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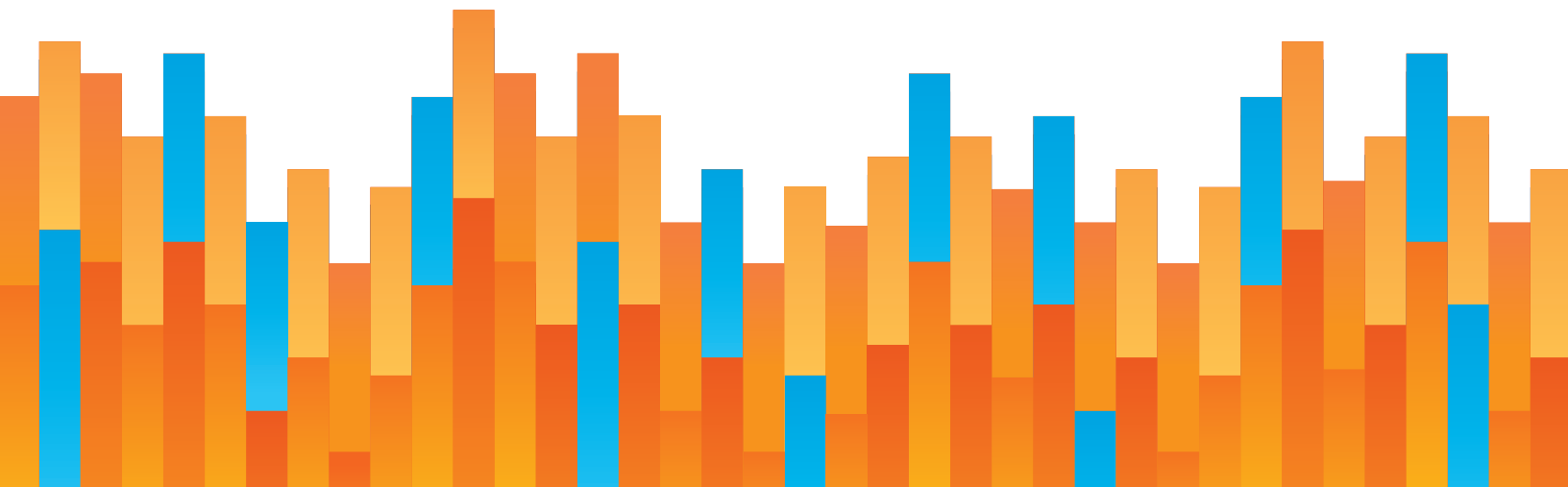


# DRUG LEGALIZATION HANDBOOK

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and Howard Wooldridge

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The **National Coalition for Drug Legalization** is a nonprofit 501(c)3 focused on the legalization of all drugs. Our mission is to advance the conversation about the legalization of all drugs through community service and research. We are a direct-action organization guided by the principle of love. We recognize love is an action that does not punish people who use drugs with criminalization but promotes understanding, accountability, and responsibility through compassion and patience.

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**Students for Sensible Drug Policy (SSDP)** is the largest national youth-led network dedicated to ending the War on Drugs. At its heart, SSDP is a grassroots organization, led by a Board of Directors primarily elected by and from our student and youth members. We bring young people of all political and ideological orientations together to have honest conversations about drugs and drug policy. We create change by providing a platform where members collaborate, communicate, share resources with, and coach each other to generate policy change, deliver honest drug education, and promote harm reduction. Founded in 1998, SSDP is comprised of thousands of members in hundreds of communities around the United States.

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**The Law Enforcement Action Partnership (LEAP)** is an organization of police, prosecutors, judges, corrections officials, and other law enforcement officials advocating for criminal justice and drug policy reforms that will make our communities safer and more just. Through speaking engagements, media appearances, and legislative testimony, LEAP professionals advise on police-community relations, incarceration, harm reduction, drug policy, and global issues from a place of unassailable credibility and insight, reaching audiences across a wide spectrum of affiliations and beliefs.

# FOREWORD

This handbook is a living document. As new information and data arrive, the words on these pages will change. The intent of this handbook is simply to provide a framework for how to legalize all drugs. Much conversation and work has been done to detail **why** we should legalize drugs, but not enough effort has been done to show people **how** we can successfully legalize drugs in the current legal regime. As the founder of the National Coalition for Drug Legalization, I must admit that my journey to believing in the legalization of all drugs began with loss and tragedy.

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*Much conversation and work has been done to detail why we should legalize drugs, but not enough effort has been done to show people how we can successfully legalize drugs in the current legal regime.*

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As late as 2017, I supported drug prohibition. However, when my cousin Duane passed away, his death made me think about issues that affect Black men and the Black community as a whole. Duane was born drug dependent. He later went to prison over drugs and died in his struggle with alcoholism. At his funeral, I met his son Desmond for the first

time. I could not believe how much Desmond resembled Duane. He had Duane's fingers, body shape, and demeanor. There was no denying that he was Duane's son.

Immediately, I made a commitment to ensure that Desmond did not live the life his father led. I made Desmond an offer: He could live with me provided that he graduate from high school, go to college, and work. Desmond kept his end of the deal when he graduated from high school. This was a proud moment for me, considering that his father dropped out of high school in the 12th grade. To see Desmond in college and working part time made me very happy, but I couldn't help but think why Duane's story of drug abuse and imprisonment is so common among Black families? Why couldn't Duane see his son graduate from high school? Why couldn't Duane move beyond his substance abuse problem? The answer is drug prohibition.

Our current drug laws negatively and disproportionately affect people of color, especially Black people. The felony record Duane received from his drug sentence prohibited him from finding a decent job, applying for Pell Grants, and accessing most kinds of public assistance. I then started to think about issues related to poverty and how drug prohibition contributes to crime and drug overdoses in poverty-stricken communities. People will resort to selling drugs when job opportunities for low-skilled, low-wage workers are virtually non-existent. People will abuse drugs under the same circumstances. Our drug supply is not safe. Prohibition has created very fertile ground for organized crime. There are no standards for purity or potency, hence the increase of fentanyl overdoses due to contamination unbeknownst to drug users. Violence is common in an illicit economy where people cannot resolve their disputes through lawsuits or arbitration.

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*What is presented is unconventional, but it is clear that the current approach to drug use has failed. Use a critical eye to evaluate the guidance shared in this handbook.*



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America needs to recognize that we will not see a reduction in violent crimes until we legalize drugs. All drugs. We need to recognize that we will not see a reduction in opioid overdoses until we legalize opioids like heroin. I ask that all who read this handbook keep an open mind. What is presented is unconventional, but it is clear that the current approach

to drug use has failed. Use a critical eye to evaluate the guidance shared in this handbook. I hope to open your heart and inspire you to join our movement to abolish drug prohibition.

I want to thank all of the esteemed contributors to this handbook. The views and opinions expressed within each section are those of the authors and do not necessarily reflect on the collective. From the outset, I believed it was important to include a range of viewpoints from among the community of drug-policy reform advocates. I'm thrilled that we were able to get so many knowledgeable contributors to impart their wisdom.

In solidarity,

Veronica Wright,  
Founder of the National Coalition for Drug Legalization

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# INTRODUCTION

BY GEOFFREY LAWRENCE

Prospective legalization of drugs is a sensitive and complicated topic that inevitably evokes visceral reactions from most observers. Legalization proponents believe the drug war has represented a vast overreach of government power and that this power has often been applied in arbitrary and discriminatory ways. Often, the so-called “War on Drugs” has served as a pretext for authorities to harass communities or individuals they dislike. More broadly, a prohibition on legal commerce simply creates market opportunities for illegal sellers to organize illicit markets. American prohibition of alcohol, for example, led to the emergence of the American Mafia, who sought to fill the still-existent popular demand for liquor. Today, there are clear parallels with international drug cartels.

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On the other hand, defenders of the status quo believe federal, state, and local governments safeguard the public welfare by enforcing drug prohibition. They believe drugs are a threat to national health and rightly view addiction as leading to a pattern of

destructive behavior. Parents often worry about how the availability of drugs will affect their children. No parent wants to see their child succumb to addiction.

All of these concerns are valid. However, the contributors to this volume recognize that use and abuse of drugs have not disappeared even after decades of strict legal prohibition. To the contrary, deaths associated with drug use have reached all-time highs in recent years. Drugs adulterated with harmful substances like fentanyl have proliferated rapidly in an illicit market where there are no manufacturing standards, clear labeling requirements, nor product liability insurance. Likewise, violence throughout Latin America and along the border states has grown steadily for decades as international drug cartels have amassed power and wealth.



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*In face of these dangers, it may be time to admit that a legal and regulated market for drugs is likely to produce less dangerous outcomes for both society at large and the individuals who choose to consume drugs.*



In face of these dangers, it may be time to admit that a legal and regulated market for drugs is likely to produce less dangerous outcomes for both society at large and the individuals who choose to consume drugs. Orderly transactions for clearly labeled products with controlled access or medical supervision can cut through the violence associated with illicit markets and also minimize accidental overdose.

The contributors to this volume hope to launch a renewed national conversation about whether the drug war actually protects the American public from harm. If not, we as a society should begin to consider an alternative approach based on reason and evidence. The approaches considered here are intended to inform that debate.



## PART 1

# THE HISTORY OF THE WAR ON DRUGS

BY MICHELLE MINTON AND NEILL FRANKLIN

The use of drugs in human culture likely precedes the written word. For much of that history, drug use and even abuse were uncontroversial or, at least, not controversial enough to warrant formal deterrence.<sup>1</sup> In 19th-century America, however, anxieties over race and class transformed the issue of drug use, previously viewed as a personal and later medical matter, into an existential cultural threat demanding severe government interventions in order to protect society from drugs and drug users, ultimately culminating in the 20th century's War on Drugs.

Though typically ascribed to law-and-order political interests, historical scholarship has recently emphasized the bipartisan origins of the War on Drugs, showing that American anti-drug policies, particularly at the federal level, emerge from broad political consensus.<sup>2</sup> Moreover, such consensus is typically only achieved when political interests converge

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<sup>1</sup> Elisa Guerra-Doce, "The Origins of Inebriation: Archaeological Evidence of the Consumption of Fermented Beverages and Drugs in Prehistoric Eurasia," *Journal of Archaeological Method and Theory*, Vol. 22, Issue 3 (2015), pp: 751–782. Available at: <https://www.jstor.org/stable/43654200>.

<sup>2</sup> Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration*. Cambridge, MA: Harvard University Press (2016).

around those issues deemed “imperative” by society’s most politically empowered or dominant classes. In America, that class has traditionally been affluent (middle- and upper-class) individuals of European descent, henceforth referred to as affluent whites or suburban whites.

The primacy of these so-called “suburban imperatives” in American drug politics, at least partly, explains why the War on Drugs has been repeatedly constructed around the imagery of “suburban crisis.” Predominantly white individuals, and especially youth, are rhetorically positioned as the sympathetic victims in need of protection, whether from drugs, drug users, illicit drug markets, or, in more recent history, from the consequences of criminal drug laws themselves.<sup>3</sup> This majority, bipartisan viewpoint has historically crowded out minority viewpoints regarding the legal status of drugs, drug users and drug markets.

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America’s first anti-drug laws emerged at the local level and eventually culminated in federal restrictions governing the practice of opium smoking. This habit was commonly associated with Chinese immigrants. At the same time, early drug laws largely preserved access to the “medicinal” liquid opium tinctures favored by affluent whites of the era. This general pattern of disparate treatment has been replicated with remarkably little variation in every other major drug policy the government has enacted since that time.

America’s first foray into anti-drug policy occurred during a period of rapid change and intensifying anxiety. Though advancement in science, technology, and industry had

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<sup>3</sup> Matthew D. Lassiter, “Impossible Criminals: The Suburban Imperatives of America’s War on Drugs,” *The Journal of American History*, Vol. 1, Iss. 1 (2015), pp. 126-140. Available at: <https://academic.oup.com/jah/article/102/1/126/686691>.

afforded greater wealth and comfort for many 19th-century Americans, the shifting modes of living and demographics this progress both inspired and required also provoked deep angst over what the nation's future might look like.

Chinese immigrants arriving in the American West brought with them not only the cheap labor needed to fuel American industrialization but also new religions, cultural practices, and philosophies that often clashed with Euro-Christian values. Newly freed and enfranchised Black Americans in the South came to be seen as potential political rivals to the white Southerners they outnumbered in many regions. Northern elites, meanwhile, fixated on “urban squalor” and the deviant behavior of the “underclass whites,” including poor Eastern European immigrants, bohemians, and other nonconformists drawn to the nation's metropolises.

Though dissimilar in their particulars, the anxieties plaguing various groups of affluent white Americans during this period stemmed from the same fundamental fear of losing their status as the dominant class in American society and the privileges that status bestowed to them. Far from unique, 19th-century Americans responded as dominant groups throughout history often typically have when confronted by a perceived class threat—by attempting to reestablish the social hierarchy and their position at the top of it through the subjugation of potential rivals. Famed economist Joseph Schumpeter has described how elites in the early 20th century used the government to suppress free enterprise because open competition empowered new entrants to the market to displace elites and threaten their social status.<sup>4</sup>

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*Prior to the 19th century, the concept of “addiction” was not part of biomedicine, as a medical concept did not really exist. “Inebriety,” or any improper use of intoxicating substances was viewed primarily as a personal moral failure and thus the rightful purview of religion.*



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<sup>4</sup> Joseph Schumpeter, *Capitalism, Socialism, and Democracy, Second Edition* (1947), London: George Allen and Unwin.

Elite attitudes toward drugs, drug users, and drug markets complemented this antipathy to free enterprise as well as the growing hostility toward new industries, ways of life, and groups migrating to the nation. Although affluent whites of this era were not a homogenous political class, their interests converged around what came to be seen as a common enemy and shared goal: drug addicts and drug control.

Prior to the 19th century, the concept of “addiction” was not part of biomedicine, as a medical concept did not really exist. “Inebriety,” or any improper use of intoxicating substances was viewed primarily as a personal moral failure and thus the rightful purview of religion.<sup>5</sup> Borrowing from the emerging fascination with genetics and Social Darwinism, these early theories of addiction proposed a genetic origin for the disease. Under this theory, sufferers were believed to inherit a nervous system disorder or “nervous weakness” that made them less resilient to the hectic pace of modern life and predisposed them to all manner of impropriety, including crime, indolence, sexual deviance, and drug abuse. Sufferers were thought to not only experience greater inebriating effects from drugs than non-sufferers but also to be more likely to develop addiction with repeated use and then pass down that predisposition with escalating severity to their progeny. In other words, addiction came to represent both cause and effect of “degeneracy,” a sign of genetic inferiority made worse by modern life. In modern parlance, this degeneracy was thought to impose externalities on all of society, leading advocates to conclude that what was once thought of as a personal vice had become a social peril.<sup>6</sup>

On one hand, this disease model of addiction allowed medical professionals to reframe substance use as a problem in need of treatment rather than moral condemnation or punishment. On the other hand, however, it created a sharp distinction between “good drug users” and “bad drug users,” with drugs once considered harmless when used by predominantly affluent whites to be deemed harmful when used by other groups solely on the basis of the traits inherent to their members. The dangerousness of any given substance, in other words, was dictated by the nature of its users rather than the substance itself. Consequently, with the support of the medical and scientific communities, this thinking established a double standard in America’s approach to drug control: It at once justified treatment-centric approaches for drug problems commonly facing affluent whites while simultaneously demanding harsh criminal policies for drug issues prevalent among

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<sup>5</sup> Marcus Aurin, “Chasing the Dragon: The Cultural Metamorphosis of Opium in the United States, 1825-1935,” *Medical Anthropology Quarterly*, Vol.14, No. 3 (Sep., 2000), pp.414-441. Available at: <https://pubmed.ncbi.nlm.nih.gov/11036586/>.

<sup>6</sup> Ibid.

other groups. Drug laws aimed to protect affluent whites from the dangers of addiction but to otherwise protect society from drug addiction or people with substance use disorder.



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This thinking established a pattern in American drug politics that, with strikingly little variation, has been replicated in every major drug policy enacted since. Briefly, this pattern begins when a specific drug or drug-using behavior becomes linked in the public consciousness with a visible minority group. Bolstered by sensationalistic news accounts, fear then spreads within the dominant classes that the drug or drug-using behavior is not confined to the minority group, but is spreading like a contagion first to underclass whites, then to affluent whites. This then makes the matter a class imperative, uniting affluent whites around a common cause that, in turn, puts pressure on elected officials to meet the demands of their most empowered constituency and leads to increasingly restrictive laws for the drug in question, culminating in total prohibition. Finally, efforts to enforce those criminal drug laws, whether by design or accident, serve as a vehicle to control members of the marginalized groups. Opium and more specifically, opium smoking, was the first substance-use behavior to trigger this pattern, but it was certainly not the last.

Until practically the 20th century, opium use was so uncontroversial that it could be found in practically every middle-class American home and available for purchase at general stores and grocers. Even available by mail-order, opium quickly gained popularity with affluent women who could enjoy its effects in the privacy of their own homes while continuing to manage their household duties.<sup>7</sup> Ironically, opium and its derivatives,

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<sup>7</sup> Michael M. Cohen, "Jim Crow's Drug War: Race, Coca Cola, and the Southern Origins of Drug Prohibition," *Southern Cultures* 12, No. 3 (Fall 2006), pp. 55-79. <https://www.jstor.org/stable/10.2307/26391000>.

including morphine and heroin, gained rapid popularity among women affiliated with the Temperance Movement because opium products were viewed as a socially acceptable, and even scientific, alternative to alcohol.<sup>8</sup>

Chinese laborers, who began migrating to the U.S. in the middle of the century, also enjoyed opium. But, instead of drinking it like their white neighbors, Chinese immigrants smoked it, typically in a commercial opium den. Though certainly strange to white Americans, the Chinese practice of opium smoking, as much the rest of Chinese-American life, was initially viewed by affluent whites with curiosity if not simply ignored.<sup>9</sup> As the number of Chinese immigrants grew, however, elites began to worry that growing interaction between Chinese immigrants and white Americans could lead morally weaker whites into violating the norms of Victorian propriety. Of particular concern was the idea that white women and girls might fall into lives of depravity as a result of their visits to the opium den. Worries abounded that women might ignore their household duties, be forced into prostitution, or—worst of all—engage in voluntary sexual relations with non-whites and endanger the nativist purity of their entire race.<sup>10</sup>

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<sup>8</sup> Alana Henninger, Hung-En Sung, “History of substance abuse treatment,” in *Encyclopedia Criminology and Criminal Justice*, eds. Gerben Bruinsma, David Weisburd (New York: Springer, 2014), 2257-2269.

<sup>9</sup> Patrick Mccaffrey, “Drug War Origins: How American Opium Politics Led to the Establishment of International Narcotics Prohibition,” Master’s thesis (Harvard Extension School, 2019), <http://nrs.harvard.edu/urn-3:HUL.InstRepos:42004195>.

<sup>10</sup> Diana L. Ahmad, “To Preserve Moral Virtue: Opium Smoking in Nevada and the Pressure for Chinese Exclusion,” *Nevada Historical Society Quarterly* 4, No. 3 (September 1998): 141-168, <http://epubs.nsls.nv.gov/statepubs/epubs/210777-1998-3Fall.pdf>.

Though working-class whites had long complained about competition from Chinese laborers, the opium den eventually came to signify the corrupting influence of Chinese immigrants on the so-called respectable classes of whites. Controlling the threat posed by opium smoking thus became a social imperative, and the matter received swift attention from local and state lawmakers. Beginning with San Francisco in 1875, many Western cities and states with large Chinese populations began enacting anti-opium smoking legislation, often with the explicit goal of preventing whites from interacting with Chinese people in opium dens.<sup>11</sup> For example, Idaho's 1878 ban on opium smoking applied only to white residents, as well as to Chinese opium den operators caught servicing white patrons.<sup>12</sup> The failure of such bans to achieve either their explicit or implicit ends led only to demands for increasingly restrictive, comprehensive, and punitive solutions, including banning the importation of opium for smoking (but not for medicinal purposes), ending Chinese immigration, which was believed a main pipeline for opium, and ultimately calls for global prohibition of narcotics.<sup>13</sup>

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*... cocaine became associated with the idea of “negro cocaine fiends” and Latin American migrants, stoking fear in both white Southerners and northern reformers transforming coca—once considered so inoffensive it was included in everything from Coca-Cola to children’s cough drops—into a social menace.*



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The same pattern occurred with cocaine just a decade later. Similarly in wide-use since the middle of the 19th century, cocaine became associated with the idea of “negro cocaine fiends” and Latin American migrants, stoking fear in both white Southerners and northern

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<sup>11</sup> Geoffrey Lawrence, “Cannabis and States’ Power: A Historical Review of State Efforts and Authority to Regulate Cannabis,” Reason Foundation Policy Brief, April 2019, [reason.org/wp-content/uploads/cannabis-and-states-power-historical-review-of-regulation.pdf](https://reason.org/wp-content/uploads/cannabis-and-states-power-historical-review-of-regulation.pdf).

<sup>12</sup> Liping Zhu, “How The Other Half Lived: Chinese Daily Life in Boise Basin Mining Camps,” *Idaho Yesterdays* 38, No. 4 (Winter, 1995): 20-28.

<sup>13</sup> Opium smoking, anti-Chinese attitudes, and the American medical community, 1850–1890. *Am Nineteenth Century Hist.*, Vol. 1, Issue 2 (2000), pp. 53–68. [https://scholarsmine.mst.edu/his\\_polsci\\_facwork/25](https://scholarsmine.mst.edu/his_polsci_facwork/25).

reformers transforming coca—once considered so inoffensive it was included in everything from Coca-Cola to children’s cough drops—into a social menace.<sup>14</sup> To date, coca remains one of the most understudied botanicals, with a rich history of medicinal and traditional uses, and little is known about its other properties, with an almost singular focus on the alkaloids used in cocaine production being the sole subject of modern research on the plant. It occurred again with cannabis in the early 20th century, linked to fears over the influx of Mexican refugees to Western states during the Mexican Civil War. Americans had commonly purchased cannabis as an elixir for decades, but Mexican refugees imported the curious habit of smoking raw cannabis flowers.<sup>15</sup>

Throughout much of the rest of the 20th century, domestic opinions on drug use among the general public largely followed this model, with drugs like marijuana, LSD, psilocybin, crack cocaine, and methamphetamines linked to disfavored or minority groups, use of that drug deemed immoral or counter-culture, and those using such drugs viewed as a threat to the social fabric in need of quarantining.<sup>16</sup>

Internationally, the U.S.-led effort to establish a global drug control regime, initiated before World War I, proved a convenient vehicle to pursue the country’s national security, geopolitical, and global trade goals. Through treaties and conventions, America and other industrialized nations entrenched their definitions of legitimate and illegitimate drug use and the appropriate flow of drug commodities in international trade. Restrictions on the cultivation, export, and consumption of drug commodities adopted by other nations intended to direct the global supply of drug commodities to legitimate purposes, also served to secure supplies of the raw materials needed for the domestic manufacture and ultimate exportation of pharmaceutical goods, reducing the potential threat of trade disruptions and reducing costs through tamping down on competition posed by now illegitimate uses of drug materials, such as the traditional practice of coca leaf chewing observed by indigenous populations in coca-leaf-exporting nations.<sup>17</sup>

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<sup>14</sup> Michael M. Cohen, “Jim Crow’s Drug War: Race, Coca Cola, and the Southern Origins of Drug Prohibition,” *Southern Cultures*, Vol. 12, No. 3 (Fall 2006), pp. 55-79. <https://www.jstor.org/stable/10.2307/26391000>.

<sup>15</sup> David F. Musto, *The American Disease: Origins of Narcotic Control*, (New York: Oxford University Press, 1999).

<sup>16</sup> Suzanna Reiss, *We Sell Drugs: The Alchemy of US Empire*, (Oakland: University of California Press, 2014).

<sup>17</sup> Reiss, *We Sell Drugs*.





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*President Nixon’s War on Drugs, declared in 1971, was a direct response to the escalating Cold War and fears over communism, as well as the growing anti-war, youth counter-culture, and civil rights movements, which together threatened to upend the social order.*

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By the latter half of the 20th century, America’s approach to drugs had become fundamentally intertwined with its broader domestic and foreign policy goals. President Nixon’s War on Drugs, declared in 1971, was a direct response to the escalating Cold War and fears over communism, as well as the growing anti-war, youth counter-culture, and civil rights movements, which together threatened to upend the social order. This approach to drug control, characterized by tough-on-crime policies, such as mandatory minimum sentencing, aggressive law enforcement, and the expansion of the carceral state, served as mechanisms to contain that social threat.<sup>18</sup>

Whether regarding drug use at home or abroad, successful implementation of restrictive drug policies continued to depend on mobilizing public fear against those groups associated with those drugs, like the communist dope pusher threatening not only the bodies but the minds of young Americans or the urban crack cocaine dealer bringing drugs and crime into the enclave of the suburbs.<sup>19</sup>

Recently, an addendum to this pattern has emerged in the growing movement for drug policy reform that, generally speaking, seeks to modernize, relax, or repeal criminal drug policies. Typically provoked by periods of aggressive anti-drug law enforcement, reform movements are characterized by a cultural shift in attitudes toward particular substances or the groups associated with their use. The cannabis legalization movement in America, for example, was largely kickstarted by suburban parents in California following the state’s

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<sup>18</sup> Craig Reinerman and Harry G. Levine, “Crack in the Rearview Mirror: Deconstructing Drug War Mythology,” *Social Justice*, Vol. 31, No. 1/2 (2004): 182-199.

<sup>19</sup> Julie Netherland and Helena B. Hansen, “The War on Drugs That Wasn’t: Wasted Whiteness. Dirty Doctors, and Race in Media Coverage of Prescription Opioid Misuse,” *Culture, Medicine, and Psychiatry*, Vol. 40, No. 4 (2016): 664–686, doi: 10.1007/s11013-016-9496-5.

1950s crackdown on drugs, particularly in suburban neighborhoods and on college campuses. By 1967, with white youths and adults comprising the vast majority of marijuana arrests, attitudes began to shift. In the following year the American Civil Liberties Union launched a nationwide campaign to legalize cannabis use for adults, and a year later, the National Organization for the Reform of Marijuana Laws (NORML) was founded.<sup>20</sup>

Since the late 20th century, the reform movement has accelerated, both at home and abroad. Beginning in the late 1990s, starting with California, U.S. states began legalizing medical cannabis and eventually recreational cannabis use for adults. As of this writing, 38 states and the District of Columbia have legalized medical cannabis, while 22 states and D.C. have legalized adult-use cannabis.

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Facing similar outcries over drug-related harms and enforcement-related harms, European nations have also experienced movements for reform. In 2001, Portugal enacted one of the most comprehensive drug reform laws, among other things decriminalizing the possession and personal use of small amounts of all drugs. Within the first decade of switching from a punitive to treatment-focused policy, Portugal's rate of drug-related deaths declined by 80 percent and the prevalence of heroin dependency fell by half.<sup>21</sup> Their success spurred other European nations, such as the Netherlands, Switzerland, and the Czech Republic, to experiment with their own reforms, decriminalizing the possession and use of certain illicit drugs like cannabis, cocaine, and heroin.

In more recent history, the American drug reform movement has turned its attention to substances in addition to cannabis. In 2020, for example, Oregon voters approved a ballot

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<sup>20</sup> Lassiter, *Impossible Criminals*.

<sup>21</sup> Glenn Greenwald, "Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies." Cato Institute, 2009. <https://www.cato.org/white-paper/drug-decriminalization-portugal-lessons-creating-fair-successful-drug-policies> (April 2, 2009).

measure making the state the first in the nation to decriminalize psilocybin and legalize its supervised use, with other states expected to follow in the coming years.

The movement to unravel criminal drug laws stands as a sharp rebuke to American drug policies of the past 150 years. No one can yet be sure how liberalization of drug laws will affect society, but this book is intended to provide thoughtful guidance on the issues policymakers should consider.

## 1.1 MILESTONES IN AMERICAN DRUG POLICY

BY NEILL FRANKLIN

Throughout the 19th century, opium and cocaine were widely available in the U.S. without restriction. During this period opium could be sold by virtually anyone. Cocaine was similarly available and uncontroversial, given in chewable leaf form to boost the productivity of laborers, used in numerous remedies, and consumer products, like Coca-Cola, which famously contained 9 milligrams of cocaine per bottle until 1903.<sup>22</sup>

The following is a timeline of major changes in American drug culture and policies since the mid-19th century:

### 1800-1919

- 1853: Invention of the hypodermic syringe for the administration of morphine.<sup>23</sup>
- 1880: The U.S. and Qing Dynasty China complete an agreement prohibiting the shipment of opium between the two countries.<sup>24</sup>

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<sup>22</sup> Jochen Beyer, "Herbal Psychoactive Substances," in *Encyclopedia of Forensic Sciences*, ed. Jay A. Siegel, Pekka J. Saukko, Max M. Houck (Cambridge: Academic Press, 2013), 275-279.

<sup>23</sup> Stephen Levy, "Hypodermic Syringes: Greatest Medical Device of All Time?" Medical Device And Diagnostic Industry Website, 11 Apr. 2014. <https://www.mddionline.com/drug-delivery/hypodermic-syringes-greatest-medical-device-all-time> (Accessed 26 May 2023).

<sup>24</sup> American Addiction Centers Editorial Staff, "Cocaine History and Statistics," updated January 2023. <https://drugabuse.com/drugs/cocaine/history-statistics> (Accessed 19 July 2023).

- 1890: Congress enacts the first federal taxes on morphine and opium.<sup>25</sup>
- 1906: Congress enacts the Pure Food and Drug Act, which seeks to use ingredient-labeling requirements to prevent unwitting addiction.<sup>26</sup>
- 1909: Congress enacts the Smoking Opium Exclusion Act, which bans the possession, importation, and use of opium for smoking.
- 1914: Congress enacts the Harrison Act, which regulates and taxes the production, importation, and distribution of opiates and cocaine.
- 1919: The 18th Amendment to the U.S. Constitution is ratified, federally prohibiting the manufacture, transportation, and sale of intoxicating liquors.

## 1920-1969

- 1920: The American Medical Association calls for a ban on heroin due to concerns over safety and addiction.<sup>27</sup>
- 1922: Congress enacts the Narcotic Drugs Import and Export Act of 1922, which prohibits the possession, use, or import of narcotics for non-medicinal uses and establishes the Federal Narcotics Control Board to enforce the Act.
- 1924: Congress enacts the Heroin Act, which prohibits the manufacture, distribution, sale, and possession of heroin.<sup>28</sup>

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<sup>25</sup> “The Federal Response to the United States Drug Problem 1960-1989,” U.S. Department of Justice, National Institute of Justice, OJP.Gov, December 1989.  
<https://www.ojp.gov/pdffiles1/Digitization/124803NCJRS.pdf>.

<sup>26</sup> Hamilton Wright, “Report on the International Opium Commission and on the Opium Problem as seen within the United States and its Possession,” Senate Document No. 377, United States Congressional Series No 5657 (1910), pp. 53–75.  
<https://www.taylorfrancis.com/chapters/edit/10.4324/9780429436079-42/hamilton-wright-report-international-opium-commission-opium-problem-seen-within-united-states-possession-senate-document-377-united-states-congressional-series-5657-1910-pp-53%E2%80%9375-dan-malleck?context=ubx>.

<sup>27</sup> Audrey Redford and Benjamin Powell, “Dynamics of Intervention in the War on Drugs: The Buildup to the Harrison Act of 1914,” *The Independent Review* 20, No. 4 (Spring 2016): 509-530,  
<https://www.jstor.org/stable/44000159>.

<sup>28</sup> Ibid.

- 1933: The 21st Amendment to the U.S. Constitution is ratified, ending alcohol prohibition and returning alcohol regulation to the states.
- 1937: Congress enacts the “Marihuana Tax Act,” which ostensibly creates a federal tax on the sale of cannabis, hemp, or marijuana, but effectively prohibits cannabis across the 48 states.
- 1961: The United Nations passes the Single Convention on Narcotic Drugs, an international agreement which seeks to limit the possession, use, trade in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes, as well as an agreement among member nations to deter and discourage drug traffickers.

## 1970-2020

- 1970: Congress enacts the “Controlled Substances Act,” which establishes the “schedule” of drug classification based on their medical application and potential for abuse. Marijuana, along with “dangerous drugs” like heroin, is placed as a schedule I narcotic and prohibited. All other drugs currently sold were placed within Schedules I through V or designated as “Generally Recognized as Safe” (GRAS) and exempt from drug laws, except for two drugs: alcohol and tobacco.
- 1971: Congress enacts the Bank Secrecy Act, which requires U.S. financial institutions to aid government agencies in detecting and preventing money laundering.
- 1971: The United Nations passes the Convention on Psychotropic Substances, which establishes an international control system for psychotropic substances.
- 1971: President Nixon officially declares a “War on Drugs.”
- 1986: Congress enacts the Anti-Drug Abuse Act, which establishes mandatory minimum sentencing for various drugs.
- 1986: Congress enacts the Money Laundering Control Act, which criminalizes money laundering.
- 1988: The United Nations passes the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which provides measures against drug trafficking, including provisions against money laundering and the diversion of precursor chemicals.

- 2010: Congress enacts the Fair Sentencing Act, which reduced the statutory penalties for crack cocaine offenses to produce an 18-to-1 crack-to-powder drug quantity ratio. This act eliminated the mandatory minimum sentence for simple possession of crack cocaine and increased statutory fines.
- 2018: Congress enacts the First Step Act, which made a variety of sentencing reforms.

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## PART 2

# ADULT RECREATIONAL USE

BY MICHAEL GALIPEAU

The current state of the War on Drugs is marked by both laudable liberalization and unprecedented draconianism. There has never been a time in the country's history that consumers have had better access to high-quality and safe cannabis. However, the War on Drugs, particularly with regard to synthetic opioids, has brought unprecedented death to American soil.

Recreational drug use for adults is a controversial topic in most political environments. For too many people who use drugs, the only education they've ever received about drugs is about their potential for harm. Yet, for those who consume drugs recreationally, these messages neither reflect common experiences or personal motivation. Messages that highlight the benefits of drug use may be more informative or compelling for people using drugs recreationally. The popularity of publications like *High Times* demonstrate how responsible drug use education, art, music and culture has contributed to a movement that is aware of the potential benefits of drug legalization.

Indeed, legal adult recreational drug use is a vital part of public health. Recreational drug use has been a staple in the cultural history of mankind for as long as there has been recorded history. Even archaeological evidence has indicated that the history of drug use is more than 10,000 years old.<sup>29</sup>

Contrary to popular belief, legal adult recreational drug use minimizes harm to children and adolescents. Good legal systems incorporate sensible messaging that balances the dangers and risks of drug use. Potential harms are not completely disregarded by those who realize the alarmist nature of the current educational approach. Legal adult drug use also provides market regulatory and safety practices that do not exist in an illicit market. Not only does legal adult recreation increase consumer education and public safety, but it also inherently disempowers criminal enterprises, which are substantially less equipped to address public safety. There are too few tools under prohibition to address quality control, distribution methods, or marketing practices. It is also virtually impossible to promote healthier competition from better actors, a process in free markets known to ferret out bad actors and create safer, more stable markets. The current system of enforcement patently destabilizes markets, the cost of which is paid in human life by people who lack basic consumer rights and protections. To expect the market to cease functioning in response to harsh criminal enforcement when faced with such incredible demand is simply not an achievable aim.

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*Lacking alternative sources for obtaining safe, legal products to resolve dependency or when seeking pleasure, people who use drugs are left with no options and undeterrable motivation to continue seeking the products of their choosing.*

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Distribution activities are often driven by the consumers themselves out of necessity. Most consumers lack the tools and knowledge necessary to successfully navigate the highly nuanced activities required to successfully package and distribute sophisticated synthetic

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<sup>29</sup> Simona Pisanti and Maurizio Bifulco, "Medical Cannabis: A Plurimillennial History of an Evergreen," *Journal of Cellular Psychology*, Vol. 234, Iss. 6 (2019), <https://onlinelibrary.wiley.com/doi/abs/10.1002/jcp.27725>.



substances that have high variability and potency. Consumers are left subject to the whims of a distribution system that is often far beyond their comprehension or control. Lacking alternative sources for obtaining safe, legal products to resolve dependency or when seeking pleasure, people who use drugs are left with no options and undeterrable motivation to continue seeking the products of their choosing. This is both a human rights and consumer rights issue of paramount importance, especially when millions of people have died as a result.

Recreational legalization would likely be comprised of the following central components: product characterization; study of pharmacology; the establishment of sensible regulatory protocol; the development of standardized manufacturing methods; advertising regulations; sensible taxation; distribution protocol with packaging and labeling requirements; reasonable restrictions like age limits; and education and research about the benefits of recreational drug use for adults that balance the research indicating its harms, as well as extensive public messaging campaigns to translate this information into an easy-to-understand and digestible format for public consumption.

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*Allowing those who previously worked in the illicit economy to transition into the regulated market is essential. Criminal history involving drugs or drug-related offenses during the period of prohibition should not disqualify individuals from participating in recreational drug sales or production.*

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People who use drugs recreationally are largely uninformed about the manner in which to best achieve the effect they are looking for while at the same time minimizing potential harms. Very little is known about optimal dosing for many currently illicit substances that would promote the user's recreational experience while reducing risks for dependency, substance use disorder or other health complications. Recent clinical research with MDMA, psilocybin, ketamine, and cannabis are indicative of future areas of focus that examine maximizing the beneficial qualities of currently illicit substances. Virtually all substances used currently for recreation are widely understood to have beneficial effects, yet little is

known about the exact nature, extent, and quality of those effects and how to maximize the benefits for current consumers.

Due to the harms of the current landscape of drug policy, it is vital to ensure that business development coincides with restorative justice. Allowing those who previously worked in the illicit economy to transition into the regulated market is essential. Criminal history involving drugs or drug-related offenses during the period of prohibition should not disqualify individuals from participating in recreational drug sales or production. In fact, these individuals have critical expertise and relationships that are advantageous to participation in a licit economy. Success with current legalization efforts has incorporated these principles. But the ideal approach to legalization must dismantle the overarching structures that are inherently hostile to freedom of choice.

*Michael Galipeau is national cannabis liaison for the National Survivors Union.*

## PART 3

# TAKING DRUGS OFF THE SCHEDULE: ELIMINATING THE CONTROLLED SUBSTANCES ACT

BY JEFFREY MIRON, PH.D., AND ERIN PARTIN

As illustrated by recent state-level debates over marijuana legalization, people worry a lot about *how* to legalize drugs. They suggest regulation, taxes, new state agencies, and more in an effort to convince voters—and themselves—that they are serious about getting it “right.” But this focus on legalizing drugs the “right way” misses the mark. Instead, Congress must repeal the laws that cause drugs to be treated differently than any other consumer good.

Throughout the 19th century,<sup>30</sup> there were few regulations on or prohibitions of narcotics and other drugs. In the early 20th century, Congress passed the Harrison Narcotics Tax

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<sup>30</sup> David T. Courtwright, “Treating Drug Problems: Volume 2: Commissioned Papers on Historical, Institutional, and Economic Contexts of Drug Treatment,” National Academies Press (U.S.), 1992, <https://www.ncbi.nlm.nih.gov/books/NBK234755/>.

Act,<sup>31</sup> establishing restrictions and regulations on the import, production, and distribution of opiates. The Harrison Act followed the 1912 International Opium Convention,<sup>32</sup> which was the first international drug control treaty. Despite lobbying efforts by the United States, this treaty did not include marijuana. However, regulations on marijuana were not far behind, with the 1937 Marihuana Tax Act imposing a tax on the sale of marijuana.<sup>33</sup>

Congress passed the primary piece of prohibition legislation, the Controlled Substances Act, in 1970. Among other provisions, the CSA established the drug scheduling system that is still used today.<sup>34</sup> This created five tiers: drugs with “high abuse potential with no accepted medical use” (Schedule I), drugs with “high abuse potential...[and] an accepted medical use” (Schedule II), drugs with “intermediate abuse potential” (Schedule III), drugs with “abuse potential” less than Schedule III but more than Schedule V (Schedule IV), and drugs with “the least potential for abuse” (Schedule V). Importantly, this classified marijuana as a Schedule I substance, considered more dangerous than heroin or fentanyl (Schedule II drugs).

The Drug Enforcement Administration was established in 1973 to “enforce the controlled substances laws and regulations of the United States.” The establishment of an agency focused specifically on prohibition happened in conjunction with the beginning of the “War on Drugs.” One of the major amendments to the CSA was the Anti-Drug Abuse Act of 1986 which redefined threshold quantities and kinds of controlled substances and introduced enhanced penalties for drug violations.<sup>35</sup> Along with the Comprehensive Crime Control Act two years earlier, prohibition focused solidly on punishment.<sup>36</sup>

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<sup>31</sup> United States Congress, 63rd Session, Harrison Narcotics Tax Act, 1914. Available at: [http://www.naabt.org/documents/Harrison\\_Narcotics\\_Tax\\_Act\\_1914.pdf](http://www.naabt.org/documents/Harrison_Narcotics_Tax_Act_1914.pdf).

<sup>32</sup> United Nations Office on Drugs and Crime, “The 1912 Hague International Opium Convention,” Accessed May 2023 at: [The 1912 Hague International Opium Convention](https://www.unodc.org/documents/convention/1912_hague_international_opium_convention.html).

<sup>33</sup> United States Congress, 75th Session, Marihuana Tax Act, 1937, Available at: <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/50/STATUTE-50-Pg551a.pdf>.

<sup>34</sup> Michael Gambay, “The Federal Controlled Substances Act: Schedules and Pharmacy Registration,” *Hospital Pharmacy*, Vol. 48, No. 6 (June 2013), pp. 473-474, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3839489/>

<sup>35</sup> <https://www.congress.gov/bill/99th-congress/house-bill/5484>

<sup>36</sup> <https://www.congress.gov/bill/98th-congress/senate-bill/1762>

So, where do we go from here? State efforts to legalize medical and recreational marijuana are steps in the right direction, but decisive federal action would have a substantially more profound impact.

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*State efforts to legalize medical and recreational marijuana are steps in the right direction, but decisive federal action would have a substantially more profound impact.*

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Repealing the federal laws that treat drugs differently than other products is the best way forward. There is no need for government to design rules and regulations for the sale of drugs: markets arise when needed. Letting the market solve a problem created by the government is the best possible outcome.

*Dr. Jeffrey Miron is vice president for research and Erin Partin is a research associate at the Cato Institute.*

## PART 4

# SENSIBLE RETAIL MARKETS

BY GEOFFREY LAWRENCE, M.S., M.A. AND HOWARD J. WOOLDRIDGE

### 4.1

## MAJORITY OF OVERDOSE DEATHS ARE DUE TO ADULTERANTS

In seeking to redress the harms to both individuals and society created by drug prohibition, it is not enough to simply stop enforcing the policies of prohibition. More than half of overdose deaths in the United States involve fentanyl, according to data from the U.S. Centers for Disease Control and Prevention.<sup>37</sup> Fentanyl is a common and deadly adulterant of drugs sold in illicit markets because its compactness makes it easy to smuggle, while its high degree of potency allows illicit sellers to adulterate their products without the clear knowledge of their buyers. A 2018 analysis of overdose deaths in Philadelphia by the U.S. Drug Enforcement Administration (DEA) found that two-thirds of these deaths in the preceding year involved fentanyl and that there were high co-occurrences of cocaine and

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<sup>37</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, “Most Overdose Deaths Involve Illicitly Manufactured Fentanyls,” <https://www.cdc.gov/drugoverdose/featured-topics/overdose-deaths-data.html>, Accessed: 2 Sep. 2022.

heroin<sup>38</sup>—indicating that users thought they were purchasing those drugs and not fentanyl. As the DEA advises on its website:

*Fentanyl is being mixed in with other illicit drugs to increase the potency of the drug, sold as powders and nasal sprays, and increasingly pressed into pills made to look like legitimate prescription opioids. Because there is no official oversight or quality control, these counterfeit pills often contain lethal doses of fentanyl, with none of the promised drug.*

*There is significant risk that illegal drugs have been intentionally contaminated with fentanyl. Because of its potency and low cost, drug dealers have been mixing fentanyl with other drugs including heroin, methamphetamine, and cocaine, increasing the likelihood of a fatal interaction.<sup>39</sup>*

The presence and possibility of deadly contaminants like fentanyl in the drug supply suggests a need for “quality control,” as termed by the DEA. Although this approach may be counterintuitive to many observers concerned about the dangers of drug abuse, the best means of helping drug users avoid accidental overdose or death might include the creation of a legal supply chain capable of filling the demand for uncontaminated narcotic substances.

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*... the best means of helping drug users avoid accidental overdose or death might include the creation of a legal supply chain capable of filling the demand for uncontaminated narcotic substances.*

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<sup>38</sup> U.S. Drug Enforcement Administration, Philadelphia Field Division, “DEA Bulletin: DEA-PHL-BUL-061-18, February 2018, <https://www.dea.gov/sites/default/files/2018-07/BUL-061-18%20Cocaine%20Fentanyl%20Combination%20in%20Pennsylvania%20--%20UNCLASSIFIED.PDF>.

<sup>39</sup> U.S. Drug Enforcement Administration, “Facts About Fentanyl,” <https://www.dea.gov/resources/facts-about-fentanyl>, Accessed: 2 Sep. 2022.

## 4.2

## A REGULATED MARKET

Experiments with liberalized drug laws are being driven primarily at the state level as a direct challenge to federal law. In 2020, Oregon became the first state to decriminalize all drugs in amounts reflecting personal use, despite their continued criminal status under federal law.<sup>40</sup> This shift introduces additional challenges regarding the development of manufacturing standards, access to financial services, and other issues addressed in separate chapters of this volume. Several states have learned lessons from navigating these same challenges when they legalized one particular federally illicit drug: marijuana.

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*The processes of creating derivatives of the opium poppy and coca plants are similar to those for creating cannabis extracts and can even be performed using the same equipment in many cases.*

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Nearly 20 states already have experience regulating the production and supply of adult-use marijuana products. More than two-thirds of states also regulate a medical cannabis market. The processes of creating derivatives of the opium poppy and coca plants are similar to those for creating cannabis extracts and can even be performed using the same equipment in many cases. States have developed expertise in the regulation of these processes and equipment to ensure that harmful contaminants are not introduced during the manufacturing process, and all state-regulated adult-use cannabis markets also require products to be lab-tested for safety before they can be sold at retail. All cannabis inventory is required to be stored securely and is tracked using radio-frequency identification tags with locations actively monitored by state regulators to avoid unlawful diversion. These inventory tracking systems also allow regulators to systematically prevent the sale of any products or batch that has not successfully passed a lab test or is otherwise found deficient from a regulatory standpoint. Most states further impose restrictions on labeling and advertising to ensure cannabis products are not marketed to children.

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<sup>40</sup> Oregon Legislature, Legislative Policy and Research Office, “Measure 110 (2020) Background Brief,” [https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-\(2020\).pdf?ID=1459](https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-(2020).pdf?ID=1459).



Each of these regulatory components could be replicated and extended to other drugs to create a safe and secure supply channel for those individuals who will seek out drug use regardless of its legality. As with cannabis, states could license suppliers, conduct extensive background checks of those who own or work for these licensees, and require training where appropriate.

## 4.3 CONSUMPTION LIMITS AND RESTRICTIONS

All adult-use cannabis markets impose limits on the amounts of cannabis products that any individual may purchase or possess at any one time. For harder drugs, regulators could go beyond these restrictions to ensure individuals do not purchase or consume quantities capable of causing overdose or that could permit resale to others.

One approach to achieving such strict control of purchase or consumption is to only allow onsite use at a safe consumption locale rather than to allow retail sales similar to the cannabis dispensary model. Following passage of Measure 109, Oregon is setting up this type of regulatory structure to govern its commercial psilocybin market.<sup>41</sup> In Oregon, psilocybin will only be administered by a trained and licensed professional in a clinical setting after a consumer has undergone at least one prior counseling session. Psilocybin supply is tightly regulated and may be procured by licensed clinics, but consumers are never permitted to take psilocybin home for unsupervised use. While there is a wide array of potential regulatory structures, the Oregon model for psilocybin could be one model for other states that choose to facilitate a commercial supply chain for safe consumption.

*Geoffrey Lawrence is research director at Reason Foundation. Howard Wooldridge is a co-founder of Law Enforcement Action Partnership.*

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<sup>41</sup> Oregon Health Authority, Oregon Psilocybin Services Section, “Summary of Measure 109,” <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/M109-Summary-2021-Dec.pdf>.

## PART 5

# THERAPY FOR DRUG DEPENDENCE

BY JEFFREY A. SINGER, M.D.

People often equate physical drug dependence with addiction. But the two are quite different. Physical dependence and tolerance result from physical adaptation to a drug such that abrupt cessation or tapering off too rapidly can precipitate a withdrawal syndrome. In some cases withdrawal can be life-threatening. Physical dependence is seen with many categories of drugs besides drugs commonly used nonmedically. It is seen for example with many antidepressants, such as fluoxetine (Prozac) and sertraline (Zoloft), and with beta blockers, like atenolol and propranolol, used to treat a variety of conditions, including hypertension and migraines. Once a patient is properly tapered off the drug, they do not feel a craving or compulsion to return to the drug.

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*People often equate physical drug dependence with addiction. But the two are quite different.*

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On the other hand, addiction is defined as “compulsive use despite negative consequences.” It is a compulsive behavioral disorder potentiated by traumatic experiences during early development, psychoneurological comorbidities, and genetic and epigenetic predispositions. According to Drs. Nora Volkow and Thomas McLellan of the National Institute on Drug Abuse, addiction occurs in only a small percentage of people exposed to opioids, “even in those with preexisting vulnerabilities.”<sup>42</sup>

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*Many people thought to suffer from addiction are, in reality, physically dependent upon a drug and are practicing withdrawal avoidance. If they are tapered off the drug, they will not feel compelled to resume use.*

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Many people thought to suffer from addiction are, in reality, physically dependent upon a drug and are practicing withdrawal avoidance. If they are tapered off the drug, they will not feel compelled to resume use. Those with substance use disorder, on the other hand, will need help identifying the triggers of their compulsive behavior and developing tools to address them.

In either case, treating people who have an opioid use disorder (OUD) using medications for opioid use disorder (MOUD), either methadone or buprenorphine, lets people with opioid dependency or addiction avoid withdrawal reactions while stabilizing and reordering their lives.<sup>43</sup> This approach is called medication-assisted treatment (MAT). Once stabilized, people with dependency or addiction can find employment, housing, health care, and important social relationships. Those with dependency can be gradually tapered off MOUD,

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<sup>42</sup> Nora D. Volkow and A. Thomas McLellan, “Opioid Abuse in Chronic Pain—Misconceptions and Mitigation Strategies,” *New England Journal of Medicine*, Vol. 374 (2016), pp. 1253-1263, <https://www.nejm.org/doi/full/10.1056/NEJMra1507771>.

<sup>43</sup> Jeffrey A. Singer, “Harm Reduction: Shifting from a War on Drugs to a War on Drug-Related Deaths,” *Cato Institute Policy Analysis No. 858*, December 13, 2018, <https://www.cato.org/policy-analysis/harm-reduction-shifting-war-drugs-war-drug-related-deaths>.

while those with substance use disorder may need to remain on MOUD for a greater length of time—possibly indefinitely.

Comparative effectiveness research shows that abstinence-based approaches to substance use disorder have a very poor success rate.<sup>44</sup> Recent research comparing abstinence-based approaches (including approaches using naltrexone) to MAT and to therapy alone found MAT to be the only therapy that yields reduced overdoses or opioid-related morbidity.<sup>45</sup> Since the 1990s, clinicians in several countries have found that diacetylmorphine (heroin) can be effectively used as a MOUD to treat patients who have not responded well to methadone or buprenorphine.<sup>46</sup>



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*Health care practitioners should be permitted to prescribe, on an ambulatory basis, methadone or buprenorphine to their patients who wish to be treated for dependency or substance use disorder, just like they treat patients with other conditions.*

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Health care practitioners should be permitted to prescribe, on an ambulatory basis, methadone or buprenorphine to their patients who wish to be treated for dependency or substance use disorder, just like they treat patients with other conditions. Practitioners have been doing this in the United Kingdom, Canada, and Australia since the 1970s.

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<sup>44</sup> Gabrielle Glaser, “The Irrationality of Alcoholics Anonymous,” *The Atlantic*, April 2015, <https://www.theatlantic.com/magazine/archive/2015/04/the-irrationality-of-alcoholics-anonymous/386255/>; see also M. Ferri, L. Amato and M. Davoli, “Alcoholics Anonymous and Other 12-Step Programmes for Alcohol Dependence,” *Cochrane Database System Review*, July 19, 2006, (3):CD005032, <https://pubmed.ncbi.nlm.nih.gov/16856072/>.

<sup>45</sup> Sarah E. Wakeman, Marc R. Larochelle, Omid Ameli, et al., “Comparative Effectiveness of Different Treatment Pathways for Opioid Use Disorder,” *JAMA Network Open*, Vol. 3 No. 2 (2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2760032>.

<sup>46</sup> Cato Institute, “Harm Reduction: Shifting from a War on Drugs to a War on Drug-Related Deaths—Panel IV: Medication Assisted Treatment, Including Heroin Assisted Treatment and Closing Remarks, Cato Institute Events, March 21, 2019. Available at: <https://www.cato.org/multimedia/events/harm-reduction-shifting-war-drugs-war-drug-related-deaths-panel-iv-medication>.

Yet in the United States, methadone can only be prescribed today in heavily regulated clinics where the patients, stigmatized and presumed untrustworthy, are required to ingest the methadone in front of clinic staff. And prior to 2023, practitioners in the U.S. wishing to prescribe buprenorphine had to get special waivers from the Drug Enforcement Administration. The DEA also placed quotas on the number of patients they may treat.

Fortunately, Congress removed many of the restrictions on buprenorphine prescribing when it passed the Mainstreaming Addiction Treatment (MAT) Act, which President Biden signed on December 29, 2022.<sup>47</sup>

The DEA should reschedule diacetylmorphine from Schedule I (“no currently accepted medical use”) to Schedule II (accepted medical use with “high potential for abuse”), so providers have the option to offer heroin-assisted treatment for substance use disorder as they do in Switzerland, Germany, the U.K., Canada, the Netherlands, Spain, and other developed countries.

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*People who use drugs should also be able to access harm reduction strategies. Until all currently illegal drugs are legalized, regulated, and available on the safer legal market, as alcohol products are today, such strategies should include syringe services programs, overdose prevention centers (also known as “safe consumption sites”), and “safe supply” programs (programs giving people access to unadulterated, pharmaceutical-grade drugs to prevent withdrawal).*



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There will always be people who use drugs and do not want to end their dependency or addiction. Many nonmedical drug users are neither physically dependent nor addicted.

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<sup>47</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/12/30/president-signs-bipartisan-measure-to-improve-addiction-treatment>; see also <https://www.cato.org/blog/one-positive-feature-offset-negative-feature-just-passed-omnibus-bill-2022>

However, because drug prohibition forces them to seek drugs on the black market, it increases the risk that drug use will cause them harm. People who purchase drugs on the black market cannot be certain of the purity or dose of the drug, or even if it is the drug they think it is.

Clinicians commonly recommend harm reduction strategies, including medications, to their patients whose lifestyle choices may cause them harm—harm caused by obesity, poor nutrition, or risky activities. People who use drugs should also be able to access harm reduction strategies. Until all currently illegal drugs are legalized, regulated, and available on the safer legal market, as alcohol products are today, such strategies should include syringe services programs, overdose prevention centers (also known as “safe consumption sites”), and “safe supply” programs (programs giving people access to unadulterated, pharmaceutical-grade drugs to prevent withdrawal).<sup>48</sup>

Drug use, drug dependency, and substance use disorder involve personal choices that, when undertaken responsibly, do not threaten or harm others. In a free society, they should be approached like other lifestyle choices, with respect for autonomy and an emphasis on harm reduction.

*Jeffrey A. Singer, M.D., practices general surgery in Phoenix, Ariz., and is a senior fellow at the Cato Institute.*

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<sup>48</sup> Jeffrey A. Singer, “Rhode Island Makes Harm Reduction History by Legalizing Safe Consumption Sites,” Cato Institute, July 8, 2021, <https://www.cato.org/blog/rhode-island-makes-harm-reduction-history-legalizing-safe-consumption-sites>; Jeffrey A. Singer, “More Evidence in Support of Needle Exchange Programs,” Cato Institute, November 3, 2019, <https://www.cato.org/blog/more-evidence-support-needle-exchange-programs>; Jeffrey A. Singer, “British Columbia’s ‘Safe Supply’ Program a Tacit Admission that Drug Prohibition Kills and Legalization Saves Lives,” Cato Institute, July 26, 2021, <https://www.cato.org/blog/british-columbias-safe-supply-program-tacit-admission-drug-prohibition-kills-legalization>.

## PART 6

# ROLE OF LAW ENFORCEMENT AND POLICING

JACOB JAMES RICH, M.A., AND VERONICA WRIGHT, M.S., M.B.A.

Following drug liberalization, policymakers will likely maintain roles for police to enforce laws within the regulated markets. Wherever various levels of government exercise their powers to regulate drug-related commerce within their jurisdictions, law enforcement will likely be expected to prevent sales to minors, unlicensed sales, and impaired driving. Law enforcement may also share responsibility for enforcing purity or potency standards that are established by either the legislature or a bureaucratic agency.

The history and state of drug prohibition has allowed for the arbitrary enforcement of laws and has led to disparities. To avoid further arbitrary and disparate enforcement in this new policing environment, officials must establish clear roles for law enforcement to prevent distrust in the community and also reduce crimes that jeopardize civilized society.

As state and local policy makers evaluate their capacity to move toward full drug legalization, they should direct their police to only enforce their specific jurisdiction's drug laws. As a technical matter, marijuana sales are actually illegal in the entire United States—

including states that have voted to legalize recreational sales. Federal law supersedes state law. State-licensed marijuana companies nevertheless operate in open view in many states without fear of punishment because state law in these jurisdictions does not authorize local and state police to enforce laws against marijuana.

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*... local officials who pursue drug liberalization should consider establishing friendly relationships with their state leaders to prevent the gubernatorial micromanagement of their jurisdictions.*

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States provide the vast majority of law enforcement resources, so when a state votes to legalize marijuana, there is little the federal government can do to prevent such a change. Local municipalities may not have similar opportunities to pursue legalization without the support of state-level authorities, who often reflexively exercise their powers to ensure compliance. Consequently, local officials who pursue drug liberalization should consider establishing friendly relationships with their state leaders to prevent the gubernatorial micromanagement of their jurisdictions. If states have proven to be hostile to drug legalization efforts, local governments can usually direct their police to at least honor decriminalization efforts. For example, Denver decriminalized psilocybin before the state of Colorado did. But local authorities must recognize that state-level police and prosecutors still have jurisdiction within their borders and can consequently enforce the state's laws themselves.

When designing the ideal role for law enforcement, the police should generally be indifferent to someone's drug use. When drug use is connected with a crime, in most cases, it should not justify additional charges. Even so, drug use should not be accepted as an excuse for criminal behavior, and the criminal justice system should pursue equal punishment whether an individual is sober or inebriated, except in cases where drug use can lead to dangerous criminal negligence, such as with driving under the influence.

Civil asset forfeiture abuse is one of the more pervasive issues in the current War on Drugs and needs to be tackled. When police permanently seize expensive property and assets that have no direct relationship to a drug crime, such as a car, this punishment is often much



more than what was originally intended by lawmakers. With drug liberalization, the police will have fewer opportunities to make abusive seizures.

Policymakers should still adjust the incentives of police departments to reduce abuse. Many police departments get to keep the cash and assets they seize, a major revenue stream for the law enforcement agency.<sup>49</sup> To reduce abuse, seized assets should always be returned if a defendant is found innocent or if charges are dropped, and policymakers should make sure the prospect of losing property isn't dangled in front of defendants during plea-bargaining negotiations. A minor, for example, shouldn't fear losing the cash in their wallet if they are caught possessing drugs under the legal age.

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*To reduce abuse, seized assets should always be returned if a defendant is found innocent or if charges are dropped, and policymakers should make sure the prospect of losing property isn't dangled in front of defendants during plea-bargaining negotiations.*



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Finally, legitimately seized assets should be either destroyed or sold, and the sales should be deposited in the government's general fund. Exceptions could be made for evidence and research purposes, but police departments should not expect to directly enrich themselves with any seized assets.

As a final point, local jurisdictions should be careful about how they pursue decriminalization policies. Although the ideal approach is to not treat drug use as a crime, decriminalization can often suspend law enforcement's ability to remove dangerous illegal narcotics from illicit markets. Much of the benefits of drug legalization come from consumer pressure to promote better brand reputations, and sometimes regulated product standards.

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<sup>49</sup> Jefferson Holcomb et al., "Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States," *Journal of Criminal Justice*, Vol. 39 No. 3; Dick Carpenter et al., "Policing for Profit, 3rd Edition" Institute for Justice, December 2020.

But a decriminalized drug market with no regulated sales usually doesn't lead to safer drugs. The worst-case scenario here leads to dangerous street drugs proliferating and no ability for police to remove them, contributing to public harms. This is why complete drug legalization that includes the commercial manufacture and distribution of a safe supply is the ideal approach. Policymakers should be careful about crafting policies that are in between total legalization and total prohibition.

*Jacob James Rich is a policy analyst at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

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*... complete drug legalization that includes the commercial manufacture and distribution of a safe supply is the ideal approach.*



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## PART 7

# PROTECTIONS FROM CIVIL AND CRIMINAL LIABILITY

JACOB JAMES RICH, M.A., AND VERONICA WRIGHT, M.S., M.B.A.

Although drug legalization inherently protects the right to use drugs, there are many related considerations that policymakers should directly address in legislation. Civil society will not tolerate reckless behaviors that may harm others, such as operating a vehicle under the influence of intoxicating substances. In all other circumstances, social norms that reinforce safer behavior are superior to coercive lawmaking.

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*Within the current system of prohibition, individuals who contact emergency responders to report an overdose should be protected from criminal liability.*

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Within the current system of prohibition, individuals who contact emergency responders to report an overdose should be protected from criminal liability. Such policies are referred to as “Good Samaritan laws” and often protect a drug seller from prosecution after selling adulterated drugs to a purchaser. Although prosecutors may feel inclined to press charges, what is more important is saving the life of a person who has overdosed, and criminal liability often scares overdose bystanders away from seeking help.

The role of drug testing in post-prohibition employment is complicated. Although individuals should have the legal right to consume drugs, private employers still have Constitutional freedom of association. They should be allowed to decide whether to employ people who use drugs. The vast majority of drug testing is either mandated by the government or the consequence of insurance companies’ inability to price discriminate based on other prohibited measures of liability. Organizations have long avoided laws that protect a person’s rights based on their membership to a protected class by targeting associated drug use.

If policymakers want to discourage consideration of drug use in hiring decisions, they should set a good example and stop off-work drug screening of their own employees. A public bus driver, for example, should be expected to be sober while operating a bus, but it’s not the government’s business what he or she does off the job.

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*... the illegal status of drug use is the major motivation for current discriminatory practices against drug users in housing. As drugs are increasingly legalized, the pressure for landlords to discriminate against tenants who use drugs will diminish.*

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Housing and tenant rights also get complicated as they intersect with drug use. Again, although individuals should have the legal right to consume drugs, private landlords also have both property rights and the Constitutional freedom of association and should have the right to decide whether to house tenants who use drugs recreationally. However, the illegal status of drug use is the major motivation for current discriminatory practices

against drug users in housing. As drugs are increasingly legalized, the pressure for landlords to discriminate against tenants who use drugs will diminish.

If the government itself is providing housing, there are reasonable situations where it might want to regulate drug use on and off its premises. Much housing provided by the government is allocated to people with mental health concerns, some of which can worsen when under the influence of drugs. Because government-provided housing units are often densely constructed, governments may want to limit the use of various drugs that can have an impact on neighbors, especially when children and families are also there.

If a government directs the design of its public housing, it should make sure that there are drug-use friendly design options that are of acceptable quality. Many of these management and ethical concerns can be avoided by contracting such housing needs to private providers, where the government's role is then limited to ensuring access and minimum quality standards for various groups.

Finally, all criminal records that are solely the result of drug use or distribution that would become legal under newly adopted laws should be forgiven and expunged. Policymakers should approach expungement through a framework that drug laws are unjust laws and their violation has little to do with one's worth to society.

*Jacob James Rich is a policy analyst at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

## PART 8

# PACKAGING, LABELING AND DOSAGE OF DRUGS AND DRUG PRODUCTS

BY GEOFFREY LAWRENCE, M.S., M.A., AND VERONICA WRIGHT, M.S., M.B.A.

Packaging and labeling requirements are a direct corollary to the safe manufacture and distribution of an uncontaminated drug supply. Whether drugs are administered by professionals at a safe consumption site or whether they are offered to customers through retail outlets similar to cannabis dispensaries, consumers and medical professionals should be able to easily gain information about the contents, concentration, and correct dosing of all drug products. Correctly conveying this information is critical to accomplishing the broad goal of reducing overdose deaths.

Regulators should establish packaging and labeling guidelines, similar to what many state regulators have already done with cannabis products. Packaging and labeling should not include themes or images appealing to minors and should display certain warnings, such as: “NOT INTENDED FOR CONSUMPTION BY MINORS. DO NOT VEND OR DISTRIBUTE TO MINORS.” As with many state cannabis regulations, product labels should also display information about the manufacturer and the batch number for each product, along with a

summary of test results to indicate the batch is free of contaminants and bears the correct concentration of active ingredients. Manufacturers should include health warnings regarding potential side effects, warnings against known contraindications, and advise that drugs should only be administered under the supervision of a medical professional. Standard dosing information, as recommended by a state's regulatory oversight body, should be disclosed on packaging.

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*... manufacturers should bear civil liability to consumers for damages caused by demonstrably negligent or malicious action that cause products to be contaminated or mislabeled.*

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Penalties for manufacturers that fail to comply with correct packaging, labeling, or advertising restrictions should include fines and may extend up to and include suspension of a license to operate. In addition, manufacturers should bear civil liability to consumers for damages caused by demonstrably negligent or malicious action that cause products to be contaminated or mislabeled.

*Geoffrey Lawrence is research director at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

## PART 9

# FINANCIAL INSTITUTIONS

BY GEOFFREY LAWRENCE, M.S., M.A.

Ideally, drug legalization is accompanied by liberalization of existing banking laws so that legitimate drug-related businesses gain unmolested access to basic financial services. However, existing federal laws and regulations prohibit financial institutions chartered in the United States from offering financial services to persons or entities that traffic in substances listed as Schedule I or II substances under the federal Controlled Substances Act.

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*Ideally, drug legalization is accompanied by liberalization of existing banking laws so that legitimate drug-related businesses gain unmolested access to basic financial services.*

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In fact, existing federal law goes beyond this blanket prohibition by conscripting financial institutions into the policing process. Banks must actively monitor client accounts and report to the Financial Crimes Enforcement Network (FinCEN), a division of the U.S. Justice Department, any transactions they deem to be suspicious. The Bank Secrecy Act, the PATRIOT Act, and related anti-money laundering legislation all set forth a responsibility for financial institutions to implement extensive “Know Your Customer” procedures and to monitor transactions for anything that appears irregular. Financial institutions must file a Suspicious Activity Report on any transaction that appears suspicious or any that involve more than \$10,000 in cash. Financial institutions that fail to adequately report on these procedures can face significant penalties, fines, and even criminal prosecution, so many financial institutions have chosen to enforce even stricter controls than are technically required as a means of mitigating risk.

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*... additional reporting requirements impose additional costs on financial institutions that choose to offer accounts to cannabis businesses and make it less profitable to service these accounts.*

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Regarding cannabis in particular, FinCEN has promulgated special reporting rules for financial institutions to follow. The stated purpose of these rules is to “enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.”<sup>50</sup> However, in practice, these additional reporting requirements impose additional costs on financial institutions that choose to offer accounts to cannabis businesses and make it less profitable to service these accounts. Financial institutions may offer checking accounts to cannabis businesses, but they must verify that the business is properly licensed, review its licensing application materials and background checks, and conduct ongoing monitoring of the account holder for compliance to ensure its transactions are with other legitimately licensed businesses in good standing.

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<sup>50</sup> Department of the Treasury, Financial Crimes Enforcement Network, FIN-2014-G001, “BSA Expectations Regarding Marijuana-Related Businesses,” 14 February 2014, <https://www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf>.

FinCEN has also created three new types of Suspicious Activity Reports for financial institutions to complete regarding cannabis-related transactions. A “marijuana limited” report is required every six months detailing the account holder’s activity for account holders the financial institution believes is fully compliant with state law. If the financial institution believes the account holder may have violated any state law, it must file a “marijuana priority” report for every instance. Finally, a financial institution must file a “marijuana termination” report if it “deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program.”<sup>51</sup> Because these requirements are so labor intensive for financial institutions, a large majority have made the business decision not to offer these accounts.

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*Financial services for these businesses may be illusive, forcing them to transact primarily in cash and to keep cash on site. These circumstances may endanger public safety by making these businesses targets for theft and also difficult to audit for tax purposes.*

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These insights into the regulation of banking for cannabis can illuminate the prospective financial environment facing businesses obtaining state licenses to manufacture or distribute any other Schedule I or II drug. Financial services for these businesses may be illusive, forcing them to transact primarily in cash and to keep cash on site. These circumstances may endanger public safety by making these businesses targets for theft and also difficult to audit for tax purposes. Short of changes to federal drug laws, states have been able to address these issues by offering data-sharing portals that allow financial institutions to access the background and transactional data of their state-licensed customers, thereby reducing the compliance costs that financial institutions face and allowing them to offer more accounts. Similarly, private actors may develop a

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<sup>51</sup> Ibid.

cryptocurrency-based payments portal that allows these businesses to store currency electronically without the need to rely on a traditional financial institution.<sup>52</sup>

*Geoffrey Lawrence is research director at Reason Foundation.*

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<sup>52</sup> For a detailed analysis of federal regulations relating to banking and the state-regulated marijuana industry and possible solutions, see: Geoffrey Lawrence, “Marijuana Industry Financial Services: Obstacles and Solutions,” Reason Foundation Policy Brief, September 2019, <https://reason.org/wp-content/uploads/marijuana-industry-financial-services.pdf>.

## PART 10

# EDUCATION AND RESEARCH

BY MICHAEL GALIPEAU

The benefits of drug legalization would be diminished without community education and ethical research. Current trends of community education are limited to discussing social harms associated with drug use, health consequences, and developmental dangers for adolescents and children. A proper implementation of drug legalization also requires meaningful scientific inquiry into the benefits of drug use, including the implications for physical and mental health, sexual health, socialization, spiritual advancement, pain management, experiential learning, inspiration of art, and other culturally relevant topics. The vast majority of benefits from drug use are under-represented in the scientific literature, and a critical social science lens should be applied.

Education of children should provide messages that balance what is known about the harms and benefits and include messages and strategies that promote harm reduction, moderation, and human rights. Education for the general public should include messages that support diversity and inclusion of various cultures of drug use and promote human rights, dignity, and respect. It should include role models that display balanced lifestyles that include a range of substance use cultures, including abstinence. People who use drugs

should be consulted and included in the development of education that holds value and meaning to reach people who are participating in and affected by drug use in communities.

Research regarding drug use needs to be developed using a critical consciousness design and approach. The intersectional nature of drug use, culture, race, and class require an intentional approach to understanding the discriminatory and oppressive role of government throughout the drug war. The inclusion of the perspectives of people who use drugs in the design, implementation, delivery, and evaluation of research is necessary for its ethical development.

Recently, the Food and Drug Administration and the Reagan Udall Foundation have developed a patient-focused drug development initiative to map the patient journey. This initiative has intentionally sought to include the perspectives of people who use drugs. The ethical inclusion of such people in the research process is key to the success of efforts at inclusion in research, policy-making, and governance. When people who use drugs are not included, research is often guided by the motives of leading researchers and funders whose primary objectives may not be aligned with those of the people most impacted by their results.

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*When people who use drugs are not included, research is often guided by the motives of leading researchers and funders whose primary objectives may not be aligned with those of the people most impacted by their results.*

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But while it has long been presumed that a person who uses drugs carries some inherent expertise, there's a flaw in this premise. Many people who use drugs have internalized stigmas and lack meaningful education and insight into the research process. People who use drugs have been subjected to decades of misinformation and biased information about the conditions which affect their lives. People who use drugs have been systematically excluded from formal education in the form of federal funding bans on post-secondary education. This shortcoming has led to an emerging research field that is led by individuals who lack first-hand experience with the consequences of drug policy. Yet, people who do

have first-hand experiences with drug use and have been affected by drug policy are often limited to participants, or at best contributors. This leads to the tokenization of people who use drugs.

And so, the education and empowerment of people who use drugs must be a priority for their ethical inclusion in research and policy. The lack of a funded education system to empower advocates and research contributors often leads to the continuation of misinformation proliferated through “objective” research processes.

The National Survivors Union has been a critical element in this effort by organizing people who use drugs to advocate for their own human rights. The ethical inclusion of people who use drugs must also address the unequal institutional power that exists within government and formal research institutions. The National Survivors Union in a letter to the White House formally requested that a national Office of Drug User Health and Human Rights be established to offset these inequalities.

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*People who use drugs must have a place to receive education and training on the history of the drug war, critical analysis of drug policy, and engage in an examination of their own inherent biases that have resulted from surviving the conditions of the drug war.*



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People who use drugs must have a place to receive education and training on the history of the drug war, critical analysis of drug policy, and engage in an examination of their own inherent biases that have resulted from surviving the conditions of the drug war. Any effort at attempting or studying drug legalization must be invested in the education and empowerment of people who use drugs and only seek to include their perspectives once they have been supported in ways that are necessary to their ethical inclusion. Due to the vast inequalities inherent in the current system, it was deemed necessary that the federal government invest their authority in establishing a federal office staffed by the nation’s leading experts on drug user human rights and that this office be involved at all levels of governance in advising the government on matters pertaining to research and policy. The establishment of institutional power that represents the interests of people who use drugs

at the highest levels of government is a necessary accomplishment to reverse the trend of their marginalization and tokenization. The National Survivors Union has developed a framework for the ethical inclusion of people who use drugs that ought to be consulted in all research that directly or indirectly impacts the lives of people who use drugs.

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*A credentialing system would be a natural result of investment in an education system that seeks to empower people who use drugs to advocate in meaningful ways for their own rights.*

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Compensation for research participation must meet the varied needs of people who use drugs. People who use drugs have often been denied self-directed payment methods and proper compensation for their time and expertise. People who use drugs often rely on secondary markets and survival sex work to support their immediate needs. People who use drugs are not compensated appropriately based on the informal sources of income they are asked to give up to participate in research processes. People who have a high level of subject matter expertise based on their lived experience and training often lack the formal credentials that lead to proper compensation. A credentialing system would be a natural result of investment in an education system that seeks to empower people who use drugs to advocate in meaningful ways for their own rights. Organizations such as the National Survivors Union and the National Harm Reduction Coalition have sought to do so but are often challenged by limited budgets and no existing funding mechanisms to invest in drug user advocate education. Just as the nation has sought to make it a priority to educate and empower peers in the recovery workforce, a parallel workforce of drug user advocates is needed in community-led harm reduction organizations and could be drawn on to inform research and drug policy.

*Michael Galipeau is national cannabis liaison for the National Survivors Union.*

## PART 11

# ESTABLISHMENT OF A REGULATORY BOARD

BY GEOFFREY LAWRENCE, M.S., M.A., AND VERONICA WRIGHT, M.S., M.B.A.

As with cannabis, we anticipate state governments will act before the federal government in the creation of regulated markets for other drugs. To ensure this market is served by a traceable supply chain of unadulterated products, states should establish regulatory boards with authority to govern licensed businesses.

States should not seek to manufacture, distribute or sell federally illicit drugs directly, as this would make the states themselves federal criminal enterprises and their assets would become subject to seizure and employees and officers subject to arrest by federal law enforcement. Similarly, states should refrain from providing capital in any form to commercial entities that perform these functions because the provision of capital would make a state an affiliate of one or more federal criminal enterprises. Moreover, government ownership of the means of production is generally anathema to the Western liberal tradition that tends to prize basic notions of individual liberty, autonomy, and the ability to decide for oneself whether to consume drugs or participate in a drug marketplace.

Governments do, however, have legitimate purposes for regulating the activities of participants in the drug marketplace. Public health and safety are general welfare concerns



that warrant government oversight in a market that has been subject to pervasive misrepresentation, fraud, violence, and criminal trafficking throughout an era in which public policy only permitted participants to transact illicitly. To protect public health and safety, states should take precautions to ensure the regulated marketplace operates in a safe and orderly manner.

This means states should prescribe reasonable rules governing the production, processing, transportation, delivery, sale, and purchase of drug products. Drugs should be manufactured under sanitary conditions using equipment and processes that do not introduce contaminants harmful to human consumption. Distribution channels should be monitored to prevent unlawful diversion of regulated inventory. Manufacturers and sellers should train employees adequately to perform their duties safely and properly. Retailers should face clear instructions on any transaction restrictions with customers, such as quantity limits or age restrictions. Customers should have full access to critical information about the products they seek to buy, including contents, testing results, and relevant health warnings.



*Retailers should face clear instructions on any transaction restrictions with customers, such as quantity limits or age restrictions. Customers should have full access to critical information about the products they seek to buy, including contents, testing results, and relevant health warnings.*



States that have created regulated cannabis markets have already confronted these regulatory needs. Private-sector entities that wish to participate within these markets must first receive licensure from the authorizing regulatory agency. These privileged licenses grant charter to engage in activities that would otherwise be considered unlawful. Most states have issued licenses that authorize the holder to participate within a limited scope of the supply chain, such as manufacturing, distribution, or retail alone.<sup>53</sup> Others have

<sup>53</sup> Geoffrey Lawrence and Matt Harrison, “A Conceptual Framework for State Efforts to Legalize and Regulate Cannabis,” Reason Foundation Policy Brief, March 2019, <https://reason.org/policy-brief/a-conceptual-framework-for-state-efforts-to-legalize-and-regulate-cannabis/>.

authorized—or even required<sup>54</sup>—holders to fulfill every component of the supply chain directly.

Regulatory agencies in these states have not only gained the authority to issue, renew, suspend, or revoke licenses, but they have the responsibility to monitor all inventory transfers, inspect licensees' facilities, audit their records, and otherwise investigate as needed to ensure compliance with state rules. These powers included subpoena power and the ability to seize or dispose of regulated inventory. Unauthorized or illicit transactions by a licensee are generally grounds for suspension or revocation of the license, along with possible civil or criminal penalties.

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*Attempts by state regulators to plan or restrict supply according to their own bureaucratic estimates of demand have often experienced a mismatch between these factors, leading to shortages or surpluses. Private actors who risk their own time, capital, and reputations should make decisions about what quantities of which products they should offer to the market.*

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There exists already a broad range of regulatory activities and licensing structures within state-regulated cannabis markets. In general, those that are most successful encourage a dynamic marketplace with relatively low barriers to entry and establish clear guidelines for licensees to follow without imposing prior restraint on licensees. Attempts by state regulators to plan or restrict supply according to their own bureaucratic estimates of demand have often experienced a mismatch between these factors, leading to shortages or surpluses. Private actors who risk their own time, capital, and reputations should make decisions about what quantities of which products they should offer to the market. Reason

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<sup>54</sup> Geoffrey Lawrence, “Florida Bureaucrats Again Stymie State’s Legal Medical Marijuana Market,” Reason Foundation, January 18, 2023, <https://reason.org/commentary/florida-bureaucrats-again-try-to-stymie-the-medical-marijuana-market/>.

Foundation has offered a conceptual comprehensive framework for the ideal approach to state cannabis regulation that could easily be adapted to the markets for other drugs.<sup>55</sup>

*Geoffrey Lawrence is research director at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

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<sup>55</sup> Geoffrey Lawrence and Matt Harrison, “A Conceptual Framework for State Efforts to Legalize and Regulate Cannabis,” Reason Foundation Policy Brief, March 2019, <https://reason.org/policy-brief/a-conceptual-framework-for-state-efforts-to-legalize-and-regulate-cannabis/>.

## PART 12

# TAXATION OF DRUGS AND DRUG PRODUCTS

BY GEOFFREY LAWRENCE, M.S., M.A., AND JACOB JAMES RICH, M.A.

Most consumer products are taxed as a mechanism for governments to generate revenue. Following the Progressive movement of the early 20th century, which recognized that people respond to incentives, governments have also expressly used tax policy to influence behavior.

Thus, when determining the optimal tax rate for any product, governments consider two major desires: 1. generating revenue; and 2. influencing behavior. Systems to balance these frequently conflicting goals are often arbitrary, but governments have shown a willingness to forfeit significant levels of tax revenue to nudge certain changes in behavior.

Conversely, as state and local governments have considered the legalization of drugs like marijuana, these efforts have largely been animated by two competing goals. First, policymakers aim to displace the illicit and unregulated market with a network of licensed producers and sellers. Second, many policymakers hope to generate new public revenues through the imposition of excise taxes on the newly legal products. However, high tax rates create a tax-induced price disparity between legal and illegal products that are otherwise similar. Although surveys indicate most consumers prefer to purchase legitimate cannabis

products from a legal retailer, those same surveys indicate that consumers will revert to illicit sellers if those sellers offer lower prices than legal sellers.<sup>56</sup> Since taxes are a direct component of the prices for legal goods, high tax rates may undermine the competitive position of the legal market and allow the illicit market to thrive.



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*Since taxes are a direct component of the prices for legal goods, high tax rates may undermine the competitive position of the legal market and allow the illicit market to thrive.*

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Using cannabis as an example, the first 10 states to authorize commercial sales imposed a variety of taxing structures assessed at the wholesale and retail levels. These taxes summed to a significant proportion of the total retail cost with large variances by jurisdiction. The total cost of state-level taxes alone on legal cannabis ranged from \$340 per pound in Oregon to as much as \$2,299 per pound in Illinois. As a percentage of the overall retail price, these taxes ranged from 13.3% in Alaska to 27.8% in Illinois.<sup>57</sup>

Local governments have assessed their own levies in addition to these state levies. An analysis of state and local cannabis taxes in California, for instance, demonstrates that legal cannabis is subject to an effective combined tax rate ranging from \$656 per pound in Desert Hot Springs to \$1,441 per pound in Solano County. These impositions make legal cannabis less attractive to consumers than illegal cannabis products for which supply chains are already widely established. As a result, roughly two-thirds of California's

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<sup>56</sup> Samantha Goodman, Elle Wadsworth and David Hammond, "Reasons for Purchasing Cannabis from Illegal Sources in Legal Markets: Findings Among Cannabis Consumers in Canada and U.S. States, 2019-2020, *Journal of Studies on Alcohol and Drugs*, Vol. 83, No. 3 (2022), pp. 392-401, <https://www.jsad.com/doi/full/10.15288/jsad.2022.83.392>.

<sup>57</sup> Geoffrey Lawrence and Spence Purnell, "Marijuana Taxation and Black Market Crowd-Out," Reason Foundation policy study, January 2020, <https://reason.org/wp-content/uploads/marijuana-taxation-black-market-crowd-out.pdf>.

cannabis demand was satisfied by illegal sellers nearly six years after California voters chose to establish a legal and regulated market.<sup>58</sup>



*While some policymakers might view legalization as a potential means to generate new public revenues through taxation, there are already established supply chains for illicit drugs. The overriding goal of legalization should be to displace illicit markets in favor of regulated, legal markets.*



This experience carries obvious lessons for any choice of tax regime for drugs. While some policymakers might view legalization as a potential means to generate new public revenues through taxation, there are already established supply chains for illicit drugs. The overriding goal of legalization should be to displace illicit markets in favor of regulated, legal markets. Therefore, policymakers should avoid creating a large price discrepancy between legal and illegal products. The legal manufacture of drugs will already impose additional costs due to clean manufacturing standards and inventory tracking requirements. These regulatory costs may be offset by economies of scale and a reduction in legal and financial risk for licensed producers. However, punitive excise taxes assessed on legal drugs are likely to imperil policymakers' ability to displace the illicit market. Additionally, governments may reduce their revenue after levying excessively-high taxes that push consumers to the illicit market, as has happened in California.<sup>59</sup>

As a result, policymakers should moderate any attempt to impose special excise taxes on legal drugs beyond the general rates of taxation that apply to all goods and businesses. All but five states impose a general sales tax calculated as a percentage of the overall

<sup>58</sup> Geoffrey Lawrence, "The Impact of California Cannabis Taxes on Participation Within the Legal Market," Reason Foundation policy study, May 2022, <https://reason.org/wp-content/uploads/impact-of-california-cannabis-taxes-on-legal-market.pdf>.

<sup>59</sup> Robin Goldstein and Daniel Sumner, "Can Legal Weed Win? The Blunt Realities of Cannabis Economics," University of California Press, June 2022.

transaction for most tangible consumer goods.<sup>60</sup> A 2022 Reason Foundation analysis showed that reductions in California’s excise taxes on cannabis would result in the growth of transactions on the legal market and that the loss of state revenue from excise taxation would be partially offset by subjecting more transactions to the general sales tax. Due to forecast growth of the legal market, overall tax revenues resulting from legal marijuana transactions would still grow over a two-year period despite recommended reductions to state excise taxes.<sup>61</sup> Policymakers can reasonably extrapolate from these conclusions that public revenues can be effectively realized through standard rates of taxation, even if policymakers desire to dedicate revenues resulting from retail drug sales toward substance abuse treatment programs.

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*... critical business expenses, including wages and salaries, utilities, and depreciation on equipment may not be deductible, and businesses may face sizable income tax liabilities even in years they operate at a financial loss.*

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Additionally, the commercial businesses licensed to produce and sell drugs would be subject to state and federal corporate income taxes. Forty-four states impose a corporate income tax and four additional states impose a business gross receipts tax instead. Only South Dakota and Wyoming impose neither a state corporate income tax nor a gross receipts tax.<sup>62</sup> The federal Internal Revenue Code contains provisions that prohibit any taxpayer that manufactures or distributes drugs designated under schedules 1 or 2 of the Controlled Substances Act from deducting any expenses from taxable income other than the direct costs of generating or purchasing inventory. This means that critical business expenses, including wages and salaries, utilities, and depreciation on equipment may not be deductible, and businesses may face sizable income tax liabilities even in years they operate at a financial loss. Most state corporate income tax provisions impose similar

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<sup>60</sup> Janelle Fritts, “State and Local Sales Tax Rates, 2023,” Tax Foundation, February 2023, <https://taxfoundation.org/2023-sales-taxes>.

<sup>61</sup> Lawrence, note 52.

<sup>62</sup> Janelle Fritts, “State Corporate Income Tax Rates and Brackets for 2023,” Tax Foundation, January 2023, <https://taxfoundation.org/publications/state-corporate-income-tax-rates-and-brackets/>.

restrictions, although many have made exceptions for state-licensed cannabis businesses. To the extent states authorize legal sales of drugs other than cannabis prior to federal legalization of the same substances, states should also declare that all legitimate business expenses the related businesses incur are fully deductible according to state tax codes.<sup>63</sup>

*Geoffrey Lawrence is research director and Jacob James Rich is a policy analyst at Reason Foundation.*

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<sup>63</sup> Lawrence and Purnall, note 51.



## PART 13

# TESTING OF DRUGS AND DRUG PRODUCTS

BY GEOFFREY LAWRENCE, M.S., M.A., AND VERONICA WRIGHT, M.S., M.B.A.

One of the key motivations for creating a legal drug market is to ensure the availability of a safe and unadulterated supply. This implies the need for certain manufacturing standards and quality control measures to ensure safe and unadulterated drugs are what consumers actually get.

Fortunately, nearly 20 states have already developed such standards to govern the production of regulated cannabis products, and policymakers can lean on this expertise for the regulation of other drug manufacturing processes. Production of most opium poppy and coca derivatives, including morphine, heroin, and cocaine, are similar to the production of cannabis extracts in that they involve the solvent- or heat-based extraction of essential oils from botanical material. In fact, the equipment, solvents, and expertise currently used for cannabis extraction are largely interchangeable with those that would be required for production of these other drugs.

This presents a huge advantage for regulators who would be placed in charge of any broader recreational drug market. While the U.S. Food and Drug Administration

tightly regulates the manufacture of most pharmaceuticals by prescribing the precise processes, equipment, and batching and tracking parameters that must be followed (collectively referred to as current Good Manufacturing Practices), these standards do not exist for products considered contraband by federal agencies. Therefore, in the absence of any uniform federal standards, state-based regulators would be able to rely heavily on the expertise developed already in some states to govern the manufacture of cannabis extracts and products containing them.



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*Regulators may want to require that all equipment used in drug manufacturing bear a certification from independent standard-bearers like Underwriters Laboratories (UL) or the International Organization for Standardization (ISO).*

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In general, this includes approved solvents, extraction and refinement techniques, and equipment types. Regulators may want to require that all equipment used in drug manufacturing bear a certification from independent standard-bearers like Underwriters Laboratories (UL) or the International Organization for Standardization (ISO). States have approved licensed cannabis manufacturers to use volatile solvents, such as butane or ethanol, in addition to pressurized carbon dioxide. When cannabis manufacturers include raw extracts as an ingredient in food items, they generally must also register with a local health or food department and submit to regular inspections to ensure the food preparation space is maintained in a sanitary manner to prevent spoilage or illness.

In addition to regulating the manufacturing process, all states with adult-use cannabis markets also require that a representative sample of the final yield be tested by an independent laboratory before it can be sold at retail. State regulations have varied on the definition of a representative sample, but regulators should anticipate that they need to strictly define the maximum batch size that manufacturers can produce, with each batch held separately in isolation until a satisfactory testing result has been obtained. Regulations should also specify the minimum sample size that must be drawn from each batch in order to obtain reasonable assurance that the sample is representative of the

batch and that test results are reliable. Samples should be tested for uniformity of potency to ensure final dosages can be controlled in a predictable fashion, as well as the presence of potentially harmful microbes or chemicals. Residual solvents or pesticides, as well as bacteria or fungi, can be harmful to human health. Although states have developed different testing standards for cannabis products, the best are those like Massachusetts, which requires testing for both potency and contaminants while making reference to objective, third-party standards of potential contaminants, such as those set forth by the federal Environmental Protection Agency.<sup>64</sup>

All batches should be held in quarantine with the wholesale manufacturer until it has obtained clean testing results assuring users the batch is free of potentially harmful contaminants. As with cannabis, once clean test results are obtained, a summary of those results should be affixed to the product's label and it can be made available for transfer to a retail consumption site.

*Geoffrey Lawrence is research director at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

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<sup>64</sup> For a detailed discussion of the testing protocols within state cannabis regulations, see: Geoffrey Lawrence and Matt Harrison, "A Conceptual Framework for State Efforts to Legalize and Regulate Cannabis," 1 March 2019, <https://reason.org/wp-content/uploads/conceptual-framework-state-efforts-to-legalize-regulate-cannabis.pdf>.

## PART 14

# RESTORATIVE JUSTICE: SOCIAL RESPONSIBILITY AND COMMUNITY REINVESTMENT

BY JACOB JAMES RICH, M.A., AND VERONICA WRIGHT, M.S., M.B.A.

The most insidious consequence of the drug war has been the destruction it has brought to America's most vulnerable communities. Leveraged arbitrarily, drug law enforcement has been fed by the racial biases of those in power and has been discriminatory in its application. Despite similar rates of drug use and sales among Blacks and whites, Blacks have been well overrepresented in arrests for drug possession and sales.<sup>65</sup> The government acted in arbitrary and discriminatory ways during the drug war, and the resulting punishments were unjustified. Following tort law traditions, it is arguably appropriate to compensate the victims of these actions through payment of financial damages.

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<sup>65</sup> Geoffrey Lawrence, "Social Equity Programs in Marijuana Legalization Laws Aren't Achieving Goals of Helping Victims of the Drug War," Reason Foundation policy study, April 2023, <https://reason.org/policy-study/social-justice-marijuana-legalization-fail-victims-of-drug-war-new-barriers/>.

It is not clear yet how policymakers should approach this compensation. Identifying who is eligible, how much they are entitled to, and who is liable to pay is complex. Even if a clear case for financial damages is identified, it is not always feasible to hold the guilty party financially accountable. The drug war was prosecuted by the government, an imperfect agent of the voting public. In practice, any financial damages paid to compensate victims for the actions of the government must first be taken from taxpayers, some of whom may never have consented to the drug enforcement actions in the first place. The resulting scenario leads to individuals who have been directly victimized by the government only being made whole if that same government impinges on unrelated parties.

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There are, nevertheless, precedents within the United States for governments to offer financial damages to victims of discriminatory government action. During World War II, the United States forcibly relocated and incarcerated more than 100,000 Japanese-American residents in internment camps without due process and in clear violation of the U.S. Constitution. In 1988 President Ronald Reagan signed the Civil Liberties Act, which offered to compensate all living internment survivors with \$20,000, and included an official apology from him on behalf of the American republic.<sup>66</sup> Some states that operated forcible eugenics programs, including California, North Carolina, and Virginia, also began awarding financial compensation to their surviving victims in 2013.<sup>67</sup>

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<sup>66</sup> United States Congress, 100th Congress, H.R. 442 (Civil Liberties Act of 1987), <https://www.congress.gov/bill/100th-congress/house-bill/442>.

<sup>67</sup> State of California, Office of Governor Gavin Newsom, "California Launches Program to Compensate Survivors of State-Sponsored Sterilization," December 31, 2021, <https://www.gov.ca.gov/2021/12/31/california-launches-program-to-compensate-survivors-of-state-sponsored-sterilization/>; Scott Neuman, "North Carolina Set to Compensate Forced Sterilization Victims,"

The goal, then, should be to target specific individuals who were directly harmed by drug enforcement policies, giving cash transfers to victims in almost all situations. Such an individualized approach avoids potential corruption that may result when politically connected organizers lobby to oversee a pool of allocated money. Some policymakers might prefer to filter the money through community-level organizations, such as grants to local nonprofits for job training and drug-addiction rehabilitation, but this approach allows third parties to claim some of the money intended for victims. Organizations may pay out grant funds as salary to officers and directors. Non-victims may gain access to the services they offer on the same basis as victims. Qualifying criteria may be written to include those who simply live in the same communities as victims. This approach cannot bring about true restorative justice for individuals directly harmed by the drug war.

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*... in communities that the drug war has disproportionately devastated, individual-level compensation actually serves as a community investment, because the residents who benefit will in turn spend money locally and build a stronger neighborhood.*

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However, in communities that the drug war has disproportionately devastated, individual-level compensation actually serves as a community investment, because the residents who benefit will in turn spend money locally and build a stronger neighborhood. To the extent the drug war was executed in a racially discriminatory way, granting damages directly to the harmed individuals is most equitable and will help bring about racial justice.<sup>68</sup>

The current federal standard for wrongful incarceration is to pay out \$50,000 for each year served. This figure is admittedly arbitrary, but it at least provides a baseline for policymakers to consider the extent of damages owed to drug war victims. Policymakers

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National Public Radio, July 25, 2013, <https://www.npr.org/sections/thetwo-way/2013/07/25/205547272/north-carolina-set-to-compensate-forced-sterilization-victims>; State of Virginia, Department of Behavioral Health & Developmental Services, "Victims of Eugenics Sterilization Compensation Program," <https://dbhds.virginia.gov/developmental-services/victimsofeugenics/>.

<sup>68</sup> See Lawrence, note 69.

should also account for the full costs of making a victim whole, replacing seized money and assets taken through civil forfeiture, reimbursing court costs from facing drug charges, and covering legal costs to expunge criminal records. Policymakers should also ensure there is a pathway for illicit market participants to transition to the legal, regulated economy so they do not continue to face criminal charges.

Finally, governments should recognize that if they have engaged in discriminatory action that violated the rights of citizens, any recompensation should not depend on the availability of any pledged revenue stream. An early impulse among some policymakers working on cannabis legalization has been to pledge excise tax revenues from cannabis sales toward restorative justice initiatives. This approach simply drives up the price for consumers legally purchasing cannabis, discouraging people from participating in the legal and regulated market.

*Jacob James Rich is a policy analyst at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

## PART 15

# INTERNATIONAL TRADE

BY JACOB JAMES RICH, M.A., AND VERONICA WRIGHT, M.S., M.B.A.

The countries that stand to gain the most from drug legalization are those currently supplying drugs to the United States. Although drug legalization broadly supports the interests of the United States, it would also help other countries that struggle with the power and threat of drug cartels that supply drugs to the United States. Ensuring that an international drug market operates without violence should be a top priority of American policymakers.

The Constitution requires that reforms to international trade be addressed at the federal level through Congress. The ideal result would allow for free trade in drug-related goods and services between countries.

There are a few immediate changes that Congress must address in order to both pursue drug legalization and respect the agreements it made with foreign powers. First, Congress must reclaim its authority to “control, alter, heighten, lower, abolish, decontrol, or likewise modify” drug scheduling for all substances.<sup>69</sup> This would require Congress to direct the executive branch to send the United Nations ambassador to inform current treaty countries

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<sup>69</sup> United States Congress, 117th Session, House Bill 5977, <https://www.congress.gov/bill/117th-congress/house-bill/5977/text>.



that the scheduling decisions related to the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, 1972 Protocol Amending the Single Convention on Narcotic Drugs, and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances no longer apply to the United States. Much of these treaties deal with the tracking of controlled substances, and the United States could still participate. But the country should avoid accepting a centralized global standard that establishes the legal uses of various substances.

Assuming more countries follow the U.S. in drug liberalization, the president would need to actively “send trade missions and engage in treaty-making with foreign jurisdictions that have legalized [the specific drugs],” and this goal should be explicitly spelled out in any federal legislation.

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*In general, U.S. policymakers should understand that excessive tariffs and trade restrictions incentivize illegal trafficking and should look at market liberalization as the first step in dealing with drug cartels.*



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Likely to be the major concern of policymakers is how to deal with the criminal cartels that have historically trafficked drugs into the United States. In an environment where drugs are legal, cartels could become recognized businesses and seek normal profits. Such recognition would then reduce violent and criminal behavior. If ally countries are threatened by cartels that refuse to enter the newly established legal markets, the U.S. may choose to provide military support to suppress the violence. In general, U.S. policymakers should understand that excessive tariffs and trade restrictions incentivize illegal trafficking and should look at market liberalization as the first step in dealing with drug cartels.

*Jacob James Rich is a policy analyst at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

## PART 16

# MEDICAL ADMINISTRATION

BY GEOFFREY LAWRENCE, M.S., M.A., AND VERONICA WRIGHT, M.S., M.B.A.

Some drugs that are currently prohibited or severely restricted by the federal Controlled Substances Act—those included in Schedule I or II under the Act—may hold substantial therapeutic value. Indeed, the U.S. Food and Drug Administration (FDA) has recently acknowledged as much by declaring two such drugs—MDMA and psilocybin—as “breakthrough therapies” worthy of expedited consideration for the treatment of serious medical conditions.

MDMA has already generated encouraging results in Phase 3 pharmaceutical trials for the treatment of post-traumatic stress disorder without showing any indication of potential for abuse.<sup>70</sup> Phase 2b psilocybin trials have shown nearly one-third of patients with treatment-resistant depression—those who showed no alleviation in depression symptoms after two different kinds of treatment—were in remission three weeks after receiving a single dose of

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<sup>70</sup> Nick Zagorski, “Psychedelic Therapy Hits Another Milestone, But Caution Urged,” *Psychiatric News*, July 22, 2021, <https://psychnews.psychiatryonline.org/doi/10.1176/appi.pn.2021.7.14>.

psilocybin.<sup>71</sup> In 2018, the FDA approved the first pharmaceutical derived from marijuana as a treatment for rare, but severe forms of epilepsy.<sup>72</sup>

Both academic studies and clinical trials are revealing these drugs hold extraordinary therapeutic value in the treatment of certain conditions beyond alternative treatments that are legally available. Pursuit of this therapeutic value may have been a leading motivation for many individuals to seek out these substances since passage of the Controlled Substances Act in 1970.

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*... the process of pharmaceutical development in the United States is extremely costly and is therefore only available to highly capitalized firms.*

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Currently, a sponsor of a pharmaceutical product can apply to the FDA to investigate the clinical effectiveness of a proposed new drug even if that drug is banned or restricted under the Controlled Substances Act. However, this process includes additional hurdles because it requires the sponsor to acquire a DEA license and adhere to additional inventory controls. More broadly, the process of pharmaceutical development in the United States is extremely costly and is therefore only available to highly capitalized firms. In recent years, the capitalized cost for bringing the average drug to market through the FDA process was \$1.3 billion and can take between five and 14 years to complete.<sup>73</sup> Once a drug is approved, it can be marketed as a treatment for only the single, often narrow, condition for which it underwent FDA supervised trials. Often, an antidepressant, for instance, could be effective at treating both Major Depressive Disorder and Treatment Resistant Depression, but these

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<sup>71</sup> Guy M. Goodwin et al., “Single-Dose Psilocybin for a Treatment-Resistant Episode of Major Depression,” *New England Journal of Medicine*, Vol. 387 (2022), pp. 1637-1648, <https://www.nejm.org/doi/full/10.1056/NEJMoa2206443>.

<sup>72</sup> U.S. Food and Drug Administration, “FDA Approves First Drug Comprised of an Active Ingredient Derived from Marijuana to Treat Rare, Severe Forms of Epilepsy,” Press Release, June 25, 2018, <https://www.fda.gov/news-events/press-announcements/fda-approves-first-drug-comprised-active-ingredient-derived-marijuana-treat-rare-severe-forms>.

<sup>73</sup> Geoffrey Lawrence, “How to Reform the FDA,” Reason Foundation Policy Brief, August 2020, <https://reason.org/policy-brief/how-to-reform-the-fda/>.

are separate indications under the FDA's process for pharmaceutical approval. This means that federal approval of pharmaceutical treatments using drugs the government already recognizes as breakthrough treatments can be extremely costly and time-consuming.

It's the Food, Drug and Cosmetics Act that grants the FDA sole jurisdiction to regulate pharmaceutical products within the United States. The FDA has chosen to interpret this law by creating a labyrinth of costly processes for drug makers to comply with before they can make any claims about potential health benefits of their products. Even natural medicines and compounds are not immune from these requirements.

Although there are clear pathways to simplify the FDA's regulatory process to allow for faster and cheaper development of safe therapeutic treatments,<sup>74</sup> substantial reform is likely to occur on a longer time horizon than state liberalization of drug laws. Many pharmaceutical companies now are responding to this policy environment by taking psychedelic and other therapies through the FDA process.<sup>75</sup> However, to recover the expense they incur from this process, they are likely to charge high prices for the resulting pharmaceutical products.

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*One alternative is for states to empower existing medical providers, including prescribing psychologists, to recommend the use of currently illegal substances if they believe those substances could be helpful.*

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One alternative is for states to empower existing medical providers, including prescribing psychologists, to recommend the use of currently illegal substances if they believe those substances could be helpful. As with medical marijuana, physicians would only be able to provide a recommendation rather than a prescription, because prescriptions are federally controlled. However, state law could insulate medical providers who recommend illegal

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<sup>74</sup> Ibid.

<sup>75</sup> Madison Carlino, "Modernizing Psilocybin Policy to Improve Mental Health Outcomes," Reason Foundation Policy Brief, May 2023, <https://reason.org/policy-brief/modernizing-psilocybin-policy-to-improve-mental-health-outcomes/>.

substances from civil or criminal liability based on those recommendations and ensure they will not face censure from state licensing boards. This approach would allow medical professionals to assess the relevant academic and clinical research on their own to draw conclusions about what may be helpful for a particular patient without being hamstrung by the current federal quagmire of pharmaceutical regulation.

*Geoffrey Lawrence is research director at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

## PART 17

# CONCLUSION: ETHICS AND ETHOS

BY GEOFFREY LAWRENCE, M.S., M.A., AND VERONICA WRIGHT, M.S., M.B.A.

Drug prohibition is a relatively new experiment in human history. Archaeological evidence has shown that human beings have used drugs now considered illicit for at least 10,000 years. Cannabis and poppy were among the most commonly used drugs in antiquity, although many human tribes regularly included psychedelic substances like peyote or ayahuasca in their most important cultural ceremonies. For the most part, drugs that people take recreationally today are no different from those that they took in antiquity. The substances largely have not changed, but social attitudes toward them have. These social mores have been incorporated into law over the past century and exposed individuals who take, produce or sell these drugs not only to emergent social scorn, but also criminal consequences that can follow them throughout their lives.

This new and modern approach to drug policy has marginalized many individuals from society, but has failed to reduce overdoses, death, or crime related to drug use. All of these negative outcomes have grown to unprecedented heights during the period of drug prohibition. Moreover, the enforcement of drug laws has often been discriminatory against particular groups of Americans and been used as a pretext to disrupt certain communities.

It's time to admit this policy has been a failure. We should return to a society that respects the freedom and independence of all individuals to live as they see fit so long as they don't harm others. This includes respecting others' choices to experiment with drugs other than alcohol and to inculcate a culture of responsible use. Education on drugs should balance the relative risks and potential benefits or cultural contexts of their use. For those individuals who succumb to addiction and can no longer balance their responsibilities with drug use, society should extend compassion while encouraging recovery services as we already do with abusers of alcohol.

The War on Drugs has destabilized the American family and led to broken homes as users and sellers become marginalized, imprisoned, and otherwise deprived of opportunity. Generations of children have grown up without both parents present due, in part, to the drug war. Statistics clearly show that these children experience greater hardships throughout their lives as a result of not having both parents.

As a society, we must recognize that collective actions pursued through the government—even if well intentioned—often produce unintended results. Every government agent has their own biases and motivations that bleed into the ways in which they choose to interpret their charge, which may even include discriminatory bias against certain groups.

Yet, even if we could ignore the challenges of implementation, we cannot ignore human nature. If enough individuals wish to purchase any commodity, someone will find a way to supply that commodity even if the government calls it contraband. This gives rise to illicit markets, which have become pervasive in America. Participants in illicit markets have no access to the court system or an appeal to contractual or property rights to enforce their claims and so they often resort to violence. These outcomes are all avoidable if we simply accord each other the mutual respect and space to live our lives according to the dictates of our own conscience.

*Geoffrey Lawrence is research director at Reason Foundation. Veronica Wright is founder of the National Coalition for Drug Legalization.*

# ABOUT THE AUTHORS

**Geoffrey Lawrence** is research director at Reason Foundation. Lawrence has been a financial executive in both the public and private sectors and has served as chief financial officer of publicly traded, growth stage, and startup companies in the regulated cannabis industry. Through these roles, Lawrence raised capital, planned capital expenditure, prepared financial forecasts, implemented systems for accounting and inventory control, designed internal control processes, managed monthly and quarterly closings and reporting, managed compliance with state and local regulations, negotiated contracts, and prepared filings with the U.S. Securities and Exchange Commission.

Lawrence also served as a senior appointee to the Nevada Controller's Office, where he oversaw the state's external financial reporting. Prior to joining Reason Foundation in 2018, Lawrence had also spent a decade as a policy analyst on labor, fiscal, and energy issues between North Carolina's John Locke Foundation and the Nevada Policy Research Institute. Lawrence holds an M.S. and B.S. in accounting from Western Governors University, an M.A. in international economics from American University, and a B.A. in international relations from the University of North Carolina at Pembroke.

**Jacob James Rich** is a policy analyst at Reason Foundation and a Ph.D. student at the Case Western Reserve University School of Medicine. His work primarily focuses on health care policy, specializing in prescription and illegal drug regulations. Rich holds master's degrees



in mathematics and economics from Eastern Michigan University. Prior to joining Reason, he conducted research for the Cato Institute focused on economics and opioid policy.

**Michelle Minton** is a senior policy analyst at Reason Foundation, where she works on consumer freedom and drug policy. Minton has authored numerous studies on policies governing cannabis, nicotine, gambling, alcohol, nutrition, and science-based public health, among other issues. Minton received her undergraduate degree from the Johns Hopkins University and earned a master's of science in nutrition from the University of New England.

**Veronica Wright** is the founder of the National Coalition for Drug Legalization, a nonprofit that supports drug legalization through research and community outreach. She is a community leader and strong advocate for the legalization of all drugs. Ms. Wright prides herself on being creative, a lifelong learner, leader, and problem solver. Some of her other community roles have involved serving on the Maryland Montgomery County's Community Development Action Committee, Maryland Montgomery County's Alcohol and other Drug Abuse Advisory Council, former co-chair of the NAACP Maryland State Conference Economic Development Committee, and current co-founder of the Baltimore Affordable Housing Partnership. Ms. Wright currently has an M.S. in biology from the Catholic University, an M.B.A. from Webster University and a B.S. in chemistry from Mary Baldwin College.

**Jeffrey A. Singer** is a senior fellow at the Cato Institute and works in the Department of Health Policy Studies. He is president emeritus and founder of Valley Surgical Clinics Ltd., the largest and oldest group private surgical practice in Arizona, and has been in private practice as a general surgeon for more than 40 years. He is also a visiting fellow at the Goldwater Institute in Phoenix. Singer is a member of the Board of Scientific Advisors of the American Council on Science and Health. He received his B.A. from Brooklyn College (City University of New York) and his M.D. from New York Medical College. He is a fellow of the American College of Surgeons.

**Jeffrey Miron** is senior lecturer, director of undergraduate studies, and director of graduate studies in the department of economics at Harvard University; he is also vice president for research at the Cato Institute. Dr. Miron holds a B.A. from Swarthmore College and a Ph.D. from M.I.T. Dr. Miron's commentary on economic policy has appeared on CNN, CNBC, MSNBC, NPR, Bloomberg, Fox, BBC, and dozens of other television, radio, and print media around the world. Dr. Miron's area of expertise is the economics of libertarianism. He has written extensively against drug prohibition. Dr. Miron is also a star teacher; the senior class at Harvard has nine times chosen him as one of its favorite teachers.

**Major Neill Franklin** is a 34-year law enforcement veteran and recent past executive director for the Law Enforcement Action Partnership, where he had served for ten years. He is also a National Coalition for Drug Legalization board member. In 1999, he retired from the Maryland State Police, where he held command positions for both the Education and Career Development Command and the Bureau of Drug and Criminal Enforcement. During this time, Major Franklin restructured the training academy, instituted and oversaw the department's very first Domestic Violence Investigative Unit, and was responsible for 17 multi-jurisdictional narcotics task forces. After 23 years of service to the Maryland State Police, he was recruited by the Baltimore Police Department to reconstruct and command Baltimore's Police Education and Training Section. After leaving the Baltimore Police Department in 2004, Major Franklin was appointed to serve as the commander of Special Operations for the Maryland Transit Administration (MTA) Police Force, encompassing criminal, narcotics and internal affairs investigations in addition to an array of Homeland Security related initiatives.

Advocating for criminal justice and drug policy reform, Major Franklin has presented before an array of audiences, from the local community college, to the lecture rooms of Harvard and the Senate on Capitol Hill. He has become a regular guest on CNN, FOX and MSNBC, appeared in a number of documentaries, and his writings have been printed in the *Los Angeles Times*, *Washington Post*, and *The New York Times*. He is one of the most sought-after criminal justice reform public speakers in the United States. Additionally, Major Franklin has been accepted in U.S. district and Maryland circuit courts as an expert witness on police policy, training, use of force, criminal and drug investigations, and Constitutional law.

Major Franklin volunteers his time by serving on many boards that include, or have included, the Law Enforcement Action Partnership, Alliance for Safety and Justice, Youth and Police Initiative, Children 1<sup>st</sup> (child advocate organization), Faith Based Community Council on Law Enforcement and Intelligence, National Organization of Retired State Troopers, Community Resource Hub for Safety & Accountability, Place of Grace Church, Anne Arundel Community College Criminal Justice Advisory Board, Coalition for Cannabis Policy Reform, Murder Victim's Families for Reconciliation and he is the past president for TurnAround, Inc. (domestic violence, sexual assault victim advocate providing counseling and shelter services).

**Michael Galipeau** serves as national cannabis liaison for the National Survivors Union and on the Board of Directors for the National Coalition for Drug Legalization. Mr. Galipeau

holds a master's degree in social work from Tulane University with a certificate in Disaster and Collective Trauma. He has served on the Governor's Task Force for Overdose Prevention in Rhode Island and worked to design and implement community-based quality control programs that include drug-checking services in Rhode Island and New York, as well as supporting the development of drug-user-led health programs across the country. His work was featured at the 2019 International Harm Reduction Conference. Data collected from the programs he helped to establish was used to leverage federal funding authorization from SAMHSA in February, 2021, bringing the country one step closer to drug legalization by funding some of its central activities—consumer education and quality control. Mr. Galipeau has helped to design and deliver training nationwide to adapt the substance-use treatment field to emerging concepts around addiction and harm reduction, delivering guest lectures at such prestigious schools as Brown University, Johns Hopkins School of Public Health, and the NYU Silver School of Social Work. He is a member of the Alcoholism and Substance Abuse Providers trainer registry and works full-time as a licensed clinician at an in-patient substance use treatment facility and detox in New York.

**Howard Wooldridge** “never gives up”—words of wisdom he received from his father. That translated into him graduating from Michigan State University and then an 18-year career as a police officer and detective. In 2003, he rode his horse from Georgia to Oregon—3,100 miles and six months in the saddle. Two years later, he rode that horse from Los Angeles to New York City, all to promote an end to America's drug war.

In 2005, he moved to the Washington, D.C., area and began his career as a federal lobbyist, representing law enforcement, which he still does to this day. Howard is fluent in four languages and uses them on a regular basis in Washington. Due to his travels on horseback, he was named a fellow of the Royal Geographic Society. His horse is the first in the 21st century to write a book: *Misty's Long Ride* by Smooth Georgia Mist.

Wooldridge is one of the five co-founders of Law Enforcement Action Partnership (LEAP).

