

Whole-of-Government and Drug Policing

THE LEGAL PATH TO A WHOLE OF GOVERNMENT OPIOIDS RESPONSE: PART 3

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Executive Summary

The long-standing “war on drugs” has demonstrated a strong whole-of-government approach to drug policing with considerable consensus across (horizontal) and between (vertical) levels of government as to the drug problem and its cause. Tragically, the evidence demonstrates that the consensus was built on fundamentally flawed policies. The result has been a sorrowful tale of mass incarceration, structural racism, and minimal improvement for treatment and harm reduction of drug use. While recent federal administrations and some state governments have increased funding for treatment and endorsed harm reduction, the war footing endures, with only a few states turning down the heat of the drug conflict. Addiction and substance use disorder is a chronic disease. A moral defect explanation of the condition that drives the “war on drugs” has fed upon itself and resulted in stigma that leads governments to over-criminalize acts far beyond drug possession and over-punish users. Drug-induced homicide (DIH) laws that allow prosecutors to “charge the death” after an accidental overdose and other overreaching laws such as prohibitions on paraphernalia have been combined with aggressive law enforcement tactics. Meanwhile, policies that establish and fund programs like specialty drug treatment courts meant to improve access to treatment and outcomes have actually made things worse. Although the end of the “war on drugs” may not yet be in sight, there are several changes in laws and policies that would improve harm reduction and treatment and perhaps the tenor of the drug war.

Federal laws could be changed to destigmatize treatment and increase access, and to better align with state laws that impact syringe services. Reports of successful programs in Europe and Canada have nudged some states to lower the criminal penalties associated with low-level possession or even adopt a civil citation model that provides a route to health screening.

Introduction

The Whole-of-Government (W-G) model posits an approach to providing effective, comprehensive, coordinated government action to solve difficult, complex, characteristically “wicked” problems (Camillus, 2008). It provides a lens through which to identify legal barriers or policy misalignment between agencies at the same level and between different levels of government. In our work in the harm reduction and treatment domains we have identified significant legal and policy barriers to effective W-G strategies to improve the health and well-being of people who use drugs. These barriers exist across multiple agencies either at one level of government (horizontal), across different levels of government (vertical), or across both. We have applied the W-G framework to identify misalignments and structural determinants in drug policy’s traditional pillars (Government of Canada, 2016; Macpherson, 2001; US Department of Homeland Security, 2022), that have impeded harm reduction, prevention, and treatment, and we have identified policy barriers that can be removed or policy supports that can be erected to smooth the path to more integrated action. As we have noted, W-G strategies must be grounded on a clear, shared vision of the nature of the problem and the kind of action necessary to solve it. We have argued that the traditional pillars upon which decades of drug policy have been built (prevention, treatment, and drug control policing) are in fact antagonistic and should be rejected in favor of a transformational model built around effective W-G to better address our drug problem. That model calls for the removal of criminal law impediments to harm reduction and treatment while looking for upstream solutions rooted in removing social and structural determinants.

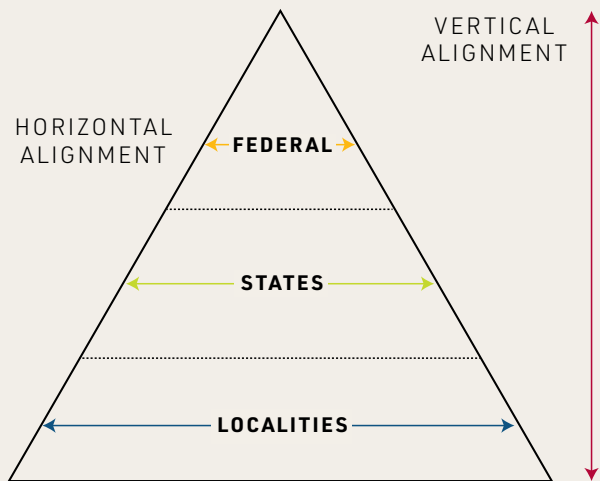
The conventional wisdom for addressing drug use and misuse in the United States is that law enforcement is the primary recourse for suppressing both supply and demand. Our analysis of drug control policing suggests a

strikingly different story. From a W-G perspective the drug policing domain is less about different agencies or levels of government getting in the way of policing, although no doubt as with all interagency or federal-state relationships there are plenty of examples of “sand in the gears” (Herd & Moynihan, 2019). Instead, ironically and tragically, the last 50 years of drug policing offers conclusive proof that W-G can be an effective model, as horizontally and vertically the criminal justice system has exhibited considerable agreement as to what the problem is (drug possession and use) and its cause (the moral defectiveness of those who use drugs). Thus, the problem here is not with the alignment of these processes but, rather, the demonstrably flawed underpinnings of that underlying consensus. Fifty years ago President Nixon opened the “war on drugs” when he said, “America’s public enemy number one is drug abuse,” to be fought by waging “a new, all-out offensive” (Smith, 2021). The war escalated during both the Reagan (Benson et al., 1995) and Clinton administrations (Murch, 2016a). Decades later the war is recognized as a disastrous failure (Coyne & Hall, 2017; Drug Policy Alliance, 2022a; New York Times Editorial Board, 2022), one that has resulted in mass incarceration and, as a textbook example of structural racism (Drug Policy Alliance, 2015; Rosino & Hughey, 2018; Tonry, 1994) gross exacerbation of racial disparities (Beckett & Brydolf-Horwitz, 2020; Pearl & Perez, 2018).

This paper applies a W-G lens to our federal and state drug policing laws, examines some of their internal contradictions and their corrosive impacts on our law and policy institutions, and provides a series of evidence-based recommendations to move forward. The “war on drugs” is examined not only for its direct effect on drug policing but how its endorsement of the moral defect theory of addiction has insinuated other drug pillars. Worse, there is circularity associated with moral disapproval and criminal law — as moral disapproval increases so do calls for more drug laws and enforcement that then reinforce the moral defect model and stigma (Boldt, 2010).

In addition to the direct impact on those arrested and their communities, the legal tools of the war on drugs had a pernicious indirect effect on efforts to provide harm reduction and treatment. We need transformational changes in law and policy to remove the “war on drugs” impediments to the treatment domain, permit harm reduction to do its job with sharply reduced interference from contrary federal policies and inconsistent state laws, and identify and remedy the upstream social and structural determinants that operate both as root causes of SUD and impediments to treatment and recovery. Difficult though it will be, “[w]e must not be satisfied with the norm, but work toward institutionalizing the demand for a standard of decency that values transformative change” (Taifa, 2021).

DEFINING WHOLE-OF-GOVERNMENT



Through the Whole-of-Government approach, we gain an improved understanding of the design and implementation of conventional drug policy. The W-G perspective provides both a lens through which to critique current levels of alignment and misalignment between different levels of government or agencies at the same level, and a normative tool designed to structure reforms. What is required for effective policy making is comprehensive, coordinated government action across the different agencies at one level of government (be it federal or state), what we term *horizontal* W-G, and between different levels (federal, state, tribal, and local), what we term *vertical* W-G.

A Whole-of-Government Exit from the War on Drugs?

The scale of the “war on drugs” and its continuing toll are well known. One of every nine arrests by state law enforcement is for drug possession, and possession arrests continue to average more than a million per year, notwithstanding a slight decline in overall imprisonment rates (Human Rights Watch, 2016; Pew Charitable Trusts, 2022). Reflecting on this period of our history it is understandable why some would conclude that “the core function of criminal law is normative, intended to stigmatize drug use and people who use drugs” (Beletsky, 2019). Indeed, it has been convincingly argued, “[l]ike Jim Crow (and slavery), mass incarceration operates as a tightly networked system of laws, policies, customs, and institutions that operate collectively to ensure the subordinate status of a group defined largely by race” (Alexander, 2010). There is also a self-reinforcing circularity at play; as more Black and brown people are

arrested, so their race becomes associated with criminality, leading to calls for more enforcement in their communities (Boldt, 2010). It is an indisputable understatement that as a result, “there are places in America today, particularly in Black and brown communities and other communities of color, where the bonds of trust are frayed or broken” (Biden, 2022).

To move beyond the mistakes of the past, the W-G approach requires policymakers to agree on the nature of the problem and its causes (Worzala et al., 2018). There is a political and legislative consensus about drug use, but it is wrong-headed and ignores the evidence. The political and legislative consensus about drug use is a loose but tenacious accord, bringing together hard right commentators who believe drug dealing is a violent crime (Bennett & Walters, 2016), fentanyl “hawks” who would use the military to attack the cartels (Press Release, 2023; Ward, 2023), and less committed politicians fearful of being seen as “soft-on-crime” (Gambino & Greve, 2022; Jouvenal & Berman, 2023).

The Biden administration has boosted harm reduction and treatment approaches to harmful drug use. However, it too has sent mixed messages (a feature of misalignment in horizontal W-G) as to what it believes are the problem and causes of the problem. In 2022, the administration launched “Operation Overdrive,” a major interdiction effort targeting “hotspots” characterized by criminal behavior and overdoses (Drug Enforcement Administration, 2022). It also extended the 2018 class-wide scheduling of fentanyl analogue (Extending Temporary Emergency Scheduling of Fentanyl Analogues Act, 2021), which results in high sentences for mid-level dealers (Schwartzapfel, 2021). More recently, President Biden signaled additional crackdowns on fentanyl trafficking and border security (Yang, 2023). Some commentators, such as journalist Sam Quinones, continue to insist that the fentanyl crisis can only be overcome with “sustained engagement and collaborative enforcement” by the United States and Mexican governments (Quinones, 2023), while some politicians apparently believe that the United States should unilaterally bomb the cartels in Mexico (Ward, 2023).

Similar criminalization-focused agendas also surface in the states where the current increase in fentanyl deaths often lead to knee-jerk calls for additional and harsher criminalization rather than disaggregated policy and policing to apply criminal sanctions differently to people who use drugs rather than the traffickers who prey on them (Ovalle, 2023; Stern et al., 2023). The disparate impact of prescription opiates on white Americans and improvements in harm reduction and access to treatment could have led to states turning away from tactics used in the “war on drugs.” Although states have been making penalties for possession more lenient, arrest rates have

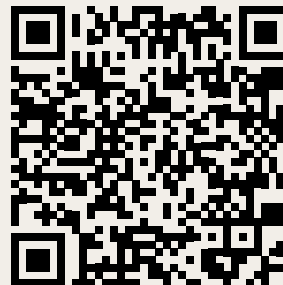
remained roughly the same (Beckett & Brydolf-Horwitz, 2020). Overcoming a war footing during which public and private actors have taken ever more entrenched positions will be difficult, while agreeing on a postwar agenda will be harder still; “[w]hat has been shown to work is not always politically feasible, and what’s politically popular often doesn’t make for sound public health” (New York Times Editorial Board, 2022).

The primary W-G task that lies ahead for both federal and state governments is to recognize what the evidence has been telling us, that the “war on drugs” is a failure, and escalation will only double-down on that failure. A coordinated extraction from our present landscape will require the actors to abandon the “moral defect” view of those with substance use disorders and accept that its causes are similar to those that lie behind other chronic diseases. In the words of the Surgeon General’s 2016 report:

Scientific breakthroughs have revolutionized the understanding of substance use disorders. For example, severe substance use disorders, commonly called addictions, were once viewed largely as a moral failing or character flaw, but are now understood to be chronic illnesses characterized by clinically significant impairments in health, social function, and voluntary control over substance use. Although the mechanisms may be different, addiction has many features in common with disorders such as diabetes, asthma, and hypertension. All of these disorders are chronic, subject to relapse, and influenced by genetic, developmental, behavioral, social, and environmental factors (Office of the Surgeon General, 2016).

Stepping back from our current approach to drug policing is simple in concept but complicated in execution. Politically it will be an immense task and, initially at least, will be measured in incremental rather than fundamental progress. It will be important to formally recognize not only the failure of the “war on drugs” but also its toll on the

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physical, mental, and familial health of those it swept up (Fleming et al., 2021; Malliori et al., 2015).

The “war on drugs” has created a complicated patchwork of overlapping crimes and interacting criminalization that not only corrodes our laws and legal institutions so that “drug offenses constitute the single most important manifestation of our tendency to criminalize too much and to punish too many,” (Husak, 2008) but that the overwhelming pervasiveness also widely, negatively impacting key social determinants of health (Cohen et al., 2022). Primarily, we must recognize that “[n]othing has contributed more to the systematic mass incarceration of people of color in the United States than the War on Drugs” (Alexander, 2010). The collateral consequences of involvement with the criminal justice system seem cruelly designed to make the employment, housing and other social determinants (Alexander, 2010, Mogk et al., 2019; Upadhyay, 2022; White House Council of Economic Advisors, 2015) necessary for recovery from substance use more unattainable (Cohen et al., 2022).

Meanwhile, a compliant Supreme Court seemingly approved of drug war exceptionalism whenever law enforcement practices and tactics were subject to constitutional scrutiny. This was particularly the case with the well-documented erosion of Fourth Amendment protection, allowing profile and pretextual stops, sweeps, drug-testing without suspicion, and limitations on the expectation of privacy (Rudovsky, 1994). In parallel, the federal appellate courts have used qualified immunity to limit the civil liability (42 U.S.C. § 1983) of police officers and prosecutors (Harlow v. Fitzgerald, 1982; Hodson, 2018).

The federal government may have started the “war on drugs” but, international eradication, interdiction, and pursuit of high-level traffickers aside, it has delegated much of the war to the states. State and local law enforcement had relatively little interest in drug policing until the federal government purchased their enthusiasm with large grants and training assistance (Alexander, 2010). Federal largesse encouraged the states to increase the number of personnel, the lethal nature of their equipment, and a massive program to build correctional facilities (Eisen, 2019). For example, the federal government, through its “1033” and “1122” programs, asserted the reality of a war footing with supplies and equipment that promoted police militarization (Gamal, 2016). The federal money flowing to state law enforcement not only led to overall increases in arrests but an immediate increase in racial disparities in those arrests (Cox & Cunningham, 2021). Much of the federal money was used to establish Multi-Jurisdictional Drug Task Forces (MJTFs) (Cox & Cunningham, 2021), such is the power (misused as it was) of vertical W-G.

Today many assume that the end of the “war on drugs” is a “when” not an “if” (New York Times Editorial Board, 2022; Singer, 2018). Clearly, what the federal government ill-advisedly started it now has the obligation to reverse. The Clinton administration doubled down on the “war on drugs” to avoid being outflanked from the right as “soft on crime” (Murch, 2016b; Segura, 2016). It remains unclear even 30 years later where in Congress such a federal initiative to reverse that effort could arise. Without W-G leadership and vastly different targeted funding, it seems more probable that the end of the “war on drugs” will depend on a very gradual, possibly glacial series of reforms in progressive and moderate states.

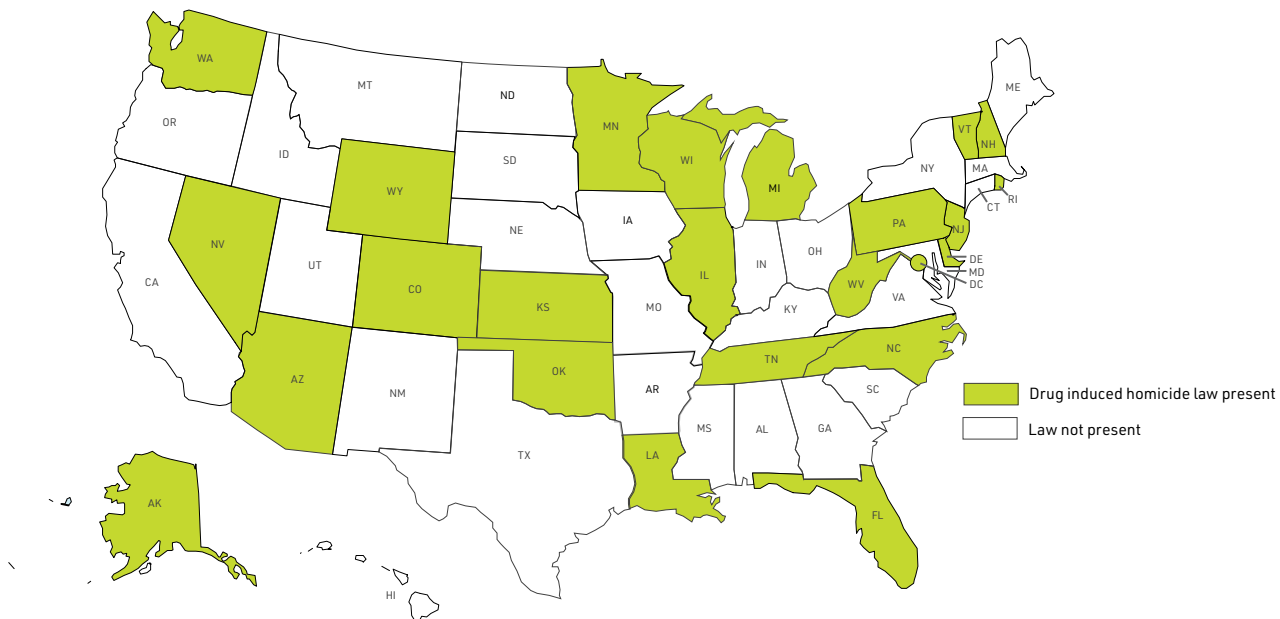


Figure 1: Approximately half the states have drug-induced homicide (DIH) laws that allow prosecution of persons who furnish or deliver controlled substances to another individual who dies as a result (PDAPS, 2019).

The War on Drugs in the States

Overall, states make far more drug crime arrests than federal authorities and most state arrests are for possession. In contrast, most drug arrests at the federal level are for drug trafficking. For example, when President Biden pardoned those convicted of federal marijuana no one among them was currently in federal prison for the offense (The White House, 2022). The states have participated with the federal government in a “successful” W-G operation, albeit one built around criminalization and stigma. The federal government with considerable alignment between its agencies (horizontal W-G) has waged war on the illicit supply and used its administrative powers, for example under the Controlled Substance Act, to curb licit access to drugs. The federal government then secured inter-agency cooperation and coordination (vertical W-G) with the localities, counties, and states through the funding of MJTFs and direct funding of police equipment and training.

States have also instituted novel or overlapping crimes in misguided attempts to deter the supply or use of drugs. Approximately half the states have drug-induced homicide (DIH) laws that allow prosecution of persons who furnish or deliver controlled substances to another individual who dies as a result (PDAPS, 2019). These strict liability drug homicide laws have been described as “a monstrosity, serving as an excellent illustration of the phenomenon of overcriminalization” (Husak, 2008). Worse, DIH prosecutions may disrupt a local drug market with unintended consequences and reduce the number of 911 “Good Samaritan” calls (Beletsky, 2019; Carroll et al., 2021; Carroll et al., 2020). Knee-jerk reactions to drug injuries can lead to further escalation; a recent increase

in fentanyl overdoses among teenagers in North Texas led to the Texas Senate passing a bill allowing prosecutors to charge fentanyl distributors with murder (Bella, 2023), and Virginia has amended its definition of “weapons of terrorism” to include a detectable amount of fentanyl.

Over policing (Bayley, 1996) and the budgets it attracts have been linked to aggressive tactics such as stop and frisk (H. L. Cooper, 2015) the criminalization of immigrants (Tosh, 2021), home invasions (H. L. Cooper, 2015), and police brutality (Hannah LF Cooper, 2015). Punishments have not only been carceral, driven by punitive minimum sentencing laws (Exum, 2021) but have extended to aggressive civil asset forfeiture (Drug Policy Alliance) that in some states has become particularly abusive (Jaglois & Baker, 2023). These in turn have fed in many places a pernicious W-G collaboration in which state legislators cut funding to municipalities and their courts with the tacit assumption that they will fill the gap by amping up fines and fees on local citizens (Martin, 2018; United States Department of Justice & Civil Rights Division, 2015).

As more public health-centered approaches to reducing drug harms have taken root, it seems at first sight that some have infiltrated the criminal justice system, suggesting a W-G win. For example, state legislatures have passed Good Samaritan Laws (GSLs) and are urged to fund specialty drug treatment courts (DTCs). Increasingly and perversely, research suggests these interventions may do more harm than good, delivering public health theater while unreformed drug policing endures. GSLs, which are now in 48 states and the District of Columbia, that encourage bystanders to call first responders during an overdose are notorious for the narrow grounds on

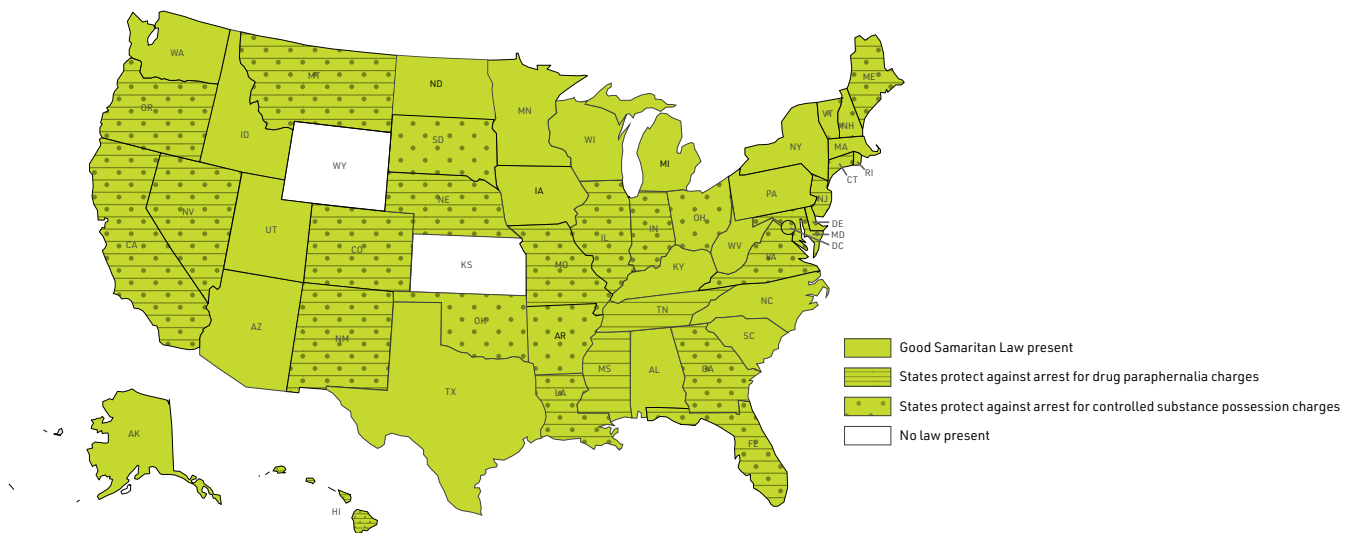


Figure 2: GSLs are now in 48 states and the District of Columbia, that encourage bystanders to call first responders during an overdose. 29 jurisdictions protect against arrest for controlled substance possession charges and 23 jurisdictions protect against arrest for drug paraphernalia charges (PDAPS, 2023).

which they are triggered (for example, administration of naloxone by the caller (Ind. Code § 16-42-27-2(g)) and the indeterminacy of police discretion (Pamplin et al., 2023). Overall, people who could benefit from these laws either have little knowledge of their existence or potential application (Schneider et al., 2020), or have had such negative experiences with law enforcement that they try to avoid any and all contact (Latimore & Bergstein, 2017; van der Meulen & Chu, 2022).

There are almost 4,000 DTCs spread across every state and the District of Columbia (National Drug Court Resource Center, 2021). The conventional wisdom is that these courts emphasize a non-adversarial, therapeutic, and treatment-oriented “team approach” (Hora et al., 1998) to address drug-related crimes. DTCs do work, but they do not work for everyone and bring with them hidden costs and tradeoffs (Bowers, 2007; Rodriguez Monguio et al., 2021). Indeed, “Far from serving as an alternative to incarceration, drug courts act as a sorting mechanism, carefully assessing which participants merit freedom and which should be locked up for an even longer time than before” (Kaye, 2019). Many participants fail out of the process. Many DTCs continue to focus on abstinence (Beckett & Brydolf-Horwitz, 2020) and are resistant to medication-assisted treatment (MAT) (Collins, 2020; Csete, 2020) There are also concerns that DTCs perpetuate drug use stigma by relying on a system of rewards and punishments (Woods, 2011); “[w]hen the court says treatment, it means discipline of individual offenders, rather than management of medical opportunities” (Miller, 2009). Questions also persist about the motivations of some judges because “problem-solving courts persist in part because they revive a sense of purpose and authority for judges in an era marked by diminishing judicial power [and] have become self-reinforcing institutions that are protected from meaningful external scrutiny” (Collins, 2020).

Damage to Other Drug Policy Pillars

The cruel irony is that “public health finds itself in a paradox: the government and taxpayers are subsidizing both policies that cause health inequities (such as overcriminalization and incarceration) and the work by public health agencies to address them” (Fleming et al., 2021). Prevention, harm reduction, treatment, and recovery have suffered in the wake of drug policing because of the “deontological perspective that conceives of drug use as wrongful or immoral (rather than by a more pragmatic conception that views drug addiction as a disease and drug use as a public health concern)” (Boldt, 2010). Facing a long road to the end of the “war on drugs,” the immediate question is how do we disentangle the worst consequences of drug policing from harm reduction and treatment?

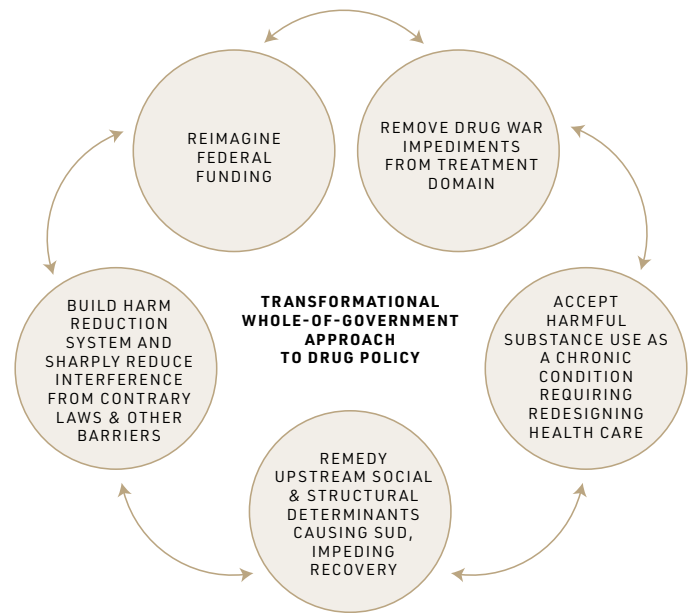


Figure 3: The components of a transformational Whole-of-Government approach to drug policy.

Harm Reduction

There are several changes in drug policing laws and policies that will positively impact harm reduction and treatment and simultaneously make for a somewhat kinder and gentler drug war (Beckett & Brydolf-Horwitz, 2020). Disagreements over harm reduction policies and implementation strategies exist at every level of government and between government and citizens. They include contrary federal policies, inconsistent state laws, and structural barriers that continue to exist notwithstanding that “[harm reduction] costs are less than the public health, law enforcement, and incarceration costs incurred under the current approach to substance use and abuse” (Singer, 2018). The priority is to remove or minimize the federal and state laws and policies that make harm reduction strategies more difficult or flat-out illegal. These include federal and state crack-house laws, outdated restrictions on syringe services, and overbroad state paraphernalia laws that discourage drug testing.

Treatment

That criminalization actively frustrates treatment is the fundamental W-G failure for opioid use disorder. Transformational changes in law and policy are required to remove “war on drugs” policies from the treatment domain. Because of “drug war logic” (Cohen et al., 2022) opioid agonist therapy (OAT) has suffered from

federal restrictions simply not faced by prescription drug treatment of other chronic diseases. That overregulation created or at least perpetuated stigma and made it less likely general practitioners would participate even as legal controls are relaxed (Stringfellow et al., 2021). The failed war not only criminalized addiction but also erected significant barriers to treatment for people involved in the justice system, particularly the continuation or initiation of OAT (Fiscella et al., 2018; Grella et al., 2020). Drug courts and prisons maintain negative policies to evidence-based agonist treatments notwithstanding that drugs and alcohol are the third leading cause of death in US jails (Fiscella et al., 2020).

Public Safety and Competing Values

It is important to recognize that getting the police, courts, and prisons out of a primary role in reducing the social and individual harms of drug use does not mean that there is no role for police in a W-G effort. We must rebuild a real system of accessible mental and behavioral health care in this country, and that includes rethinking and rebuilding our first responders to reflect expertise in behavioral health and social work). If police retain some role in responding to drug issues (not an ideal solution) they need the training, support, and tools (like naloxone) to respond effectively. We must acknowledge that Interactions of people who use drugs with law enforcement officers almost always result in health and other harms for the former and should be minimized. (Davis et al., 2023). When we step back from a reflexive application of arrest and punishment in the drugs domain, it is also possible to appreciate the interest of communities more fully in civil order: moving away from arrest and punishment for drug use as such does not mean that communities need to tolerate open public consumption and intoxication or drug dealing. Over the last half-century, police as protectors of public order played an important, largely positive role in closing down open drug scenes in major European cities, finding ways to mix punitive crime control, bridges to care and maintenance of civil standards of behavior (Bancroft & Houborg, 2020; Olsen, 2017; Waal et al., 2014).

There are numerous evidence-based studies suggesting the very real potential of leveraging law enforcement in novel ways and to further different priorities. We should invest in law enforcement deflection programs (Ross & Taylor, 2022), train early and often (Rouhani et al., 2019), enact the legislation necessary to ensure stable financing, set standards, and facilitate the relationship between police and their emerging partners (Legislative Analysis and Public Analysis Association, 2021), while recognizing that on the streets there is a thin line between simple possession and drug trafficking (Xavier et al., 2022). Cooperation and partnerships also must be a two-way street. States should adopt state-local coordination

and staffing programs modelled, for example, on Maine's OPTIONS initiative, embedding clinicians in county public safety agencies (Carter et al., 2022) and other CIT and co-responder models (Krider & Huerter, 2020; Marcus & Stergiopoulos, 2022).

Elsewhere we have argued that decriminalization or partial decriminalization is unlikely to be effective without the vacuum being filled with treatment and recovery services and the construction of a true public health-oriented harm reduction system. Modern-day San Francisco serves as a difficult example with the city apparently ill-equipped to deal with homelessness and open-air drug markets. In 2022 the Mayor announced an emergency plan for the part of the city known as the Tenderloin because overdoses, drug dealing and street chaos were "totally out of control" (Westervelt, 2022) Following significant increases in overdose deaths because of fentanyl in the first few months of 2023 (Leonard, 2023) the governor called in the National Guard and the California Highway Patrol to restore order and enforce trafficking laws (O. o. G. G. N. Press Release, 2023). The situation in San Francisco should not be used as evidence that decriminalization (there, of psychedelics) is a failure but rather that for decriminalization to succeed hard work must be put in to establish comprehensive harm reduction and treatment services, to understand how to maintain civil order, and address the social determinants of health that cause homelessness.

Meeting the Whole-of-Government Challenges

Despite modest shifts towards a public health frame, the policy and programmatic response to the crisis indicates that the change has remained largely rhetorical. Policymakers, prosecutors, and the police have continued to draw on the arsenal of carceral and punitive tools in mounting the response. These actions reflect established dynamics of policy theater (Beletsky, 2019).

Even when a more progressive state moves forward on issues such as harm reduction funding and increased treatment services, the price can be additional criminalization (Collins & Vakharia, 2020; Kenney, 2022) and the perpetuation of the public health paradox (Fleming et al., 2021; Gottschalk, 2023). Notwithstanding, there is evidence that the majority of Americans want to abandon the "moral crusade" of the "war on drugs" and adopt a public-health approach (The Lancet (Editorial), 2001). In 2018, Ohio narrowly rejected a ballot initiative that would have reduced minor drug offenses to misdemeanors and redirected savings from criminalization and incarceration towards drug treatment, crime victim, and rehabilitation

programs (Dew, 2019). Almost 40 percent of residents in this largely conservative state were in favor of the initiative. Gradual decriminalization slowly moving across the states (often in the footsteps of marijuana decriminalization) seems the most likely end to drug policing as we currently know it.

Some states, perhaps not ready to fully take on decriminalization, are making a start by reversing some of the legislative overreaching responsible for overlapping and ancillary crimes. For example, Minnesota recently revised several provisions of its criminal code that prohibited syringe possession, the bulk sale of syringes by, for example, pharmacies, the possession of residual amounts of drugs found in drug paraphernalia, and drug testing products (Minnesota S2909 Art. 16, Controlled Substances Policy, 2023). However, the only true decriminalization of possession in the legislation applied to marijuana.

Roughly half of the states still prosecute simple possession as a felony; most of the remainder classify it as a misdemeanor (Drug Policy Alliance, 2022b). Many states also classify simple possession of drug paraphernalia as a felony (Davis et al., 2022). Probably the most well-known reform was California's 2014 "ballot 47" that downgraded simple drug possession and other non-violent crimes to misdemeanors and also allowed for resentencing and reclassification to reduce collateral consequences (Ballotpedia, 2014). In states that cannot agree on a horizontal W-G approach, reform has devolved to some cities that approximate decriminalization with prosecutorial discretion. For example, Baltimore's decision to stop prosecuting low-level offenses such as drug possession did not seem to pose a threat to public safety or result in increased public complaints about drug use (Rouhani et al., 2021), and there is similar evidence coming out of Oregon (RTI International, 2023). A handful of states have considered bills that would take a similar approach (Drug Policy Alliance, 2022b; Vt. H.423, 2023). Conversely, conservative state legislatures have attempted to reign in such "rogue" prosecutors (Greenberger, 2023).

Washington State and Oregon have come closest to turning the page. In 2021, Washington's felony strict liability drug possession law was held to be unconstitutional (*State v. Blake*, 2021). Subsequently, the legislature replaced that law with a temporary simple misdemeanor provision but also enacted a substance use recovery services plan and a preference for diversion rather than arrest (WA SB 5476 (2021-22)). However, in 2023 the Washington legislature made drug possession and use are gross misdemeanors and, while expressing its preference, did not mandate referral or diversion. Nevertheless, the legislation fully preempted the field, blocking municipalities from introducing harsher laws while deregulating paraphernalia (Senate Bill 5536, 1st Special Session, 2023).

In contrast, in Oregon in 2020, following the approval of a ballot initiative, the state decriminalized low-level drug possession in favor of a civil citation model (Russoniello et al., 2023). The ticket's penalty fee can be waived if the recipient completes a health screening initiated through a recovery hotline" (OR SB 755 (2021 Regular Session)). The reforms in Washington and Oregon have significantly reduced possession arrests but have not resulted in increased arrests for other crimes. (Davis et al., 2023). Such initiatives could prove to be exemplars of horizontal W-G, ending the siloization of the harm reduction, treatment, and drug policing domains. Indeed, as criticism of the Oregon (Stephens, 2023, Westervelt, 2021) and its European exemplar (Faiola & Fernandes Martins, 2023) reforms have increased it has become obvious that criminal law reforms are inadequate in isolation. If we were to decriminalize possession and stop warehousing drug users in our prisons, we will need to ramp up our treatment and social services while finding ways to allow those who use drugs and those who don't to share spaces in our cities.

Conclusion

As has been noted, "something has gone seriously wrong with the legislative process in the criminal domain" (Husak, 2008). Even as policymakers pivot towards emphasizing demand-side strategies, they find it difficult to leave behind decades of prohibitionist policies and their consequences of "racial discrimination by law enforcement and disproportionate drug war misery suffered by communities of color" (Drug Policy Alliance).

Achieving a transformed state requires not only rethinking healthcare and its interface with public health strategies but also the role of law enforcement. Accusations that reform is surrender to criminals must be countered by a commitment to public safety initiatives such as providing amenity in civil spaces, teaming up with social services, and leveraging behavioral health skills to replace arrests and incarceration; in short reducing the role of police in addressing what are essentially societal problems (Human Rights Watch, 2020). Whole of Government got us into the "war on drugs" mess. Sooner or later, it must pick up the pieces and build something better. ♦

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