Vera Evidence Brief

For the Record

Minimizing Harm: Public Health and Justice System Responses to Drug Use and the Opioid Crisis

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Summary

How government and communities should respond to drug use is a perennial question that has gained a renewed sense of urgency in the face of the current opioid overdose crisis. More than 52,000 Americans died from a drug overdose in 2015, a number that has grown nearly ninefold since 1980.[1] In addition to the lives claimed annually—which have overtaken those from motor vehicle deaths—thousands more Americans struggle with the health consequences of substance use and the impact of chronic drug use on their economic, social, and emotional wellbeing.[2]

Over the last five decades, the national response to drug use can be broadly characterized by two approaches: treatment, prevention, and harm reduction on the one hand; and punitive responses that prioritize enforcement of drug laws and incarceration of drug users on the other. State and federal spending on substance use reflects the extent to which recent responses have skewed toward enforcement—a 2009 report estimated that state and federal governments spent $47 billion in 2005 on the justice-related consequences of substance use, compared to $8.7 billion on treatment, prevention, and research for substance use combined.[3]

The growth in both opioid use and opioid overdoses is increasingly being recognized as a public health crisis, prompting the federal government to declare opioid use a national public health emergency.[4] While there is no silver bullet for mitigating the impact of drug use on the health and wellbeing of individuals and communities, existing research demonstrates both the problems associated with relying on an enforcement-led approach and the benefits of responding with treatment and other interventions designed to reduce the harms associated with drug use. This brief summarizes this evidence and provides recommendations for a national approach to drug use that is informed by what research has shown to reduce harm.

- Increased enforcement and severity of punishment has not reduced illicit drug use or associated crime. It has, however, led to more incarceration and exacerbated racial disparities in the criminal justice system, with particularly devastating impacts on black communities.
- While enforcement remains widespread, jurisdictions across the United States and the world are increasingly adopting evidence-based public health approaches that aim to mitigate the negative effects of drug use. Strategies within the criminal justice system—such as police-led diversion, medication-assisted treatment, antidotes to opioid overdose, and drug courts—can be expanded as part of a coordinated approach to substance use that includes prevention, harm reduction, treatment, and enforcement.
- Opinions about drug use are shifting. A 2014 poll found that two-thirds of Americans believed that the government should focus on providing treatment for drug use, compared to a quarter who said that prosecuting people who use drugs should be the primary focus.[5]
- Increasing the availability and accessibility of treatment in the community is an essential component of a coordinated response to drug use. The vast majority of people with substance use disorders are not receiving treatment, often because they have insufficient resources and no health care coverage.

About these briefs

Public policy—including decisions related to criminal justice and immigration—has far-reaching consequences, but too often is swayed by political rhetoric and unfounded assumptions. The Vera Institute of Justice has created a series of briefing papers to provide an accessible summary of the latest evidence concerning justice-related topics. By summarizing and synthesizing existing research, identifying landmark studies and key resources and, in some cases, providing original analysis of data, these briefs offer a balanced and nuanced examination of some of the significant justice issues of our time.

Generous support for this brief has been provided by the members of the Google Creative Lab in memory of Charles Spencer.

The enforcement approach: a "War on Drugs"

In 1971, President Richard Nixon declared drug use to be "public enemy number one," and announced a campaign and series of initiatives that would come to be known as the War on Drugs. In the following three decades, this approach to addressing drug use expanded across the state and federal system, employing the weapons of aggressive interdiction and long mandatory minimum sentences for people arrested for drug offenses. In the 1980s and 1990s, spending at the federal level on supply reduction initiatives—such as drug law enforcement—was increased dramatically, outpacing funding for demand reduction initiatives, including treatment, prevention, and research. Over this period, drug laws became harsher: legislation at both the state and federal levels established mandatory minimum sentences, three strikes rules, and truth-in-sentencing laws.[6] At the same time, changes to policing practices that targeted low-level, quality-of-life crimes swept many users and dealers of illegal drugs into the criminal justice system.[7]

While rates of incarceration for drug offenses have declined since their peak in the early 2000s, a punitive response to drug use remains widespread—there were nearly 1.5 million arrests for drug offenses in 2015, making up 14 percent of all arrests.[8] Although these arrests include the manufacture and sale of drugs, the vast majority—nearly 84 percent—are for possession.[9]

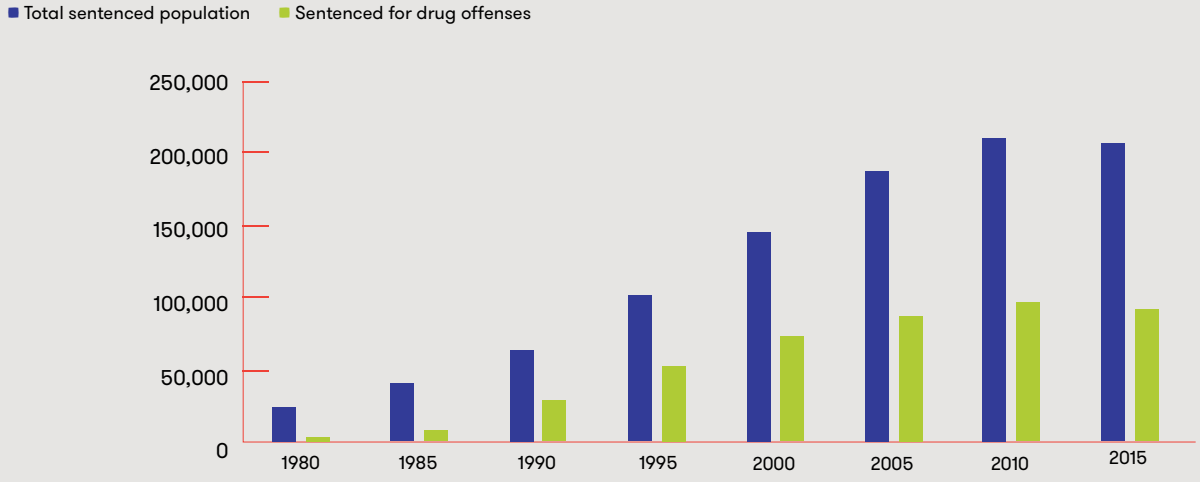
An enforcement approach to drug use has significantly contributed to mass incarceration

The enforcement approach to drug use has had profound effects on the number of people incarcerated in the United States, which has increased more than 670 percent since 1970.[10] Today, the U.S. incarceration rate is unmatched and is five times higher than most of the countries of the world.[11]

- The number of Americans incarcerated for drug offenses has grown at a faster pace than has the total number of incarcerated Americans, increasing more than tenfold in 25 years, from 40,900 people in 1980 to 469,545 in 2015.[12]
- In New York State, which enacted some of the nation's strictest drug laws, the share of all new prison admissions that are attributable to drug offenses increased from approximately 11 percent in 1980 to approximately 44 percent in 2000.[13]
- The share of people in federal prisons serving sentences for drug offenses increased from 25 percent in 1980 to a high of 61 percent in 1994, and today hovers around 50 percent.[14] (See Figure 1.) In 2012, the Urban Institute found that the increase in expected time served by people convicted of drug-related crimes was the single greatest contributor to growth in the federal prison population between 1998 and 2010.[15]

Figure 1

Federal prisoners: total and all drug charges



Source: Bureau of Justice Statistics Prisoners Series; Nathan James, *The Federal Prison Population Buildup: Options for Congress* (Washington, DC: Congressional Research Service, 2016), 19-20 & table A-1.

Drug use and the criminal justice system

Many people who come into contact with the criminal justice system experience problems related to their drug use.

- More than half (58 percent) of people in state prisons and nearly two-thirds (63 percent) of people serving sentences in jail meet the criteria for diagnosis of drug abuse or dependence, while approximately 4 percent of the U.S. population has had a substance use disorder in the past year.[a]
- The current illegal status of certain drugs in many jurisdictions sweeps large numbers people into the system.[b]
- Providing treatment in the community is a crime-reduction strategy: 42 percent of people in state prisons and 37 percent of people serving sentences in jail said they had committed their current offense while using drugs.[c] Additionally, people may turn to crime to support a drug habit: 17 percent of people in state prison and 18 percent of people in federal prison report committing their crimes to obtain money for drugs.[d]

[a] Jennifer Bronson, Jessica Stroop, Stephanie, Zimmer, and Marcus Berzofsky, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009* (Washington, DC: Bureau of Justice Statistics, 2017), 3 & table 1, https://perma.cc/3CNG-KRTD. See also Redonna K. Chandler, Bennett W. Fletcher, and Nora D. Volkow, "Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety," *The Journal of the American Medical Association* 301, no. 2 (2009), 183-90, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2681083/; National Institutes of Health (NIH), "10 percent of US adults have drug use disorder at some point in their lives," news release (Washington, DC: NIH, November 18, 2015), https://perma.cc/TG3G-HYUX; and Bridget F. Grant, Tulshi D. Saha, and June Ruan, "Epidemiology of *DSM*-5 Drug Use Disorder Results from the National Epidemiologic Survey on Alcohol and Related Conditions–III," 73, no.1 (2016), 39-47, http://jamanetwork.com/journals/jamapsychiatry/fullarticle/2470680?resultClick=1.

[b] Federal Bureau of Investigation, "2015 Crime in the United States," https://perma.cc/9SDE-EK93.

[c] Bronson, Stroop, Zimmer, and Berzofsky, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates* (2017), 3 & table 1 (state prisons) and 6 & table 6 (jails).

[d] Christopher J. Mumola and Jennifer C. Karberg, *Drug Use and Dependence, State and Federal Prisoners, 2004* (Washington, DC: Bureau of Justice Statistics, 2006), https://perma.cc/V3YD-XW7J.

Increased enforcement and incarceration have not significantly reduced drug crime or use

A 2014 national review of research on crime and incarceration conducted by a committee of 19 leading criminologists concluded that increased enforcement efforts over the past several decades are unlikely to have significantly reduced drug supply or drug use.[16] Moreover, the review found little, if any, relationship between severity of sanctions for drug use and the prevalence of such use. Much evidence has demonstrated that an enforcement-led approach to drug use has not achieved its intended goals.

- A 2017 analysis by the Pew Charitable Trusts found that there is no relationship between states' imprisonment rates for drug-related crimes and three measures of problems associated with substance use: rates of illicit use, overdose deaths, and arrests.[17]
- New York's strict Rockefeller drug laws were found to have no substantial impact on heroin use, which remained as widespread as before the laws were introduced.[18]
- In a study of the 96 largest U.S. metropolitan areas, the levels of per capita arrests, corrections spending, and police presence were not found to be associated with changes in rates of injection drug use, indicating that enforcement "may have little deterrent effect on drug injection."[19]
- It can be difficult to measure exactly how much the enforcement of drug laws has disrupted drug supply. However, one study evaluating the likely largest disruption to illegal drug supply in the U.S.—a 1995 intervention that shut down the suppliers of 50 percent of materials used to produce methamphetamine nationally—found that the intervention had dramatic, but short-lived effects. The price of methamphetamine returned to pre-intervention levels within four months; and purity, hospital admissions, drug treatment admissions, and drug arrests reached near pre-intervention levels within 18 months, suggesting that producers were able to find substitute materials relatively quickly.[20]

› The use of incarceration for people convicted of drug offenses may actually increase crime. A study controlling for relevant factors, such as prior criminal history, found that people sentenced to prison for drug offenses have higher rates of recidivism and recidivate more quickly than those placed on probation.[21]

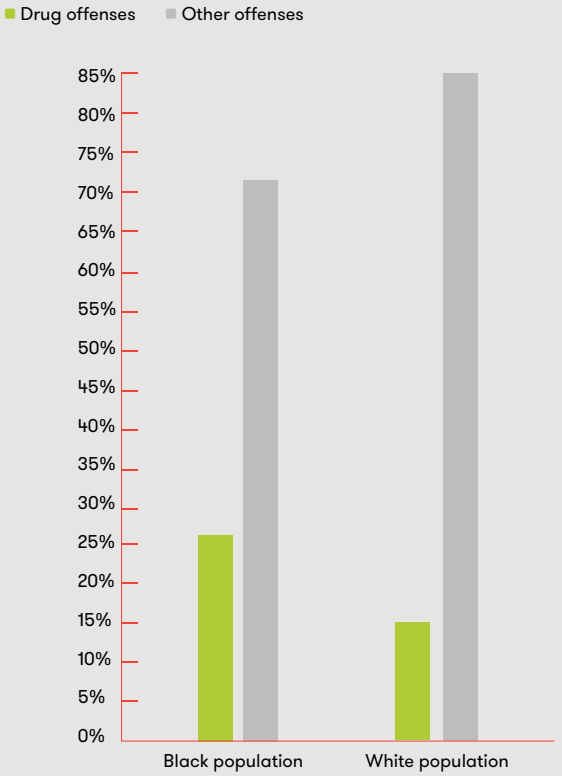
Enforcement of drug laws exacerbates racial disparities in the justice system

Increased use of enforcement for drug violations has not affected everyone equally. Although national surveys of drug use report similar rates of illegal drug use across races, black people are disproportionately arrested and charged for drug-related crimes.[22] Sentencing laws, such as those that mandate longer sentences for crack cocaine—which is pharmacologically similar to powder cocaine, but for which black people are more frequently arrested—exacerbate disparities in who serves time for drug-related crimes.

› A 2005 study found that in Seattle, although the majority of those who were involved in drug dealing were white, 64 percent of people arrested for drug delivery were black.[23] The researchers cited implicit racial bias, which shaped the police department's policies, as the primary driver of practices that led to disparate outcomes. These practices included prioritizing enforcement activities in outdoor drug markets in the racially diverse downtown area of the city rather than markets in primarily white areas, and arresting for crack cocaine—the one drug that was delivered more frequently by black people—more than for any other drug.[24]
› Under New York's Rockefeller drug laws, the rate of incarceration for black males aged 21 to 44 was more than 40 times that of their white peers.[25] Nationally, as of 2015, the rate at which black people were incarcerated in state prisons for drug offenses was approximately six times that of white people.[26]
› Twenty-seven percent of the increase in the black prison population between 1990 and 2000 nationally was attributable to drug offenses, as compared to 15 percent of the increase in the white prison population.[27] (See Figure 2.)

It is difficult to adequately account for the economic and societal impact of the War on Drugs. However, to historically disadvantaged communities of color, the system of mass incarceration that has been supported in part by punitive

Figure 2
Growth in prison population by offense type, 1990-2000



Source: Paige M. Harrison and Allen J. Beck, *Prisoners in 2001* (Washington, DC: Bureau of Justice Statistics, 2002), 13.

drug policies has resulted in the devastation of a generation of young men: there is nearly a 70 percent chance that a black man without a high school diploma will be imprisoned by his mid-thirties.[28] An analysis of the impact of the Rockefeller Drug Laws in New York State—which predominantly affected communities of color—found that, between 1973 and 2002, state residents were held in prison on drug charges for a total of 325,000 person-years, equivalent to 9,848 premature deaths in a population with the same age and demographic characteristics.[29]

The public health approach: addressing drug use as a health problem

While thousands of Americans each year are currently arrested and sentenced as a result of drug law enforcement, policymakers and practitioners are increasingly turning to a range of public health strategies—many of which embody a harm reduction philosophy—that have been proven to help prevent drug overdose and address substance use issues. (See "Harm reduction," on page 5.)

Harm reduction

Harm reduction is a public health philosophy that focuses on addressing the negative impacts of drug use. Harm reduction-informed policies and practices include Law Enforcement Assisted Diversion (LEAD) programs, needle exchange, supervised injection facilities, medication-assisted treatment, and the distribution of naloxone, a drug that can save lives by reversing opioid overdoses. What these strategies have in common is an emphasis on promoting personal and community health and safety, without an insistence on abstinence. A meta-analysis of research evaluating the efficacy of these approaches to illegal drug use found "sufficient evidence to support the widespread adoption of harm reduction interventions and to use harm reduction as an overarching policy approach in relation to illicit drugs."[a]

a Alison Ritter and Jacqui Cameron, "A review of the efficacy and effectiveness of harm reduction strategies for alcohol, tobacco, and illicit drugs," *Drug and Alcohol Review* 25, no. 6 (2006), 611-24, abstract, https://www.ncbi.nlm.nih.gov/pubmed/17132577.

A public health approach prioritizes the need to address the harms associated with drug use, including the impact on people who use drugs, the communities in which they live, and the wider society. Addressing these harms effectively demands balanced methods, where enforcement is used sparingly and only when necessary. Jurisdictions around the world have implemented a "four pillars" strategy to address drug use, which includes elements of prevention, treatment, harm reduction, and enforcement. In this coordinated framework, the four pillars work together to support dual goals of improved public health and public order.[30]

Some rates of drug and alcohol use are much higher among people who come into contact with the justice system than in the general population. Indeed, approximately 30 percent of the admissions to substance use treatment in 2015—including for alcohol dependence—were referred by the criminal justice system.[31]

Some people commit crimes to support their drug use or are typically arrested when they are using. For this population, receiving services to address a substance use disorder may be the first step to stopping offending. There are many opportunities to intervene along the continuum of justice system contact: at the point of arrest; during the pretrial period, through diversion programs; when someone is admitted to prison or jail; and when they return to the community after a period of incarceration. A "no wrong door" approach to drug use embraces all of these as opportunities to improve outcomes. However, despite the increased focus on public heath approaches, most people who experience problems related to their drug use are not offered services or support when they encounter the police, courts, jails, or other justice system entities.[32] Furthermore, many strategies for confronting drug use through the criminal justice system rely on the availability of accessible treatment or other forms of support in the community. The availability of these supports varies widely by jurisdiction.

Police can divert low-level drug users into treatment at the point of arrest

Increasingly, police departments are adopting programs that provide officers with options to divert people to treatment and other services—including housing, health care, job training, and mental health support—as an alternative to booking or arrest. The Law Enforcement Assisted Diversion (LEAD) program that was developed by the Seattle police department is one example of diversion at the point of the initial police encounter and similar programs are now operating in several other cities nationwide. A small, but growing body of work demonstrates positive outcomes for these programs.

- A LEAD evaluation found that participants were significantly less likely to be rearrested in both the short and long term after referral to supportive services, compared to similarly-situated people who did not participate in LEAD.[33]
- A separate evaluation found that participants were significantly more likely to have housing, employment, and income after being referred to LEAD.[34]

In response to an uptick in opioid-related deaths, the police chief of Gloucester, Massachusetts announced that anyone could walk into the city's police precincts and be connected to treatment without fear of arrest or incarceration.[35] In its first year, the program was able to place in treatment almost all of the 376 people who requested assistance and, according to its police chief, the city has experienced a 27 percent reduction in drug-related crime.[36]

Preventing overdoses

Faced with spiraling rates of opioid overdose in communities nationwide, public support for access to naloxone—an antidote that reverses the effects of opioid overdoses, with no potential for abuse or addictive properties—has increased. Community-organizing groups around the country have distributed naloxone to thousands of people—including friends and family members of people with opioid addictions—and a 2014 survey found that naloxone has enabled more than 26,000 overdose reversals in the past decade.[a] Criminal justice systems are beginning to incorporate naloxone access as well: as of December 2016, 1,214 law enforcement departments in 38 states were providing naloxone to officers.[b]

Access to naloxone is becoming especially important as fentanyl—a synthetic, inexpensive, and extremely potent opioid—has emerged in the illegal drug market. Fentanyl is 50 to 100 times stronger than morphine and may be mixed with heroin or cocaine to increase the potency of these drugs without a user's knowledge.[c] In New York City, drug overdose rates jumped 46 percent between 2015 and 2016 in large part due to the emergence of fentanyl, which was implicated in 44 percent of overdose deaths.[d] A *Washington Post* analysis found that in 24 of the nation's largest cities, fentanyl-related overdose deaths increased nearly 600 percent from 2014 to 2016.[e]

[a] Eliza Wheeler, Stephen Jones, Michael K. Gilbert, and Peter J. Davidson, "Opioid Overdose Prevention Programs Providing Naloxone to Laypersons—United States, 2014," *Morbidity and Mortality Weekly Report* 64, no. 23 (2015), 631-35, https://perma.cc/3P9V-TTNK.

[b] Leah Pope, Chelsea Davis, David Cloud, and Ayesha Delany-Brumsey, *A New Normal: Addressing Opioid Use through the Criminal Justice System* (New York: Vera Institute of Justice, 2017), 5 https://perma.cc/Z6W4-F4BV.

[c] Centers for Disease Control and Prevention, "Increases in Fentanyl Drug Confiscations and Fentanyl-related Overdose Fatalities," October 26, 2015, https://perma.cc/NQ6E-T6UA.

[d] New York City Department of Health and Mental Hygiene, "Unintentional Drug Poisoning (Overdose) Deaths in New York City, 2000 to 2016," *Epi Data Brief* No. 89, June 2017, https://perma.cc/WQ7G-H3SL.

[e] Nicole Lewis, Emma Ockerman, Joel Achenbach, and Wesley Lowery, "Fentanyl linked to thousands of urban overdose deaths," *Washington Post*, August 15, 2017, https://perma.cc/J7GC-4K48.

Drug courts offer the possibility of treatment over incarceration

One common way that people who are involved in the justice system access drug treatment is via drug courts, which provide court-supervised treatment, with the aim of promoting recovery and preventing future drug-related crime. Generally, eligibility is limited to people with no record of violent felony offenses who show evidence of drug dependence. There are currently more than 3,000 drug courts operating in more than half of all U.S. counties.[37] While drug court participants are under court-mandated treatment they regularly report to court, are often periodically drug tested, and are sometimes required to meet other criteria, such as gaining employment.[38] However, as discussed below, drug courts are often a poor substitute for voluntary, community-based treatment and can lead to a range of negative outcomes, including admission to prison for those who do not comply with the conditions of court-ordered treatment.

A number of research studies have found that adult drug courts are associated with reductions in recidivism. A 2012 meta-analysis of 92 existing studies found that the average impact of drug court participation was equivalent to a drop in recidivism from 50 percent for non-participants to approximately 38 percent for participants, and that these benefits lasted an average of three years.[39]

Drug courts, while yielding benefits for some participants, also have a number of drawbacks.

- Completion rates vary widely. For many people, drug courts do not provide the type of support they need to succeed and failure to complete court-mandated treatment can lead to incarceration.[40] In fact, in the aggregate, some studies have found that drug court participation does not reduce the amount of time participants spend behind bars because those who fail their programs often receive lengthy sentences.[41]
- Drug courts may result in costlier interventions if they rely primarily on expensive residential treatment programs. For example, because drug courts in New York City required participants to engage with treatment for long periods and often mandated residential treatment

programs, they were more costly on average than the alternative criminal justice sentence.[42] Even in cases where the immediate cost of treatment exceeds the cost of the equivalent jail or prison term, however, lower recidivism rates among drug court participants may lead to savings in the medium to long term.

- Drug courts can be slow to adopt evidence-based treatment options. A 2010 national survey of drug courts revealed that although 98 percent reportedly had participants with opioid addictions, only 56 percent offered medication-assisted treatment (MAT).[43] This may be changing: several states have recently passed legislation requiring that MAT be made available to drug court participants and federal funding for drug courts is now contingent on making MAT available to participants.[44]

Health care approaches to drug use require increased access to treatment

One overarching issue that exacerbates drug problems both within and outside of the criminal justice system is a lack of available treatment. Many people who experience problems related to their drug use are not able to access treatment in their communities.

- According to the 2015 National Survey of Drug Use and Health, only about one in 10 people with a substance use disorder—including use of alcohol—received any type of treatment in the year before the survey was administered. Of those who did not receive treatment, about 30 percent reported that they did not have health care coverage or could not afford it.[45]
- For people with an opioid-use disorder, only an estimated 21.5 percent were able to access some form of treatment between 2009 and 2013.[46]
- For people who are on Medicaid, there are typically months- or weeks-long wait times for a place in a treatment center, which can be hours away from their homes.[47]

However, there is a burgeoning movement to provide access to treatment and harm reduction approaches to drug use in the community.

- The Affordable Care Act defines substance use treatment as an Essential Health Benefit, increasing coverage for drug treatment and other behavioral health services.[48]
- In 2016, Congress effectively ended a longstanding ban on federal funding for syringe exchange programs, underscoring a growing recognition that such programs help reduce the spread of infectious diseases such as HIV and hepatitis C.[49]

International treatment approaches to drug use provide lessons for the United States

Countries around the world have grappled with the same questions about reducing the harms of drug use and ensuring public safety, some in markedly different ways. A number of approaches have been adopted and proved effective in jurisdictions globally, but are not currently in place or have limited availability in the United States (See "Decriminalization in Portugal" on page 9.)

- **Supervised injection facilities** aim to alleviate the health and public order impacts of drug use by offering a medically-supervised and hygienic environment in which to consume drugs. They also aim to improve treatment access by providing information on drug treatment and health care to people who may not be in touch with other services. Evidence shows that these facilities do not increase drug use and, instead, suggest positive impacts, such as increased access to health care and reduced public drug use.[50]
- **Heroin prescription** is a second-line treatment for those people who have not found success from more traditional therapies (such as MAT). Several European countries have made this treatment available, prescribing medical-grade heroin for medically supervised consumption, with the aim of helping reduce the reliance of chronic opiate users on the black market to access heroin. Some research comparing heroin prescription to methadone has found improvement in health and social functioning, as well as declines in criminal activity.[51]
- Available in some parts of the U.S., **housing first** is an approach to ending homelessness that does not require abstinence, but instead prioritizes finding permanent housing for people as quickly as possible and offering them support services, such as substance use treatment, that are entirely voluntary.[52] Early research has found that housing first approaches reduce rates of

homelessness, and are also associated with decreased use of responsive services, such as the criminal justice system and emergency health services.[53]

- Access to **treatment in prison and jail,** including MAT, has been recommended by the World Health Organization for decades.[54] People in confinement are significantly more likely to have substance use issues and they often face availability of illicit drugs in prisons and jails.[55] Some U.S. prisons and jails currently provide MAT.[56] (See "Medication-assisted treatment," below.) Others offer naloxone to people returning to the community after a period of incarceration, based on research that has shown the risk of death for those leaving confinement is nearly 13 times higher than for the general population, in large part due to overdose.[57] (See "Preventing overdoses" on page 6.)

Medication-assisted treatment

Medication-assisted treatment (MAT) combines behavioral interventions with medication such as methadone and buprenorphine to treat drug dependence. A wide body of evidence supports the use of MAT to help people decrease opioid use, remain in treatment, and reduce criminal activity.[a]

- A 2014 systemic review of evidence on MAT with methadone found a positive impact on treatment retention, illicit opioid use, mortality, and criminality.[b] A companion study on the evidence relating to MAT with buprenorphine found significant improvements in treatment retention and illicit opioid use.[c]
- A 2013 study found that in Baltimore, where drug overdoses increased more than in any other U.S. city in the 1990s, average annual heroin overdose deaths decreased by 37 percent after MAT became available in 2003.[d]

[a] See Catherine A. Fullerton, Meelee Kim, Cindy Parks Thomas, et al., "Medication-Assisted Treatment with Methadone: Assessing the Evidence," *Psychiatric Services* 65, no. 2 (2014), https://perma.cc/ZCK4-EE6L; and Timothy W. Kinlock, Michael S. Gordon, Robert P. Schwartz, et al., "A Randomized Clinical Trial of Methadone Maintenance for Prisoners: Results at 12 Months Post-Release," *Journal of Substance Abuse Treatment* 37, no. 3 (2009), 277-85, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2803487.

[b] Catherine Anne Fullerton, Meelee Kim, Cindy Parks Thomas, et al., "Medication-Assisted Treatment with Methadone" (2014).

[c] Cindy Parks Thomas, Catherine A. Fullerton, Meelee Kim, et al., "Medication-Assisted Treatment with Buprenorphine" (2014).

[d] Robert P. Schwartz, Jan Gryczynski, Kevin E. O'Grady, et al., "Opioid Agonist Treatments and Heroin Overdose Deaths in Baltimore, Maryland, 1995–2009," *American Journal of Public Health* 103, no. 5 (2013), 917-22.

Decriminalization in Portugal

In 2000, amidst a rise in rates of drug use and growing public concerns, Portugal passed a law to decriminalize all drug possession after an independent committee recommended such a step as "the most effective way of limiting drug consumption and reducing the number of drug dependent persons."[a] Under the law, drug users who are stopped by the police with a personal supply of drugs—up to 10 days' worth—are released and instructed to appear at a non-court based setting where they can be referred to treatment or other forms of support, if appropriate. The policy also established an intensive prevention campaign that targeted people at the highest risk of developing drug dependence, and increased harm reduction approaches, such as centers that provide methadone.[b]

An evaluation of the new drug laws nine years after they were implemented found that Portugal's decriminalization did not lead to major increases in drug use. It also found that the prevalence of "problematic drug use" declined—particularly injection drug use, which fell from 3.5 to 2.0 injecting drug users per 1,000 people.[c] (In contrast, a 2014 study estimated injection drug use in the United States to be 3.0 per 1,000).[d] The number of drug users in treatment expanded from 23,654 to 38,532 between 1998 and 2008, and the number of people arrested on drug-related offenses dropped from 14,000 in 2000 to an average of 5,000-5,500 per year from 2001 to 2008. After decriminalization, the country also saw a reduction in opiate-related deaths and infectious diseases, and an increase in the amounts of drugs seized by authorities.[e]

[a] Artur Domosławski, *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use* (Warsaw, Poland: Open Society Foundations, 2011), https://perma.cc/287L-4JYR.

[b] Ibid.

[c] Caitlin Elizabeth Hughes and Alex Stevens, "What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?" *British Journal of Criminology* 50 no. 6 (2010), 999-1022, 1006.

[d] Amy Lansky, Teresa Finlayson, Christopher Johnson, et al., "Estimating the Number of Persons Who Inject Drugs in the United States by Meta-Analysis to Calculate National Rates of HIV and Hepatitis C Virus Infections," PLOS ONE 9, no. 5 (2014), https://perma.cc/KHF4-VMK3

[e] Hughes and Stevens, "What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?" (2010), at 1008-1009 & 1015.

Looking ahead

In recent years there has been a shift in attitudes about drugs and views of the best way to respond to drug use and overdoses. A 2005 survey found that 82 percent of police chiefs and sheriffs believed that the national War on Drugs has been unsuccessful in reducing drug use.[58] And a 2014 national survey found that 67 percent of Americans said that the government should focus more on providing treatment for those who use illegal drugs such as heroin and cocaine.[59]

Many states are taking steps to reduce the penalties associated with drug use. Between 2014 and 2015, 16 states enacted laws that reclassified drug offenses—many of which legalized, decriminalized, or reduced penalties for the possession or use of marijuana.[60] In eight states and the District of Columbia, certain amounts of marijuana are now legal for recreational use.

As policymakers grapple with critical questions of how to best respond to an overdose epidemic that is claiming lives, some are advocating for a tough-on-crime, punitive approach. The research evidence, as described in this brief, is clear that incarceration does not reduce drug use, address criminality, or mitigate health consequences, including overdose. By incorporating evidence accumulated in the last five decades of the United States' response to drugs, as well as looking to its international peers, America can choose policies that make the country healthier and safer.

Resources

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