REIMAGINING PUBLIC SAFETY

RPS ISSUE BRIEF SERIES:
Substance Use

This brief is part of a series on different types of community issues and complaints to which police are asked to respond. In each brief, we discuss the nature of the issue, review traditional policing strategies, and explore opportunities to adopt novel approaches.

Top Takeaways:

Under state and federal drug prohibition laws, police in the United States made over 1.3 million arrests for drug possession in 2019. This represents almost 12 percent of all arrests made nationally that year, and more than any other type of arrest.[1]

Even as millions of Americans churn through the criminal legal system for the possession of drugs, overdoses related to substance use remain the leading cause of accidental death in the United States, claiming 107,477 lives in 2022.[2] This represents an increase of 781 percent since 1999.[3] At the population level, overdose is more lethal than homicides, vehicle accidents, and HIV combined.[4] Rates of overdose are highest in Native American and Black communities.

As more and more senior officials in government speak out against the use of law enforcement to address the overdose epidemic in the United States, and as the public increasingly views addiction as a public health concern, some jurisdictions have begun experimenting with ways to reduce the footprint of policing in this space:

- Diverting individuals detained by law enforcement for possession of suspected controlled substances to healthcare professionals.
- Decriminalizing personal use amounts of controlled substances and paraphernalia to disincentivize and reduce the impact of enforcement.
- Legalizing the possession of controlled substances at the state level.
- Employing public health strategies that combine aggressive outreach with low-barrier access to medically assisted treatment.

The Traditional Police Response

Drug prohibition in the United States is federally codified under the Controlled Substances Act, which classifies substances based on their potential for abuse, medical use, and likelihood for addiction. After it was enacted in 1971, states followed suit with their own Controlled Substances Acts by either adopting federal language verbatim or drafting a version of their own. Notable in its absence from this regulation is alcohol.

There are two traditional police responses to someone who is suspected of being in violation of the Controlled Substances Act: ticketing and arrest.

In New York, officers issue a Desk Appearance Ticket (DAT), whereby individuals who are stopped for the suspected possession of a controlled substance are immediately released from custody after signing an acknowledgement that they will appear in court at a later date. DATs are only issued for specific types of crimes, including misdemeanors, violation offenses, and certain felonies.[5]

For states that do not have this option, individuals are taken into custody and transported to a detention facility. The steps are as follows:

1. Detain the individual
2. Search their belongings
3. Confiscate any controlled substances and paraphernalia
4. Run a check for warrants
5. Transport individuals to the lockup facility
6. Typically the following day, transport individuals to bond court

Our reliance on jails and courts to solve this issue is backed by sheer representation of individuals within the legal system – *85 percent* of the United States prison population either has a substance use issue or was convicted on drug related charges.[6]

However, research demonstrates that arrest and incarceration are ineffective addiction interventions – in fact, their use can contribute to overdose. The Vera Institute reports that detention facilities have limited access to medical treatment that adequately supports individuals experiencing substance use disorder, and that periods of incarceration interfere with the formal and informal networks of care that are essential to recovery.[7]

The leading cause of death for individuals recently released from prison is overdose; for individuals currently incarcerated, it is the third leading cause of death.[8] One study in the state of Washington found that individuals recently released from prison were *129 times* more likely to die from an overdose than the general public. These statistics are all the more sobering given the significant overrepresentation of Black residents in the criminal legal system, who are arrested for drug violations at double the rate of their representation within the United States population.[9]

Simply put, arresting and detaining individuals in institutions without adequate medical and addiction treatment services does little to prevent continued substance use.

Improved Police Response: Diversion

Diversion programs connect individuals detained for suspected possession of a controlled substance with a treatment provider in lieu of charges filed with the courts. In doing so, these strategies acknowledge that jail and the courts are not best equipped to support individuals in recovery.

Under the model, police remain legally empowered to take individuals into custody – but the role of the criminal legal system typically concludes once a connection to services and/or treatment has been made. The strength of diversion programs is their reliance on the threat of arrest to guarantee the first interaction between the individual and treatment provider.

Diversion programs can be administered at the local and county state level, as demonstrated below.

Municipal diversion: the City of Chicago, Illinois

In 2021, Vermont and Rhode Island became the first In 2018, the City of Chicago launched the Narcotics Arrest Diversion Program to divert individuals in possession of a suspected controlled substance from arrest and into treatment. Clinicians from local service providers were embedded into the Chicago Police Department

and, when an officer brought a suspect back to the police station, they were processed into treatment and released immediately as opposed to remaining in custody overnight to see a judge the next morning.[10]

Early findings for the Narcotics Arrest Diversion Program show a reduction in the likelihood of future arrest for both suspected drug violations and violence.[11] In this instance, the safety of the public is improved by connecting suspects of drug violations with the public health system instead of sending them deeper into the criminal legal system.

These findings contribute to a larger body of research that demonstrates an association between increased investments in substance use treatment and a reduction in arrests.[12]

County diversion: the Sobering Center, Travis County, Texas

In 2018, the Austin-Travis County Sobering Center opened its doors to receive individuals suffering from alcohol intoxication that would have otherwise been taken to jail or an emergency department. Once inside the center, individuals are under medical supervision until they are screened for referral to treatment and peer recovery support.

Since launch, the scope of the program expanded to include intoxication from controlled substances as well. This diversion program is unique in that it can be utilized by either law enforcement or EMS and, because patient transfer is shorter and takes an average of six minutes, increases the availability of first responders to respond to other calls.[13]

An evaluation of a year's worth of data found that arrests for public intoxication dropped significantly, and that 80 percent of individuals were connected with follow-up treatment - some even leaving directly from the center to a treatment provider.[14] Eighty-eight percent of the individuals brought to the Sobering Center were admitted into their care, and of those admitted, 98 percent were satisfied with their care.[15] This unique intervention offers first responders a new location beyond the emergency room and jail to support residents who really just need treatment.

Improved Local and State Government Response: Decriminalization

Decriminalization is the downgrading of a charge's severity while still maintaining some sort of government regulation over the behavior. Decriminalization of substances works by committing to not prosecute arrests made related to possession, thereby disincentivizing local enforcement and leaving it to the federal government (which has significantly fewer state agents on the ground).

In the United States, decriminalization occurred most often through the passing of Good Samaritan Laws. These laws protect overdose victims and people who seek assistance during a potential overdose from arrest as a means of encouraging individuals to call 911 in a crisis.[16] More recently, states have decriminalized the possession of personal use amounts of substances, equipment used to ingest substances safely, and places to use controlled substances under medical observation.

Decriminalizing Buprenorphine in Vermont and Rhode Island

In 2021, Vermont and Rhode Island became the first states in the country to decriminalize the possession of Buprenorphine without a prescription. Buprenorphine – the primary drug present in the more commonly known Suboxone – is an opioid that is frequently used in medically assisted treatment programs for opioid use disorder due to its low risk of overdose and ability to reduce symptoms of withdrawal.[17]

Prior to going into effect statewide, Buprenorphine decriminalization was piloted in Burlington, Vermont. In the policy's first year, opioid overdoses dropped by 50 percent.[18]

Decriminalizing paraphernalia in Pennsylvania

Every state except for Alaska has a prohibition on the possession of drug paraphernalia (equipment used to ingest drugs), and 45 states specifically include drug testing material in that prohibition.[19] Testing kits have become increasingly important in recent years due to Fentanyl, and banning their use effectively prevents

individuals from consuming their drugs safely.

Last year, Pennsylvania took intentional steps to address this by removing testing tools used to safely ingest controlled substances from the list of illegal paraphernalia.[20] With the 8th highest fatal overdose rate in the country, this measure was intended to reduce the number of overdoses in the state.[21]

Safe consumption sites in New York

In November 2021, the New York City Office of the Mayor began a pilot that enabled two needle exchange programs to begin operating as safe consumption sites. These drop-in sites monitor drug consumption by providing clean needles, reversing overdoses that may occur, and providing resources for addiction treatment.[22] They also offer case management, mental health services and other related services that reduce the harms associated with drug use and needle-sharing. Since launch, the centers in New York City have provided 701 overdose interventions.[23]

Although safe consumption sites are a fairly new concept within the United States, a systematic review of similar facilities in Vancouver, Canada found that they were associated with significant reductions in drug overdose morbidity and observed no increases in crime to the surrounding communities.[24]

Ideal Local and State Government Response: Legalization

Legalization is the repealing of criminal and civil penalties for a particular behavior. With overwhelming support from the public, states across the country are beginning to repeal their prohibition on the possession, cultivation, and sale of marijuana. As of 2022, twenty-one states, the District of Columbia, and Guam have legalized its recreational use.

State income tax from marijuana sales generates almost 4 billion dollars annually, a figure that does not include income taxes generated by individuals employed by the industry, sales of medical marijuana, or federal income taxes.[25] These tax receipts represent a third of what hospital emergency departments – the most expensive place to seek substance use treatment – spend nationwide on substance use disorder every year, meaning that taxes from national legalization would more than subsidize the cost of treatment.[26]

Initial evidence regarding marijuana's legalization shows that ending prohibition allows the criminal legal system to prioritize true public safety concerns.[27] In the first two states to legalize marijuana, low-level court filings fell by 98 percent within four years (Washington) and possession charges dropped 88 percent in three years (Colorado).[28] In Oregon and Alaska, arrests declined by 96 percent within three years of legalization and 93 percent within two years, respectively.[29]

In terms of public health, marijuana legalization has been associated with a reduction in the use of opioids, as well as negative outcomes of opioid use disorder.[30] States where marijuana is legal dispense opioids less than states where it is still under prohibition. One evaluation found a six percent drop in opioid prescriptions amongst Medicare enrollees in states that have legalized marijuana use.[31] Hospitalizations of all opioid users, prescribed or otherwise, have been shown to decrease with legal access to marijuana, an important benefit when bedspace is at a premium. Finally, states with legal access to marijuana tend to have significantly lower opioid mortality rates – as much as 25 percent lower in one case.[32]

Treatment as the Alternate Response to Substance Use Disorder

In order for alternative strategies to be successful – from arrest diversion to safe consumption sites and legalization – it is imperative that jurisdictions take the

time to invest in the availability of treatment services for individuals who develop a use disorder, as well as ensure that they are located within the communities that need them the most.

Substance use response and coordinated follow-up care, San Francisco, California

Several cities across the country are experimenting Launched in November 2020, the Street Crisis Response Team responds to non-violent calls with a mental health, behavioral health or substance use component. Teams are composed of a San Francisco Fire Department paramedic, a mental health clinician and a peer specialist from the San Francisco Department of Public Health. San Francisco's alternate response to mental health and substance use is unique in that they have also created an agency that coordinates the care of individuals who come into contact with the Street Crisis Response Team.

Once the Street Crisis Response Team has made contact with an individual, they refer them to the Office of Coordinated Care, which was launched in 2021 and links patients with mental health and substance use care across the city. This partnership has been a resounding success, with the Office of Coordinated Care managing to make contact with almost of the patients who come into contact with the Street Crisis Response Team and ultimately lowering the rate of repeat callers.[33] This unique approach to alternate first and second response shows the importance of case management and coordination to the success of resolving community concerns around mental health and substance use.

Overdose Response Teams in Newark, Dallas, and the state of West Virginia

Several cities across the country are experimenting with using emergency department admissions as a pathway to treatment. In Summer 2022 the Newark Community Street Team in the City of Newark, New Jersey launched an alternate response program that dispatched outreach workers and EMS to respond to overdoses in the community together. Outreach workers resuscitate individuals who are suspected of experiencing an overdose and conduct outreach into the community to provide harm reduction supplies and connections to treatment. The City of Dallas also dispatches an Overdose Response Team staffed with peer support specialists from the Recovery Resource Council and EMS staff from the Dallas Fire & Rescue Mobile Integrated Healthcare unit, but their dispatch happens 24 to 72 hours following an overdose event.

The State of West Virginia took a different approach, and managed their Quick Response Teams out of the county health departments. The staffing makeup of these teams vary by county, but they are made up of EMS, law enforcement officers or health department professionals, and peer recovery specialists.[34] These teams receive 911 and emergency department data showing who was brought into the emergency department and whether or not they were connected with follow-up care. Those who refused services are prioritized for outreach, which is typically done in the patient's home. If they are willing to be connected with care, the team will transport the individual in their team vehicles. This program has had significant early successes, managing to connect about 30 percent of the people they conduct outreach to into care.[35]

Mobile Pharmacies, Pierce County, Washington

One of the major barriers to successful treatment of substance use disorder is that in many communities it is easier to acquire controlled substances illegally than via a pharmacy. One study found that upwards of 30 percent of patients who are prescribed medication never fill their prescriptions. This can be for a number of reasons, but the absence of pharmacies in the communities where they are needed the most is certainly one of them. Medically assisted treatment has been shown to increase the amount of time patients engage with the treatment programs, which reduces the likelihood of fatal overdose and improves their quality of life.

To address this concern, treatment providers in Pierce County, Washington were permitted to engage in a pilot program that delivered the medication during the patient's visit, rather than requiring them to go to a pharmacy. Improved access to medication increased retention in treatment by over 50 percent, reduced non-prescribed controlled substance use by almost a third, and reduced emergency department visits by over 40 percent.[36]

If we want to reduce the demand that leads to open air drug markets and other street dealing of controlled substances, we have to remove the barriers to individuals remaining engaged in treatment. Whether that be meeting them at their worst moments with emergency treatment and follow-up care, or continuing to find and remove barriers to treatment uptake through improved convenience. These interventions will reduce the likelihood of future engagement with the public safety system and allow them to focus their energies elsewhere.

Bringing It All Together

The criminal legal system has traditionally dominated this space because it is properly funded, located in every community, and available on-call, 24/7/365. And so, in order to shift from a criminal legal system approach to public health, treatment options and resources must also be broadly available, funded, and accessible across communities. Decriminalization without taking the time to develop and fund infrastructure that is essential to care for those who develop a substance use disorder mitigates the community benefit of a smaller law enforcement footprint, and instead shifts the burden onto emergency departments.

The data shows our current approach doesn't work – and the communities impacted most by enforcing drug prohibition end up being the same communities most impacted by overdose. With that in mind, a full hands on deck approach that incorporates diversion, legalization, decriminalization, and an expansion of treatment options is the only real way we can begin to truly disentangle health and wellness crises from criminal legal system solutions.

Endnotes

1 Federal Bureau of Investigation. (2020). Crime in the United States 2019. Retrieved from https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-29/table-29.xls AND https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019

2 House, W. (2023). Dr. Rahul Gupta Releases Statement on CDC's New Overdose Death Data. The White House. https://www.whitehouse.gov/ondcp/briefing-room/2023/01/11/dr-rahul-gupta-releases-statement-on-cdcs-new-overdose-death-data-2/

3 Drug Overdoses - Data Details - Injury Facts. (2023). Injury Facts. https://injuryfacts.nsc.org/home-and-community/safety-topics/drugoverdoses/data-details/

4 Ibid.

5 Solomon, F. (2020, November 27). Desk Appearance Tickets: Prelude To Bail Reform. New York City Criminal Justice Agency. Retrieved March 10, 2023, from https://www.nycja.org/publications/desk-appearance-tickets-prelude-to-bail-reform.

6 https://nida.nih.gov/publications/drugfacts/criminal-justice

7 https://www.vera.org/publications/overdose-deaths-and-jail-incarceration/national-trends-and-racial-disparities

8 Ingrid A. Binswanger, Patrick J. Blatchford, Shane R. Mueller, and Marc F. Stern, "Mortality After Prison Release: Opioid Overdose and Other Causes of Death, Risk Factors, and Time Trends From 1999 to 2009," Annals of Internal Medicine 159, no. 9 (2013), 592–600; Ingrid A. Binswanger, Marc F. Stern, Richard A. Deyo, et al., "Release from Prison—A High Risk of Death for Former Inmates," New England Journal of Medicine 356, no. 2 (2007), 157–65, https://perma.cc/L49X-7MZ7

9 https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-43

10 https://urbanlabs.uchicago.edu/attachments/6a32c5011b950b384aae8bd86e45af26bfa9095b/store/7e89ea7c67330f4bddcb594f9dc416805eb75133105fc2fbcbf6ddd1669e/NADP.pdf

11 Arora Bencsik - Policing Substance Use - Nov 2021.pdf

12 Ibid.

13 https://www.documentcloud.org/documents/6535141-Sobering-Center-Program-Evaluation-Report.html

14 Ibid.

15 Ibid.

16 Latimore, A. D., & Bergstein, R. S. (2017). "Caught with a body" yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law. Int J Drug Policy, 50, 82-89. https://doi.org/10.1016/j.drugpo.2017.09.010

17 del Pozo, B., Krasner, L. S., & George, S. F. (2020). Decriminalization of Diverted Buprenorphine in Burlington, Vermont and Philadelphia: An Intervention to Reduce Opioid Overdose Deaths. The Journal of Law, Medicine & Ethics, 48(2), 373-375. https://doi.org/10.1177/1073110520935353

18 https://www.berkshireeagle.com/news/local/buprenorphine-treatment-opioid-decriminalized/article_44df51a2-fb95-11eb-9ff7-4309425e37dd.html

19 https://www.cato.org/blog/fentanyl-test-strips-save-lives-yet-most-states-ban-them-drug-paraphernalia#:~:text=As%20Sophia%20Heimowitz%20and%20I,or%20distribution%20of%20drug%20paraphernalia.

20 https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2022&sessInd=0&act=111

21 https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm

22 Newman, A. (2021, November 30). Nation's First Supervised Drug-Injection Sites Open in New York (Published 2021). The New York Times. https://www.nytimes.com/2021/11/30/nyregion/supervised-injection-sites-nyc.html.

23 OnPoint NYC. (n.d.). OnPoint NYC - Making History. Saving Lives. Retrieved March 13, 2023, from https://onpointnyc.org.

24 Levengood, T. W., Yoon, G. H., Davoust, M. J., Ogden, S. N., Marshall, B. D., Cahill, S. R., & Bazzi, A. R. (2021). Supervised injection facilities as harm reduction: a systematic review. American journal of preventive medicine, 61(5), 738-749. https://pubmed.ncbi.nlm.nih.gov/34218964/

25 https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use/

26 https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2777032#:~:text=This%20study%20estimated%20 the%20annual,hospitals%20to%20be%20%2413.2%20billion.

27 Todd, T. (2018). The benefits of marijuana legalization and regulation. Berkeley J. Crim. L., 23, 99. https://www.bjcl.org/assets/files/23.1-Todd.pdf

28 ACLU of Washington. (2014, March 19). Court Filings for Adult Marijuana Possession Plummet. Retrieved March 13, 2023, from https://aclu-wa.org/news/court-filings-adult-marijuana-possession-plummet.; Reed, J. K. (2016, March). Mar-ijuana Legalization in Colorado: Early Findings: A Report Pursuant to Senate Bill 13-283 (March 2016). Retrieved March 13, 2023, from https://cdpsdocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf.

29 Brock, J. D. (2013, July). State of Oregon Report of Criminal Offenses and Arrests 2012. Retrieved March 13, 2023, from https://digital.osl.state.or.us/islandora/object/osl%3A68346/datastream/OBJ/view.; Drug Policy Alliance. (2018). From Prohibition to Progress: A Status Report on Marijuana Legalization. Retrieved March 13, 2023, from https://ndlegis.gov/files/committees/66-2019/21_5039_03000appendixm.pdf.

30 https://www.bmj.com/content/372/bmj.m4957

31 https://injepijournal.biomedcentral.com/articles/10.1186/s40621-019-0213-z

32 Ibid.

33 https://sf.gov/sites/default/files/2022-06/SCRT%20Final%20Report_FINAL-%201%20year.pdf

34 https://dhhr.wv.gov/BBH/FundingAnnouncements/FY%202020/AFA%2011-2020-SA%20Quick%20Response%20Team%20(QRT).pdf

35 https://www.cdc.gov/drugoverdose/od2a/pdf/od2a-public-safety-case-study-508.pdf

36 https://www.jsatjournal.com/article/S0740-5472(20)30513-4/fulltext