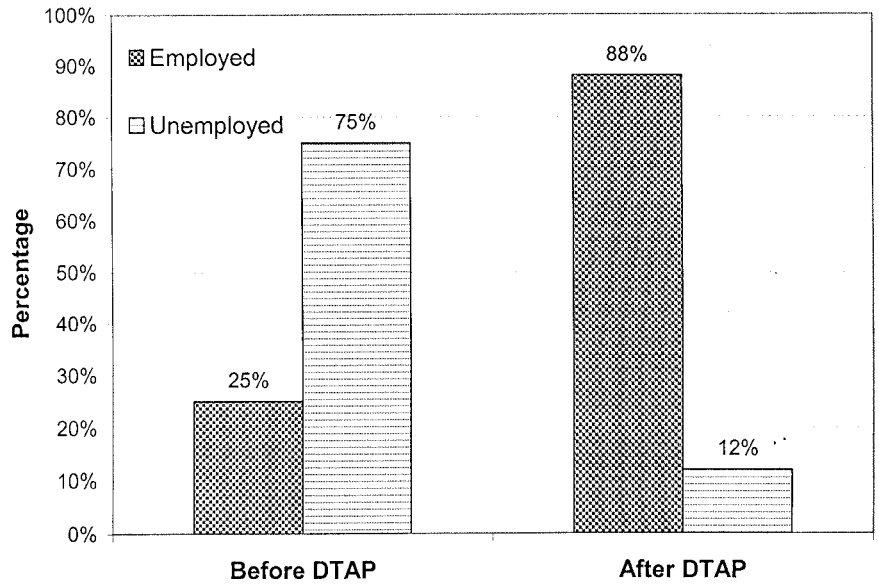
Analysis based on 184 DTAP graduates, of which 117 were *employable* at the time of treatment completion

Statistically significant at .05 level

Comparison of Corrections and Socioeconomic Costs between Incarceration and DTAP

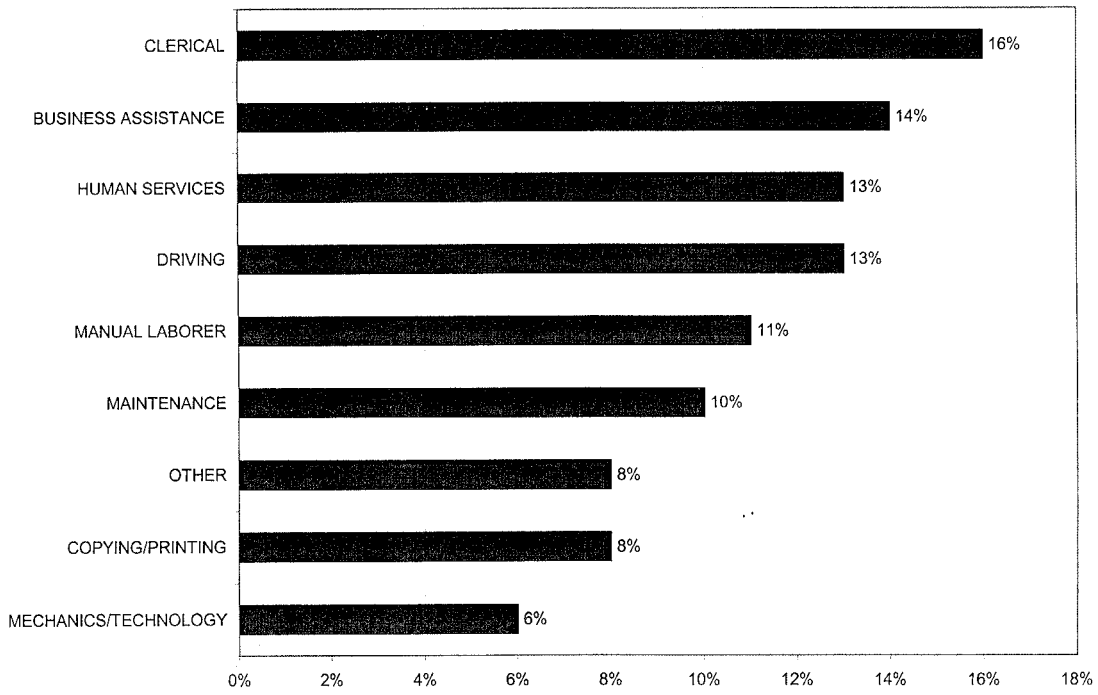


Comparison of Pre-/Post-Treatment Employment Rates among Employable Graduates



SOURCE: DTAP employment tracking database.

TYPES OF EMPLOYMENT FOR DTAP GRADUATES



Analysis based on 202 DTAP graduates *employed* at the time of treatment completion.

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REVIEW & OUTLOOK

The Rockefeller Drug Laws

No one knows for sure why violent crime has fallen so dramatically nationwide. Whatever we're doing, it's working. We're not complaining, but it would be good to know just what it is we're getting right.

The fall in crime is surely due in part to demographics; the current cohort of males in their peak crime years—teens and early 20s—is small. The fact that crack is no longer the scourge it was in the late '80s has also played a part. And the array of get-tough-on-crime laws that virtually every state put into effect during the past decade meant that the core group of repeat offenders who commit a high proportion of violent crimes are locked away until the age where they're too old to do damage.

We suppose it's inevitable that too much of a good thing is too much for some politicians to bear. Why sit still when you can tinker with success? But it's hard to understand why, in New York state, liberals and conservatives alike have been calling for drastic revisions to what are known as the Rockefeller drug laws.

These draconian drug laws, put in place by the late Governor Nelson Rockefeller in 1973, mandate stiff prison sentences for users and dealers alike. Someone convicted of possessing as little as four ounces of a drug or selling as little as two ounces receives a mandatory sentence of 15 years to life. As opponents of the laws are fond of pointing out, that's more time in prison than many people end up serving for violent crimes—even murder.

That's appalling—that is, it would be if in fact those small-time, nonviolent users actually ended up in the slammer. A study just out from the state commissioner of criminal justice tells a different story. In 1996, 87% of the 22,000 people in jail in New York for drug crimes were in for *selling* drugs or intent to sell; of the 13% doing time for possession, 76% were arrested for selling drugs and pleaded down to possession.

The study further shows that most convicted first-time drug offenders end up on probation or in treatment. Nonviolent offenders who are in prison on drug charges only are overwhelmingly there because they have long histories of drug convictions and of violating court directives. "You really have to earn your way into state prison," says Commissioner Katherine Lapp. The study shows that "it's very difficult the first time around or even the second time around to end up in prison."

Behind these numbers lies a remarkable story about drug treatment and the men and women who have been able to shake their addictions and claim a productive place in society. One of the places that nonviolent, repeat drug offenders end up is D-TAP programs, shorthand for Drug Treatment Alternatives to Prison. These long-term, residential treatment programs have a rate of success that is "astounding," says Brooklyn District Attorney Charles Hynes, who started the first program in 1990. The success rate for program graduates is close to 90%.

The cost differential between D-TAP and prison is also astounding. D.A. Hynes says it costs between $18,000 and $20,000 a year to keep a drug offender in his program, compared with $89,000 a year in prison. Treatment typically lasts two years.

The key to getting addicts into D-TAP and other treatment programs is the Rockefeller drug laws. Nonviolent offenders charged with felony possession are given a choice between the stiff sentence mandated by the Rockefeller drug laws or entering a treatment program. If they complete the program, the charges are dropped; if they drop out, they go to jail for a very long time. Guess which option many choose.

"These tough laws have diverted lots of people into treatment who wouldn't otherwise go into treatment," says Dr. Mitchell Rosenthal, head of Phoenix House, a national drug treatment center based in Manhattan. "D-TAP couldn't work if we didn't have the hammer of mandatory sentencing," says D.A. Hynes.

Both men, it should be noted, argue that the Rockefeller drug laws are too stringent; they support a plan by the state's chief judge to give judges a lot more leeway in sentencing drug offenders. Governor Pataki also supports revisions that would give judges more flexibility in sentencing, but in return he is demanding an end to parole, a troubled institution that needs a study as illuminating as the one these drug laws received; the Assembly Democrats aren't going along. And so it looks like the Rockefeller drug laws are going to be with New Yorkers a while longer. If that means more addicts are going to be forced into treatment, maybe that's not such a bad thing. Just look at the crime numbers.

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Drug Stories Can Have Happy Endings

Sheryl McCarthy

IN A MAJESTIC synagogue on the Upper West Side, a young black man pounded most of the right notes to "Pomp and Circumstance" on an electronic keyboard, while 83 graduates of Phoenix House marched down the aisle.

These men and women, ranging from their late teens to their mid-40s, mostly black and Hispanic, but with a few white faces, once meant only trouble and heartache for their families and the people of New York City. Their need for heroin, crack, cocaine and marijuana led them to betray their parents, sisters and brothers, their children, their spouses and the people they worked with. But now they had pulled themselves together and had been off drugs for at least 18 months, were working and had homes of their own.

It was one of those events in the life of New York City that reveals the toughness and resilience of its people. For these were people who had tried and failed in the past, but had picked themselves up, tried again and finally succeeded. And there in the pews were their family members and friends, standing, applauding, screaming and feeling hopeful again, although some must have thought that this can't last.

One of the graduates was Willie, who asked me not to use his last name. Thirty-one, handsome, with a kind of macho swagger, Willie is also a poet. Like everyone, he started out with a promising future. He finished high school, attended college, got a job at a literary agency, completed a book of poems and did a poetry tour, reading his work at events around the country. But he was also using crack and heroin.

"My habit got the best of me, so that my sole interest became acquiring drugs to support my habit," Willie told me.

In 1996, he was arrested three times for possession of heroin and crack, which were misdemeanors. Then he got arrested for selling a bag of heroin in Harlem, and was facing a year to three years in prison.

"My back was up against a wall," he said. "Obviously, I needed help. Too many people were getting hurt around me — my loved ones, my mother, the people I worked with. I was just tired of being a slave."

Willie went to Phoenix House and enrolled in its drug treatment program. Phoenix House has saved thousands of drug addicts over the years. At his court appearance he told the judge he was in treatment, and the judge said he would consider dismissing the charges if Willie completed the program.

Willie ultimately went through five Phoenix House facilities, the names of which he can rattle off like a Catholic naming the stations of the cross. After 18 months, which included induction, primary care, job training, re-entry and aftercare, Willie is off drugs, has his own apartment and is working at a publishing house. All of which beats prison hands down.

Most intelligent people now agree that treating drug addicts is more effective than locking them up. Everybody from Brooklyn District Attorney Joe Hynes to the American Bar Association has called for a move in that direction. In New York the problem is the Rockefeller laws, which say that anyone convicted of having or selling certain small amounts of hard drugs must go to prison for 15 years.

Despite a clamor to repeal these laws, Gov. George Pataki and our legislators in Albany are playing games and passing the buck. Meanwhile, 22,000 people are doing time in New York for selling drugs or for possession; many of them should be in treatment instead.

District Attorney Hynes has managed to circumvent the Rockfeller laws somewhat since 1990 by putting 954 nonviolent drug offenders into treament instead of prison. The defendants must plead guilty to the crime. If they successfully complete the program, their charges are dismissed. Otherwise, they go to prison. The success rate has been 83 percent, Hynes says. He estimates that his office saved taxpayers $13 million they otherwise would have spent on prison, health, welfare and recividism costs for the drug offenders.

After the ceremony the other night, grown men were seen hugging each other, and a grandmother accepted bouquets from her daughter and granddaughter, who were relieved to see her, finally, off drugs. As the president of Phoenix House, Mitchell Rosenthal, told the graduates, they had proved that drug abuse can be beaten, and that relapse is not irreversible.

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Mr. MICA. Thank you. Did you want to identify the individual?

Mr. HYNES. This young gentleman right here.

Mr. MICA. Thank you. We will go through the panel first. We will recognize now Ms. Katherine Lapp, director of Criminal Justice, Office of the Governor of New York.

Ms. LAPP. Thank you, Mr. Chairman, and thank you for inviting me here this morning to talk about the topic of decriminalization of illegal drugs.

I would like to focus my remarks principally on the experience of New York State in addressing illicit drug use and drug-driven crime. Over the last several years, there has been much debate in New York State about the efficacy of our drug laws, oftentimes referred to as the Rockefeller drug laws, which were enacted in 1973, in response to the onslaught of drugs and drug-driven crime. Drug law reform advocates have argued that the drug laws have done little to remove drugs from our communities and have only served to imprison low-level drug addicts in our State's prison system for lengthy periods of time. Advocates also argue that the laws should be repealed in whole or in part and replaced with a system to provide treatment for all drug-addicted criminals.

My response to this position is twofold: First, the facts do not bear out the position that there are thousands of low-level drug-addicted offenders sentenced each year to State prison for lengthy periods of time on charges of pure possession of small amounts of drugs. Second, New York State has developed a rather sophisticated and progressive system for providing drug treatment options and alternatives to incarceration programs for dealing with drug-addicted non-violent offenders. The success of that system, however, is premised, in large part, on the fact that these offenders are motivated to take advantage of treatment options in order to avoid mandatory prison terms.

In a recent report issued by my office entitled, "Narrow Pathways to Prison: The Selective Incarceration of Repeat Drug Offenders in New York State," we have documented that less than 10 percent of persons with no prior felony record arrested each year in New York State for a felony-level drug offenses received sentences of State imprisonment; the balance received sentences of local jail time or probation. When we analyzed the group who were sentenced to State prison, we learned that 49 percent had been arrested for a Class A–1 drug offense. Of those charged with lesser offenses, 48 percent had one or more bench warrants issued against them while they were out on pretrial release awaiting disposition of the drug charge.

Mr. MICA. Excuse me, could you tell us what is a Class A–1 drug offense?

Ms. LAPP. Sure. In New York State, a Class A–1 drug offense, is sale of 2 ounces or more of a narcotic substance or possession of 4 ounces or more of a narcotic drug. In addition, 57 percent were arrested at least once while out on pretrial release.

We also undertook a random review of the case files for these first-time felony drug offenders sentenced to State prison and, in what I believe is a very persuasive way, documented the various reasons why they were sent to State prison. In simple terms, the offenders gave the judges little choice as they consistently and rou-

tinely "thumbed their nose" at the system and showed little remorse for their actions or interest in seeking treatment. And, finally, those sentenced to State prison served an average of 13 months in prison—hardly the lengthy sentences which drug reform advocates suggest.

As for repeat drug offenders, our report also documented that only 30 percent of persons with prior felony arrest histories who were arrested on a drug felony charge actually received a sentence of State imprisonment.

Now, there are roughly 22,000 individuals currently serving time in New York State prisons for drug offenses, and we have roughly a population of over 70,000 inmates in our prison system. Eighty-seven percent of the 22,000 are actually serving time for selling drugs, not mere possession, and over 70 percent have one or more felony convictions in their record. Of those persons serving time for drug possession charges, 76 percent were actually arrested on sale or intent to sell charges and pled down to possession.

It is also significant to note that despite 15 years of continuous increases in the number of non-violent offenders sentenced to New York State prison, we have begun to witness a stabilization and, in fact, a slight decline in the number of non-violent offenders in State prison. Between 1982 and 1995, the number of non-violent offenders in New York State prisons increased four-fold, from 8,200 in 1982 to 34,000 in 1996. But from 1996 to 1997, we witnessed a slight decline, actually about 1,000 offenders, in the number of non-violent offenders coming into our custody.

Now, that stabilization can be directly attributed to a variety of initiatives that have diverted these otherwise prison-bound offenders into alternative treatment programs. These programs include drug courts, the DTAP program, initiated by District Attorney Hynes in Kings County and now replicated by numerous prosecutors throughout the State, and the State Willard Drug Treatment Facility, implemented by Governor Pataki to provide a 90-day drug treatment program in a secure facility for D and E repeat non-violent drug offenders who would otherwise be prison-bound. Governor Pataki also implemented a merit time program for incarcerated non-violent offenders which allows these offenders to be considered for early parole release if they take part in and successfully complete in-prison substance abuse treatment programs.

Each of these treatment alternatives and early release programs have varying degrees of success in terms of reduced recidivism rates, perhaps the most successful being the DTAP program which reports a recidivism rate of roughly 10 percent among its graduates after only 1 year. What is oftentimes overlooked in analyzing the success of these programs, however, is the fact that the program participants are motivated to address their substance abuse because of the lengthy prison terms which loom over them. In fact, in a recent Wall Street Journal article regarding this very issue, Dr. Mitchell Rosenthal, head of the Phoenix House national drug treatment organization, which participates in the DTAP program, noted that the State's tough drug laws have "diverted lots of people into treatment who wouldn't otherwise go into treatment."

I would submit that those who advocate a wholesale repeal of New York State's drug laws in favor of treatment for substance-

abusing offenders actually miss the point or fail to appreciate or choose to ignore the realities of the system. Perhaps the most compelling argument in favor of maintaining tough drug laws as a way to motivate substance-abusing offenders is found in the reports of the Kings County DTAP program. On average, over 30 percent of the defendants screened and deemed eligible for the DTAP program actually declined to participate in the 18-month residential program, opting instead to go to State prison. This despite the fact, as District Attorney Hynes noted, if they successfully complete the program, the charges will be dropped and wiped off their record. Now, I submit, what are we to do with these categories of offenders in the absence of mandatory minimums? Return them to the community? I think not.

In recent years, changes have been made to the New York State drug laws to permit certain non-violent offenders to be diverted from prison into treatment programs—two examples mentioned, the Willard Drug Treatment Facility and the merit time program. Those programs, along with DTAP, incorporate a "tough but smart" approach to criminal justice and substance abuse. Wholesale repeal of drug laws is a simplistic and irresponsible approach to our country's drug problem—simplistic because it ignores the reality of drug use and irresponsible because it would only serve to fuel crime in our communities.

The intrinsic link between crime and drugs is indisputable, as any member of this Nation's law enforcement community will attest. The 1998 Arrestee Drug Abuse Monitoring program report issued by the National Institute of Justice documented that an estimated 80 percent of persons arrested each year in New York City, regardless of charge, tested positive for drugs. It is also no coincidence that when the New York City Police Department in 1994, began implementing a targeted and comprehensive policing strategy aimed at the street drug trade in some of the highest crime areas in that city, those communities witnessed unprecedented reductions in crime—reductions, I might add, which outpaced those in other areas of the city. This same trend has been witnessed throughout the Nation, as noted in the 1999 National Drug Control Strategy report, which reported that drug-related murders decreased by 42 percent from 1991 to 1997, as drug arrests increased by 57 percent during that period.

So, in closing, I would submit that our drug laws work and the effective drug treatment options we have operating in New York State for drug-addicted offenders are successful because of them. Repeal or wholesale revisions to those laws would only serve to undermine the successes we have enjoyed over the last several years in New York State, with index crime down by 28 percent since 1994, more than four times the national average, and our communities being the safest they have been since the 1960's.

Thank you once again for inviting me here today.

[The prepared statement of Ms. Lapp follows:]

Testimony by Katherine N. Lapp, New York State Director of Criminal Justice before the U.S. House Subcommittee on Criminal Justice, Drug Policy and Human Resources on July 13, 1999, Washington D.C.

Thank you Chairman for inviting me here this morning to discuss the topic of "Decriminalization of Illegal Drugs". I would like to focus my remarks principally on the experience of New York State in addressing illicit drug use and drug driven crime.

Over the last several years, there has been much debate in New York State about the efficacy of our drug laws, often times referred to as the Rockefeller Drug Laws, which were enacted in 1973 in response to the onslaught of drugs and drug-driven crime. Drug law reform advocates have argued that the drug laws have done little to remove drugs from our communities and have only served to imprison low level drug addicts in our State's prison system for lengthy periods of time. Advocates also argue that the laws should be repealed in whole or in part and replaced with a system to provide treatment for all drug addicted criminals.

My response to this position is two-fold: first, the facts do not bear out the position that there are thousands on low level drug addicted offenders sentenced each year to State prison for lengthy periods of imprisonment on charges of possession of small amounts of drugs. Secondly, New York State has developed a rather sophisticated and progressive system for providing drug treatment options and alternative to incarceration opportunities for dealing with drug addicted non-violent offenders. The success of that system, however, is premised, in large part, on the fact that the offenders are motivated to take advantage of treatment options in order to avoid

mandatory prison terms.

In a recent report issued by my office entitled ***Narrow Pathways to Prison: The Selective Incarceration of Repeat Drug Offenders in New York State***, we documented that less than 10% of persons with no prior felony record arrested each year in New York State for a felony level drug offenses received sentences of State imprisonment -- the balance received sentences of local jail time and/or probation. When we analyzed the group who were sentenced to State prison, we learned that 49% were arrested had been arrested for a Class A-1 drug offense; of those charged with lesser offenses, 48% had one or more bench warrants issued against them while they were awaiting disposition on the drug charges, and 57% were arrested at least once while out on pretrial release.

We also undertook a random review of the case files for these first time felony drug offenders sentenced to State prison and, in what I believe is a very persuasive way, documented the various reasons why they were sent to prison. In simple terms, the offenders gave the judges little choice as the offenders consistently and routinely "thumbed their nose" at the system and showed little remorse for their actions or interest in seeking treatment. And finally, those sentenced to State prison served on average 13 months in prison -- hardly the lengthy sentences which the drug law reform advocates suggest.

As for repeat drug offenders, our report also documented that only 30% of persons with prior felony arrest histories who were arrested for a drug felony actually received a sentence of State

imprisonment.

There are roughly 22,000 individuals currently serving time in New York State prisons for drug offenses -- 87% of them are actually serving time for selling drugs, not mere possession and over 70% have one or more felony convictions in their record. Of the persons serving time for drug possession charges, 76% were actually arrested for sale or intent to sell charges and eventually down pled to possession.

It is also significant to note that despite fifteen (15) years of continuous increases in the number of non-violent offenders sentenced to New York State prison, we have begun to witness a stabilization and, in fact, a slight decline in the number of non-violent offenders in State prison. Between 1982 and 1995, the number of non-violent offenders in New York prisons increased four-fold -- from 8,200 in 1982 to over 34,000 in 1996. From 1996 to 1997 however, we witnessed a slight decline, by roughly 1,000 offenders, in the number of non-violent offenders admitted into State custody.

That stabilization can be directly attributed to a variety of initiatives that have diverted these otherwise prison-bound offenders into alternative treatment programs. These programs include Drug Courts; the D-TAP program, initiated by District Attorney Hynes in Kings County and now replicated by numerous prosecutors throughout the State; and, the State Willard Drug Treatment Facility which was implemented by Governor Pataki to provide a ninety (90) day drug treatment program in a secure facility for D and E repeat non-violent drug felons who would otherwise be

serving State terms of imprisonment. Governor Pataki has also implemented a merit time program for incarcerated non-violent offenders which allows these offenders to be considered to early parole release if they take part in and successfully complete in-prison substance abuse treatment programs.

Each of these treatment alternatives and early release programs have varying degrees of success in terms of reduced recidivism rates among the program participants. Perhaps the most successful being the D-TAP program which reports a recidivism rate of roughly 10% among its graduates after one year. What is often times overlooked in analyzing the success of these programs, however, is the fact that the program participants are motivated to address their substance abuse because of the lengthy prison terms which loom over them. In fact, in a recent Wall Street Journal article regarding this very issue, Dr. Mitchell Rosenthal, head of the Phoenix House national drug treatment organization which participates in the D-TAP program, noted that the State's tough drug laws have "diverted lots of people into treatment who wouldn't otherwise go into treatment".

I would submit that those who advocate a wholesale repeal of New York State drug laws in favor of treatment for substance abusing offenders actually miss the point and fail to appreciate or choose to ignore the realities of the system. Perhaps the most compelling argument in favor of maintaining tough drug laws as a way to motivate substance abusing offenders is found in reports of the Kings County D-TAP program. On average, over 30% of the defendants screened and deemed eligible for the D-TAP program actually declined to participate in the eighteen (18)

month residential treatment program -- opting instead to go to State prison. This despite that fact that, were they to successfully complete the program, the charges would be dropped and wiped off their record. What would we do with these category of offenders in the absence of mandatory minimum terms -- return them to the community?

In recent years, changes have been made to the New York State drug laws to permit certain non-violent offenders to be diverted from prison into treatment programs or to be released from prison early following successful completion of treatment -- two examples mentioned earlier are the Willard Drug Treatment program and the merit time program. Those programs, along with programs such as D-TAP, incorporate a "tough but smart" approach to criminal justice and substance abuse. Wholesale repeal of drug laws is a simplistic and irresponsible approach to our country's drug problems. Simplistic because it ignores reality of drug use and irresponsible because it would only serve to fuel crime in our communities.

The intrinsic link between crime and drugs is indisputable as any member of this nation's law enforcement community will attest. The 1998 Arrestee Drug Abuse Monitoring program report issued by the National Institute of Justice documents that an estimated 80% of persons arrested each year in New York City regardless of charge tested positive for drug use. It is also no coincidence then that when the New York City Police Department in 1994 began implementing targeted and comprehensive policing strategies aimed at the street drug trade in some of the highest crime areas in the City that those communities witnessed unprecedented reductions in all crime -- reductions which out paced those in other areas of the City. This same trend has been

witnessed throughout the nation, as noted in the 1999 National Drug Control Strategy report, with drug-related murders decreasing by 42% from 1991 to 1997 as drug arrests increased by 57% during that same period.

In closing, I submit that our drug laws work and the effective treatment options we have operating in New York State for drug addicted offenders are successful because of them. Repeal or wholesale revisions to those laws would only serve to undermine the successes we have enjoyed over the last several years in New York State, with index crime down by 28% since 1994, more than four times the national average, and our communities being the safest they have been since the 1960s.

Thank you once again for the opportunity to address the Subcommittee this morning on this extremely important topic.

Narrow Pathways to Prison: The Selective Incarceration of Repeat Drug Offenders in New York State

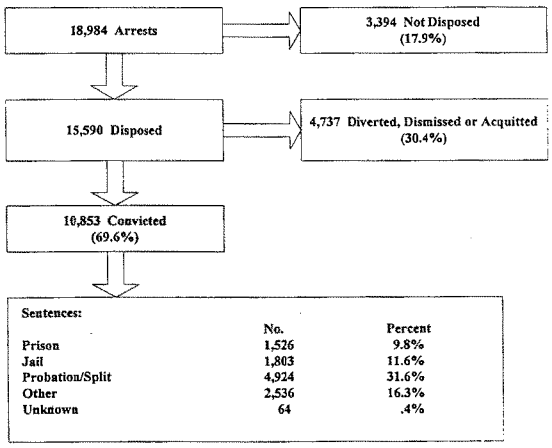
Katherine Lapp, Director of Criminal Justice
April 1999

Advocates seeking to reduce or eliminate the incarceration of drug offenders often focus their concerns on the following two types of offenders: (1) incarcerated drug offenders with no prior felony arrest histories; and (2) incarcerated drug offenders whose only prior felony arrests (and perhaps convictions) involve drug offenses. This report helps to illuminate the circumstances underlying the incarceration of those two groups of offenders. It reveals that the vast majority of these offenders never receive prison sentences, and most of those who are sentenced to prison have failed to abide by conditions of community supervision.

Part I: Drug Offenders with No Prior Felony Arrest (or Conviction)

Few felony drug arrestees without prior felony histories receive prison sentences in New York State. As shown below in figure 1, fewer than 10 percent of disposed felony drug arrestees without a prior felony arrest (or conviction) are sentenced to prison. The other 90 percent are diverted from the criminal justice system prior to conviction or sanctioned locally. These data suggest that the criminal justice system is very selective in its use of prison for first-time offenders.

1996 Felony Drug Arrests of Defendants with No Prior Felony Arrest (or Conviction) in New York State



Source: Division of Criminal Justice Services, Computerized Criminal History Database 3/99

In order to provide greater insight into the reasons for the State incarceration of first-time offenders arrested on felony drug charges, data on 1998 admissions into prisons in New York State were reviewed. A DOCS admission cohort was used to avoid the problem of missing dispositions in the 1996 arrest cohort and to ensure that each offender is counted only once. However, an analysis utilizing the prison commitments from the 1996 arrest cohort would produce almost identical findings.

Four factors help to explain the incarceration of drug offenders who have no prior felony histories.

Factor 1: Seriousness of the drug offense

Forty-nine percent of the 1,222 drug felons with no prior felony arrest histories who were committed to DOCS in 1998 **were arrested for class A drug offenses.**[1] Another 48 percent were arrested on class B drug charges.

Of the "first felons" *not* arrested for a class A drug offense:

Factor 2: Failure to comply with conditions of pre-trial release

Forty-eight percent had one or more bench warrants issued against them while awaiting disposition on the drug charges for which they were eventually imprisoned.

Factor 3: Rearrest while on pretrial release

Fifty-seven percent were arrested at least once while on pretrial release awaiting disposition on the drug charges. The recidivists averaged over two additional arrests while on pretrial release.

Factor 4: Misdemeanor prior arrest histories

Forty percent had one or more prior misdemeanor arrests. Those with prior misdemeanor histories averaged 2.6 arrests each.

These non-class A, first-time drug admissions will serve an average of 13 months in

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[1]New admissions are excluded from this analysis if they have any of the following characteristics: (1) non-drug top conviction charge, (2) prior felony arrests or convictions, (3) concurrent VFO commitment offense or (4) second felon status according to DOCS records.

prison.[2] The circumstances surrounding the incarceration of these felons are best illustrated through a review of typical cases. Below are summaries of the criminal histories of 20 first-time felons arrested on non-class A drug charges and admitted to prison in 1998. The 20 cases represent a computer-generated random sample of all such admissions.

Case 1:

This female is 27 at her first adult arrest in New York State and she is charged with misdemeanor drug possession. She absconds while on pretrial release and reappears almost two years later when she is arrested for felony class D drug possession. She is again released pretrial and again absconds. Two years later, she is rearrested for felony class B drug sale. The case is dismissed; she is returned to her pretrial release status and again fails to appear at a court hearing for the earlier class D drug possession arrest. Within nine months she reappears on a trespass arrest, but the case is dismissed and she is released. Two months later she is arrested for the fifth time and charged with a misdemeanor drug offense. Finally, she pleads guilty to the class D possession offense and is sentenced to 16 months to 4 years in prison.

Case 2:

The subject is a male whose first adult arrest in New York State occurs when he is 19 years of age and involves a misdemeanor drug possession offense. Within three months of that arrest, he is rearrested for felony class B drug possession, pleads to attempted possession and received a five-year term of probation. Less than two years into his probation term, he is again arrested for operating a motor vehicle while under the influence of drugs. Although he is convicted of that charge, he remains on probation. Approximately 14 months thereafter, he is rearrested for misdemeanor drug possession, his probation term is revoked and he is sentenced to two to six years in prison.

Case 3:

This male is 16 at his first adult arrest in New York State in 1994. This first arrest involves misdemeanor drug possession. Three months later he is arrested for sexual misconduct involving deviate sexual intercourse without the other party's consent and is adjudicated a youthful offender. Fifteen months later, he is involved in another incident and arrested for resisting arrest. Finally, he is arrested for five counts of felony class B drug possession and sentenced to two to six years in prison.

Case 4:

This male is 23 at his first adult arrest in New York State. He is first arrested for felony class B drug possession, convicted of attempted sale and sentenced to five years probation. Within three months of that sentence, he is rearrested on class B drug possession charges and released pretrial. While on pretrial release (and probation), he is arrested for the third time on charges of robbery, kidnaping, burglary and weapons possession. Finally, his probation is revoked and he is sentenced to 36 to 108 months in prison.

Case 5:

This male is 19 at his first adult arrest in New York State. He is first arrested on a misdemeanor marijuana sale and received an adjournment in contemplation of dismissal (ACOD). Within 10 days, he is again arrested on a misdemeanor property offense. Shortly after receiving another ACOD on the second charge, he is arrested a third

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[2]Time served data from a 1998 DOCS release cohort indicate that first-time, non-class A drug felons serve, on average, 13 months in State prison.

time for misdemeanor marijuana possession. A third ACOD is followed by a fourth arrest (marijuana sale) eight months later. While on pretrial release, he is arrested a fifth time for misdemeanor assault and harassment. He then fails to appear for a court hearing on his fourth arrest and a warrant is issued. However, before the warrant is executed he reappears on his sixth arrest, which again involves the sale of marijuana. He pleads guilty to the assault charge and receives 60 days in jail. Seven months later he is arrested, for the seventh time, on charges of misdemeanor drug possession and receives another 60 days. Finally, three years after his initial adult arrest, he is arrested for the eighth time, charged with felony class B drug sale and sentenced to 18 to 54 months in prison.

Case 6:

This male is 39 at his first adult arrest in New York State. He is arrested nine times within a three-year period. His arrest history begins with a misdemeanor assault charge. Within three weeks, he is rearrested for petit larceny but prosecution is declined. His next arrest involved petit larceny and criminal possession of stolen property. Again, the prosecution is declined. He then reappears with a fourth arrest involving misdemeanor property offenses. While on pretrial release from the fourth arrest, he is twice rearrested for misdemeanor property offenses and released pretrial, in spite of the fact that a "failure to appear" bench warrant is issued in case four. Shortly after pleading guilty in cases five and six, he is arrested a seventh time for multiple felony class B drug sales, but is again released pretrial. Within three months and while on pretrial release, he is rearrested an eighth time for felony class B drug possession and is again released pretrial. Finally, he reappears in another three months with a third felony class B drug sale arrest, this time involving sales near drug school grounds and is sentenced to 12 to 36 months in prison.

Case 7:

This male is 24 at his first adult arrest in New York State. The first arrest involves misdemeanor charges of criminal trespass. He is released pretrial and returns within two weeks with a second arrest for misdemeanor property offenses. He then jumps bail and reappears within three months on multiple charges of felony class B drug sale and possession and is sentenced to a five-year probation term. Over the next three years, he is the subject of seven bench warrants presumably regarding misbehavior while on probation. His probation is finally revoked and he is sentenced to a term of one to three years in prison.

Case 8:

This male is 22 at his first adult arrest in New York State. He is first arrested for marijuana possession, reckless driving, and a variety of other traffic offenses. He pleads guilty to marijuana possession for which he receives a jail term. Within a year, he is rearrested for felony-level marijuana possession and the unlicensed operation of a motor vehicle. He pleads guilty and is sentenced to 16 months to 4 years in prison.

Case 9:

This male is 20 at his first adult arrest in New York State. He has a total of nine arrests within two and one-half years. His first arrest involves misdemeanor assault charges; he is released pretrial and absconds. Thereafter, he is rearrested for multiple felony class B drug sales, convicted of felony class C drug possession and sentenced to five years probation. Within 15 months of his sentence to probation, he is again arrested for misdemeanor assault and reckless endangerment involving grave risk of death. While on pretrial release from the second assault charge (and probation), he is rearrested for felony class C drug possession. Both the assault and drug charges terminate in dismissal and he remains on probation. A month later, he is again arrested for felony drug possession and released pretrial. Within four months, he is rearrested for misdemeanor assault, unlawful imprisonment, and weapons possession. He is again released pretrial and rearrested two months later for the obstruction of governmental administration and resisting arrest. Four months later he has a series of two more arrests, the second of which involved another assault offense. Finally, his probation is revoked on the earlier drug possession offense and he is sentence to prison for two to six years.

Case 10:

This male is 16 at his first adult arrest in New York State. He has a total of five arrests in a span of two and one-half years. His history begins with a misdemeanor marijuana arrest upon which he is released pretrial and absconds. Within a month, he is rearrested for two counts of felony class B drug sale, again is released pretrial and again absconds. He reappears approximately two years later on an arrest for felony class B drug sale and possession and burglary of a dwelling. He then pleads guilty to the original marijuana charge and is released pretrial on the felony drug arrests. He absconds again, only to be returned six months later on a new arrest with charges of reckless endangerment involving the grave risk of death to another, criminal mischief and the possession of weapons. The case is adjourned in contemplation of dismissal and he remains on pretrial release in spite of the fact that numerous bench warrants are issued for failure to appear on the felony drug charges. Finally, he reappears with a misdemeanor drug arrest, pleads guilty to the prior felony drug arrests and is sentenced to two to six years in prison.

Case 11:

This male is 20 at his first adult arrest in New York State. His first arrest involves the violation of the Public Health Law regarding the sale of imitation controlled substance. While on pretrial release, he is rearrested for multiple felony class B drug sales, pleads guilty and is sentenced to a five-year probation term. The probation is revoked on a technical violation and the offender is resentenced to prison for 1 to 3 years.

Case 12:

This male is 38 at his first adult arrest in New York State. He is first arrested on felony class B drug sale charges. Within one month, he is arrested a second time for the same offense. The court issues multiple warrants in both cases for failure to appear for various court hearings and he is eventually sentenced to a prison term of one to three years.

Case 13:

This female is 31 at her first adult arrest in New York State. She is arrested on three occasions within 13 months. The first arrest involves multiple felony class B drug sale offenses, including sales near school grounds. Within two weeks, she is arrested again for misdemeanor drug possession, pleads guilty and is sentenced to time served (approximately eight days in jail). She continues to abscond on the felony drug case until she is arrested a third time for criminal trespass and resisting arrest, after which she is sentenced to one to three years on her first arrest.

Case 14:

This male is 16 at his first adult arrest in New York State. He has a total of five arrests within two years. He is first arrested for criminal mischief involving property damage. On the day that the case is disposed through an ACOD, he is rearrested for felony class B drug possession and loitering. He is then rearrested within a month for a grand larceny that occurred prior to his first arrest and is then sentenced to a five-year probation term for the felony class B drug arrest. Two days into his probation term, he is arrested for the fourth time with charges of criminal possession of stolen property and resisting arrest. His fifth arrest involves felony class D drug possession charges as well as resisting arrest. Finally, his probation is violated on technical grounds and he is sentenced to one to three years in prison.

Case 15:

This male is 16 at his first adult arrest in New York State. He has a total of six arrests in less than two years. The first arrest involves multiple charges of felony class B drug sale. He is released pretrial and absconds. Seven months later he is rearrested for the same offense and again released pretrial. He returns in another month with

multiple felony class B drug sale charges. Again, he is released and reappears two months later with a fourth arrest involving felony class B drug possession. At this point he pleads guilty to one of the earlier cases in satisfaction of all four and receives a prison term of one to three years. Approximately a year later, he reemerges with new arrests for felony class B drug sales, including sale near school ground, but the prosecution is declined. Less than a month later, he is rearrested for felony class B criminal possession and burglary and the charges remain undisposed at the time of this review.

Case 16:

This male is 41 at his first adult arrest in New York State. He is first arrested on multiple felony class B drug sale offenses, released pretrial and absconds. He reappears seven months later when he is arrested for misdemeanor drug possession. Two months after his second pretrial release, he is rearrested on another felony class B drug sale. He pleads to charges in the first arrest and is sentenced to one to three years in prison.

Case 17:

This male is 26 at his first adult arrest in New York State. He is charged with seven counts of felony class B drug sale and six counts of felony class B drug possession. He pleads guilty and is sentenced to a minimum term of 30 months in prison.

Case 18:

This male is 22 at his first adult arrest in New York State. He is arrested for and pleads guilty to two counts of felony class B drug sale and is sentenced to 28 months to seven years in prison.

Case 19:

This male is 37 at his first adult arrest in New York State. He is first arrested on a felony marijuana charge and sentenced to probation. Subsequent to completion of the probation term, he is rearrested on three felony class B drug sales, as well as a variety of Vehicle and Traffic misdemeanors. He pleads guilty and is sentenced to one to three years in prison.

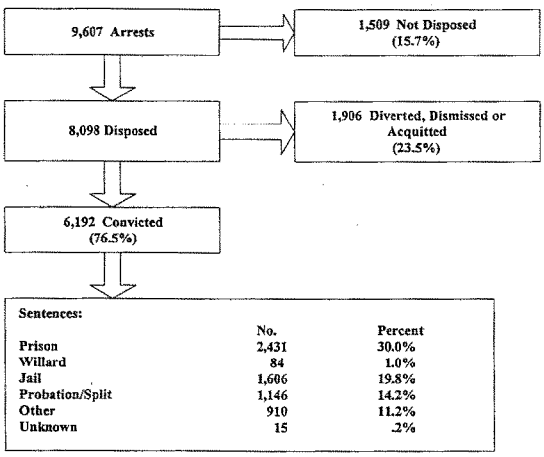
Case 20:

This male is 35 at his first adult arrest in New York State. He is arrested for multiple felony class B drug sales, including drug sales near school grounds. He pleads guilty to attempted drug sale and is sentenced to 1 to 3 years in prison.

Part II: Drug Offenders Whose Only Prior Felony History (Arrest or Conviction) Involves Drug Offenses

Most suspects who are arrested for felony-level drug crimes and whose prior felony histories are limited to drug crimes do not receive prison sentences in New York State. As shown below in figure 2, approximately 70 percent of the disposed felony arrests are either diverted from the criminal justice system prior to conviction, or sanctioned locally. Again, these data indicate a very selective use of prison even when the arrestee has a prior drug felony arrest history.

1996 Felony Drug Arrests of Defendants with Prior Felony Arrest Histories in New York State Limited to Felony Drug Arrests



	No.	Percent
Prison	2,431	30.0%
Willard	84	1.0%
Jail	1,606	19.8%
Probation/Split	1,146	14.2%
Other	910	11.2%
Unknown	15	.2%

Source: Division of Criminal Justice Services, Computerized Criminal History Database 3/99

Many factors beyond the "second felony offender" law explain why certain felony drug arrestees with only prior felony drug histories are committed to State prison. As before, data on new admissions to DOCS in 1998 are used to identify factors contributing to their incarceration. The analysis shifts from an arrest cohort to a DOCS admission cohort to avoid the problem of undisposed cases and to insure that each offender is counted only once. Approximately 1,700 drug offenders admitted to DOCS had felony histories limited to drug offenses.[3] Thirteen percent of the admissions were arrested on class A drug charges. **The following factors help to explain the incarceration of the remaining 87 percent of "drug only" admissions:**

Factor 1: Seriousness of the drug offense

Almost all (97%) of the remaining admissions were arrested for felony class B drug offenses.

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[3]New admissions are excluded from this analysis if they have any of the following characteristics: (1) non-drug top conviction charge, (2) prior non-drug felony arrest or conviction or (3) concurrent VFO commitment offense.

Factor 2: Prior commitment to probation or prison

Seventy-two percent served prior probation or prison terms and still continued their involvement in drug crimes.

Factor 3: Prior arrest histories

These "drug only" offenders averaged **2.5 prior felony drug arrests** and **2.2 prior misdemeanor arrests**.

Factor 4: Failure to comply with conditions of pre-trial release

Twenty-eight percent had one or more bench warrants issued against them while awaiting disposition on the drug charges for which they were eventually imprisoned.

Factor 5: Rearrest while on pretrial release

Thirty-two percent were arrested at least once on pretrial release while awaiting disposition on the drug charges for which they were eventually imprisoned.

Again, **a computer-generated random sample** of 20 of the non-class A, "drug only" admissions was selected for review. The following are summaries of those histories.

Case 1:

The subject is a female whose first adult arrest in New York State occurred when she was 20 years of age. She is initially arrested for a felony class B drug sale and receives a five-year probation term. Six months into her probation sentence, she is rearrested for misdemeanor drug possession, but remains on probation with the charges dismissed. Five months thereafter, she is again arrested for a felony class B drug offense, the charges, again, are dismissed and she remains on probation. Approximately 18 months later, she is again arrested for felony class B drug sale and her probation sentence is finally revoked and she apparently is sentenced to a term in prison. She reappears five years later with an arrest for misdemeanor trespass. Within five days, she is again arrested for misdemeanor drug and property offenses, but jumps bail. She appears again four months later after an arrest on misdemeanor drug charges and trespass. Although she is sentenced to 15 days in jail, she is not held on her earlier "failure to appear" warrant. But, within six months of her release from jail, she is again arrested for a felony class B drug offense, pleads guilty on both the undisposed misdemeanor and the felony offense and receives a prison term of 27 to 54 months.

Case 2:

The subject is a male whose first adult arrest in New York State occurs when he is 20 years of age. He is initially arrested for felony class C drug possession, released pretrial and absconds. While absconded, he is arrested twice more. First he is arrested for felony class C drug possession, again released pretrial and again absconds. Then, he is arrested for felony class B drug sale and finally receives a jail sentence of one year. Within 18 months of his release from jail, he is again arrested for felony class B drug sale. However, this time he also possesses firearms. Still, he is released pretrial and absconds, only to be returned on a new felony class B drug sale offense. He resists arrest, eventually pleads guilty and is sentenced to a minimum of three years in prison.

Case 3:

The subject is a male whose first adult arrest in New York State occurs when he is 20 years of age, at which time he is arrested for felony class B drug possession and petit larceny. The charges are dismissed and he does not reappear as an arrest in New York State for a number of years. Eventually, he reappears with a new felony class B drug sale arrest and receives a probation term of three years. A few years after completing his probation term, he is again rearrested for 14 counts of felony class B drug sales, at which time he receives a prison term of 18 months to 3 years.

Case 4:

The subject is a female whose first adult arrest in New York State occurs when she is 20 years of age. Her initial arrest involves misdemeanor property offenses that are eventually dismissed. She reappears many years later on felony class B drug sale charges that are later dismissed. Within two years, she is again arrested for felony class D drug possession and serves a short jail term. Within four years, she is again arrested for felony class B drug sales, including drug sale near school grounds. She absconds while on pretrial release, but is returned. She pleads guilty and receives a minimum prison term of 18 months.

Case 5:

The subject is a male whose first adult arrest in New York State occurs when he is 34 years of age, at which time he is arrested for felony class B drug sale. The charges are dismissed, but only after he is again arrested for two new counts of felony class B drug sale. He absconds while on pretrial release, only to return five years later on charges of grand larceny and criminal possession of stolen property. The prosecution declines those charges and he again is released pretrial on the five-year-old drug charges. Once again, he fails to appear for a court hearing and is returned a year later after a new arrest for class A-1 drug sale and possession offenses. Those charges are eventually dismissed and he is released without standing trial for the undisposed drug offense. However, he returns within a year on charges of felony assault and resisting arrest and is finally sentenced to a minimum prison term of 18 months for the seven-year-old drug offense.

Case 6:

This male's first adult arrest in New York State occurs when he is 18 years of age, at which time he is arrested for felony class B drug sale and the charges are later dismissed. Within two months of the dismissal, he is arrested for felony class A-II drug possession and receives a three-year probation sentence. Within 13 months of his sentence to probation, he is again arrested for a felony class B drug sale. He pleads to a misdemeanor, serves a short jail term and remains on probation. Two months later, he is arrested on another felony class B drug offense, but still remains at liberty. Four months later, he is again arrested for felony class B drug sale and felony class A-II drug possession. Finally, his probation is revoked and he is sentenced to one to three years in prison. Within three years, he reappears with a misdemeanor drug possession arrest. Over the next 18 months he has a series of three arrests involving felony class B drug sale offenses as well as resisting arrest. The series of arrests result in a second prison sentence of three to six years.

Case 7:

This male is first arrested as an adult in New York State at 16 years of age. He is arrested for felony class B drug sale and sentenced to a five-year probation term. Within nine months of his sentence to probation, he is rearrested for felony class C drug possession. While on pretrial release (and probation), he is arrested twice more, first for misdemeanor drug possession and then for felony class B drug sale. These various arrests result in a second probation sentence of five years. Within three years, he is again arrested on felony class B drug charges and receives a prison term of five to ten years.

Case 8:

This male is first arrested as an adult in New York State at 23 years of age. His first arrest involves a property misdemeanor, for which he fails to appear for trial. Within a few months, he is rearrested on multiple drug sales including sale near school grounds and is sentenced to a five-year probation term. Within two years, he reappears with two new arrests, including criminal possession of a weapon. He still remains at liberty and, within a month of the weapon arrest, he is rearrested for felony class B drug possession. He pleads guilty to a misdemeanor possession offense and is sentenced to two days of community service. Within four months, he is again rearrested for felony class B drug sales, including sale of drugs near school grounds. Finally, he receives a prison term of 18 months to three years.

Case 9:

This male is first arrested as an adult in New York State at 19 years of age. He first appears with a felony class B drug arrest for which he receives a misdemeanor conviction and three years probation. Within a month of his sentence to probation, he is rearrested for misdemeanor drug possession. He remains at liberty and is arrested two months later on felony class B drug sale. He pleads guilty to attempted sale and is again sentenced to probation (five-year term). Six months later, he is again arrested for felony class B drug sale, absconds on pretrial release and is later acquitted at trial. Within another six months (and prior to his acquittal), he is rearrested for a variety of offenses including robbery, assault, grand larceny and criminal possession of stolen property. These charges get dismissed and he remains on probation. Finally, within another year, he is arrested on multiple felony class B drug sale offenses including a sale near school grounds. His probation is revoked and he is sentenced to 54 months to nine years.

Case 10:

This male is first arrested as an adult in New York State at 18 years of age, at which time he is arrested for three counts of felony class B drug possession and receives a one-year jail term. Within three months of his release from jail, he is again arrested for three counts of felony class B drug possession. He is released pretrial and absconds, only to return two years later with a new arrest for felony class B drug possession. He receives a prison term of one to three years.

Case 11:

This male is first arrested as an adult in New York State at 17 years of age, at which time he is arrested for felony class B drug sale (two counts). Within two week, he is twice rearrested for the same offense. He pleads guilty to one of the charges and is sentenced to five years of probation. Two months after receiving the probation sentence, he is again rearrested for felony class B drug sale. His probation is revoked and he is sentenced to one to three years in prison. He reappears two and one-half years later with two new arrests within two months of each other. Both involved felony class B drug sales. One occurs near school grounds and the other arrest included a charge for possession of burglary tools. He is then sentenced to prison for 30 months to five years.

Case 12:

This male is first arrested as an adult in New York State at 36 years of age. The first arrest involves multiple felony class B drug sale charges. Within two months of that arrest and while on pretrial release, he is rearrested for felony class C drug sale. He pleads guilty and receives a one-year jail term. Within a year of his release from jail, he is again arrested for two counts of felony class B drug sale and receives a sentence of three to six years in prison.

Case 13:

The subject is a male whose first adult arrest in New York State occurs when he is 26 years of age. The first arrest involves multiple charges of felony class B drug sale, including sale near school grounds. He is released pretrial for less than a month when he is arrested for two more counts of felony class B drug sale. These two cases result in a sentence of one to three years in prison. Less than a year later, he is again arrested for felony class B drug sales, including sale near school grounds. He is again sentenced to prison for a term of thirty months to five years.

Case 14:

This male is first arrested as an adult in New York State at 17 years of age. He is first arrested for two counts of felony class B drug sale and sentenced as a youthful offender to a one-year jail term and five years of probation. Within 18 months of his release from jail, he is rearrested for felony class B drug sales. He is released pretrial and jumps bail. Within a few months he is arrested on the bail jumping offense, his probation is revoked and he is sentenced on the drug charge to one to three years in prison.

Case 15:

This male is first arrested as an adult in New York State at 16 years of age. His initial arrest involves harassment and misdemeanor assault charges. Within one month and while on pretrial release, he is arrested for criminal trespass. He is again released pretrial and arrested one month later in possession of stolen property and burglary tools. He pleads guilty to trespass and receives 15 days in jail. Two months later, he is again arrested on criminal trespass and receives another 15-day sentence. One month later, he is arrested for three counts of felony class B drug sale and again released pretrial. He absconds and is returned and sentenced as a youthful offender to one year in jail and five years of probation, after which his original assault charge is dismissed. Nine months later, he is rearrested for felony class B drug sale. He is released pretrial and returns a month later with a felony class C drug possession charge. His probation is finally revoked and he is sentenced to one to three years in prison.

Case 16:

The subject is a female whose first adult arrest in New York State occurs when she is 39 years of age. Her first arrest involves a felony class B drug sale near school grounds and multiple drug possession charges. Within seven months and while on pretrial release, she is arrested three more times; each arrest involves felony class B drug sales, including a sale near school grounds. Finally, she is sentenced to prison for one to three years.

Case 17:

This male is first arrested as an adult in New York State at 19 years of age. His first arrest involves felony class B drug sales including sales near school grounds. While on pretrial release, he is twice rearrested. His first rearrest occurred less than a month after his initial arrest and involves harassment and obstruction of governmental administration. Within another month, he is again arrested for felony class B drug sales, including sale near school grounds. He receives a prison term of one to three years.

Case 18:

This male is first arrested as an adult in New York State at 24 years of age, at which time he is arrested for multiple counts of felony class B drug sale. While on pretrial release, he is rearrested on felony class B drug charges. The cases are consolidated and he is sentenced to a prison term of one to three years.

Case 19:

This male is first arrested as an adult in New York State at 17 years of age, at which time he is arrested for multiple counts of felony class B drug sale. He receives a youthful offender adjudication and a five-year probation term. Less than a month later, he is again arrested for felony class B drug sale. His probation is revoked and he is sentenced to one to three years in prison.

Case 20:

This male is first arrested as an adult in New York State at 37 years of age, at which time he is arrested for of felony class B drug sale, criminal trespass and resisting arrest. He absconds while on pretrial release and is returned within a month with a new series of arrests involving felony class B drug sale and criminal trespass, and eventually receives a sentence of three months in jail and five years on probation. He is on probation for less than two months when he is again arrested for multiple counts of felony class B drug sale and resisting arrest. His probation is revoked and he is sentenced to two to four years in prison.

Conclusion:

This report provides an accurate and objective insight into the manner in which New York State's criminal justice system adjudicates persons charged with drug offenses. Contrary to images portrayed by Rockefeller Drug Law reform advocates, the drug offenders serving time in our State prison system today are committed to prison because of their repeated criminal behavior leaving judges with few options short of prison.

In the past decade, numerous alternative to prison and prison division programs have been implemented to target non-violent drug abusing offenders in an effort to reduce unnecessary reliance on prison and reduce recidivism among this category of offenders. The programs range from merit time, to Shock Incarceration, D-TAP, and the Willard Drug Treatment program. Those programs and others have yielded promising results; however, as this report clearly demonstrates, when offenders continue to flaunt the system and fail to abide by the conditions of their release, the court must take swift action and impose appropriate sentences of imprisonment in order to protect society and break the cycle of crime.

Mr. MICA. Thank you for your testimony.

We will recognize now Ms. Barbara Broderick, director of Adult Services, Administrative Office of the Courts, from Arizona.

Ms. BRODERICK. Thank you, chairman and members of the committee. I would ask to have my written testimony submitted.

Mr. MICA. Without objection, we will make that part of the record. And if you would just pull that mic as close as possible, we will be able to hear.

Ms. BRODERICK. Sure.

Mr. MICA. Thank you.

Ms. BRODERICK. I also will attempt to shorten my version.

I am not here to discuss decriminalization of drugs but rather, to relate to you a strategy that I think is very promising to taxpayers and to public safety. It is a system that talks about strong probation with available and effective drug treatment services. One point I have to make very clear: while the courts can provide you with information, basically, on drugs and about drug offenders, we take no position in terms of legalization. That rightfully belongs with the legislative and the executive branches of Government.

I am the director, as you stated, of probation programs at the State level in Arizona. Our probation system is very different than a lot of other States. We are under the auspices of the judiciary, and we have a decentralized system with the 15 counties. Each chief probation officer reports directly to the presiding judge of our superior court.

Another thing that is very fortunate about Arizona, we have a very well-funded probation system. I grant you it has probably one of the best supervision and control mechanisms in the Nation. We have in statute for standard supervision, 1 officer to 60 adults. For our youth, it is 1 officer to 35. For our high-risk felons, it is 2 to 25. When you have a system like that, what you start to look for is how do you actually bring in the treatment services. That is what was lacking in Arizona.

In 1996, the citizens passed Proposition 200, better known as the Drug Medicalization, Prevention and Control Act. This particular act, I am happy to say, gave us the ability to bring in more drug treatment dollars to the courts, close to $3.1 million. It also brought in another $3.1 million to a parents commission that basically deals with prevention. And it brought in another $2.7 million to our Department of Corrections to actually place programs in the facilities to deal with substance abuse.

In Arizona, not unlike the rest of the Nation, two out of three people on community supervision have a substance abuse problem. We also have the ability to use the National Institute of Justice's Arrestee Drug Abuse Monitoring Program, better known as ADAM, and if you look at the 1998 annual report, you will see that Phoenix is listed. Basically, 63 percent of the men who are arrested test positive for drugs, and more alarming, perhaps, is the fact that 71 percent of the women also test positive for drugs.

The first report I am going to talk to you about—and I will be talking about two—is going to be dealing with what we call the Drug Treatment and Education Fund. This is the fund that was made available through Proposition 200 and came into the probation system.

First, and probably most importantly, the DTEF—as we call it, very similar to DTAP—hypothesis is: If substance-abusing offenders can be accurately and effectively assessed as to the risk and degree of substance abuse, and these offenders can be matched with effective treatment interventions determined through research to confront their presenting problems, and supervised closely by probation, then substance-abusing behaviors can be reduced or eliminated, offenders' quality of life will improve through recovery, community safety will increase, and incarceration will be primarily reserved for the violent and chronic offender.

Now, one problem that emerged with the passage of DTEF was the idea that we could not use jail as a sanction for revocation. One of the fallacies to that—and that has been a part of what the national press has talked about—is we can—it is at the discretion of the judge. At the time he or she decides to sentence, they can impose up to a year of jail time as a condition of probation. And when we find people in non-compliant behavior, we can go back to the court and ask the court to impose a sanction of jail.

We have also gotten very creative because, as a part of the DTEF, we are not allowed to send back first and second non-violent possessing offenders to prison. So we have gotten very creative in terms of the sanctions that we will use. We have done things like move people into intensive probation. We have moved them into day reporting. There is nothing worse than having to come down to a probation office at 7:30 a.m., and 7:30 p.m. We have also established more and more programs.

Now, our first year, the accomplishments were very encouraging. We created basically 2,600 more treatment slots, and they range from everything from education classes right on through to long-term residential beds. Arizona is a rural State. We have one big metropolitan area and one suburban. We have Phoenix and we have Tucson. The rest of the State is very, very small. We have actually created a tremendous amount of treatment slots in very rural counties.

What we found was the following: In our first year of operation—and it was partial operation—we were able to basically match offenders into appropriate treatment over 90 percent of the time. We were also able to have 932 people go through treatment, and 3 out of 5 of those people completed successfully.

Now, one of the problems—or not necessarily a problem—was our first year, we did not look at an outcome evaluation. We have not found the recidivism data. We do not have quality-of-life information to give you. We have preliminary results, and you have to take these very cautiously. But they are good. We basically found that primarily 75 percent of the offenders could offset their treatment by at least paying for part of it. We also found that about 77 percent of them remained drug-free. We also found that probation coupled with treatment was cheaper than incarceration.

Now, the second report that I am going to talk to you about is probably more methodologically sound. It is an audit that was conducted by our Office of the Auditor General, and they came in with a question that was posed by the legislature, and I will read the question. The legislature asked: "How effective are substance abuse programs at reducing abuse and crime, and do they contribute to

the successful completion of probation?'' The audit came in and basically had to answer that question.

They looked at 845 cases, randomly selected from four counties, representing 80 percent of our population. Those four counties had two of the big urban areas and two rurals. Basically, what they found out is the following: Probation with treatment works. Eighty-five percent, very similar to what D.A. Hynes was talking about, of the individuals who were in drug treatment and successfully completed it then went on to successfully complete probation. This is a 4-year study. Those people who were in alcohol treatment with probation, 80 percent went on, if they completed treatment, to complete their probation successfully. Now, by contrast, those people who refused to go into treatment, only 22 percent of them completed their probation successfully.

Another interesting statistic is, only 57 percent of the people who were not identified actually were ever able to complete the probation.

I can go on. There are some other interesting ones that deal with employment. Ninety percent of the people who are consistently employed will do well. Those people who do not stay consistently employed will do poorer, about 40 percent, and the same is true for those who have paid full restitution and do their community work service. People who do their probation will do well.

In conclusion, I just want to talk to you about something that Joan Petersilia's work talked about. She is the former director of RAND's Criminal Justice Research Center, and she is a professor at the University of California at Davis. Basically, she recognizes the probation system and the treatment system in Arizona as one of the most effective. We believe that probationers, if they can become clean and sober, will maintain jobs, they will pay in full their restitution, and they will live law-abiding lives, resulting in safer communities, improved family and social relationships, increased productivity and wages, and decreased health costs.

Thank you very much.

[The prepared statement of Ms. Broderick follows:]

Testimony

Before the Subcommittee on Criminal Justice, Drug, Policy and Human Resources, Committee of Government Reform, House of Representatives

The Arizona Experience: Probation with Treatment Protects the Community

Statement of
Barbara A. Broderick
State Director of Adult Probation
Administrative Office of the Courts
Arizona Supreme Court

The Arizona Experience: Probation with Treatment Protects the Community

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to be with you here today, representing the Arizona Administrative Office of the Court and adult probation system.

I am not here to discuss the decriminalization of any drugs, but rather to relate a promising strategy for taxpayer savings and public safety – a strong probation system coupled with available and effective substance abuse treatment. One point should be made clear: While the courts can provide you with information based on our daily experiences of dealing with large numbers of offenders, a decision about the criminalization or legalization of any drugs rightfully belongs in the legislative and Executive branches of government.

In Arizona, as is the case in many states, adult probation is a part of the court system. Of the offenders we see in court nearly 70 percent have a substance abuse problem. Thus we have considerable experience in dealing with offenders who abuse alcohol and drugs.

I am pleased to discuss two recent reports examining the impact of substance abuse treatment with sentenced probationers in the state of Arizona. Both Reports substantiate earlier findings that substance abuse treatment is beneficial to the probationer receivng treatment, and to society. The studies found less drug usage, more productivity, and lower criminal activity for those in treatment.

I am the Director of probation programs at the state level in Arizona. Our probation system is under the auspices of the judiciary and is a decentralized system of service delivery. There are fifteen counties in Arizona in which a chief probation officer reports to the respective presiding judge of superior court.

In Arizona, we are fortunate to have a legislature that has funded a probation system at a level that can provide meaningful supervision and control. The average adult probation caseload is funded at one officer to sixty offenders, and the average juvenile caseload is one officer to thirty-five youths. Arizona also has a large intensive probation program with caseloads of two officers for every twenty-five probationers. These caseload ratios are some of the best in the Nation and are necessary to have probation services that work. I should mention that the cost of such a system is not excessive. In Arizona it costs approximately $800 per year to keep a person on standard probation.

However, our system lacked sufficient funds to tackle the overwhelming problem of substance abuse amongst its charges until the passage of the 1996 proposition 200, formally known as the drug medicalization, prevention and control act. The Arizona Court and probation systems did not endorse nor campaign for the passage of Proposition 200, but once passed by the voters, was responsible for implementing a

PORTION OF THE NEW LAW.

TWO OUT OF THREE ADULT PROBATIONERS IN ARIZONA HAVE A PROBLEM WITH DRUG/ALCOHOL ABUSE. THIS IS CONSISTENT WITH THE FINDING FOR PHOENIX FROM THE NATIONAL INSTITUTE OF JUSTICE'S ARRESTEE DRUG ABUSE MONITORING PROGRAM (ADAM) 1998 ANNUAL REPORT – 63 PERCENT OF MALES ARRESTED TESTED POSITIVE, AND 71 PERCENT OF THE WOMEN.

THE FIRST REPORT I WILL DISCUSS HAS RECEIVED SIGNIFICANT NATIONAL ATTENTION IN RECENT MONTHS. I MUST CAUTION EVERYONE THAT THIS LEGISLATIVE REPORT ON THE DRUG TREATMENT AND EDUCATION FUND (DTEF), WHICH WAS CREATED BY THE 1996 PROPOSITION 200, PRESENT EARLY RESULTS OF THE PROGRAM'S FIRST YEAR OF IMPLEMENTATION. MY OFFICE WAS REQUIRED TO PREPARE THIS INITIAL REPORT FOR THE LEGISLATURE UNDER ARIZONA LAW. THE REPORT'S BOTTOM LINE IS THAT TREATMENT WITH ADEQUATE SUPERVISION WORKS BUT THE BENEFITS SHOULD NOT BE OVERESTIMATED.

THE DTEF HYPOTHESIS IS:

IF...SUBSTANCE ABUSING OFFENDERS CAN BE ACCURATELY AND EFFECTIVE ASSESSED AS TO THEIR RISK AND DEGREE OF SUBSTANCE ABUSE;

AND

THESE OFFENDERS CAN BE MATCHED WITH THE EFFECTIVE TREATMENT INTERVENTION DETERMINED THROUGH RESEARCH TO CONFRONT THEIR PRESENTING PROBLEMS, AND SUPERVISED CLOSELY BY AN EFFECTIVE PROBATION SYSTEM;

THEN...

SUBSTANCE ABUSING BEHAVIORS CAN BE REDUCED AND/OR ELIMINATED;
OFFENDERS' QUALITY OF LIFE WILL IMPROVE THROUGH RECOVERY;
COMMUNITY SAFETY WILL INCREASE; AND
INCARCERATION WILL BE PRIMARILY RESERVED FOR VIOLENT AND CHRONIC OFFENDERS.

ONE PROBLEM THAT INITIALLY EMERGED WITH THE PASSAGE OF THE PROPOSITION WAS THE PROHIBITION OF INCARCERATING OFFENDERS IF THEY DID NOT COMPLETE TREATMENT. SOME CRITICS OF THE DTEF PROGRAM HAVE FOCUSED ON THE FACT THAT WE NO LONGER HAVE THE "HAMMER" OF JAIL TIME IF A PROBATIONER REFUSES TO PARTICIPATE WITH HIS OR HER TREATMENT PROVIDER. THOUGH IT IS A LEGITIMATE POINT OF DISCUSSION, THIS IS NOT THE CASE IN ARIZONA AS THE JUDGE AT THE TIME OF INITIAL SENTENCING MAY IMPOSE A TERM OF JAIL (LESS THAN A YEAR) AS A CONDITION OF PROBATION. WE CAN INFORM THE COURT OF NONCOMPLIANT BEHAVIOR AND THE JUDGE CAN IMPOSE THE DEFERRED JAIL TIME. HOWEVER, IT IS TRUE THAT WE CANNOT USE INCARCERATION AS A PUNISHMENT RESULTING FROM THE REVOCATION PROCESS. THIS ISSUE MAY WARRANT FURTHER LEGISLATION. WE CAN REVOKE FOR NONCOMPLIANT BEHAVIOR AND IMPOSE OTHER MORE CREATIVE INTERMEDIATE SANCTIONS SHORT OF INCARCERATION, I.E., INTENSIVE PROBATION, ELECTRONIC MONITORING, OR DAY REPORTING.

THE DTEF PROGRAM RECEIVES ITS FUNDING FROM A PERCENTAGE OF THE REVENUE GENERATED BY THE LUXURY TAXES ON BEER, WINE AND LIQUOR. FIFTY PERCENT OF THE MONEY DEPOSITED INTO THE FUND IS DISTRIBUTED BY THE ADMINISTRATIVE OFFICE OF THE COURTS (AOC) TO THE SUPERIOR COURT PROBATION DEPARTMENTS IN EACH COUNTY TO COVER THE COSTS OF PLACING PROBATIONERS IN DRUG EDUCATION OR SUBSTANCE ABUSE PROGRAMS. THE REMAINING 50 PERCENT IS TRANSFERRED TO THE ARIZONA PARENTS COMMISSION ON DRUG EDUCATION AND PREVENTION FOR

INITIATIVES THAT ENHANCE PARENTAL INVOLVEMENT AND INCREASE PUBLIC AWARENESS ABOUT THE SERIOUS HEALTH RISKS CAUSED BY THE ABUSE OF ALCOHOL OR CONTROLLED SUBSTANCES.

AS REQUIRED BY STATUTE, A FORMULA WAS DEVELOPED AND ADOPTED BY THE AOC TO EQUITABLY ALLOCATE THE FUND TO THE FIFTEEN LOCAL ADULT PROBATION DEPARTMENTS. THE FORMULA WAS BASED UPON EACH COUNTY'S AT-RISK POPULATION, THE NUMBER OF ARRESTS FOR POSSESSION AND SALE OF DRUGS, AND THE NUMBER OF FIRST-TIME DRUG POSSESSION CONVICTIONS IN FISCAL YEAR 1996. THIS COMPOSITE INDEX PRODUCED THE ALLOCATION FORMULA FOR DTEF TO INSURE FAIR DISTRIBUTION OF DOLLARS ($3.1 MILLION) TO RURAL, SUBURBAN AND METROPOLITAN PROBATION DEPARTMENTS. THE LOWEST AMOUNT RECEIVED WAS $10,000 TO THE SMALLEST DEPARTMENT (GREENLEE COUNTY, WITH ONLY 75 ACTIVE PROBATIONERS), AND THE LARGEST DISTRIBUTION WAS $1.7 MILLION TO MARICOPA COUNTY (THE PHOENIX METRO AREA, WITH MORE THAN 25,000 ACTIVE PROBATIONERS).

OUR FIRST YEAR ACCOMPLISHMENTS WERE ENCOURAGING: WE FOUND THAT THE DTEF PROGRAM CREATED OVER 2,600 ADDITIONAL TREATMENT SLOTS STATEWIDE FOR SUBSTANCE ABUSING PROBATIONERS. THE TYPE OF SLOT CREATED RANGED FROM DRUG EDUCATION CLASSES TO LONG TERM RESIDENTIAL BEDS. WE ADOPTED A STATEWIDE SUBSTANCE ABUSE SCREENING AND ASSESSMENT PROCESS TO MEASURE THE EXTENT OF THE CONTROLLED SUBSTANCE PROBLEM WITH PROBATIONERS.

OVER 90 PERCENT OF THE PROBATIONERS WERE PLACED IN THE RECOMMENDED TREATMENT CATEGORY AS ASSESSED. DURING THE FIRST YEAR, 932 PROBATIONERS FINISHED THEIR TREATMENT, WITH THREE OUT OF FIVE SUCCESSFUL. THOSE NOT SUCCESSFULLY DISCHARGED WERE REASSESSED AND PLACED IN A HIGHER LEVEL OF INTENSIVE TREATMENT OR WERE REARRESTED AND CHARGED WITH A NEW CRIME. ADDITIONALLY, THREE OUT OF FOUR PROBATIONERS PLACED IN DRUG TREATMENT REMAINED DRUG FREE AND PAID AT LEAST ONE CO-PAY TO OFFSET THE COST OF THEIR TREATMENT.

WE DID NOT ATTEMPT AN OUTCOME EVALUATION SINCE THIS WAS OUR FIRST YEAR WITH PARTIAL OPERATION. THERE WILL BE A THOROUGH EVALUATION DONE WITH COMPARISON GROUPS AND MORE DETAILED AND COMPLEX PERFORMANCE MEASURES, INCLUDING RECIDIVISM AND QUALITY OF LIFE INDICATORS.

WE ALSO FOUND THAT THE COST OF PROBATION SUPERVISION WITH TREATMENT $25 WAS LESS EXPENSIVE THAN INCARCERATION, ON THE AVERAGE $50. THOUGH THESE COST COMPARISONS ARE FAVORABLE FOR TAXPAYERS, WE HAVE PUBLICLY CAUTIONED POLICY MAKERS TO REMEMBER THAT THEY ARE PRELIMINARY IN NATURE.

THE SECOND REPORT IS FAR MORE IMPORTANT SINCE IT WAS AN INDEPENDENT AUDIT OF THE ADULT PROBATION SYSTEM COMMISSIONED BY THE ARIZONA LEGISLATURE IN MAY 1997. THE QUESTION THAT THE LEGISLATURE POSED WAS -- HOW EFFECTIVE ARE SUBSTANCE ABUSE PROGRAMS AT REDUCING ABUSE AND CRIME AND DO THEY CONTRIBUTE TO SUCCESSFUL COMPLETION OF PROBATION? THE AUDIT FOCUSED ON IDENTIFYING FACTORS THAT CONTRIBUTE TO ADULTS SUCCESSFULLY COMPLETING PROBATION. THE ARIZONA OFFICE OF THE AUDITOR GENERAL CONDUCTED AN EVALUATION OF 845 PROBATIONERS FROM FOUR COUNTIES RANDOMLY SELECTED BASED UPON CERTAIN CRITERIA WHO BEGAN THEIR PROBATION TERMS IN 1994. THESE PROBATIONERS WERE FOLLOWED UNTIL THEIR TERM ENDED (WHETHER SUCCESSFUL OR NOT) OR UNTIL SEPTEMBER 1998. THE FOUR COUNTIES, COCHISE, MARICOPA, PIMA, AND YAVAPAI, REPRESENT APPROXIMATELY 80 PERCENT OF ALL PROBATIONERS STATEWIDE. THE SAMPLE WAS ALSO GEOGRAPHICALLY SOUND WITH RURAL DEPARTMENTS FROM BOTH THE NORTHERN AND SOUTHERN HALF OF THE STATE REPRESENTED.

THE SAMPLE INCLUDED:

- 80 PERCENT MALE
- 61 PERCENT ANGLO
- AVERAGE AGE OF 31 YEARS
- THREE-FOURTHS HAD NO PRIOR FELONIES
- 60 PERCENT HAD COMMITTED ONE PRIOR MISDEMEANOR OFFENSE
- HALF HAD NOT COMPLETED HIGH SCHOOL
- 3 OUT OF 4 PROBATIONERS DISPLAYED A SUBSTANCE ABUSE HISTORY

THE AUDIT FOUND THAT SUBSTANCE ABUSERS WHO CONSISTENTLY ATTENDED OR SUCCESSFULLY COMPLETED TREATMENT WERE MUCH MORE LIKELY TO SUCCEED ON PROBATION AS COMPARED TO THE CONTROL GROUP. ABOUT 85 PERCENT OF THE INDIVIDUALS WHO COMPLETED DRUG TREATMENT SUCCESSFULLY COMPLETED THEIR TERMS OF PROBATION AND 80 PERCENT OF THOSE WHO CONSISTENTLY ATTENDED ALCOHOL ABUSE PROGRAMS FINISHED THEIR PROBATION SATISFACTORILY. BY CONTRAST, ONLY 22 PERCENT OF THOSE NOT COMPLETING TREATMENT FINISHED THEIR PROBATION TERM. FOR THOSE PROBATIONERS WHO WERE NOT IDENTIFIED AS NEEDING SERVICES, ONLY 57 PERCENT SUCCESSFULLY COMPLETED THEIR PROBATION TERM. FURTHER, THE AUDIT UNCOVERED THAT PROBATIONERS GRADUATING FROM TREATMENT/COUNSELING PROGRAMS HAD SIGNIFICANTLY FEWER SUBSEQUENT ARRESTS THAN NON-GRADUATES AND HAD REMAINED DRUG FREE LONGER.

THE AUDIT ALSO NOTES A 90 PERCENT COMPLETION RATE FOR PROBATIONERS WHO WERE CONSISTENTLY EMPLOYED DURING PROBATION VERSUS 41 PERCENT FOR THOSE UNEMPLOYED, AND AN 85 PERCENT SUCCESS RATE FOR THOSE COMPLETING THEIR COMMUNITY SERVICE VERSUS 40 PERCENT FOR THOSE WHO DID NOT. THESE FACTORS ALSO LED TO SIGNIFICANTLY FEWER RE-ARRESTS AND POSITIVE DRUG TESTS WHILE ON PROBATION. IN ADDITION, THE AUDIT FOUND THAT THE STATEWIDE PROBATIONER SAMPLE WAS PAYING FULL VICTIM RESTITUTION, AND NEARLY TWO-THIRDS PAID FULL FINES AND FEES. THE AUDIT'S CONCLUSION WAS SIMPLE: PROBATION WITH TREATMENT WORKS. THE AUDIT FURTHER STATED THAT – IN VIEW OF THE KNOWN RELATIONSHIP BETWEEN SUBSTANCE ABUSE AND CRIME, PLUS ARIZONA'S EMPHASIS ON DRUG TREATMENT, THE NEXT STEP IS TO ENSURE THAT EFFECTIVE TREATMENT IS AVAILABLE TO ALL WHO NEED IT (PROBATIONERS), WITH EMPHASIS ON ATTENDANCE IN AND COMPLETION OF COURT ORDERED SUBSTANCE ABUSE TREATMENT PROGRAMS BY THE PROBATION DEPARTMENTS.

THESE TWO REPORTS ALONG WITH MANY OTHERS, FOR EXAMPLE, JOAN PETERSILIA'S WORK, (FORMER DIRECTOR OF RAND'S CRIMINAL JUSTICE RESEARCH CENTER AND NOW A PROFESSOR AT THE UNIVERSITY OF CALIFORNIA AT DAVIS), RECOGNIZE ARIZONA AS ONE OF THE FEW STATES THAT IS WELL KNOWN FOR DELIVERING GOOD PROBATION SUPERVISION AND HAVING ADEQUATE RESOURCES TO PROVIDE TREATMENT AND SERVICES FOR ITS CLIENTS. THE KEY TO CHANGING THE ODDS FOR PROBATIONERS IS HAVING A STRONG SYSTEM OF SUPERVISION AND ENOUGH EFFECTIVE SERVICES TO CONFRONT THE PROBLEM OF ADDICTION. IF PROBATIONERS CAN BECOME CLEAN AND SOBER MOST WILL MAINTAIN JOBS, PAY IN FULL THEIR RESTITUTION, AND LIVE LAW ABIDING LIVES, RESULTING IN SAFER COMMUNITIES, IMPROVED FAMILY AND SOCIAL RELATIONSHIPS, INCREASED PRODUCTIVITY AND WAGES, AND DECREASED HEALTH COSTS.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU AND OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

NEWS RELEASE

ARIZONA SUPREME COURT • ADMINISTRATIVE OFFICE OF THE COURTS

For Immediate Release

March 18, 1999
Contact: John MacDonald
(602) 542-9656

AUDIT CONFIRMATION: PROBATION WITH TREATMENT WORKS

A performance audit of adult probation services in Arizona released today by the Office of the Auditor General provides independent confirmation of a belief long held by court officials: probation, coupled with substance abuse treatment services, significantly decreases the chance that criminals will commit future crimes.

The performance audit finds that probationers who complete substance abuse treatment programs, maintain employment, and complete community work services are much more likely to complete probation, and far less likely to have a subsequent arrest. Court officials are pleased with the audit's conclusions, which complement *Justice 2002*, the strategic agenda for Arizona courts which calls for increased substance abuse treatment programs for adult probationers.

"When done right, probation works well," said David Byers, Director of the Administrative Office of the Courts. "It is now clear that in Arizona, probation supervision coupled with drug treatment increases positive results and allows people who would otherwise be sent to prison to become effective, contributing members of the community. Those who are successful work, pay restitution and taxes, and save prison space to be used for offenders who cannot succeed in our communities.

"The Arizona Legislature should be commended for providing the resources necessary to make probation work," Byers added. "We have one of the finest systems in the country. There's more that needs to be done, but Arizona taxpayers have been well-served. It only costs the state about $725 per year to keep an adult on probation. By adding a small amount for drug treatment we are achieving dramatic savings by avoiding prison costs."

A recent United States Department of Justice study found the number of American adults in prison at its highest level ever. A subsequent Arizona Department of Corrections study showed nearly 26,000 Arizona adults in prison, the highest in Arizona history.

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However, the performance audit correctly notes that, "Probation is the most common way that offenders in Arizona's criminal justice system serve their sentences. At any given time in 1998, Arizona probation departments were actually supervising approximately 35,000 probationers."

The audit's positive correlation between substance abuse treatment services and successful probation was particularly striking. It recognizes that probationers who consistently participated in those services had completion rates of 85 percent. "Further, probationers graduating from treatment/counseling programs had significantly fewer subsequent arrests than non-graduates did, and had significantly fewer positive drug tests," the audit finds.

The audit also notes a 90 percent completion rate for probationers who were consistently employed during probation (versus 41 percent for those unemployed), and an 85 percent success rate for those completing their community service requirements (versus 40 percent for those who do not complete the service requirements). These factors also led to significantly fewer subsequent arrests and positive drug tests while on probation.

Byers also added that, because of the results of this audit and earlier research, Arizona courts are experimenting with the creation of Drug Courts, a specialized court dealing with drug crimes that features drug treatment services as a major component.

Also noted in the outcomes study is the fact that, of the statewide sample, nearly three-fourths paid full victim restitution, and nearly two-thirds paid full fines and probation fees, and completed their community service. This is in keeping with *Justice 2002*, which mandates strict compliance with court orders, specifically including victim restitution and community work service.

Copies of the performance audit are available on-line at the Auditor General website, *http://www.auditorgen.state.az.us/*.

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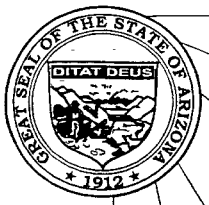

State of Arizona Office Of the Auditor General

PROGRAM EVALUATION

ADULT PROBATION PROGRAMS

Report to the Arizona Legislature
By Douglas R. Norton
Auditor General
March 1999
Report No. 99-4

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

DEBRA K. DAVENPORT, CPA
DEPUTY AUDITOR GENERAL

March 17, 1999

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Mr. David K. Byers, Administrative Director
Administrative Office of the Courts
Supreme Court

Transmitted herewith is a report of the Auditor General, An Evaluation of the Adult Probation Programs administered by the Supreme Court's Administrative Office of the Courts, Adult Services Division. This evaluation was conducted in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee.

The report describes factors that contribute to adults successfully completing probation. Of particular note was the fact that substance abusers who consistently attended or successfully completed substance abuse treatment were much more likely to successfully complete probation than was the general sample of probationers we evaluated. About 85 percent of the individuals who completed drug treatment succeeded in completing the terms of probation. And, 80 percent of those who consistently attended alcohol abuse programs successfully completed probation. In view of the known relationship between substance abuse and crime, plus Arizona's emphasis on drug treatment, the next step is to ensure that effective treatment is available to all who need it, and to emphasize attendance in and completion of substance abuse treatment programs. Since consistent employment and completion of community service also predict successful probation outcomes, probation departments should continue to emphasize these conditions of probation.

The evaluation identified differences in the ways counties manage probationers. Some counties emphasize restitution and rehabilitation and therefore are more tolerant of some forms of noncompliant behavior. Other counties appear more concerned with community protection, and are quicker to revoke misbehaving probationers. Follow-up evaluations could determine the relative costs and benefits of these approaches, but improved recordkeeping is needed to facilitate further studies. Better standards and guidelines for

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information collection, storage, and retrieval of both paper case files and electronic records, and development of a statewide electronic database, is required to expedite future research and evaluation. Such action is also important for decision-making, case management, and protecting victims.

As outlined in its response, the Administrative Office of the Courts agrees with most of the findings and recommendations presented in the evaluation. However, the Administrative Office of the Courts does not agree to work with County Probation Departments to determine the long-term cost-effectiveness of tolerating different degrees of criminal and non-compliant behaviors, while departments provide community-based rehabilitation. The Courts indicate that implementing this recommendation would be too costly. The Courts also disagree with the recommendation to develop specialized caseload assignments in smaller counties for probationers with mental health problems. It was suggested that a different method would be used to address this concern.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on March 18, 1999.

Sincerely,

Douglas R. Norton

Douglas R. Norton
Auditor General

Enclosure

SUMMARY

The Office of the Auditor General has conducted an evaluation of the adult probation programs administered by the Supreme Court's Administrative Office of the Courts, Adult Services Division. This evaluation was conducted in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee. The evaluation focused on identifying factors that contribute to adults successfully completing probation and examines the effect of substance abuse treatment programs, differing probation management approaches counties have adopted, and outcomes associated with gender and other demographic characteristics.

Under the Criminal Code, probation is a sentencing alternative for many crimes in Arizona. Most typically, it involves a convicted felon being placed under supervision for three to seven years for crimes ranging from theft, drug, or drunk driving charges to armed robbery and sex offenses. Offenders who are sentenced to probation are required to abide by standard conditions such as remaining law abiding, submitting to searchers, and possessing no weapons. Many sentences, in addition to probation, include some time in jail or prison. Courts may also impose financial obligations on probationers, such as fees for probation services and supervision, or restitution payments to a victim for economic loss, such as medical expenses.

Probation is the most common way that offenders in Arizona's criminal justice system serve their sentences. At any given time in 1998, Arizona county probation departments were supervising approximately 35,000 probationers. Given the recent dramatic rise in drug-related arrests, many of these probationers have substance abuse problems. The current trend in the Arizona criminal justice system is to emphasize substance abuse treatment rather than punishment. Since first- and second-time drug possession offenders can receive treatment during probation, it is necessary to determine the degree to which drug treatments are successful.

Factors Associated with Successful Completion of Probation (See pages 11 through 17)

This evaluation identified three factors that are associated with successfully completing probation. These factors are probationers' success in completing substance abuse treatment programs, maintaining employment, and completing community service requirements. Although the overall successful probation completion rate for this study was 63 percent, probationers who consistently participated in drug abuse counseling had successful probation completion rates of 85 percent. Similarly, substance abusers who frequently attended 12-step drug or alcohol programs such as Alcoholics Anonymous had probation success

rates of 80 percent. These probation completion rates are not only higher than those for probationers not successfully completing their treatment programs, but are also higher than those for probationers never required to attend such programs.

Because completion of substance abuse treatment programs is associated with higher probation success rates, efforts to initially screen probationers for treatment needs and to emphasize that they attend substance abuse treatment programs should be stressed. Many probationers were not identified as substance abusers and/or ordered to attended treatment at the time they were placed on probation. Approximately 17 percent of the probationers not initially ordered to attend treatment programs were later identified as having problems and ordered to do so. In addition, approximately 30 percent of those ordered to attend treatment never did. This group was more likely to have their probation revoked than those not ordered to treatment and those who completed treatment. Although in some cases this may have been due to a lack of funding and availability of such programs, more treatment should be available in the future through the Drug Treatment Education Fund established in 1996 and from which monies became available in fiscal year 1998.

Probationers who were consistently employed during probation had a 90 percent probation completion rate. Probationers with consistent employment also had significantly fewer subsequent arrests and positive drug tests during probation than those who were only sporadically employed. In addition, probationers who completed their community service requirements had probation success rates of 85 percent. These probationers also had fewer positive drug tests and tended to have fewer subsequent arrests than did those who did not complete community service. Therefore, supervision should continue to emphasize consistent employment and completion of community service

Counties' Degree of Tolerance for Criminal and Noncompliant Behaviors Affects Probation Outcomes (See pages 19 through 26)

Probation departments have a dual responsibility to provide probationers with opportunities for rehabilitation while at the same time protecting the community from crime. In Arizona each county sets its own policies for balancing these two responsibilities and each varies in the degree to which it tolerates criminal and noncompliant behavior in an effort to provide community-based rehabilitation. The four counties in the study vary in the extent to which they emphasize rehabilitation or community protection.

Variations in different levels of tolerance for criminal and noncompliant behaviors are reflected in various outcomes of the probation process. For example, Pima County revoked more probationers to jail or prison than did Maricopa. In addition, Pima County revoked its probationers more quickly than did Maricopa County, which tended to reinstate probationers with additional conditions or more stringent levels of supervision. While arrest rates for

probationers who were subsequently revoked are similar across the four counties, the extra time Maricopa County probationers spend in the community before eventually having their probation revoked does result in more crimes committed by these individuals.

In Maricopa individuals completing probation were more likely to pay full restitution to crime victims, do their community service, and complete probation early. However, it is not clear how the costs and benefits associated with probation departments' varying levels of tolerance for criminal and noncompliant behaviors compare to one another. A follow-up on early probation completers versus probationers who serve their full terms, and a more in-depth analysis of the behaviors of probationers who are eventually revoked, would help to determine the costs and benefits associated with different levels of tolerance.

Probationer Success Rates Vary by Gender and Other Characteristics (See pages 27 through 32)

Probation outcomes differ by gender. As a group, women are somewhat more likely to complete their probation, and, even if they violate their conditions of probation, they are less likely to have their probation revoked. However, while education, age, and income are all positively correlated with probation success for men, these relationships are different for female probationers.

Minorities are generally more likely to have their probation revoked and are less likely to complete probation early. However, this is generally accounted for by the fact that African-Americans whose probations were revoked had higher arrest rates and initially committed more serious types of crimes than non-minorities who had their probations revoked.

In addition, appropriate treatment is important for the probation success of offenders with mental health problems or mental disabilities. Probationers whose mental health problems are identified at the time of sentencing and who receive appropriate treatment do just as well in the probation system as the general population. However, probationers with mental health problems that are not identified and addressed in their conditions of probation do not fare well.

Finally, for the small group of probationers who abscond (flee and whose whereabouts are unknown), only two characteristics differentiate them from the population as a whole. They are more likely to fall into the 26-to-30-year-old age group and have an average lower education level than other probationers.

Recordkeeping Needs to Improve

(See pages 33 through 36)

Accurate and complete documentation in probation files is important for decision-making, case management, protecting victims, and research and evaluation. However, basic management information collected by county probation departments is difficult to retrieve and use in a timely manner. Specifically, case files often were missing information, or information was conflicting, disorganized, or illegible. In addition, electronic files are unreliable. The Adult Services Division of the Administrative Office of the Courts should work with the county probation departments to develop standards and guidelines for information collection, storage, and retrieval of both paper case files and electronic records, and to develop a statewide, standardized electronic database.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted an evaluation of the adult probation programs administered by the Supreme Court's Administrative Office of the Courts, Adult Services Division. This evaluation was conducted in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee. The evaluation focused on identifying factors that contribute to probationers successfully completing their probation. It examines such issues as the effect of substance abuse treatment programs, differing probation management approaches counties have adopted, and outcomes associated with gender and other demographic characteristics.

Drug and Alcohol Abuse Is Impacting the Criminal Justice System

From 1980 to 1996, the number of people in the criminal justice system tripled, due primarily to criminal activity linked to drug and alcohol abuse. Recent dramatic increases in arrests, convictions, and incarcerations for drug-related crimes have been accompanied by prison and jail overcrowding.

While Arizona's overall increase in the crime rate reflects the State's population growth, the number of alcohol- and drug-related offenses has increased more rapidly. Department of Public Safety Uniform Crime Reports from 1990 to 1996 show an 80 percent increase in arrests for illicit substance abuse, drug trafficking, and drug sales. During the same period, however, the increase in the total number of all crimes was much more reflective of the overall increase in population, and grew only slightly faster than the population.

The dramatic rise in drug-related crime imposes a heavy cost to taxpayers, businesses, neighborhoods, and families. It is estimated that in Arizona, approximately 30 percent of domestic violence incidents and nearly 80 percent of child abuse and neglect cases are attributed to substance abuse. Law enforcement officials attribute as much as 80 percent of theft and credit card fraud cases to substance abuse. While social costs are difficult to calculate, the federal government spends billions of dollars on drug prevention treatment, drug interdiction, and related child support and law enforcement. Law enforcement, prisons and jails, courts, probation, and substance abuse treatment demand increasing public resources. We estimate the combined taxpayer burden in Arizona to be approximately $105 million a year: about $65 million in county and state dollars, and approximately $40 million in federal monies.

The current trend in the Arizona Criminal Justice System is to emphasize substance abuse treatment rather than punishment. Since first- and second-time drug possession offenders can receive treatment during probation, it is necessary to determine the degree to which

drug treatments are successful. For example, to what degree can participation in substance abuse treatment lead to more successful probation; does treatment substantially reduce substance abuse; and does successful substance abuse treatment lead to lower crime rates over time? In addition, the recently created Drug Treatment and Education Fund will afford more probationers the opportunity to receive substance abuse treatment.

Probation in the Criminal Justice System

Under the Criminal Code, probation is a sentencing alternative for many crimes in Arizona. Most typically, it involves a convicted felon being placed under supervision for three to seven years for crimes ranging from theft, drug, or drunk driving charges to armed robbery and sex offenses. Many sentences, in addition to probation, include some time in jail or prison. Courts may also impose financial obligations on probationers, such as fees for probation services and supervision, or restitution payments to victims for economic loss, such as medical expenses.

Offenders who are sentenced to probation are required to abide by standard conditions such as remaining law abiding, submitting to searches, and possessing no weapons. Specialized requirements may also be imposed, such as having no contact with a crime victim, or participating in vocational or educational training or mandatory substance abuse treatment. Failure to adhere to the conditions of probation may result in more stringent conditions being imposed, a lengthening of the probationary period, or in revocation of probation, where the offender is sent to jail or prison to complete the sentence. Probation officers monitor offenders to determine whether they are complying with the terms of their probation. They can make recommendations ranging from discharging offenders from probation ahead of schedule to revoking probation and sending the offender to prison or jail.

Probation is the most common way that offenders in Arizona's criminal justice system serve their sentences. Over the last several decades, more than 60 percent of all adults under criminal justice supervision have served required sentences through probation in the community. At any given time in 1998, Arizona probation departments were actually supervising approximately 35,000 probationers. As of February 28, 1998, there were 33,513 active probationers. The number increased to 35,694 by November 30, 1998.

Together with parole, probation constitutes the community corrections portion of the criminal justice system. Probation and parole are believed to provide better opportunities than incarceration for rehabilitating offenders. Rehabilitation, in turn, is believed to lower the chance of criminal recidivism (relapse into criminal behavior). Although there are efforts to provide rehabilitation while inmates are incarcerated, former prison inmates have relatively high recidivism rates.

Probation Must Address Multiple Goals Affecting Both Offenders and Victims

The probation system involves a number of different participants, such as offenders, victims, courts, county probation offices, and other law enforcement personnel, and involves the difficult task of meeting multiple goals that range from protecting the victim to rehabilitating the offender. The six major goals of community corrections, as identified by the American Probation and Parole Association, are listed below, together with a discussion of the role probation departments and others play in meeting those goals.

- **Enforcing sanctions ordered by the court**—County probation departments are given the responsibility to enforce all sanctions or conditions ordered by the courts. More offenders with higher levels of risk are being placed on probation, often with more stringent conditions, through programs such as the Community Punishment Program (described further in the next section on pages 4 through 5), which range somewhere between incarceration and standard probation. Enforcement requires facilitation skills, ongoing monitoring, and timely response, both to signs of progress and incidents of noncompliance.

- **Assisting offenders**—While many offenders may genuinely have a motivation to change, they are unlikely to do so unless they receive help in altering their behavior or in learning new skills and forming different attitudes. To help offenders change from a criminal lifestyle to a socially acceptable and productive one, their attitudes toward employment, peers, authority, and substance abuse must be assessed and addressed. Probation officers need to specify appropriate behaviors and to provide offenders with access to programs that help them develop new skills, and learn appropriate coping skills.

- **Protecting the community**—Protecting the community has always been a primary objective of the criminal justice system. Probation officers must provide surveillance to monitor an offender's activities and social environment. Surveillance efforts include home visits, contacts with employers, neighborhood contacts, and electronic monitoring.

- **Assisting decision-makers**—Probation departments have a responsibility to provide decision-makers with complete and accurate information regarding offenders' backgrounds and their current risks and needs. Probation officers provide this information by conducting presentence investigations and by preparing reports that are used during alterations in the conditions of probation (such as revocation) as well as in determining if an offender should be released from probation.[1]

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[1] Probation officers may also begin the revocation process, which ends probation by having the offender complete his or her term in jail or prison.

- **Supporting victims**—Probation departments have a responsibility to support the rights of crime victims and to provide benefits to all those involved. To meet this responsibility, probation officers can assist victims through advising them of the offender's custody status, notifying them of arrangements for payment of restitution, informing them of supervision conditions, and notifying them if there is potential danger.

- **Coordinating services**—Finally, probation departments have a responsibility to coordinate services for probationers. Offenders under the supervision of probation departments require a variety of services throughout their rehabilitative process. While many of these services are increasingly provided in-house, probation departments are still largely dependent on other community service providers to meet these needs.

Probation Is Locally Administered but Primarily State-Funded

With the adoption of A.R.S. §12-251 in 1927, the probation system in Arizona was established as part of the superior court system in each county. Each county's presiding judge is responsible for the county probation department. Specifically, A.R.S. §12-251(A) designates the presiding judge in each county to appoint a chief probation officer to manage the probation department.

Probation departments were initially funded exclusively by counties. The first significant state funding occurred during 1985, and since that time the State's monetary involvement has continued to increase. For fiscal year 1999, over $76 million was scheduled for expenditure on probation services, with the State contributing approximately $50 million and the remainder provided by the counties and monies generated from fees and other sources. The State provides financial support in the following programs:

- **Standard Probation**—Standard probation is a sentencing option whereby a convicted offender is released into the community under the supervision of a probation officer in lieu of incarceration. Offenders may be required to seek substance abuse treatment or participate in other programs as directed by the court or the probation officer.

- **Intensive Probation**—This program for high-risk offenders, as measured by a risk assessment used by probation departments, began in 1986. It is more highly structured and requires stricter conditions than standard probation, such as more frequent reporting to probation officers, electronic monitoring, at-home surveillance, and abstaining from drug or alcohol use.

- **Community Punishment Program**—The Legislature established this program in 1988 to provide enhanced services for high-risk offenders who might otherwise fail to complete probation. Offenders who fail drug offender diversion programs, fail other re-

quirements for an existing probation term, or are newly sentenced to probation may be enrolled in Community Punishment Programs. Each Arizona County operates Community Punishment Programs differently, which may include the elements of electronic monitoring, sex offender treatment, or substance abuse treatment.

- **Drug Treatment Education Fund**—Voters approved Proposition 200 in November 1996. This proposition, known as the Drug Medication and Control Act of 1996, created a program that provides expanded drug treatment and education services to first- and second-time drug possession offenders. Each of Arizona's counties receives some of the Drug Treatment Education Fund monies for substance abuse treatment. Although the Drug Treatment Education Fund is primarily designed as a treatment program for drug offenders (not including alcohol), it can serve as a funding source for all substance abuse programs. Excess Drug Treatment Education Fund monies may be spent on other offenders with substance abuse problems after all offenders eligible under Proposition 200 are served. The increased resources afforded by this fund beginning in fiscal year 1998 allow the judicial system to better address the probationers' substance abuse issues.

- **Interstate Compact**—In 1996, probation departments began supervising offenders who were under supervision in other states but move to Arizona (this service was previously provided by the Department of Corrections). While the funding for most counties' Interstate Compact probationers is absorbed through the standard probation monies, four counties (Maricopa, Mohave, Pima, and Yavapai) have enough probationers to require at least one additional probation officer. As a result, the Legislature appropriated slightly more than $1 million in fiscal year 1998 for these counties.

Table 1 (see page 6) provides an overview of statewide expenditures for adult probation programs for fiscal years 1995 through 1998. As the table shows, most of the $45.9 million in state aid in fiscal year 1998 went to standard and intensive probation.

Table 1

Adult Probation Outcomes Study
Statewide Adult Probation Programs
Schedule of Expenditures by Funding Source
Years Ended or Ending June 30, 1996, 1997, 1998, and 1999
(Unaudited)

Source/Program	1996 (Actual)	1997 (Actual)	1998 (Actual)	1999 (Estimated)
State monies:[1]				
General Fund appropriations:				
Adult Standard Probation	$17,492,273	$18,468,955	$20,473,797	$22,163,585
Adult Intensive Probation	16,156,266	17,090,678	18,100,614	19,129,421
Community Punishment	3,440,737	3,447,883	4,115,147	4,182,932
Interstate Compact	776,433	1,051,563	1,120,011	1,313,900
Luxury privilege tax:				
Drug Treatment and Education		2,740	3,167,683	3,655,802
Total state expenditures	37,865,709	40,061,819	46,977,252	50,445,640
Other monies:				
County general fund[2]	15,726,591	16,735,435	15,838,983 [4]	15,054,922
Probation service fees	4,562,026	4,971,753	6,897,990	10,913,031
Total expenditures	$58,154,326	$61,769,007	$69,714,225	$76,413,593

1 Includes amounts disbursed directly to the counties, amounts paid by the State on behalf of the counties for expenditures such as motorpool charges and vehicle purchases, and amounts paid by the State for administrative costs and centralized services such as research, automation, and certification.

2 Includes estimates for Gila, Graham, Greenlee, La Paz, Mohave, and Santa Cruz Counties because they have combined juvenile and adult probation departments and do not separately account for adult probation expenditures.

3 Includes expenditures from federal grants, city grants, and other state grants such as Department of Education grants. The total amounts spent from these monies averaged about $2 million for fiscal year 1996 and 1997.

4 Estimated for 1998, figures not available from counties.

Source: Auditor General staff analysis of the Administrative Office of the Courts' financial reports, county finance department reports, and county adult probation department reports for years ended June 30, 1996, 1997, and 1998.

As of February 1998, about 87 percent of offenders on probation in Arizona were in standard probation. Table 2 shows the distribution of probationers by county. Probationers in the Community Punishment Program are included under standard probation. Probationers receiving services through the Drug Treatment Education Fund are not accounted for separately. Table 2 also shows staffing levels for each county's probation department as of December 1997. In all, the counties had 1,638.5 positions.

Table 2

Adult Probation Outcomes Study
County Adult Probation Departments
Populations Served in Standard, Interstate Compact, and Intensive Probation Programs at February 28, 1998, and Departments' Staffing Levels at December 31, 1997
(Unaudited)

	Probation Population				
County	Standard	Interstate Compact	Intensive	Total	Total Staff
Maricopa	18,762	762	1,518	21,042	898.0
Pima	3,481	238	608	4,327	284.8
Mohave	1,202	114	66	1,382	51.5
Yavapai	1,017	43	161	1,221	69.5
Pinal	894	31	83	1,008	53.0
Yuma	722	32	214	968	68.5
Coconino	771	32	118	921	50.5
Gila	551	11	33	595	24.4
Navajo	555	16	44	615	26.5
Cochise	406	29	136	571	50.0
Santa Cruz	129	11	34	174	20.0
Apache	194	19	40	253	20.0
Graham	183	2	14	199	8.0
La Paz	116	10	5	131	6.3
Greenlee	95	2	9	106	7.4
Total	29,078	1,352	3,083	33,513	1,638.4

Source: Adult Services Division, February 1998 *Monthly Statistical Report* and 1998 fiscal year *Midyear Closing Report* (as of December 31, 1997).

Audit Scope and Methodology

This evaluation focused on identifying factors that contribute to probationers' successful completion of probation, with particular attention to substance abuse treatment, and to a

lesser extent, how counties vary in their management of probationers. The focus on substance abuse reflects the profound effect of drug-related crimes on the criminal justice system in recent years.

The findings in this report are based on analysis of data generated from 845 probation files in 4 of Arizona's 15 counties: Cochise, Maricopa, Pima, and Yavapai. Approximately 80 percent of all probationers in Arizona reside in one of these four counties.[1] The 845 probationers included in the analysis all began their probation terms in 1994. The study covers the period from when each individual began his or her probation through the date the probation ended.[2] The 845 cases were drawn from the population of individuals who began probation in 1994 in the four counties that were selected. The sample was drawn in such a way to maximize the extent that statistically valid conclusions could be drawn. However, some constraints in the data collection (see Appendix A, pages a-i through a-vii), limit the extent to which conclusions regarding Cochise and Yavapai Counties can be made. As a result, county comparisons in the report focus on Maricopa and Pima Counties.

The evaluation was specifically designed to allow an assessment of how substance abuse treatment affected probationers. As a result, the sample included a group known to have a substance abuse problem and to have received treatment. For Maricopa and Pima Counties, this group included a large number of probationers who had Community Punishment Program as a condition of their probation, because these two counties use the Community Punishment Program to provide substance abuse treatment. However, offenders with known substance abuse problems who were not in the Community Punishment Program were also in the sample. The sample intentionally included substantial numbers of offenders sentenced for driving under the influence, and who have a substance abuse problem.

The sampling design also called for a group to be included that had a known substance abuse problem but who did not receive treatment. To serve as a comparison to the probationers who received substance abuse treatment as a condition of probation, this review included known substance abusers who were not required to attend substance abuse treatment. The sample also included probationers with no known substance abuse problem. See Appendix A (see pages a-i through a-vii), for a more thorough description of the sampling methods and the data collection procedures.

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1 The methodology used in selecting the counties and files, and a discussion of data, are provided in Appendix A (see pages a-i through a-v).

2 Some of the probationers were still on active probation at the time their files were reviewed. Their activities through the time their files were reviewed were analyzed.

The following provides some key descriptions of the total sample:[1]

- 80 percent were male
- Almost half had not completed high school
- The average age was 31 years
- Eighty percent were not married when their probation began
- Most had committed a class 4 or 6 felony[2]
- More than three-fourths had no prior felonies
- Approximately 60 percent had committed at least one prior misdemeanor (the average number of misdemeanors was 2.3)
- More than half had no prior supervision
- At the time of data collection the sample of 845 had the following probation dispositions:
  - 49 percent had successfully completed their probation
  - 9 percent were still on probation due to an initially longer-than-average term of probation
  - 5 percent were still on probation because their term had been lengthened or they had an additional/concurrent probation term added
  - 24 percent had been revoked to jail or prison
  - 5 percent absconded
  - 1 percent were decreased
  - 3 percent were transferred with no known outcome, and
  - 4 percent had dispositions that were unclear or unknown

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1 Additional information on the sample by county is provided in Appendix A, Tables 7, 8, and 9 (see pages a-iv and a-v).

2 Crimes are classified as felonies or misdemeanors. Felonies are more serious than misdemeanors. Felonies are assigned a class of 1 to 6, with 1 the most serious. For example, homicides are felony class 1 offenses. Robbery is a class 4 felony; sexual assault on a spouse is a class 6 felony.

Additional information was gathered through literature reviews; interviews with a variety of individuals in the system, including a judge, chief probation officers, supervisors, and treatment counselors; observations of substance abuse treatment services and 12-step programs for substance abuse; and review of county probation office documents regarding processes and procedures.

Complete information on each of the 845 probationers was not available. As described in Finding IV (see pages 33 through 36), some files contained conflicting or incomplete information. In cases where there was incomplete or conflicting information, missing values are assigned to that variable. As a result of this missing data, and the fact that not all of the 845 cases in the study had completed probation, the number of cases on which the analyses are conducted varies, since a case with a missing value on any of the factors being analyzed is excluded. A variety of methods, including linear and logistic regression, analysis of variance, and cross-tabulation were used to develop the findings in this report. Appendix B (see pages b-i through b-iv) provides additional detail about the analyses that are reported in Finding I (see pages 11 through 17), Finding II (see pages 19 through 26), and Finding III (see pages 27 through 32).

This report presents findings in four areas regarding:

- The impact of substance abuse treatment and other factors on the successful completion of probation;
- A comparison of probation completion rates and intermediate outcomes in the four counties, as well as the counties' treatment of probationers;
- Probation outcome variations among important subpopulations, such as women and absconders (probationers who flee and whose whereabouts are unknown); and
- An assessment of probation recordkeeping.

The Auditor General and staff express appreciation to the Administrative Office of the Courts, the Director and staff of the Adult Services Division, presiding judges, and the chief probation officers and their staff for their cooperation and assistance throughout the audit.

FINDING I

FACTORS ASSOCIATED WITH SUCCESSFUL COMPLETION OF PROBATION

The evaluation identified several factors that are associated with successful completion of probation in Arizona. Probationers who successfully complete drug treatment programs or actively participate in 12-step programs, such as Alcoholics Anonymous, are more likely to successfully complete probation, less likely to be arrested while on probation, and less likely to test positive for alcohol or drugs during probation. Additionally, probationers who remain consistently employed or who successfully complete required community service also are more likely to complete probation than those who do not. Not surprisingly, the factors most closely associated with failure to complete probation involved conditions that often result in incarceration: being arrested during the probationary period or otherwise being the subject of petitions to revoke probation. Arizona appears to have potential to make greater use of treatment programs for substance abuse among those offenders who are placed on probation.

Substance Abuse and Criminal Behavior

The success of substance abuse programs is of particular interest to probation systems. Many studies have found a relationship between drug and alcohol abuse and criminal activity. For example, individuals who test positive for drugs at the time of arrest have longer criminal records and have been imprisoned more often than those who do not. Forty-one percent of first-time offenders have a history of regular drug use, but the proportion jumps to 81 percent for those with five or more prior convictions. Studies have concluded that treatment of substance abuse may reduce criminal activity and that the justice system is one of the most important gateways to treatment delivery. With this in mind, in recent years the national trend has been to emphasize treatment for offenders with drug problems as opposed to incarcerating them. Arizona voters approved the Drug Treatment Education Fund in 1996, which created a program that provides expanded drug treatment and educational services to first- and second-time drug possession offenders. It can also serve as a funding source for all substance abuse programs, and excess monies may be spent on other offenders with substance abuse problems. Increased resources afforded by the fund allow the Courts to better address the substance abuse issues of probationers. The question is, how effective are these programs at reducing substance abuse and crime, and do they contribute to successful completion of probation?

Of the 660 probationers who had final probation outcomes in the current evaluation, 63 percent completed probation successfully and 37 percent did not. If probationers successfully completed probation, they were terminated on or before the predetermined date. Unsuccessful probation involved revocations to jail or prison, or probationers absconding by leaving the state, for example. The remaining 185 probationers in the sample were not included in the analysis because they neither successfully nor unsuccessfully terminated probation. The majority of these individuals were still under supervision at the conclusion of the evaluation.

Completing Treatment Programs Is Associated with Successful Completion of Probation

Probationers who consistently participated in drug or alcohol abuse counseling had significantly higher probation success rates, lower subsequent arrest rates, and fewer positive drug tests during probation than those who participated in but did not complete such programs. Their success in completing probation was also better than that for probationers who did not participate in such programs.

Completing drug treatment is associated with successful probation outcome—Individuals who completed drug treatment or counseling programs were significantly more likely to complete probation than were other probationers.[1] As Figure A (see page 13) shows, 85 percent of individuals who graduated from their most recent drug treatment or counseling program also successfully completed probation. By contrast, only 22 percent of those who did not graduate from treatment or a counseling session completed probation. Although attending drug treatment/counseling was often a condition of probation, not completing it did not necessarily lead to revocation.

As Figure A also shows, probationers who completed their treatment had a higher probation success rate than those who were not ordered to attend drug treatment or counseling. Only 57 percent of those not required to attend drug treatment or counseling successfully finished probation. The fact that those graduating had a significantly higher probability of completing probation than those without a known drug problem further demonstrates the impact of successful treatment.

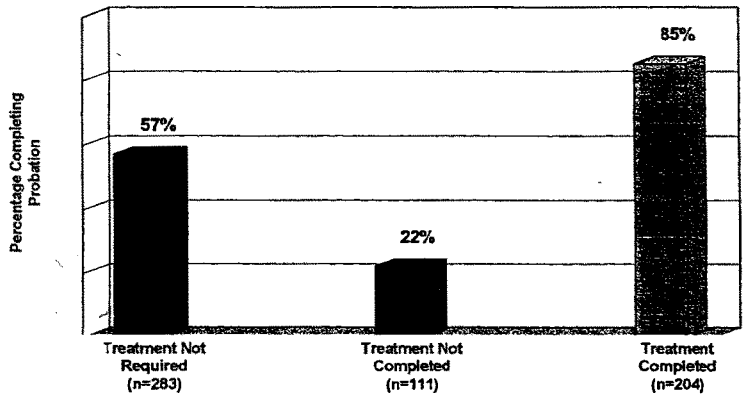
Further, probationers graduating from treatment/counseling programs had significantly fewer subsequent arrests than non-graduates did, and had significantly fewer positive drug tests. Although treatment graduates had significantly fewer positive drug tests than non-graduates, the graduates, on the average, still had some problems with drugs as indicated

[1] Information was collected on up to four substance abuse treatment programs probationers attended while on probation. The analyses are based on the outcome of the program they most recently attended.

by some probationers having positive drug tests after treatment. On the other hand, treatment graduates had rearrest rates similar to those not sent to treatment. It may be that treatment graduates were more motivated in general to complete the requirements of probation.

Figure A

Adult Probation Outcomes Study
Percentage of Successful Probations
and Result of Final Drug Treatment
As of September 1, 1998



Source: Auditor General staff analysis of sample of probationers' records who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Frequent attendance in 12-step programs predicts probation success—Similar results were obtained for substance abusers who frequently attended 12-step drug or alcohol programs such as Alcoholics Anonymous. These probationers were significantly more likely to complete probation (80 percent), than were those who seldom attended (42 percent). And for further comparison, only 57 percent of those not required to attend 12-step programs successfully completed probation. In addition, substance abusers who frequently attended 12-step programs also had significantly fewer arrests and positive drug tests than did those who seldom attended programs. As was the case with drug treatment graduates, frequent 12-step attendees still experienced some substance abuse problems and some were arrested

again, but abuse problems and recidivism rates were less than those observed for probationers who did not take full advantage of 12-step programs.

Consistent Employment and Community Service Are Associated with Successful Completion of Probation

While the issue of treatment programs relates to probationers with substance abuse problems, two other factors emerged as being strongly associated with positive probation outcomes for all types of probationers. These two factors were consistent employment during probation and completion of the community service requirement. In both cases, there was a substantial difference in probation success rates for those who maintained consistent employment or who completed community service and those who did not.

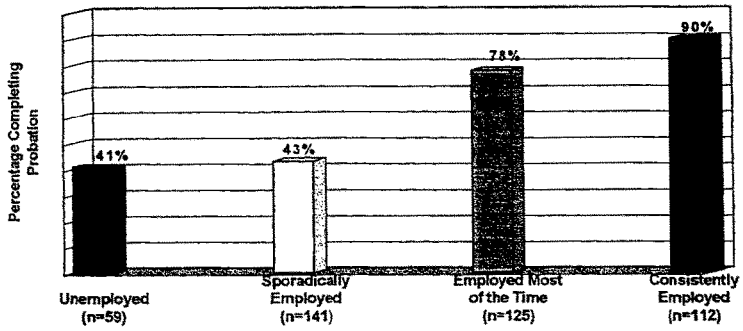
Consistent employment is associated with successfully completing probation—Probationers who were consistently employed throughout probation successfully completed probation at a 90 percent rate, as indicated in Figure B (see page 15). This success rate was somewhat better than that for probationers who were employed most of the time and significantly better than that for probationers who were employed sporadically or not at all. Consistently employed probationers also had significantly fewer arrests and positive drug tests during probation than those who were employed only sporadically.

In addition, probationers who were employed on a full-time basis at the beginning or end of probation completed probation at a significantly higher rate than individuals unemployed or employed on a part-time basis at those times. Full-time employment at the beginning or end of probation was also associated with fewer arrests and fewer positive drug tests.

Completion of community service is also associated with successful probation—Probationers who completed their community service requirement completed probation more often than did other probationers. As indicated in Figure C (see page 15), 84 percent of those completing community service also completed probation successfully. Only 40 percent of those who did not complete community service completed probation, and 61 percent of probationers not required to perform community service completed probation. Again, community service was a condition of probation, but not completing it did not always lead to revocation. As was the case with probationers who frequently attended 12-step programs, or completed drug programs, those who completed community service may have been more committed to completing probation than were other probationers. These probationers also had fewer positive drug tests and tended to have fewer subsequent arrests than did those who did not complete community service.

Figure B

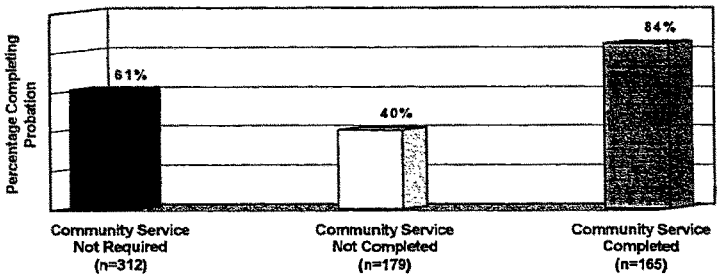
Adult Probation Outcomes Study
Consistency of Employment and
Percentage of Successful Probations
As of September 1, 1998



Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Figure C

Adult Probation Outcomes Study
Percentage of Adult Probationers
Successfully Completing Probation
and Community Service Participation
As of September 1, 1998



Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Repeated Arrests and Petitions to Revoke Were Linked to Probation Failure

Higher numbers of arrests and petitions to revoke during probation were associated with probation failure. As could be expected, new arrests lead to petitions to revoke, and petitions to revoke lead to revocation to jail or prison. And, revocation to jail or prison is, by definition, unsuccessful probation. By itself, an arrest or petition to revoke did not automatically lead to revocation to jail or prison. Decisions on revocation are made on an individual basis. Repeated arrests or petitions to revoke, however, were the factors most commonly associated with probation being terminated unsuccessfully.

Those assigned to Intensive Probation Supervision were less likely to successfully complete their probation than were other probationers. These individuals were considered high-risk probationers, were supervised more closely, and were required by statute to be revoked under certain conditions.

Greater Use of Treatment Programs Could Further Improve Probation Success

Conditions of probation, such as substance abuse treatment, afford probationers with opportunities for rehabilitation. Substance abusers who conscientiously took advantage of those opportunities had higher probation success rates and lower recidivism rates than did the probation population at large. However, almost one-third of the probationers ordered by the courts to go to treatment did not attend. Fully utilizing these programs (as a condition of probation during sentencing), and strongly emphasizing completion through probation supervision may lead to more successful probations in the future.

Many ordered to substance abuse treatment did not attend—At the time this evaluation was completed, a number of probationers with substance abuse problems did not receive drug counseling or attend treatment programs. For example, 161 of 536 probationers ordered by the courts to go to treatment did not attend treatment and were more likely than those who did attend to have their probation revoked. Failure to attend may have been partially due to lack of funding and availability of such programs. However, the Drug Treatment Education Fund, established in 1996, provides funding and requires the courts to direct substance abusers to treatment.

Additional screening could identify others who would benefit from treatment programs—With the potential availability of substance abuse treatment increased, efforts to screen offenders for abuse problems may be expanded. Auditor General staff analysis of the data found that probation officers identified a number of substance abusers through the course of probation and directed them to treatment programs. More specifically, 69 of the 309 proba-

tioners who were not initially ordered by the courts to attend treatment eventually were directed to attend, and 33 of these probationers subsequently received treatment. More effective screening for abuse problems prior to sentencing may result in placing more abusers in treatment and placing them there more quickly.

Recommendations

The Arizona Adult Probation System should:

1. Continue to screen offenders thoroughly for substance abuse issues prior to sentencing, so that all probationers in need may be directed to substance abuse treatment or counseling services.

2. Use monies from the Drug Treatment Education Fund to assure substance abuse treatment options are available for all probationers who need them.

3. Supervise probationers with special attention paid to completing substance abuse treatments and community service, and emphasize consistent employment as a condition of probation, as these factors significantly predict successful probation outcomes.

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FINDING II

COUNTIES' DEGREE OF TOLERANCE FOR CRIMINAL AND NONCOMPLIANT BEHAVIORS AFFECTS PROBATION OUTCOMES

When probationers were arrested or otherwise violated the conditions of probation, the four counties studied varied substantially in whether they allowed offenders to remain on probation or remanded them to jail or prison. These variations reflect differing levels of tolerance for relapse into criminal and/or substance-abusing or noncompliant behaviors. The differences in their tolerance for relapse were reflected in various outcomes of the probation process, such as how many probationers met their court-ordered financial responsibilities. However, additional research would be needed to determine the costs and benefits of various levels of tolerance.

Counties Have Wide Latitude in Setting Probation Policies

Probation departments have a dual responsibility to provide probationers with opportunities for rehabilitation while at the same time protecting the community from crime. In Arizona, each county sets its own policies as to how to balance these two responsibilities and to what degree relapse into criminal or substance-abusing behavior or noncompliance is tolerated as part of the rehabilitation process. One of the key areas involved relates to deciding when, and under what circumstances, to revoke probation. If a probationer commits an offense or does not comply with the terms of probation, a determination must be made whether to keep the offender on probation (perhaps with modifications to the conditions) or to revoke the probation entirely. Because rehabilitation is generally more likely to occur in community settings than in prison, keeping the offender on probation is often seen as an attempt to provide additional opportunities for rehabilitation. However, many probationers relapse into criminal or substance abuse behaviors. Probation departments can vary in the tolerance they have for continuing rehabilitation in the community or sending the offender to jail or prison, which may perhaps protect the community against the possibility that the offender will commit further crimes during the probation.

Probation officers have a statutory responsibility to bring defaulting probationers into court when they judge that the offender's conduct justifies the sentence being revoked. Arizona statute gives courts the discretion to revoke probation or modify conditions of probation. Probation officers also have a responsibility to make recommendations to modify conditions when the probationer's behavior exceeds expectations.

The process of bringing offenders back to court for new sentencing involves Petitions to Revoke (PTR). PTRs, which are completed by probation officers, may be filed for probationers who have committed a new crime or for technical reasons involving noncompliance with probation conditions. When a PTR is filed, the court has the discretion of sentencing the offender to jail or prison, ordering stricter monitoring, reinstating the offender with added conditions, or dismissing the petition. PTRs can also be withdrawn by a probation officer. However, the courts must revoke the probation and remand the individual to prison if the probationer is on Intensive Probation Supervision at the time of the new arrest.

Tolerance for Relapse to Criminal and Noncompliant Behaviors Differs Among Counties Studied

The four counties in the study vary in the extent to which their policies, particularly toward probation revocation, tolerate criminal relapse and noncompliant behaviors. The greatest distinction between tolerance for relapse was that of Maricopa County, which places a great emphasis on rehabilitation and tolerates more noncompliant and criminal behavior; and Pima County, which allows probationers only limited leeway. Yavapai and Cochise are somewhere between the two, with Yavapai closer to Maricopa, and Cochise closer to Pima.

Maricopa has higher tolerance for criminal and noncompliant behaviors—Maricopa County's focus is on rehabilitating of the probationer and promoting the use of intermediate sanctions if probationers relapse into criminal, substance abuse, or noncomplaint behaviors. The County's written procedures instruct probation officers to use counseling and warnings, or to modify supervision techniques if probationers are arrested for nonviolent crimes or otherwise commit violations of their probation conditions. Similarly, the County Superior Court has adopted a policy of intermediate sanctions, such as new conditions including short jail time, or substance abuse treatment rather than incarceration. The County uses PTRs as an intermediate sanction or warning, and also to refer probationers to additional rehabilitation interventions.

The Pima County model is less tolerant of criminal and compliance relapses and offers fewer options for intermediate sanctions. The County's written procedures say that a general unwillingness to abide by supervision requirements subjects a probationer to revocation. The probation department does not rely on PTRs as a sanction before revocation.

Differing tolerance levels are reflected in number and timing of revocations—Pima County, revoked more probationers to jail or prison than did Maricopa County (38 vs. 29 percent).[1] Differences in policies influenced not only the percentage of probationers revoked, but also how soon the revocation occurred. Pima County revoked probations after an average of 14

[1] No county differences in outcomes for probationers originally placed on Intensive Probation Supervision were found.

months. Maricopa, by contrast, revoked them after an average of 24 months. No significant differences in the reason for filing a PTR (new crime, technical violation, or both new crime and technical) were found for PTRs that resulted in revocations.

Compared to Pima, Maricopa was more likely to reinstate probationers with additional terms or change the level of supervision. The Maricopa County Criminal Justice System also used concurrent probation more often than other counties. Concurrent probation means an offender has committed a new crime and is serving two or more probation sentences simultaneously. These sentences overlap, meaning each day served on one term counts toward completion of the others.[1] Within the sample, 75 Maricopa probationers were serving multiple probation terms simultaneously, with 17 of them serving three concurrent terms. In the three other counties combined, 30 probationers were serving concurrent terms, and only one of them was serving three concurrent terms.

An example of a revocation that occurred in each of the two counties can help illustrate the differences in the counties' approaches. Each example comes close to matching the county's statistical average for months on probation and number of PTRs issued before the probation was revoked.

- **Example 1: Maricopa County**—Before being remanded to prison, this probationer served 22 months in community supervision and had two previous PTRs. This offender was convicted of drug possession and sentenced to three years' probation beginning in August 1994. In addition to conditions requiring payment of fees and fines, he was ordered to substance abuse treatment, prohibited from drinking alcohol, and ordered to serve four months' jail time. He seldom worked during probation, failed two drug treatment programs, and tested positive for marijuana and cocaine. He was revoked in November 1994 for technical violations and reinstated after serving more jail time. He was revoked again for technical violations and noncompliance in August 1995 and was subsequently reinstated. In June 1996, he was remanded to prison.

- **Example 2: Pima County**—Before being remanded to prison, this probationer served 13 months in community service and had no previous PTRs. He was sentenced to three years' probation for a drug offense in July 1994. He was ordered to serve two months in jail, perform 24 hours of community service, and pay fines. He was revoked to prison in August 1995 for a new arrest and technical violations.

Yavapai's and Cochise's approaches are between Maricopa's and Pima's—The two other counties have approaches somewhere between Maricopa's and Pima's. Similar to Maricopa County, Yavapai County appears to take a more traditional approach to relapse to criminal

[1] If one term expires, however, offenders are not released until all the terms are served. Within the constraints of the criminal code, judges are able to impose different conditions for each new conviction.

and noncompliant behaviors by probationers. Its probation officers consult with the appropriate judge to decide if a PTR will be filed. Cochise County's approach is similar to Pima County's. Its probation officers make a decision about filing a PTR based upon the severity and number of technical violations. In instances of a new felony arrest or an arrest for a crime similar to their probation offense, Cochise County officers are directed to file a PTR on the probationer.

Approaches Produce Varying Probation Outcomes

The differing levels of tolerance for criminal and noncompliant behaviors produce different outcomes in the probation process. Probation completers in Maricopa County were more likely to pay full restitution, do their community service, and complete probation early. However, revoked probationers in Maricopa County were also the most likely to have committed additional crimes before revocation. The counties showed little difference, however, in the degree to which fines were paid.[1]

Maricopa County probationers pay full restitution and complete community service more often—Maricopa County's probation completers are more likely to pay full restitution than are probation completers in Pima County. Probationers in Maricopa County paid full restitution 86 percent of the time. As seen in Table 3 (see page 23), Pima County probationers paid full restitution 77 percent of the time. Since Maricopa County had a larger portion of offenders who were employed when their probation began, it may be these probationers had more opportunity to pay money owed.

Yavapai County probationers paid full restitution only 60 percent of the time. The significantly smaller number of probationers in Cochise County paid full restitution only 33 percent of the time.

Probationers in Maricopa County completed community service, which was a frequent condition of probation, more often. Maricopa County probationers completed court-required community service 68 percent of the time, compared to 58 percent for Pima and 53 percent for Cochise.

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[1] Only probation completers are included in the analyses specific to payment of restitution, completion of community services, and payment of fines and fees.

Table 3

Adult Probation Outcomes Study
Percentage of Probationers Who Paid All Fines, Fees, and Restitution and Performed All Community Service
As of September 1, 1998

County	Fines	Probation Fees	Victim Restitution	Community Service
Maricopa	67%	68%	86%	68%
Pima	60	61	77	58
Yavapai	75	69	60	56
Cochise	38	32	33	53
Percentage for sample as a whole	64	64	74	64

Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Early completions earned more frequently in Maricopa County—Maricopa County probationers are more likely to earn early completion than are probationers in the other three counties. Fourteen percent or fewer of probationers in Pima and Cochise Counties earned early closure. However, Maricopa County had twice as many probationers, or 28 percent, earn early closure.

To complete probation early, probation conditions must be satisfied, including the paying of all fines and restitution, and the completion of community service. Early completers not only satisfy their responsibility to their community admirably and completely, but their termination allows court and probation department resources to be used on remaining caseloads.

The longer a probationer remains in the community, the greater the opportunity to re-offend—Most probationers in the study were not arrested while serving their probation sentence. However, some probationers, especially those whose probation was eventually revoked, were arrested while on probation. Figure D (see page 24) shows the number and types of crimes that resulted in probationer arrests. A very high percentage of the arrests were for drug or alcohol use, or for crimes known to be related to drug and alcohol abuse, such as shoplifting, theft, and family violence.

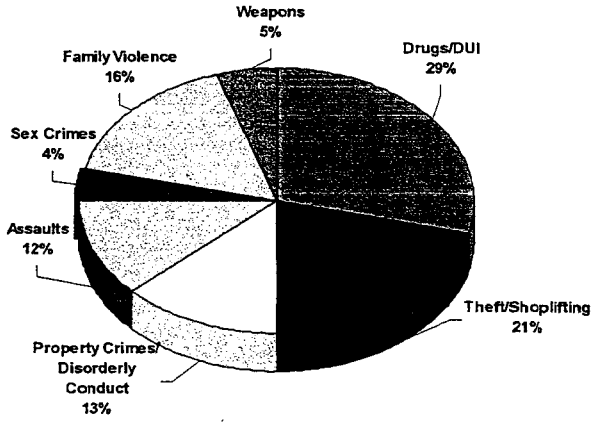
The arrest rates per month for these probationers were similar across all four counties. meaning that over a 12-month period of time, the same number of crimes per probationer would be committed regardless of the county. But, the extra time on probation afforded to

Maricopa and Yavapai probationers, as compared to their counterparts in Pima and Cochise Counties, resulted in more total arrests. For example, for every five revoked probationers in Maricopa County, an average of two more crimes are committed than occur for every five revoked probationers in Pima County.

Table 4 (see page 25) indicates how the counties differ in the use of revocation and how that relates to arrest rates. As indicated by the table, the average number of arrests while on probation for Maricopa and Yavapai County probationers who are eventually revoked is higher than for Pima and Cochise probationers.

Figure D

Adult Probation Outcomes Study
Arrests During Probation by Type of Crime
Shown as a Percentage of All Arrests Recorded
As of September 1, 1998



Number of recorded arrests = 186 (excludes arrests for which charges were dropped).

Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Fees and fines payment similar across counties—The different approaches taken by probation counties appear to have no impact on whether court-imposed fees and fines are eventually paid. Maricopa, Pima, and Yavapai Counties had probationers paying all fees and fines 60 to 75 percent of the time. The only notable difference among counties came from Cochise County, where persons who completed probation paid 32 percent of their fees and 38 percent of their fines. However, Cochise County secures civil judgments for money that probationers still owe at the time of termination. This procedure allows parties involved to continue pursuing payments after probation.

Table 4

Adult Probation Outcomes Study
Revoked Probationers
Comparison of Average Arrests During Probation, and
Average Number of Months Before Revocation, by County
As of September 1, 1998

County	Average Arrests Prior to Revocation	Average Months Before Revocation
Maricopa	.72	24
Pima	.37	14
Yavapai	.87	20
Cochise	.20	13

Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Additional Study Necessary

It is not clear how the costs and benefits associated with probation departments' different tolerances of probationers' criminal and noncompliant behaviors contrast with one another. A follow-up on early completers and their criminal recidivism rates after probation, compared to recidivism rates of probationers whose terms expire, would help answer these questions. Since most recidivism occurs within a short period of release from supervision, a long time span would not be necessary. A follow-up of one to two years should be sufficient to answer the question. In addition, a comprehensive comparative analysis of behaviors, while under supervision and after release, of probationers who are eventually revoked would answer some of the questions regarding revocation practices and the costs to the community. This question could also be analyzed using a design with random assignment of high-risk probationers (those most likely to be revoked) to a group who receives intermediate sanctions and to another group who does not.

Recommendation

The Adult Services Division of the Administrative Office of the Courts should work with County Probation Departments to determine the longer-term cost-effectiveness of different degrees of tolerance of criminal and noncompliant behaviors, in order to provide community-based rehabilitation.

FINDING III

PROBATIONER SUCCESS RATES VARY BY GENDER AND OTHER CHARACTERISTICS

Previous studies have found that probation outcomes vary with such characteristics as age, gender, and education. Like these other studies, this evaluation found differences in success rates, but it also found more complex relationships between the various characteristics analyzed than has been noted before. Outcomes vary between the sexes, between ethnic groups, and between those receiving and not receiving needed mental treatment. Analysis of probationers who abscond (flee the court's jurisdiction and whose whereabouts are unknown), shows that this group also has characteristics that differ from probationers who do not abscond.

Background

Of particular interest among previous studies of probation outcomes is the Arizona Supreme Court's 1995 study of adult probation outcomes. That study found the following:

- Female probationers were more likely to complete probation than males.
- The older the offender was at the time of sentencing the more likely he or she was to complete probation.
- Of both male and female probationers, those with at least a high school education are the most likely to complete their probation.
- Anglos were more likely to complete probation than were Hispanics or African-Americans.

The findings reported here generally replicate these findings, but they also show additional complexities in the relationship of the characteristics analyzed.

Comparisons Between Men and Women Show Substantial Differences in Probation Outcomes

Probation outcomes differ by gender. As a group, women are somewhat more likely to complete their probation, and, if they violate conditions of their probation, they are less likely to have their probation revoked. However, while education, age, and income are all positively correlated with probation success for men, these relationships are different for female probationers.

Success rates and sanctions differ—For the sample group studied in this analysis, women had a somewhat higher success rate in completing probation than men did. Sixty-five percent of women successfully completed probation, compared with 60 percent for men. The sanctions for violating terms of probation also differ. Women who do not fully comply with terms of probation are more likely to have their probation term lengthened, while men who do not comply are more likely to have their probation revoked and be sent to jail or prison, or given some other more restrictive sentence. Women who did not fully comply with the terms of their probation were three times as likely as men to have their time on probation lengthened.

Relationship between probation completion and education, age, and income also varies by gender—Three characteristics that are commonly associated with success rates in probation, education, age, and income, were analyzed across gender lines, and the relationships were not the same for women as for men.

- **Education**—Typically, higher education levels are generally related to probation completion. However, in the current evaluation the impact of education on successful completion of probation is much weaker for women than for men. Another way in which education levels affect women differently is that more highly educated women are even more likely to have their terms lengthened rather than revoked. These differences are more fully illustrated in Table 5 (see page 29).

- **Age**—When men and women are considered together, the results show a positive relationship between age and successful completion of probation; that is, the older the person, the greater the likelihood of successful completion. However, when the sexes are analyzed separately, this relationship changes. For example, males 20 years of age and younger are the least likely age group to successfully complete probation, but women of this age group are more likely than all but the oldest group to be successful. Figure E (see page 30), presents successful completion rates by age and gender.

- **Income**—Typically, probationers with higher incomes at the beginning of probation are more likely to complete probation. However, when the sexes are analyzed separately, the impact of income to probation completion disappears for women.

Table 5

Adult Probation Outcomes Study
Probation Outcomes for Men and Women
By General Education Level
In Percentages
As of September 1, 1998

	Men			Women		
	Less than High School	High School Graduate or GED	Some College	Less than High School	High School Graduate or GED	Some College
Unsuccessful						
Probationer absconded	8%	3%	2%	1%	3%	2%
Probation revoked	36	34	25	30	21	17
No Final Outcome						
Probation term lengthened	4	5	6	12	9	20
Successful						
Probation term expired	31	33	35	32	49	29
Early positive probation termination	21	25	32	25	18	32
Number of cases	220	157	109	69	33	41

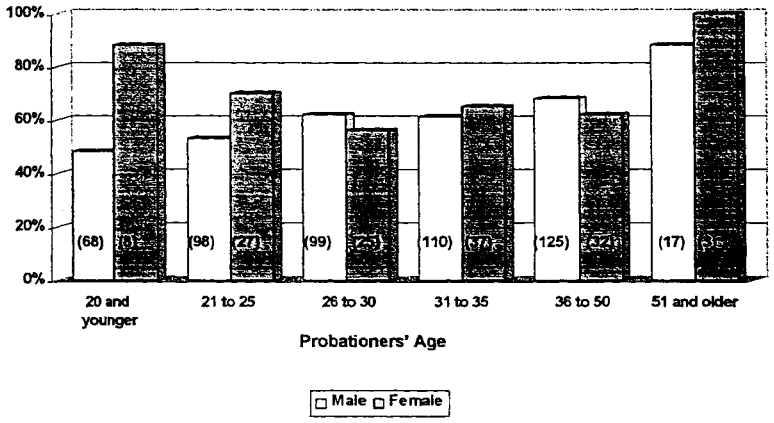
Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Differences in Revocation and Early Completion Found for Different Ethnic Groups

While Anglos are more likely to complete probation than were minorities, the differences in completion rates are not significant. However, when outcomes are examined more closely, for example, completion versus early completion, some differences emerge. Hispanics and African-Americans are more likely to have their probation revoked and less likely to have an early termination of probation than Anglos. However, differences among ethnic groups in the number of petitions filed to revoke probation, and severity of the crime that led to probation, appear to account for these differences in outcomes.

Figure E

Adult Probation Outcomes Study
Percentage of Probationers Who Successfully Completed Their Probation by Gender and Age
As of September 1, 1998



Number of cases = 649

Cases by gender and age group indicated in parentheses.

Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Revocation rates were 27 percent for Anglos, 35 percent for African-Americans, and 32 percent for Hispanics.[1] Early termination rates were 29 percent for Anglos, 16 percent for African-Americans, and 18 percent for Hispanics. For all three ethnic groups, the average number of months before probation was revoked was about 21.

African-Americans whose probation was revoked had a higher rate of arrests during their probation and a higher rate of petitions to revoke filed than either Hispanics or Anglos. They also were likely to be on probation for more serious crimes. The portion of offenders

[1] The numbers of Native Americans and Asian-Americans in the sample were relatively small, so they were excluded from this analysis.

on probation for class 2 or class 3 felonies, and whose probation was subsequently revoked, was 30 percent for African-Americans, 10 percent for Anglos, and 1 percent for Hispanics.

Without Appropriate Treatment, Probationers with Mental Health Problems or Mental Disabilities Are Less Likely to Succeed

Appropriate treatment is important for the probation success of offenders with mental health problems or mental disabilities. Probationers whose mental disabilities or illnesses are identified at the time of sentencing and who receive appropriate treatment do just as well in the probation system as the general population. However, probationers with mental problems that are not identified and addressed in their conditions of probation do not fare well. Similarly, identification and subsequent assistance may help mentally disabled probationers succeed, but without early identification and specialized assistance, probationers with mental problems are less likely to be successful.

The sample of probationers included 24 probationers who had been identified by our evaluation as having a mental or emotional health problem or mental disability, but who had no recognition of this condition or no prescribed treatment in their conditions of probation. These probationers had a successful completion rate of only 46 percent, compared to 62 percent for the general probation population. While the number of these probationers in the sample is small they were significantly more likely to be revoked to prison or jail than those with no such identified problems (44 percent vs. 27 percent) and much less likely to have completed probation early (11 percent vs. 26 percent). By contrast, the sample included 66 probationers who were required to have mental health counseling as a condition of their probation. This group had no significant differences in their probation outcomes from the probation population as a whole.

These findings suggest that greater efforts at identification and treatment could yield better chances of success for this segment of the probation population. For example, early identification and recognition of mental health problems as a condition of probation may help to improve these probationers' chances of successful probation. Both the Maricopa and Pima County Probation Departments assign probationers with mental health problems to probation officers with specialized training in supervising these offenders.[1] It appears that these assignments contribute to the probationers having positive outcomes. While based on small numbers of cases, probationers in the other counties who were identified as having mental health problems, but did not have the opportunity for specialized assignment, tended to have very poor experiences and negative outcomes.

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1 Such grouping also exists for sex offenders, and those convicted of domestic violence.

Absconders Differ from Other Probationers in Education and Age

The approximately 6 percent of probationers who abscond are generally similar to the probation population as a whole except for two characteristics, education and age. In other characteristics, such as employment or prior criminal history, they are generally similar. For example, employment and marital status do not distinguish absconders from other probationers.

Education levels lower for absconders— Absconders had an average lower education level, completing an average of 10.06 years of schooling compared to 11.46 years for the general probation population. Only about one-third of the absconders have a high school diploma or GED, compared to about one-half of those whose probation was revoked and about 60 percent of those who complete probation successfully.

Absconders over-represented in one age group— Absconders are over-represented in the 26- to 30-year-old age group. Forty percent of absconders fall into this age group, compared to fewer than 20 percent of all probationers.

Absconders are not distinguished by employment or prior criminal history. Employment status at the beginning of probation does not distinguish absconders from other probationers. Absconders have risk levels and average numbers of prior supervisions very similar to probationers who complete probation and different from those who are revoked. Absconders actually have fewer prior felonies than probationers who are revoked and fewer than even the average probationer who completes his or her term. In addition, absconders have fewer prior misdemeanors than either probation completers or probationers who are revoked.

Conclusions

The various findings suggest that different groups bring different risks and strengths to their probation and may require variations in supervision. Better understanding of these subpopulations can help identify demographic characteristics that can be used as indicators of probation outcomes and may help probation officers to make better decisions in their supervision of probationers.

Recommendation

The Administrative Office of the Courts should work with the smaller counties to develop specialized caseload assignments for probationers with mental health problems.

FINDING IV

RECORDKEEPING NEEDS TO IMPROVE

Basic management information collected by county probation departments is difficult to retrieve and use in a timely manner. Poor information management can affect probation officers' ability to adequately supervise offenders and can inhibit effective program management and decision-making. The Administrative Office of the Courts should collaborate with the 15 county probation offices to create minimum standards for paper and electronic case files management.

Good Recordkeeping Critical to Probation Management

Accurate and complete documentation in probation files is important for a number of reasons:

- **Decision-making**—Probation officers are responsible for providing information to judges and administrators at a number of important times during the sentencing and supervision of probationers. Besides being used during a probationer's initial sentencing, additional information about a probationer's progress is used in making recommendations about revocation, adding or deleting conditions of probation, changing levels of supervision, or determinations about whether probation has been successfully completed. Recommendations based on insufficient or inaccurate information could be detrimental to the defendant and/or the community.

- **Case management**—Poorly maintained records reduce the probation officers' ability to assess probationers' performance either quickly or accurately. Officers need to understand the risks and status of the people they supervise, particularly when assigned a new and unfamiliar case. Probation officers need to have complete and accurate information if they are to meet their responsibilities in protecting the community and assisting the offender to change. Likewise, probation officers need to identify and document violations quickly in order to intervene with timely sanctions. They also need to document probationers' progress to assist them in finding services and activities that can help them change their behaviors.

- **Protecting victims**—Incomplete and inaccurate information could limit a probation officer from meeting his or her responsibilities regarding informing victims of restitution ar

rangements, the offenders' supervisory conditions, and potential dangers from the probationer.

- **Research and evaluation**—Inaccurate and incomplete information limits the Administrative Office of the Courts and the County Probation Departments' abilities to measure short-term and intermediate goals and conduct cost-benefit analyses. Without good data there is not an effective ongoing system of monitoring and evaluating probationers and the system and no sufficient mechanism to communicate the impact it has on public safety.

Many Recordkeeping Problems Surfaced While Auditors Assembled Data for This Evaluation

In analyzing the sample of probationers selected for this evaluation, some situations were encountered in which probation files contained conflicting information, lacked essential details, were illegible, contained duplicate information, and were unobtainable. This lack of information can make it difficult for probation officers to adequately supervise probationers and places great limits on administrators' abilities to assess and manage their departments and programs. The types of problems encountered in the four-county review included the following:

- **Missing information**—Basic information was often lacking. For example the offender's state identification number and standard criminal justice codes identifying their crimes were often not available. A disturbing illustration of incomplete information is the incomplete recording of new arrests.

- **Conflicting information**—Files also contained conflicting information about the probationer's demographic information and probation outcome.

- **Treatment details missing**—While all four counties have probationers who were court-ordered to obtain drug or alcohol abuse treatment, consistent details were missing about treatment programs entered or completed.

- **Incomplete information for transfers**—Files for probationers who had transferred from another county or another state were particularly difficult to garner information from. In these cases, background information on the offender and personal details were often missing.

- **Files not found**—Maricopa County had difficulty obtaining active probationers' files and locating others thought to be in storage. Other counties were also unable to find some files selected for the study.

- **Handwritten information**—Handwritten conditions of probation were difficult to decipher and confirmation of an offender's conditions of probation had to be sought elsewhere in the file record. Pima County's paper files were the most problematic because probation officers wrote their notes by hand. Officer notes on several files could not be read at all, causing gaps in data collection.

- **Disorganized files**—Maricopa County paper files were the most disorganized of the four counties. For example, they contained multiple copies of the same document and inconsistent information was also found. Overall, Yavapai, and Cochise records were better organized and consistently decipherable.

- **Unreliable electronic files**—Overall, as discussed in Appendix A, reliable electronic files were not available from any of the four counties. For example, in Maricopa County, electronic and paper files had inconsistent information for the beginning and ending dates of an offender's probation.

- **County electronic files are not standardized**—This evaluation was impeded by the fact that counties did not collect, record, and report information in the same manner and format. (See Appendix A, pages a-i through a-vii for additional discussion.)

Improvements in Case File Accuracy and Electronic Formats Could Improve Accountability

The Adult Services Division of the Administrative Office of the Court (AOC) should work with the counties to create standards for paper and electronic filekeeping. At present, there are no statewide standards for what should be included in paper or electronic files. Although collecting data from paper files is time consuming and costly, developing standards for paper files appears to be the place to start. If the State is to track the effectiveness of probation, working with paper files is currently necessary. Within the past five years at least two other adult probation outcome studies in Arizona found that electronic files were essentially useless.

Building on standards agreed upon by AOC and the county probation departments for paper files, the AOC should then work with the counties to develop consistent and accurate electronic case files. Improved electronic filekeeping is necessary for courts to assess and direct probation activities. It would also allow more timely assessment of probation programs. An adequate data system would allow work that currently consumes four months because paper files must be reviewed to be completed in a matter of days.

Recommendations

In cooperation with the county probation departments, the Adult Services Division of the Administrative Office of the Courts should:

1. Set and enforce minimum standards of information maintained in paper files for active and closed adult probation files.

2. Set and enforce minimum standards of electronic information maintained for active and closed adult probation files.

3. Explore the feasibility of creating a standardized electronic database for recording and maintaining probation case files.

Agency Response

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Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

homas A. Zlaket
Chief Justice

David K. Byers
Administrative Director
of the Courts

March 5, 1999

Mr. Douglas R. Norton, Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Mr. Norton:

Thank you for the opportunity to comment on the performance audit report of the Administrative Office of the Courts' Adult Services Division. Before addressing each of the recommendations, I would like to make several comments.

We are very pleased that the evaluation by your staff focused on identifying factors contributing to an adult's successful completion of probation and the positive results from an offender's participation in substance abuse treatment. Your findings validate what those of us who manage community corrections programs have believed for some time; probationers who maintain employment and complete community work service requirements have a greater likelihood of successfully completing probation. Your evaluation further validates an outcome study conducted by the Administrative Office of the Courts in 1995, as well as fifteen years of national research which concluded that substance abusing probationers who consistently participate in treatment/counseling programs are much more successful on probation. It is now clear that in Arizona, not unlike the rest of the country, probation supervision coupled with treatment increases positive behavioral change of the offender and decreases revictimization of the community.

The citizens of Arizona also recognized the benefit of, and need for, resources for substance abusing offenders by establishing the Drug Treatment and Education Fund (DTEF), which became operational during fiscal year 1998. During it's first year of operation, this fund provided substance abuse treatment services to 2,622 probationers statewide. It is anticipated that the number of probationers receiving treatment/counseling services funded by the DTEF will rise to approximately 3,496 during fiscal year 1999.

While the availability of DTEF monies will continue to have a considerable impact on the availability of treatment resources for drug abusing probationers, the evaluation by your staff did not note that community resources are limited. Your report notes that Department of Public Safety Uniform Crime Reports show an 80% increase in the number of drug-related arrests from 1990 to 1996, and that Arizona law enforcement officials attribute a significant portion of crime to substance abuse. However, there is no acknowledgment of the lack of agencies/programs statewide to accommodate

the number of substance abusing individuals in Arizona, especially in the rural areas. The audit findings were shared with each of the probation departments included in the evaluation and all agree that probationers are competing with other citizens for treatment placements and may have to wait weeks or months before space is available in a residential or group setting. While the state can provide treatment funds, the positive impact of those dollars is diminished by the lack of program capacity. It is also important to note that pursuant to statute, the DTEF can not be utilized for the treatment of alcohol abuse, which also plagues Arizona.

The report points to the significance of employment and community work service in the successful completion of probation. However, it does not recognize the need for expanded job readiness and development programs, as well as an increase in not for profit agencies to provide probationers opportunities to complete community service requirements.

The audit suggests the need for standardized electronic record keeping. For several years the Supreme Court has been requesting funding from the Legislature to develop and deploy an adult probation automated case management system and funding has not been provided. Absent funding and a statewide system, standardized electronic files are next to impossible.

Finally, the analysis excluded 185 probationers in the sample who "neither successfully nor unsuccessfully terminated probation"as the majority of them were still under supervision at the conclusion of the evaluation. These probationers are, and should be considered, successful, as they are in the community and complying with court orders.

RESPONSE TO RECOMMENDATIONS

FINDING I

The Arizona Adult Probation System should:

1. **Continue to screen offenders thoroughly for substance abuse issues prior to sentencing, so that all probationers in need may be directed to substance abuse treatment or counseling services.**

The finding of the Auditor General is agreed to and has been part of the probation process.

Risk and needs assessment tools have been used by the probation departments for over 10 years to assist with identifying and prioritizing the resources needed by probationers. Maricopa and Pima County operate an Assessment Center, designed to evaluate probationer need and identify appropriate resources during the presentence process. These counties are also in the process of examining and developing additional tools to facilitate probationer assessment. Finally, the Drug Treatment and Education Fund program requirements mandate the use of two statewide screening and assessment tools (Arizona Substance Use Survey and Offender Substance Abuse Profile) to determine probationer need and appropriate treatment placement. These assessments were completed on all

2,622 probationers receiving substance abuse treatment services through the DTEF in fiscal year 1998.

2. Use monies from the Drug Treatment and Education Fund to assure substance abuse treatment options are available for all probationers who need them.

The finding of the Auditor General is agreed to and has occurred.

As previously noted, DTEF monies were utilized to provide substance abuse treatment to 2,622 probationers in need in fiscal year 1998. Of these probationers, approximately 10% participated in substance abuse education, less than 1% in day treatment, 74% in outpatient counseling, 9% in intensive outpatient counseling, 3% in short term residential treatment, and 4% in a long term residential program.

3. Supervise probationers with special attention paid to completing substance abuse treatments and community service, and emphasize consistent employment as a condition of probation, as these factors significantly predict successful probation outcomes.

The finding of the Auditor General is agreed to and will be implemented.

The Adult Services Division will request probation officers place greater emphasis on probationer compliance with substance abuse treatment and community service requirements. Consistent employment will also be stressed. However, the need for increased statewide treatment capacity, not-for-profit agencies to provide opportunities for community service, and job readiness and development services must be acknowledged by the Auditor General when setting probation outcome expectations.

Finding II

The Adult Services Division of the Administrative Office of the Courts should work with County Probation Departments to determine the longer-term cost-effectiveness of different degrees of tolerance of criminal and noncompliant behaviors, in order to provide community-based rehabilitation.

The finding of the Auditor General is acknowledged.

The audit primarily attributes the varying degrees of tolerance for criminal and noncompliant behavior to the local probation departments and fails to acknowledge the significant roles of the other entities involved. Local law enforcement, county attorney charging and plea bargaining practices, and judicial discretion all substantially contribute to the varying degrees of "tolerance" cited in the audit report. The issue spans the entire criminal justice system and can not be examined solely from the perspective of the local probation department.

To conduct the type of evaluation suggested would be a tremendous undertaking requiring vast resources to collect data across a multitude of criminal justice agencies. The Adult Services Division does not have the personnel or funding available for such a project and the cost implications were not included in the biennial budget request to the Legislature. Additionally, the basis for the funding is fundamentally incorrect.

On a technical note, the revocation examples from Maricopa and Pima County presented on page 21 are markedly different (the Maricopa County case is limited to technical violations of probation while the Pima County case involves technical violations plus a new arrest) and can not be compared. Furthermore, no information has been provided on the probationer's criminal history or the nature of the new arrest.

It should also be mentioned that Cochise County is not the only jurisdiction which seeks civil judgments for unpaid court assessments upon completion of probation, as indicated in the audit report. In fact, Maricopa County was the first to initiate this practice and civil judgments are also sought in Pima County.

Finding III

The Administrative Office of the Courts should work with the smaller counties to develop specialized caseload assignments for probationers with mental health problems.

The finding of the Auditor General is not agreed to and a different method will be utilized to address the concern.

Appendix A of the audit report states that "there was not an expectation to generalize statewide from the four counties" yet this recommendation is based upon only 24 mental health cases and is generalizing statewide. We do not believe that each local department can justify and support specialized caseloads for mentally ill probationers. What is needed, however, is a continuum of care for these probationers which is not being provided by all Regional Behavioral Health Authority's (RHBA) statewide. The Adult Services Division will commit to working with the local probation departments to develop relationships with their local RHBA to facilitate the delivery of services to mentally ill probationers. The Division will also work with the probation personnel and the RHBAs to establish a training curriculum for probation officers to assist them in better managing the special needs of these probationers.

Finding IV

In cooperation with the county probation departments, the Adult Services Division of the Administrative Office of the Courts should:

1. **Set and enforce minimum standards of information maintained in paper files for active and closed adult probation files.**

The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented.

It is agreed that establishing some minimum standards for what should be retained in a case file is a desirable goal. However, Arizona's probation system is decentralized and it would be inappropriate for the state to mandate local file set up. The more appropriate recommendation would be for the Legislature to provide funding for the development of an adult probation automation system.

2. Set and enforce minimum standards of electronic information maintained for active and closed adult probation files.

The finding of the Auditor General is acknowledged.

This recommendation should be directed at the Legislature. Minimum standards for electronic record-keeping is a worthwhile goal and we stand ready to implement them if funding is provided.

3. Explore the feasibility of creating a standardized electronic database for recording and maintaining probation case files.

The finding of the Auditor General is not agreed to and can not be implemented without further resources.

The feasibility of a statewide adult probation database has already been addressed and the Administrative Office of the Courts is actively involved with representatives from Maricopa and Pima County's in the development of an automated case tracking and management system. A prototype of this statewide automation system is scheduled to be piloted in one field office in Maricopa County this year, expanding to one field office in Pima County and one rural county during the summer of 2000. Full implementation will, however, require funding from the state, the county or both.

Again, we are very pleased that the evaluation by your staff validates our belief and national research that probation supervision coupled with treatment results in positive behavioral change of the offender and decreases revictimization of the community. I hope your findings will result in legislative support for additional funding to increase treatment capacity and for the development of an adult probation automation system.

I thank your staff for the professionalism demonstrated throughout the course of this audit and assure you that those recommendations we agreed to will be implemented.

Sincerely,

David K. Byers, Director
Administrative Office of the Courts

DKB:des
cc: Barbara Broderick, Director, Adult Services Division
Mike DiMarco, Budget Director, Administrative Services Division

Appendix A

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APPENDIX A

SAMPLING AND DATA COLLECTION

The findings in this report are based on analysis of data generated from 845 probation files in four counties. The counties represented are Maricopa, Pima, Yavapai, and Cochise. Data is for probationers who began probation in 1994.

Data was generated from analysis of 845 files. Electronic data was available from some counties in Arizona. However, these data were incomplete, unreliable, and not always comparable to other counties; i.e., all counties do not collect the same information.

Probationers who began probation in 1994 were selected because most individuals placed on probation in 1994 would have finished or be finishing their probation in 1998 (since probation terms are typically 3 years) and would have an outcome. At the same time, files for individuals who began probation in 1994 and who had already terminated should not have been destroyed. In addition, the time period is recent enough to have relevance for current supervisory practices. However, approximately 21 percent of the cases did not have a final probation outcome. This includes probationers who were still active on probation because they had long terms, including lifetime terms, and probationers whose terms were extended. This group also includes probationers who died, or were transferred.

Maricopa and Pima Counties were selected because Pima and Maricopa County probation departments supervise the majority of probationers in the State. Seventy-five percent of all probationers in Arizona reside in these counties, with 62.3 percent in Maricopa and 12.7 percent in Pima. Yavapai and Cochise counties were selected for comparison and illustration and because they provided probationers with some options for substance abuse treatment, a key element of the study. Convenience also entered into selecting Yavapai and Cochise Counties. These counties were selected over other options because they provide a cross-section of rural counties and allowed Auditor General staff to conduct research within the time and resource constraints. Probationers from these four counties represent approximately 80 percent of all probationers in Arizona's 15 counties.

Sample Selection

The original sample size was set for Maricopa and Pima Counties at the 95 percent level of confidence and 5 percent sample precision based on the outcome variable (successful completion) occurring at 50 percent. Yavapai and Cochise Counties, chosen for comparison and

illustration, were not set at the same sample precision as Maricopa and Pima. Table 6 summarizes the sampling process and confidence levels and sample precision.

Table 6

Adult Probation Outcomes Study
Summary of Sample Selection

County	Strata	Number in Strata	Number in Sample	Number in Data File	Confidence Level	Sample Precision
Maricopa	Community Punishment Program	155	155	145		
	Driving Under Influence	747	75	66		
	Drug offense	1,004	75	66		
	Drug possession	1,551	75	60		
	No substance abuse	427	75	62		
	Non-drug, crime, substance abuse history	3,872	150	128		
	Total Maricopa	7,756	605	527	95%	5%
Pima [1]	Community Punishment Program	80	50	24		
	Drug and alcohol abuser	Unknown	50	46		
	Drug offender	Unknown	50	33		
	Non-drug offense	Unknown	50	29		
	Non-drug offense, likely abuser	___	50	44		
	Total Pima	1,600 [2]	250	176	95%	7%
Cochise	No strata					
	Total Cochise	155	75	74	95%	10%
Yavapai	No strata					
	Total Yavapai	472	75	69	95%	10%
	Total	9,983 [3]	1,005	846		

[1] Actual number of strata in Pima County is unknown.

[2] Estimated number of individuals who began probation in Pima County in 1994.

[3] Estimated.

Source: Auditor General staff analysis of data provided by Cochise, Maricopa, Pima, and Yavapai Counties.

Maricopa accounts for more than 60 percent of all probationers statewide. Therefore, the sample precision and confidence level set were based on the materiality of Maricopa County to probationers statewide. It was also determined that comparison among the strata would be made so strata needed to be large enough to do that. Six strata in Maricopa County were defined: 1) attended Community Punishment Program; 2) convicted of DUI felony; 3) drug offense other than possession; 4) drug possession; 5) non-drug crime and no substance abuse history; and 6) a non-drug crime, but a documented substance abuse history. Strata 2 through 6 exclude all probationers originally sentenced to the Community Punishment Program.

A sample was also drawn from Pima County. However, Pima County did not provide a reliable sampling frame and the sample was drawn from the presentence report file that included all probationers sentenced to any form of punishment in Pima County. The original file contained over 3,700 cases but approximately 1,000 of these were required to serve a sentence in the Department of Corrections (DOC). In addition, the remaining 2,700 included offenders who may have been sentenced to DOC and should not be included in the sampling frame. However, a confidence interval of 95 percent with sampling precision of 5 percent was planned. Since the level of detail provided on the offenders was not the same as that provided by Maricopa County, it was not possible to draw the same strata. However, since there was an inadequate sampling frame, strata were constructed from the available information allowing for stratified sampling in order to minimize variance. It was expected that over sampling 50 in each stratum would yield a minimum of 30 per strata for statistical runs. Due to differences in the type of data provided by Pima and Maricopa County the Pima strata are similar to, but not the same, as the Maricopa County strata. Five strata in Pima County were defined: 1) Community Punishment Program; 2) non-drug offense but no known abuse; 3) original charge is drug related; 4) known drug and alcohol abuser; and 5) non-drug offense but likely abuser. Due to budget and calendar constraints, the stratified 250 sample seemed a reasonable number. However, the resulting sample was actually lower than 250 owing to coding errors from the poor sampling frame. Although a 95 percent confidence is retained with the resulting 176 cases from Pima County, the sampling precision is only 7 percent in contrast to the 5 originally planned.

Yavapai and Cochise Counties were not set at the same sample precision as Maricopa and Pima for two main reasons. First, the small number of probationers in the two counties did not warrant the same evaluation effort as Maricopa or Pima. Second, since there was not an expectation to generalize statewide from the four counties, there was no need to have a sample precision equal to Maricopa and Pima. A confidence interval of 95 percent with 10 percent sample precision for Yavapai and Cochise seemed both feasible and appropriate.

Tables 7, 8, and 9 provide additional background information on individuals in the sample.

Table 7

Adult Probation Outcomes Study
Sample[1] of Probationers by County
Percentage Assigned to Intensive Probation Supervision and
Percentage Identified as Male and Belonging to an Ethnic Minority

County	Intensive Probation Supervision	Male	Minority
Cochise (73)	30%	95%	52%
Maricopa (527)	11	77	33
Pima (176)	16	82	60
Yavapai (69)	20	87	16
Percentage of total (845)	14	80	39

1 Number of cases in the County's sample is indicated in parentheses.

Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Table 8

Adult Probation Outcomes Study
Sample[1] of Probationers by County
Type of Crime Causing the Probation by Percentage

	Type of Crime						
	Felonies						
County	Class 2	Class 3	Class 4	Class 5	Class 6	Class Unknown or Undesignated	Misdemeanor
Cochise (73)	7%	3%	19%	7%	21%	11%	32%
Maricopa (527)	4	9	28	8	32	0	19
Pima (176)	8	7	17	6	8	51	3
Yavapai (69)	0	3	8	2	25	49	13

1 Number of cases in the County's sample is indicated in parentheses.

Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Table 9

Adult Probation Outcomes Study
Sample[1] of Probationers by County
Percentage of Sample with Prior Supervisions, Custodies, Misdemeanors, and Felonies
and Average Length of Probation Sentence in Months

County	Prior Actions				Average Sentence Length
	Supervisions	Custodies	Misdemeanors	Felonies	
Cochise (73)	34%	26%	47%	15%	39
Maricopa (527)	44	42	67	29	40
Pima (176)	42	30	57	11	36
Yavapai (69)	35	39	64	19	32
Average for the total	42	38	63	23	38

1 Number of cases in the County's sample is indicated in parentheses.

Source: Auditor General staff analysis of sample of records of probationers who began probation in 1994 in Cochise, Maricopa, Pima, and Yavapai Counties.

Critical Data Elements Collected During the File Reviews

Data was gathered in seven basic areas: 1) demographics, 2) criminal history, 3) conditions of probation, 4) criminal behavior while on probation, 5) substance abuse treatment while on probation, 6) life events while on probation, and 7) probation outcomes including payments of fees, fines and restitution, completion of community service, and probation status. A sample of files from Pima and Maricopa Counties was reviewed prior to developing the data collection strategy.

1. *Demographics*—The following data was sought in each probation file: date of birth, ethnicity, marital status, level of education, income, and employment. Ethnicity was used as both a categorical variable and as a recoded binary variable of minority and non-minority. Education was also recoded into number of years of education completed. In addition, marital status was used as a categorical variable and was also recoded into a binary variable of married and not married. State identification numbers and social security numbers were also recorded. More than one social security number was recorded where necessary.

2. *Criminal history*—data was collected to include total number of prior felony convictions, prior misdemeanor convictions, prior supervisions including parole and probation, prior incarcerations[1], and prior juvenile offenses. The severity of the crime sentenced for was also coded for felony or misdemeanor and class of offense from 1 through 6. Need and risk scores as measured by need and risk assessments used by the counties were also recorded. The need and risk scores summarize demographics and criminal history. The total possible need and risk scores were also recorded to account for variations across counties. Concurrent probation with the same county, other counties, cities, other states, and federal was also recorded.

3. *Original terms of probation*—and additional and revised conditions of probation were coded. Any conditions of probation on the basic conditions of probation forms used by courts, and which could vary, were recorded. In addition, comment fields allowed for special conditions not appearing on the standard forms to be recorded. Total amounts of fees, fines, restitution, and community service ordered were recorded. Most conditions were ordered as binary variables. Conditions that were added or subtracted after the original terms were also coded.

4. *Data was collected on criminal justice system interaction while on probation*—Dates of arrests were recorded. Up to six arrests could be recorded. Initially it was expected that NCIC codes would be available for new arrests, but this data was generally not available and is not useable in the data set. In addition, while conviction data were also expected to be gathered, these data were not available. The number of and length of incarcerations while on probation was recorded. Dates of petitions to revoke probation were recorded along with the reason for the petition and the outcome of the petition.

5. *Data on life events*—such as marriage, divorce, loss through death of a loved one, and having children was also recorded. Stability in employment was also estimated using an ordinal level scale.

6. *Attendance and completion of substance abuse treatment program(s) was recorded*—Substance abuse treatment information included beginning date, ending date, type of program (i.e., residential or outpatient), and outcome from the program (failure, graduation). Up to four treatment programs while on probation were recorded. In addition, the results of drug testing were recorded. The total number of tests given and the total number positive were recorded along with the substance(s) found on the first and last positive test.

7. *Data on probation outcomes were recorded*—The reasons for the probation termination were collected. Outcome was recoded into an ordinal level variable (see discussion in Appendix B, pages b-i through b-iv) and further recoded into a binary variable. In addi-

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[1] Consistent with the files, any incarceration is counted. Using this method, one night in jail is equivalent to 10 years in prison.

tion to their probation outcome, outcomes specific to completing community service and paying fees, fines, and restitution were recorded. It was necessary to construct ordinal levels of measurement for these outcomes since files did not have complete information in these areas. Dates specific to benchmarks were recorded including date probation began, date probation was due to end, date probation actually ended, and new date probation was due to end if an extension was made. These dates, along with date of birth, dates of arrests, petitions to revoke, and substance abuse treatment dates made it possible to compute a variety of time intervals. Comment fields also allowed for the recording and coding of information not routinely collected.

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Appendix B

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APPENDIX B

Methods

A variety of analytic methods have been used in the report. Discussion of the specific methods is not included in the body of the report. A brief summary of the statistical techniques employed for each finding is provided below.

Results are referred to as significant if the relationship is found to be statistically significant. The significance level is the probability that a statistical result as extreme as the one observed would occur if there were no differences between or among groups. A probability of .05 or less is considered statistically significant throughout this report.

Finding I

Analyses reported in Finding I (see pages 11 through 17) were conducted on data weighted for population by county. The 845 cases were weighted so that each of the four counties was represented in the sample in direct proportion to the number of cases they represent in the probation population for these four counties. Weighting allows for generalization of the findings across the four counties included in the sample.

The results reported in Finding I are based primarily on a series of one-way analysis of variance. The independent variables used for the analyses of variances were identified through a statistical modeling of the data. The first step in the modeling was a factor analysis that resulted in four main factors identified. Variables with large weights in the factor analysis were selected for further analyses and variables with lower weights were eliminated thus limiting both the numbers of variables analyzed and reducing multi-colinearity. The independent and dependent variables do not meet stringent data requirements of linear regression. Logistic regression is used for analysis of dichotomous dependent variables; however, it also requires stringent data requirements for independent variables. These variables were then used to develop both linear and logistic regression models. The methods were both used for exploratory purposes and to identify variables that were predictive using both methods.

The results of the two regression models were used to identify the factors that appeared to have the most impact on probation outcomes and were subsequently included in the one-way analyses of variance.

- **Statistical Model**—Both linear and logistic regression models were used to estimate how well probation outcomes could be predicted.

The final standardized model has an R squared of .54. The *standardized* coefficients for the variables that enter the model and the R squared change for each are:

Variable	Beta	R Squared Changed
Total petitions to revoke filed	-.559	.312
Completed community service	.313	.129
Total treatments completed while on probation	.253	.069
IPS as a condition of probation	-.163	.023
Ethnicity	.135	.018

Since the reliability of the model is limited by the data, a logistic regression model was also utilized. Logistic regression is useful for situations in which one wants to predict the presence or absence of a characteristic or outcome based on values of a set of predictor variables. It is similar to linear regression but is suited to models where the dependent variable is dichotomous.

In the Logistic Model the dichotomous outcome variable of 0 = unsuccessful and 1 = successful was used as the dependent measure. This variable excludes all probationers who are still active and those with unknown final outcomes.

In the logistic model, without any predictor variables it is possible to predict with 61.45 percent accuracy the dichotomous probation outcome.[1] At best, the accuracy is increased to 64.08 percent if knowledge about ethnic group and the probationer's risk score is known. However, the predictive accuracy increases to 87.67 percent using only one condition of probation variable and 4 activity variables and no background variables. This model provides an improvement in accuracy of 26.22 percentage points. The independent variables in the logistic models are 1) whether the probationer is assigned to IPS as a condition of probation, 2) total number of petitions to revoke filed, 3) monthly arrests, and 4) number of treatments completed while on probation and consistency of employment.

Using SPSS we estimated a stepwise linear model. Variables enter the linear regression if they are statistically significant at the .05 level, and are deleted in a step if their significance falls below the .01 level. The linear regression model is used to inform our evaluation and is suggestive and not definitive. Data do not meet all of the assumptions required for the re-

[1] Since there is a 61.45 percent probation completion, one would predict success in all cases and be accurate 61.45 percent of the time.

gression. The dependent variable used is the ordinal level probation outcome variable where 0=abscond, 1=revoke, 2=still on probation because term extended, 3=terminated because term expired, and 4=early positive termination from probation. Those who are still on probation, were transferred, or had an unknown outcome are excluded from the analysis.

- For example, the following variables were all tested, but were not significant in this stepwise method:

  Demographic/historical variables
  Prerisk score
  Age at time probation began
  Marital status at beginning of probation (married/not married)
  Severity of crime sentenced for (felony class 1 =1, through misdemeanor class 6 = 12)
  Education level (number of grades completed from 0 to 18)
  Number of prior felonies

  Conditions of Probation as Imposed by the Court
  Number of months in jail
  No contact with gang members or fellow criminals
  No contact with victim
  Electronic monitoring
  Attend domestic violence counseling
  DWI impact panel
  Not have firearms
  Not gamble or visit gambling establishments
  Take medications as prescribed
  Proscribed establishments
  Attend parenting classes
  Attend shock (This involves incarceration in a "boot camp" program intended to "shock" young offenders, so as to discourage future criminal behavior.)
  Register as a sex offender
  Work furlough

  Behaviors while on probation/Activity variables
  Getting married while on probation
  Having a child born while on probation

- **Analysis of probation outcomes**—The relationships between substance abuse treatment, employment consistency, and community service and probation success were estimated using analysis of variance.

Finding II

Since the focus of Finding II (see pages 19 through 26) is on county difference, the analysis for this finding was conducted on an unweighted sample.

Analysis of variance was used where one of the variables was quantitative (such as arrests and length of time on probation). Post hoc tests were used to make pairwise comparisons. Variables that could not be appropriately analyzed using analysis of variance were analyzed using two-way or multiway crosstabulations, and the Chi-Square test used as a measure of association.

Finding III

Analyses reported in Finding III (see pages 27 through 32) were conducted on a weighted data set. The 845 cases were weighted so that each of the four counties was represented in the sample in direct proportion to the number of cases they represent in the probation population for these four counties. Weighting allows for generalization of the findings to the four counties included in the sample.

Analysis of variance (discussed above) with post hoc tests was used where one of the variables was quantitative (such as arrests and length of time on probation). Post hoc tests were used to make pairwise comparisons.

Variables that could not be appropriately analyzed using analysis of variance were analyzed using two-way and multiway crosstabulations and the Chi-Square test used as a measure of association.

REFERENCES

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Mr. MICA. We thank each of you for your testimony.

Mr. HYNES. Mr. Chairman, may I ask for your indulgence to have 1 minute for Mr. Cohen?

Mr. MICA. Yes, in just 1 second. I want to make this announcement to the panel before I lose some of these folks.

I was informed by the Attorney General yesterday evening that the Mexican Supreme Court ruled in favor of extradition for Mr. Del Toro. Several weeks ago, we had a very compelling hearing about the problem with extradition of that individual. I don't know that this is the case. The Attorney General told me, I believe, yesterday or today, he will be extradited to the United States. So I do want to thank all of the members of the panel. Mr. Miller also asked me to convey his thanks to you, and those of you who participated in the hearing, we appreciate it.

Yes?

Mr. BARR. Did the Justice Department have to agree not to seek the death penalty, though?

Mr. MICA. Yes.

Mr. BARR. Is that the price——

Mr. MICA. That is the unfortunate part. I did talk to Mr. Bellush yesterday. It is unfortunate that is one of the conditions which Mexico insists on for all their extraditions. But at least there will be some justice in the case. So I do thank you, and we also received the thanks of Mr. Bellush and his family yesterday.

Mrs. MINK. Will the chairman yield?

Mr. MICA. Yes.

Mrs. MINK. I would like to commend the chairman and our colleague, Mr. Miller, for bringing the matter to the subcommittee and giving us an opportunity to have input. I would particularly like to compliment my colleague, Mr. Cummings, for his role in achieving this result. It is a tribute to your leadership, Mr. Chairman.

Mr. MICA. Well, as I told the press, we were fortunate on that case. But we still have 274 to go, so we can only pat ourselves on the back a little bit. But, again, after that hearing, I think everyone feels a little bit of satisfaction in what we were able to achieve. So thank you.

I do apologize. I meant to do that at the beginning of the hearing and didn't get a chance to inform my colleagues on the panel of that information.

You were going to introduce this gentleman?

Mr. HYNES. Frederick Cohen is a 1995 graduate of the drug treatment program. I know he has no more than 1 minute to talk to you about his experience.

Mr. MICA. Mr. Cohen, if you could come up, and would you mind just standing for a second and being sworn?

[Witness sworn.]

Mr. MICA. Thank you and welcome, and we will recognize you for a statement.

STATEMENT OF FREDERICK COHEN, GRADUATE OF DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAM

Mr. COHEN. Thank you. Thank you very much, Chairman Mica, for having me and allowing me 1 minute to briefly speak to you.

I heard a lot of interesting things today in discussing the legalization of drugs. A lot of things were rallying to my ears. I want to share with you briefly, a story about a drug history and an outcome, a personal story.

At the age of 9 to 11, I began drinking alcohol and smoking marijuana, which for me, marijuana was a gateway drug which led me to use other drugs. By the age of 14, I had done PCP, LSD, cocaine, Valium, and hashish. I had experimented with mushrooms, assorted hallucinogens. In fact, this was in the early 1980's. I had done Ectasy at that time. I frequented the Washington, DC, area and tried what they called Love Boat at that time, which was PCP sprinkled over marijuana. By the time I was 16, I actually began to sell drugs in order to support my habit. At the same time, I committed petty non-violent crimes to obtain money to support this habit.

It was at that time that I understood that if I wanted to get high, I would have to devise a way to do so. So I began to sell drugs, and I would take the profits that I made selling drugs to supply my habit. This continued and by the time I was 22 years old, I was smoking crack daily in the streets of New York. I met all the criteria for chemical dependency at that time, and I continued to use drugs for 4 years after that, despite the negative consequences.

And you may ask yourself, what type of background did I have and what type of life did I lead during this time? Well, I was a Boy Scout. I was a Cub Scout, and I went to Weplo and I became a first-class Boy Scout as a juvenile. I graduated valedictorian from a private high school in New York City. From there I went on to college with hopes and dreams of becoming a computer scientist. All during this time I was using drugs. I dropped out of college because my chemical dependency problem caught up with me and I could no longer concentrate on my studies.

I remember leaving college and obtaining certain types of employment from bank tellers to computer operators to accountants to construction workers and security guards. All jobs were lost due to my chemical dependency problem, the absenteeism and the tardiness.

I remember getting arrested on several occasions for petty crimes, for petty possessions, and doing small amounts of time, up to a year. None of this was a deterrent for my substance abuse problem. I remember the hardship. I remember the homelessness. None of this was a deterrent. I remember losing my family, losing my friends, and yet still I used substances.

The only deterrent for me was the threat of serious sentencing from the district attorney's office of Kings County. I was arrested again, for a second felon, and I faced a minimum of 4½ to 9 years. It was at that point that the district attorney's office actually offered me an opportunity to get my life together. It was either I do the minimum sentence of 4½ years or I opt for a drug treatment alternative to prison program and get my life together with the promise of the case being dismissed. The district attorney's office gave me another opportunity at life.

It was at that point that I realized the destruction that the chemical dependency had caused in my life, and I took advantage of that opportunity. I took advantage of the opportunity because

the manipulative, addictive mind-set said, "Hey, 18 to 24 months is far better than 4½ to 9 years." I went into the program, I excelled, and I found out a lot of things about myself, about drug use, about how to restructure my life, and about how to be responsible.

To make a long story short, I went from a welfare recipient, a beggar on the street, to the program director at the Project Return Foundation where I make over $45,000 a year. I pay over $10,000 a year in taxes today. I am a home owner. I pay property taxes. And I am a voting American citizen.

In conclusion, I just want to say that legalizing drugs perpetuates the illness. Arresting people actually bandages the illness. Arresting people with an alternative to incarceration remedies the illness.

I want to thank the committee for hearing me. I want to thank District Attorney, Charles Hynes, for saving my life. I want to thank the assistant district attorney, Samaritan Village, and the Project Return Foundation for all their help and all their efforts.

Thank you once again.

Mr. MICA. Thank you for your testimony. I think you have provided an interesting chronology of how this whole problem has affected you personally. It doesn't sound like you would be much of an advocate then for reducing tough enforcement. It sounds like tough enforcement is the only thing that got you to the point where you had to choose. Is that correct?

Mr. COHEN. That is absolutely correct.

Mr. MICA. What do you think, time to liberalize some of these tough laws, Mr. Hynes?

Mr. HYNES. Mr. Chairman, as I said, these harsh laws we use as creating an opportunity to have people save their lives. And if we are going to make modification of the so-called Rockefeller drug laws, we better do it with mandated treatment.

Mr. MICA. Did they alter the laws to give you the discretion at that point? Or was there enough——

Mr. HYNES. Sir, I have an obligation. Once a grand jury returns an indictment in these kinds of cases, I lose all discretion. This is pre-indictment.

Mr. MICA. Pre-indictment.

Mr. HYNES. Yes.

Mr. MICA. It was interesting to hear Ms. Broderick. I have heard quite a bit about the Arizona—I don't want to say experiment—but the Arizona approach and some of the preliminary data. You are telling us that there is not a decriminalization under this law. Is that correct?

Ms. BRODERICK. Probation is a very strong and viable sanction in Arizona.

Mr. MICA. But you told us, you said that you can still—you hold over their heads——

Ms. BRODERICK. Correct.

Mr. MICA [continuing]. Incarceration and the tough penalty.

Ms. BRODERICK. The judge may impose that as a condition of probation.

Mr. MICA. So it is actually withheld based on a performance, but some 30 percent are sent back to the—or I forget what your failure rate. I guess it varies?

Ms. BRODERICK. Actually, there are two things going on here. One is the way in which a person is sentenced, and the way the sentencing laws are in Arizona, for first-time possession and second-time possession, the person must be sentenced to probation. In Arizona——

Mr. MICA. OK. That is important. You said first-time possession?

Ms. BRODERICK. And second-time possession. People must get probation, and there must be no violence in their background. And it is an incident of violence, which means a simple arrest. So it is truly first-time drug possession, second-time drug possession.

Mr. MICA. First-time drug possession is mandatory probation, but with the caveat that there can be some incarceration if they don't complete their probation.

Ms. BRODERICK. Correct. As a condition of probation, a judge may impose up to a year of jail.

Mr. MICA. OK. That is different than what the public perception is.

Ms. BRODERICK. Correct, and that is one of the clarifications I wanted——

Mr. MICA. I have not seen that in any of the news stories or editorials that I have read to date. And the second time, how does it——

Ms. BRODERICK. Same thing. The judge can impose up to a year of deferred jail time. Now, why there is some confusion is the fact that in the revocation process, which is a way in which probation usually comes forward and says to the judge we would like this person to be revoked, we no longer have that as an option if there is just simple non-compliance and the year jail time that has been deferred has been used up. So that is probably where some of the confusion may be.

Mr. MICA. And what substances are taken into account by first-time possession? Is that marijuana, cocaine, heroin, methamphetamine, all drugs?

Ms. BRODERICK. All drugs.

Mr. MICA. And what about quantities?

Ms. BRODERICK. That varies depending on——

Mr. MICA. What is the triggering——

Ms. BRODERICK. I don't know off the top of my head. I am sorry. I can tell you that the bulk of people that are coming through are principally methamphetamine—I look no different than Iowa—and marijuana.

Mr. MICA. And I heard small numbers quoted here, like you said 932 have been in that program?

Ms. BRODERICK. Correct. The program——

Mr. MICA. Over what period of time?

Ms. BRODERICK. It is 1 year.

Mr. MICA. So for 1 year.

Ms. BRODERICK. Correct.

Mr. MICA. And how big is your prison population?

Ms. BRODERICK. About 27,000, and under probation we have about 35,000.

Mr. MICA. But in your program, under probation in your program, it has only been 932?

Ms. BRODERICK. 2,622 people actually received services.

Mr. MICA. I am sorry, 2,000?

Ms. BRODERICK. 2,622, and 932 in a given year graduated, either successfully or not. Like I said, three out of five were successful and two out of five were not, and they went on either to be reassessed and placed in a different type of treatment, or they committed a new crime or perhaps absconded.

Mr. MICA. Has this resulted in any decrease in your prison population?

Ms. BRODERICK. That is a very difficult question to answer and something that we will be looking to in the future. But Arizona is a growth State, so one has to take into account the numbers coming into the State. So our at-risk population keeps growing.

Mr. MICA. But if I go back and look at 1996—when did this start, 1995?

Ms. BRODERICK. The law was passed in 1996. The program became effective in 1997.

Mr. MICA. So we would look at 1997 and 1998, and we factor in population growth, too. But do you know if the population incarcerated in the State prison has increased or decreased?

Ms. BRODERICK. I am assuming it has increased because the population on probation has also increased. Our population growth is just so great, and there are other factors that are going on, being a border State with Mexico.

Mr. MICA. And your crime, though, is generally down, according to national trends?

Ms. BRODERICK. Unfortunately, Phoenix is not one of the cities that is down.

Mr. MICA. Phoenix is not down?

Ms. BRODERICK. No.

Mr. MICA. Does that mean the State is not down?

Ms. BRODERICK. I think where goes Phoenix, so goes the State.

Mr. MICA. So the State is not down, either?

Ms. BRODERICK. Correct.

Mr. MICA. Because I look at your prison population and the crime rate, I know—I come from a growth State, Florida, and we have a lot of that. But most of the people who come to our State are the least likely to commit crimes unless it is——

Ms. BRODERICK. Not that I want to have a commerce debate with you——

Mr. MICA [continuing]. Driving behind the wheel of their car and not being able to see the dashboard. But we won't get into that.

Ms. BRODERICK. That fits two sections of our State, also.

Mr. MICA. I have heard a lot about the DTAP program. It is impressive, and certainly this gentleman that you brought along is an example. DTAP, though, is part of a very tough—now, Kings—I don't—I am the fourth one from New York. I am from upstate New York, but I am not that familiar with the city geography. Kings County, is that part of the metropolitan——

Mr. HYNES. We are one of the five counties of New York City. We are the largest county in New York State by population.

Mr. MICA. Now, where does Giuliani fit into the picture? Is he also——

Mr. HYNES. Anywhere he wants to be, Mr. Chairman.

Mr. MICA. But is the—would he be the mayor of——

Mr. HYNES. He is the mayor of the five counties of New York City.

Mr. MICA. OK. That is my question. He has had a tough enforcement policy.

Mr. HYNES. Yes.

Mr. MICA. And you, therefore, have had a tough enforcement policy combined with this program, which—and you said this is pre-indictment or——

Mr. HYNES. It is pre-indictment, and I must make a point that there are some good things that preceded the mayor. He is not responsible for all the good things that happened in New York City.

Mr. MICA. You know what? We don't want to hear that. [Laughter.]

But it is impressive.

Mr. HYNES. Yes, it is.

Mr. MICA. By any standard.

Mr. HYNES. I can tell you that the crime reductions are extraordinary. We have a 61 percent reduction since 1990, in the seven major categories of crime, the index crimes. It is really extraordinary. But I believe it is fundamentally part of the strategy of being very, very tough on violent crime and drug traffickers that are not addicted and having this piece put in, which is to offer an opportunity, as we did for Mr. Cohen.

The third part of the fundamental change is we have an extraordinary education program. We have had 135,000 kids through our program since 1990, 10 hours a month for the entire school year, which is run by my prosecutors who teach kids two essential values: that it is wrong to hate anyone regardless of what the difference might be, and that drugs are about death. It has been an extraordinary program. It has been replicated in about 12 cities in America and about 8 counties in the State.

So I think it has got to be a coordinated strategy. I don't think anyone would suggest that prison alone works. It has to be a much broader strategy.

Mr. MICA. Now, you also had some numbers. I thought I had them down here, but I don't——

Mr. HYNES. There are 398 graduates, Mr. Chairman.

Mr. MICA. OK. But that is not a whole lot of——

Mr. HYNES. No, it is not. But if you begin to look at the numbers, I mean, Ryker's Island, which is our local prison, the cost, I think, will astound you. It is $69,000 for 1 year. Now, it takes us about 6 months to get someone involved in drugs out of the downstate prison up to upstate. So it is about $34,500 for 6 months of incarceration. Then we ship them upstate for the remainder of their sentence, and you are talking about another $15,000 for that second 6 months, and then $30,000 for the next year and subsequent years. So while the numbers seem, I guess, a drop in the bucket, if you begin to look at all of the money—this is Anne Sweren, who is my deputy. She gives me charts because I can't read. She would be more than happy to explain them if you would like.

But if you look at the money that is spent, for this 398 population, it is extraordinary. It is $14 million, and that is documented.

Mr. MICA. Well, I don't want to hog all the time. Mr. Cummings.

Mr. CUMMINGS. Yes, thank you very much, Mr. Chairman.

Mr. Hynes, let me ask you, one of the problems that a lot of jurisdictions face is trying to figure out how to have effective drug treatment.

Mr. HYNES. Well, you begin with a very preliminary problem. When you talk about drug treatment, you are almost always accused of being soft on crime. It took us a long time to be able to get the word out that you can do this thing in a tough, coercive way. I tell the story of one of my colleagues that someone from the public defender's office wanted to help us run the program, and I told him I didn't need his help, I will run the program, I will decide who goes into my program. We typically knock out two-thirds of the people who are eligible. As was mentioned before by Ms. Lapp, you will get 30 percent who won't take the program because it is too tough.

I think the prosecutors have got to make the argument that you can't continue to build prisons without alternative strategies. Prisons ought to be used for people who you can send away until they are too old to hurt people, too old to commit crime. But I think you have got to look at a strategy that says let's give someone like Fred Cohen a chance, let's try it because it works. So there has to be, I think, a much broader strategy.

I am the director for New York State representing the 62 counties on the national board, and I say to my colleagues all over the country that it is a program that works, you ought to try it. But you are going to have to deal with the reality. When you initially talk about it, people are going to look at you askance and wonder if you are soft on crime all of a sudden.

Mr. CUMMINGS. Well, thank you for that response, but that wasn't my question. Let me try to zero in on what I am talking about.

When I say effective, I mean the treatment itself. In other words, in Maryland, we have a lot of treatment programs, but the question is whether they are effective with the individual. Do you follow what I am saying?

Mr. HYNES. I understand.

Mr. CUMMINGS. We have a lot of people throughout, and—wait a minute, hold on—and I guess what I am trying to get to, is it is clear, based upon what you have just said, that you have a lot of confidence in the program itself.

Mr. HYNES. Right.

Mr. CUMMINGS. And I am asking you, what does that program entail, and apparently it is effective, so how do you make sure——

Mr. HYNES. I apologize for misunderstanding.

Mr. CUMMINGS. No, that is OK. It is no problem.

Mr. HYNES. But let me tell you what—let me tell you about the Holy Grail of this program—jobs. Because if you have a drug treatment program and there is no job component, you are going to get a 12 to 14 percent success rate.

By the way, I take that, but it doesn't work unless you have jobs, and that is why our retention rate jumps up to 66 percent after 1 year. If you can create a model in Maryland or Indiana or Georgia or anywhere you want, create a model that has tough, coercive al-

ternatives and a job component at the end of the program, you are going to get success.

Mr. CUMMINGS. You know, it is interesting. Before I came to Congress—this is an interesting point you just made. Before I came to Congress, I created a program in my church where we worked with people who were coming out of boot camp programs, and not 1 dime of Government money was used, all volunteers, young men like the young man sitting there, who wanted to help and advise. But one of the key pieces of it was, the business community got involved and helped folk with jobs. You are absolutely right.

We saw things began to really change. We saw people who—guys would come up to us and say, you know, a light bulb came on because now I am working and I am getting the treatment. Now I have found that fun is being with my 2-year-old as opposed to standing on the corner. And I guess the job thing allows—does something else. What I noticed is, a lot of the problem was, these guys would come out of prison and go right back to the corner. And if they could just stay away from the corner, that would be very, very helpful.

Mr. HYNES. The breakthrough in our program was going to a plant manager of a major corporation in Brooklyn and saying this is what I have in mind, and he just looked at me, and he said, "Listen, you know, I know you from a lot of other jobs you had, I mean, you want to put junkies on my factory floor?" And I said, "do you have an alcohol rehab program?" He said, "Of course, we do, very progressive." I said, "I will give you the same quality, and maybe even better." And that broke through.

Now, Anne Sweren, who is my deputy who runs the program, just had a meeting the other day, a luncheon meeting. We had 45 business people. They are on line waiting to hire my people. It is the breakthrough. And everywhere it has been tried, it is very successful.

Mr. CUMMINGS. And is there monitoring with regard to those? When you send somebody to get a job, do you monitor them, too?

Mr. HYNES. Yes, sir, we do.

Mr. CUMMINGS. To what extent? I mean, is it just checking the drug use, or is it more than that?

Mr. HYNES. Well, I mean, the drug use ultimately leads to arrest. We do have our failures, no question about it. But we regularly check in with our work force, and we find a great deal of success. And you are right, if they are not hanging out on the street corner, they feel good about themselves and the edge of success is assured.

Mr. CUMMINGS. Thank you.

Mr. MICA. Mr. Barr.

Mr. BARR. Mr. Hynes, you may have covered this, and if you did, I apologize. But what if somebody goes through the DTAP program and then later on there is a problem? They successfully complete it and later on they have a problem.

Mr. HYNES. There is no longer a chance. They have had their chance. But the more difficult thing is that someone might go through it for 19 months and walk away, Mr. Barr. And we have an enforcement team that is very effective. We pick them up. They don't get time served for a minute in our program. And they know

it. They know it when they go in. So they go back to the original sentence.

Mr. BARR. That is very similar to a first offender program, for example, that we have in Georgia that applies.

Mr. HYNES. Yes.

Mr. BARR. When you first instituted this program, was everybody on board, or did you have some detractors?

Mr. HYNES. Heavens no. I mean, people on my own staff said, "Are you crazy? You have to run for office. If, God forbid, someone walks off the program and hurts someone, you know, how are you going to face the people?" And I said, "I am going to say a prayer every day," and thank God we have never had a problem. But, sure, there was a great deal of resistance.

Mr. BARR. What was the general nature of that? I know there seems to be always inherent opposition to anything that changes the status quo. But how would you summarize the type of opposition that you faced?

Mr. HYNES. It was political fear. It was that simple. People on my staff were saying—you know, I had a lot of appointed jobs. I was in private practice a lot of years, but I had a lot of appointed jobs. I was the fire commissioner of New York City. And someone said, you know, this is the first time you have run and been elected to something, and you better be very careful. And I said, look, if we are going to remain—you know, maintain the status quo, as you suggest, Mr. Barr—and you have been a prosecutor—you will never get a change. So we took the chance and it has worked, and my only disappointment is that it has not expanded to the extent that it can. We have had great support from Governor Pataki through his criminal justice adviser, Katie Lapp, but we have—there is unending conflict in our legislature with the two houses represented by two different parties, and it is difficult to get agreement on expansion.

Mr. BARR. How about within the city? The chairman mentioned the mayor. Do you work with him? Do you have a good relationship?

Mr. HYNES. Yes, the mayor has been supportive. The city council, you know, funds most of my budget, and we get approval from that segment. But most of our funding comes from the State.

Mr. BARR. Have you discussed this program and received support or have others taken it on? And a couple come to my mind, the National District Attorneys Association?

Mr. HYNES. Oh, yes. I represent the State on the board, and some counties are very, very interested. The problem is two things: first, getting beyond the reaction, the visceral reaction that, you know, you are going to put people like this in a program? I don't know if I should take that chance. But once you get beyond that, the money saved is demonstrable. And once we get beyond that, I think it is pretty easy, but it is the first step.

Mr. BARR. How about the folks at Main Justice?

Mr. HYNES. I have had a number of conversations with the Attorney General. She has been very helpful to us in supporting the program. Actually, she came up to—the corporation that first signed on was Pfizer, and she came up to the anniversary of Pfizer a couple of weeks ago in Brooklyn, and she was very pleased to hear

from this former plant chairman how happy he was with the program.

Mr. BARR. Is there anything in particular that we could do, both on this subcommittee as well as, perhaps, the Congress generally?

Mr. HYNES. It is all about resources, Representative Barr. If we had money to expand this program by perhaps 4,000 or 5,000 slots, I think we could effect an incredible change in public safety, even for all of the positive changes we have in my city and my State. I think the more people we could put into this program and turn them from drug addict criminals into taxpayers, the better it would be for public safety. So if we could get some kind of visible support through direct grants to prosecutors, through the State DAs Association, that would be terrific, through the National DAs Association, that would be great.

Mr. BARR. And you don't receive any Federal funds for the program?

Mr. HYNES. Well, most of the Federal funds are—if they are targeted, they go through the State government, and Ms. Lapp can speak to that more eloquently than I can. But I think we have had a number of conversations with——

Mr. BARR. Another chart you can't read?

Mr. HYNES. No. This is from Katie Lapp. The Byrne money has been cut by 10 percent during the current budget. Restoring that would be very helpful. But the Deputy Attorney General, Eric Holder, had a conference of about 25 prosecutors around the country, and Ralph Martin from Boston, whom I am sure you are familiar with, complained to him that, you know, if you don't have a particularly good idea and someone happens to slip it to you, you get funded. But if you got a great idea and you want to expand it, you have no money for enhancement. Eric Holder is now committed to helping us with direct grants to prosecutors to allow us to enhance programs. So if we get some support from the Congress, this committee, you know, for drug treatment expansion, that would be wonderful.

Mr. BARR. Thank you very much.

Mr. HYNES. Thank you, sir.

Mr. MICA. Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman.

Mr. HYNES. I am a lawyer, Mr. Ose, I am sorry to say.

Mr. OSE. I am sorry?

Mr. HYNES. I am a lawyer, I am sorry to say.

Mr. OSE. Well, we will see how you are.

Mr. HYNES. OK.

Mr. OSE. I look at the testimony, your written testimony here on page 4, and it highlights the difference after a 3-year treatment period, really highlighting the difference of about 25 percent, that being the differential from the two treatment modalities.

Mr. HYNES. No, it is from treatment as opposed to prison.

Mr. OSE. Well, treatment—not treatment in the sense of medical treatment, but how you treat the person that is there in front of you in court.

Mr. HYNES. Right.

Mr. OSE. There is a 25 percent difference in terms of re-arresting, equating to around $14 million in reduced criminal justice costs.

Mr. HYNES. Right.

Mr. OSE. And health and welfare costs. That is remarkable. That is only 400 people?

Mr. HYNES. That is right.

Mr. OSE. That is remarkable.

Mr. HYNES. I think, as I said to my associate coming over here, the true figure is a heck of a lot higher, and I will tell you why. The average drug addict goes to jail for life on the installment plan. So if you took half those people, you are talking over a 50-year life expectancy—you know, a 50-year life of crime, you are talking about a lot of money.

Mr. OSE. Because that $14 million only relates to a 3-year period.

Mr. HYNES. Yes, sir.

Mr. OSE. Now, the other question I have, Ms. Lapp, you have—I am not quite sure I read it here other than maybe implicitly, but both of you—I am sorry, Ms. Broderick. I haven't quite read your testimony yet. Both of you suggest that repeal of drug laws will not satisfy or address our problem, and I perceive there is concern on both your parts that, in fact, this is inappropriate behavior on people's part and we need to help them stop this behavior. Am I correct in that?

Mr. HYNES. Well, Mr. Ose, we were well served, I think, by the testimony of this young man, and I don't think you were in the room. What he said was very, very clear. It wasn't until he faced 4½ to 9 years in prison that we got his attention, and so he would believe that harsh punishment led him to change his life. He is now a program director of a major agency and paying $10,000 a year in income tax.

Mr. OSE. The reason I asked that question, I could hardly contain my disbelief at the testimony from some members of the second panel that marijuana in particular is a behavioral pattern that we should overlook. Is it your conclusion that we should or should not overlook marijuana use?

Mr. HYNES. I don't believe for a moment that we should overlook marijuana use. Indeed, the testimony of Frederick Cohen a few minutes ago was that he began his substance problems with marijuana and booze. You know, I have heard marijuana advocates say endlessly that there is no data that would suggest that because you use marijuana you naturally will go on to the next drug. I look at it in the reverse way. If you speak to the average hard-core drug abuser, they will tell you that certainly marijuana was their first introduction to drugs.

Mr. OSE. Their gateway.

Mr. HYNES. Yes, their gateway, right. And that is exactly the word Mr. Cohen used.

Mr. OSE. Mr. Chairman, I can't—I sat here literally in disbelief at the second panel to have that gentleman suggest that we should over—I just—I am sorry. I had to leave the room. And I thank you for tolerating this. Thank you.

Mr. MICA. Don't leave the room. Stay and engage, Mr. Ose. It is more fun that way.

We appreciate all of the testimony. It is fascinating to hear more about the Arizona experience, and, again, we would like to get some additional data, I think, on that approach. You know, we have a responsibility here to see what is going on across the country and what is effective and what isn't effective. And we do spend a lot of money. Believe it or not, I think, in the last 6 years, we have almost doubled the treatment money from the Federal level, which filters down into the State level and these local programs. Mr. Barr just said that if the New York State program is effective, then we should make certain that funds get to these programs that are effective. That is all I care about, that it is effective and we are doing something about the problem Mr. Cummings has in Baltimore or New York or Arizona or wherever it may be. I think that is our major interest.

So we would like to hear more about your program. Did you want to comment?

Ms. BRODERICK. Chairman Mica, there is going to be a full-blown evaluation that will be done looking at it after we really have been in existence a little bit longer. I was required by the law to do an initial report, and it basically—that initial report that really got a lot of attention was about a first-year implementation program, going to what Congressman Cummings was talking about in terms of best practice. We are working with all 15 departments to try and come up with research-based best practice so we can go out and contract with really good, effective treatment providers. So hopefully, about 10 months from now, you will see some long-term evaluation that really gets to outcome, not the preliminary data that we talked about.

The other thing, if I can just put in a pitch to Congressman Barr, there is some funding for residential substance abuse and treatment, RSAT. It is not available to community corrections. It is only for institutions. It would be wonderful if you could see if there is a way to open up some of that funding so that probation departments and not-for-profits and ATI programs could actually access some of that.

Mr. BARR. Could I just ask one quick question on that, Mr. Chairman?

Mr. MICA. Go right ahead.

Mr. BARR. Would you send me, either directly or through the chairman, either way, just a few details on that so that we could maybe draft something up?

Ms. BRODERICK. Sure, I would be glad to.

Mr. BARR. Thank you.

Mr. MICA. The other thing we planned to look at as a panel is the amount—the way this money filters down to the States and the programs. I believe it is administered by SAMHSA, and the preliminary information is that we spend an incredible amount on administering the programs and the grants, and they end up going into State programs or local programs that are already in existence, that already get State money. I think it was $129 million we have identified in overhead, which sounds like just paring that down and maybe going to a grant system to these locales we could put, let's say, $120 million into the system and use $9 million to

administer, dividing it up, which seems like it would be much more effective.

The other thing we did in some of our preliminary studies—and we used Florida as an example when I had to testify before—not testify, but participate in a State summit. We found an interesting phenomenon in Florida, and we will see if it is repeated across the country, which, in fact, the Federal Government has dramatically increased the amount of treatment money. But then we are finding that the States—in particular, we verified that with Florida. As the Feds increased the money to the States for treatment, the legislatures decreased the amount. And it was one of these things, we went up, they went down, and so the money was being shuffled around at the State level. And we need to look at that because we want the money to go into the programs.

Then the third area is the effectiveness of the programs. Unfortunately, some of the secular programs have had very dismal rates of success. Some of those that have been non-secular, private and some with a religious connection, have been highly successful, and some of those are not eligible for Federal funding, which I think we are doing a re-examination of. All we care about is success, and we are trying to evaluate that.

In 10 months, Ms. Broderick, we will invite you back, maybe 11 months, and we would like to hear more of your program and the specifics and see what we can do to get additional funds and resources into programs that obviously are effective.

It does appear that decriminalization, we have some real problems with it, and there is a lot of mess out there about it. The study that you conducted, Ms. Lapp, in New York is really outstanding. It is probably the most recent. Was it completed in April?

Ms. LAPP. Yes, it was issued in April.

Mr. MICA. And it does debunk some of the myths that we have, just first-time offenders in prison in New York. In fact, I think even the cases where you cited there for possession were, in fact, almost all—what do you say—something down, taking the sentence——

Ms. LAPP. Oh, pled down.

Mr. MICA. Pled down, exactly. That is the term I was looking for. So that as far as pure possession, there were very few, if any, incarcerated in New York for first-time possession offenses. Is that correct?

Ms. LAPP. That is correct. One of the purposes of the report was actually to just synopsize who was actually in our State prison system and for what types of offenses because we have had substantial debate about the Rockefeller drug laws. There have been a lot of advocates seeking to repeal, wholesale repeal, of those laws. And one of the things—I just wanted to segue a little bit. Before I took my current position with Governor Pataki, I worked for Mayor Giuliani for 4 years, and what we did in the city, which now dovetails with what the State has been doing, is we took a very intensive and targeted approach to all drug dealing and drug possession.

Mr. MICA. All drug dealing?

Ms. LAPP. And possession.

Mr. MICA. OK.

Ms. LAPP. But prior to 1994, one of the problems that the police department had was that uniformed police officers were discouraged, actually not allowed to make any arrests of drug dealers on the street. They used undercover units to do that. Mayor Giuliani turned that around and told the police officers, you see drug dealers on the corner, on the stoop, in the playground, we want them arrested, we want them to go to jail, we want them to go to prison. That is what happened.

For drug possessors—and we enforce laws and district attorneys such as District Attorney Hynes enforce those laws very vigorously against possessors with substance abuse problems and put them into programs that work—DTAP and some of the others.

One of the interesting things that happened in New York State is despite increased arrests at an all-time high of all felony levels, and particularly drug offenses, we saw a reduction in the jail population in Ryker's Island. It is down to about 15,000. It used to be over 23,000 in 1994. New York State's prison system essentially remained the same; 70,000 of the population remained the same since 1994.

What happened was, the makeup of the prison population changed. We are holding the violent felony offenders for longer periods of time, and we are allowing appropriate non-violent felony offenders to go into treatment programs like DTAP, like merit time, like some of the others that I mentioned.

What that allowed us to do was, unlike the prior administration, which released a high number of violent felony offenders on work release, we kept them in prison. That helped the police officers on the street, it helped prosecutors like District Attorney Hynes, because they weren't seeing those people come back again. They were being released into our community, recidivating in violent ways—and I am talking about violent felony offenders—and the police officers were just continually arresting them and sending them to—being prosecuted and sending them to State prison. So what we have done is hold the right people in prison, prosecute them, hold them for longer periods of time, not allow early parole release. We ended early parole discretionary release for all violent felons, and we screened, very appropriately, the non-violent felons, drug offenders, that would otherwise go into State prison to go into DTAP and some of the others.

Mr. MICA. So your violent folks are staying behind bars?

Ms. LAPP. That is right.

Mr. MICA. The non-violent ones are getting a chance at probation?

Ms. LAPP. That is right, or, you know, going into DTAP as an alternative to prison or in some of the other programs.

Mr. MICA. Now, Ryker's—again, excuse my New York geographic ignorance—that is a State prison or local?

Ms. LAPP. Ryker's Island represents the local jail system in New York City.

Mr. MICA. You said that went from 23,000 to 15,000?

Ms. LAPP. 15,000. And it makes sense when you think about it. In New York City, prior to 1994, violent felony offenders were being released on early parole release from the State prison system, and they were put into work release programs when they real-

ly should not have been. They were going back to the communities. They were recidivating. The police officers just continued to re-arrest them. The prosecutors were re-prosecuting them. They would go back to State prison, and we would release them again.

All that changed with what Mayor Giuliani did in the city and what Governor Pataki did in the State. Mayor Giuliani said, I am going to arrest everybody that is breaking the law, and I want tough State prison sentences for violent felony offenders. In concert, Governor Pataki passed a truth in sentencing scheme for all violent felons. They do not get out early. They are being held behind bars. But the non-violent offenders are being screened appropriately.

It is actually quite a success in New York State that very few people know about. We have talked about it. I have spoken to many, many people about it, and we have had people from other States come in to see how we have worked in concert with programs like District Attorney Hynes' program, tough law enforcement by Mayor Giuliani, and Governor Pataki with his truth in sentencing, holding the violent felony offenders behind bars.

One of the things I would just like to quote and synopsize as a success: Prior to Governor Pataki, work release and—violent felony offenders could go into work release, which allows them to go into the communities. We stopped that, and Governor Pataki changed that in 1995, and said no violent felons can go into work release. That is a privilege that should only be limited to non-violent offenders.

We reduced the work release participants group by about 32 percent, and we saw a 90 percent drop in violent felony offenses committed by work release inmates. That synopsizes—and it is just plain common sense. Keep the violent felons behind bars and the non-violent felons with violent criminal histories behind bars. Give non-violent offenders who want treatment that opportunity like this young man here. Give them a chance. If they succeed, then we can see the success—more success stories like this. If they don't want to deal with their problem, we have to send them to prison because I do not advocate, nor does Governor Pataki or Mayor Giuliani advocate, putting them back in the community. They are just going to prey on their neighbors.

Mr. MICA. One other point. We are seeing now, an attack on the Federal minimum mandatory, and we have a certain class of offenders at the Federal level. They are going after, as I understand it from Mr. Constantine's testimony, Barry McCaffrey and others, they are going after the trafficker, the big dealer, the big-time dealer, the repeat felony offender. If you look at a study of who is in the Federal prison population—and we are going to explore that a little bit further—you have some pretty tough cookies who have been involved in some serious felony offenses, in most cases repeat.

You wouldn't then advocate changing our minimum mandatory?

Mr. HYNES. No, but that doesn't——

Mr. MICA. At the Federal level.

Mr. HYNES. Sure, but it doesn't deal with the historic problem. You know, drugs as something affecting society didn't happen over a weekend. It took a long time for it to catch on. And there has to be a reduction in demand, and if we are not allowed or we can't

corral the demand, we are always going to have the hard-core drug sellers down to the low-level people who are committing crime.

The reduction in demand, I think, should be a primary goal of this country, and, you know, interdiction has not worked. I wouldn't do away with interdiction, but interdiction is not something that has worked. I think you have to expand the alternatives for treatment. That is the only way you can deal with demand as I see it.

Mr. MICA. I have to disagree with you on the interdiction, but that is—since we abolished interdiction——

Mr. HYNES. No, I wouldn't abolish it. I am just saying it hasn't worked terribly effectively.

Mr. MICA. Yes, well, I would disagree with that, too, because we basically at the Federal level abolished interdiction in 1994 and 1995, and that is why you are seeing this incredible supply coming in now—not that interdiction is the key. I believe you start in the source countries. But that doesn't answer it, either, because if you look at methamphetamine, people can get the recipe off the Internet and cook it in their kitchen, and we still have a hell of a——

Mr. HYNES. It is——

Mr. MICA. It is a combination——

Mr. HYNES. It is a cultural thing that has to be dealt with, and we allowed it to become part of our culture.

Mr. MICA. Let me see. Mr. Cummings.

Mr. CUMMINGS. Thank you. As I am listening to you all, everything you are saying just makes sense. And I was thinking how what happens so often is we get so caught up in which party you are in that we miss the boat. I mean, we just miss it. I have got to give you credit, what you are doing makes sense.

I think that in the African American community, there is a concern that many—just a disproportionate number of African Americans are being literally warehoused in prisons. That is one piece of it. But there is another piece, too, and that is that in my district, which is predominantly African American, folk want people to be punished for violent offenses, there is no doubt about it. I mean, I have been in Congress only 3½ years, but in politics, in elected office for 20, and I have seen it. Because African American people are so much victimized—and I am not saying other people aren't, but I am just saying I know we are.

So it makes sense, Ms. Lapp, it makes sense to treat the violent offenders the way they are treated. And you said something that kind of confused me. You said that when you stopped allowing violent offenders and those with a history of violent offending, your work release offenses, violent offenses—is it offenses or violent offenses?

Ms. LAPP. All violent offenses committed by work release inmates.

Mr. CUMMINGS. Work release inmates went down——

Ms. LAPP. Ninety percent.

Mr. CUMMINGS. Ninety percent. So basically, you have created a situation where you have no violent offenders in your midst unless they commit it while they are on work release. Is that right? Does that make sense?

Ms. LAPP. Well, I think what——

Mr. CUMMINGS. I mean, I know they are kicked out of the program if they do it on work release, but I am just saying basically, what you have, based upon that, is that when these guys go out today there should be no violent offenders in——

Ms. LAPP. In the work release program.

Mr. CUMMINGS. In the work release program. And that makes a lot of sense.

On another matter—I am sorry. I forgot your name.

Mr. HYNES. Mr. Cohen.

Mr. COHEN. My name is Frederick Cohen.

Mr. CUMMINGS. Mr. Cohen. Something that Mr. Cohen said, and I just wonder how this affects your report. And I have seen this to be true, too. You will get people who are using, and in order to maintain their habit, they have got to figure out what to do. They may have done some petty larceny, robbed a few people, and then they get to a point where they are saying, well, I mean, what else can I do? So then they begin to sell or they have been selling for a while. So maybe they have been arrested one or two times, three times for possession. And then they finally get caught doing something like robbing somebody.

I was just trying to figure out, when you were talking about your statistics, the ones that the chairman was impressed with, which I am impressed with, too, about who is arrested and how long—you know, who is in your prisons, how is that—I mean, how does that play out? Are you following my question? In other words, you have people who—you can't even put your finger on how many people fall into that category. In other words, they have been doing—they have been using drugs for years, arrested say three or four times for possession, and they have been committing violent offenses for years. But now finally they get caught. So I am just trying to figure out how do you—how does that play into your analysis, if at all?

Ms. LAPP. Is your question how do we address someone whose violent offense was fueled because of their drug habit?

Mr. CUMMINGS. Yes.

Ms. LAPP. Well, I think once an offender starts committing violent acts against other members of society, we have to separate that person from someone who repeats a drug offense.

Mr. HYNES. We don't accept them in our program.

Ms. LAPP. They will not go into the DTAP program. Obviously, when they get into prison and violent felony offenders—our laws are very tough with regard to that. We have increased the sentences fairly dramatically. We put them in prison drug treatment, and in New York State, ours has gone up in the last 3 years. The participants have gone up about 27 percent, 28 percent now. So we are pretty aggressive in New York State in terms of once—if you are a violent felony offender you go into prison. But if your underlying problem was substance abuse, we are going to put you in a substance abuse program while you are in prison and continue that once you are released on parole after you have served your definite period of imprisonment.

It is a difficult thing. Once someone starts engaging in violent offenses because of their drug habit, we as responsible government officials, need to make sure that those people are punished appro-

priately. And that is why the district attorney doesn't allow them to go into even the DTAP program.

Mr. CUMMINGS. Well, it just seems to me that if the program is all that you all said it is—and I have no reason to doubt it—it seems like every State would be doing something like this. I mean, can you help me with what the arguments are against it? I am just curious. It makes sense.

Ms. BRODERICK. In Arizona, our district attorney in Maricopa County has a very similar program called "Do Drugs, Do Time," and it is exactly modeled after the program in Brooklyn. There are a lot of district attorneys. They may have different names for those programs, but they all are prosecutorial where they make the selection, they do the screening, they offer the diversion, you complete that and you basically are able to do away with your offense.

Mr. HYNES. Mr. Cummings, this is new. You know, I mean, 12 years ago you wouldn't want to talk about this. This is new. But we did it in Brooklyn because we had no choice. We were in a crisis. You know, you talked about seeing those young men in a stupor. They were on my block, too. They were mugging people on my block. My house was burglarized four times in 5 years, and one of my graduates was one of the burglars before he went into my program.

So, I mean, this is new, and it has taken a long time. As I mentioned to Ms. Sweren coming over here, and Mr. Cohen, this is the first time I have been called before a congressional committee in 10 years on this program. And it does make perfect sense. And I will tell you, of the 62 district attorneys, apropos of your mention about political parties, of the 62 district attorneys in my State, the vast majority are conservative Republican. They would buy into this program in a minute if we could get the funding. But the Governor, who has been pushing the program to get money from the legislation, has had this constant fight with the legislature. So, you know, Mr. Barr didn't invite it, but I am certainly going to send something on to him, of course, through you, Mr. Chairman, to try and get some additional funding because it does make sense. It is a perfectly appropriate approach. For the violent people, no questions asked, you go to jail—you know, don't pass go. But if you are someone like Frederick Cohen, you give them a shot. And he is just one of the many, many examples of why this program works so well.

Mr. CUMMINGS. What I hear, I have never—and I am sure that there are probably similar statistics somewhere in the United States. I have never heard those kinds of statistics with regard to jail cells and who occupies them and a reduction of the drug—I mean, how did you put it, Ms. Lapp? In other words, you all, you say you still have the 70,000——

Ms. LAPP. Our overall population is still 70,000. The mix is starting to shift. Over 15 years, it went from 80 to 100 to 34,000 nonviolent offenders in our system, of which most of them are drug offenders. And now that has shifted. At the same time, let me underscore that New York State's crime declined, went down 28 percent, which is four times the national average, and we are the safest we have ever been since 1960. All those things indicate that New York State is doing something very interesting, and obviously right,

which was one of the reasons why District Attorney Hynes and I, when we received the invitation from Congressman Mica's office to be here today, we jumped at the chance because we have a lot to say, we have a lot to show. And we think that this is a recipe for success. Obviously, we still have our problems, but working together with the local police, with prosecutors, courts, the State government and the State legislature in passing laws, that is how all this has changed, and it has been a lot of coordination.

I can recall the days when the mayor took office and he said we are going to arrest every drug dealer and every drug possessor and every quality-of-life offender in New York City. And I sat down with people like District Attorney Hynes and said I don't know how we are going to handle it. But we did because we coordinated everything.

Mr. HYNES. It would have been more helpful if they gave us more money, Mr. Cummings.

Mr. CUMMINGS. The last question, Mr. Chairman. It does have to be—you have to have both sides of this thing, though. You know, I am just thinking, you got to have that toughness on the violence, but you also have got to have this treatment and give it a chance. And I guess it is that combination, like a one-two situation, that helps it to work so that I guess it does free up funds on one end, and I guess those funds don't necessarily flow back, but the treatment——

Ms. LAPP. No, not as much as the district attorney would like.

Mr. CUMMINGS. I am sorry?

Ms. LAPP. Not as much as the district attorney would like.

Mr. CUMMINGS. Yes. Well, you would be in great shape, wouldn't you? The money that you save in the end, if that came back to the other side. That is all right. You don't have to comment.

Mr. HYNES. OK. Thank you, sir.

Mr. CUMMINGS. Thank you very much. You all have been very, very helpful.

Mr. MICA. I look forward to working with you in getting more of that money into the system. I know where there is $120 million to start with, not counting what resources are used by you to apply for this Federal largesse.

Mr. Ose.

Mr. OSE. Before I venture into my few items, I think that my friend from Maryland has come up with an idea. He only touched on it very briefly, and that is perhaps to put some sort of an incentive program to work where a portion of the funds saved go back to the agency that saved them. And I think that is well worth exploring.

One of the things that—going back to my comment about never leaving a charge unanswered that you disagree with, Ms. Lapp, you have in your testimony on page 3, the first paragraph, at least as it relates to New York State, some statistics regarding who has been arrested and incarcerated under the current legal protocols affecting drugs. And some who have testified before you suggested, whether it was explicitly or implicitly, that we were incarcerating people for, "recreational use," "individual use," and the like. And I just—the first paragraph kind of refutes that comment. I mean, 87 percent of these 22,000 individuals are serving time for selling

drugs, not for recreational use but for selling drugs. We don't know if they were selling to their siblings or their parents or their children or what have you, but they were selling drugs. It was a commercial transaction.

Over 70 percent have one or more felony conviction in their record. Of the persons serving time for drug possession, 76 percent were arrested for sale or intent to sell. And then they pled down.

You know, one of the things we lose up here in the testimony is the ability to come back and say, well, now those down pleadings are actually the result of a higher charge being negotiated down.

I wish we could have had all eight of you up here to kind of have a roundtable discussion, as we say in politics. I just want to suggest to you that this information is extremely valuable to me, and I appreciate you bringing it forward.

The other aspect that I wanted, Mr. Chairman—I went through everybody's testimony here, and I found it very interesting. I started with Mr. Constantine, page 1: "I have passionately believed that legalizing drugs is wrong . . ."

Ms. Bennett in her—there is no question what she thinks. Her son is dead, and she obviously believes it is wrong.

Mr. MacCoun, on page 7, "Legalization is a very risky strategy for reducing drug-related harm."

Sheriff Glasscock, "[My] experiences have clearly demonstrated to me that this Nation should not be considering legalizing drugs . . ."

District Attorney Hynes, "I believe it would be a terrible mistake to make any changes in the law that would make it easier for young people to have access to these poisons."

And then I compare that to Mr. Stroup's testimony and, Ms. Lapp, your comment here. Here it is, page 5: "Wholesale repeal of drug laws is a simplistic and irresponsible approach to our country's drug problems."

Mr. Chairman, I am having a little trouble right now because we sit and receive the testimony of people whose sole purpose in life is to improve our community by enforcing the laws that are passed, and then we countenance testimony from individuals, organizations like NORML that, for personal gratification or otherwise, wish to have these poisons remain available in our country. And I just—I can hardly contain myself today.

To you, I very much appreciate what you are doing. I mean, you are on the other end of the country from where I live. You will never have an impact on my town or my kids or my community. But just keep at it. We will give you every resource we can.

Mr. HYNES. Thank you.

Mr. MICA. I do want to thank the panelists. We tried to open this whole subject up to discussion. There is increased interest in so-called decriminalization, but when you talk to folks in New York or Arizona, you find out a little bit more of what is going on, the facts, so to speak. They are not all in, at least in Arizona, and I think the study that has been revealed here today from New York is interesting.

It is incumbent on us at the Federal level that we look for effective legislative and administrative initiatives that will make a difference. Mr. Cummings' community—he and I served together. He

was a ranking member when I chaired Civil Service, and he told me—I think he has 60,000—his estimate is 60,000. Mr. Constantine had 38,900 heroin addicts in Baltimore; the population is 60,000, which has adopted a more liberal approach, so it does raise some very serious questions about what we do, and that certainly has to have some cost to his community.

I think we would all be better off if we could have more success stories liken Mr. Cohens. That is what we are looking for, and trying to find a route there isn't easy.

We do appreciate your participation, your testimony. As we move along, we may call on you again, obviously trying to draw on those success stories and see where we can do a better job, from the Federal level, of assisting you.

We have no further business to come before the subcommittee. I am going to leave the record open for 10 days for additional comments or additional information or questions that may be directed to any of the witnesses.

There being no further business before the subcommittee this afternoon, I would like to thank you again for being with us and providing testimony.

Mr. HYNES. Thank you very much, Mr. Chairman.

Mr. MICA. This meeting is adjourned.

[Whereupon, at 2:10 p.m., the subcommittee was adjourned.]

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