

Rethinking the “Drug Dealer”

A Drug
Policy
Alliance
release.

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and we envision new drug policies
grounded in science, compassion,
health and human rights.

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Table of Contents

2	Executive Summary
4	Recommendations
7	Introduction
9	Looking Ahead: Legal Regulation of Drugs
11	Aron Tuff's Story
12	Four Common Myths about Drug Selling and Distribution
17	Drug-Induced Homicide and the Overdose Crisis
21	"Offender Function" According to the United States Sentencing Commission
24	Caswick Naverro's Story
27	How Many People are Incarcerated for Drug Selling or Distribution, and Where?
28	What Does the Current System of Criminalization Look Like?
33	Louise Vincent's Story
36	Who is Most Harshly Criminalized by Selling and Distribution Laws?
39	Miguel Perez Jr.'s Story
45	Rethinking the Criminalization of People Involved in Drug Selling or Distribution
42	Corvain Cooper's Story
50	Kenneth Mack's Story
55	Where to Begin
58	Looking Ahead: Key Questions for Reformers
61	Endnotes

Executive Summary

Policymakers in the United States increasingly recognize that drug use should be treated as a public health issue instead of a criminal issue. Most, however, continue to support harsh criminal sentences for people who are involved with drug selling or distribution. Many imagine these people are “predators” or “pushers” who force drugs on the vulnerable, contributing to addiction, overdose and violent crime.¹

With more than 68,000 people in the U.S. dying from accidental drug overdose in 2018 alone,² many people are searching for someone to blame. Pointing the finger at people who sell drugs is, in some ways, a natural emotional response to loss of this magnitude. It is also consistent with decades of drug policies based on the assumption that people who sell or distribute drugs are responsible for causing drug use. Politicians of all stripes have argued that long sentences for drug sellers will reduce drug availability and make remaining drugs more expensive, driving down demand. But this is not how drug markets actually work.³

Imprisoning people who sell drugs does not reduce the drug supply, increase drug prices, or prevent drug use. As Mark Kleiman, a highly-regarded drug policy expert, has explained, “We did the experiment. In 1980, we had about 15,000 people behind bars for drug dealing. And now we have about 450,000 people behind bars for drug dealing. And the prices of all major drugs are down dramatically. So if the question is do longer sentences lead to higher drug prices and therefore less drug consumption, the answer is no.”⁴ When a person who sells drugs is imprisoned, they are inevitably replaced by a new recruit or by remaining sellers, as long as demand remains unaffected.⁵ A Maryland police officer once described arresting drug sellers as “playing whack-a-mole” and “banging your head against a wall,” because they can be so efficiently replaced.⁶

Framing people who sell drugs as perpetrators and people who use drugs as victims is also misguided because there is extensive overlap between these two groups. A 2012 survey found that 43% of people who reported selling drugs in the past year also reported that they met the criteria for a substance use disorder.⁷ In addition, laws against drug selling are so broadly written that it is easy for people caught with drugs for personal use to get charged as dealers, even if they

were not involved in selling at all. Politicians and prosecutors who say they want a public health approach to drug use, but harsh criminal penalties for anyone who sells, are in many cases calling for the imprisonment and non-imprisonment of the very same people.⁸

Beyond being merely ineffective, the harsh criminalization of supply-side drug market activity may actually make drug use more dangerous, increasing overdose deaths and leading to more violence in communities. Law enforcement crackdowns on drug trafficking may incentivize the introduction of more potent, riskier drugs such as fentanyl – a synthetic opioid 30 to 50 times as potent as heroin⁹ – into the drug supply.¹⁰ Aggressive prosecution of people who sell drugs may undermine 911 Good Samaritan laws, making it less likely that people will call 911 at the scene of an overdose.¹¹ Indiscriminately putting people who sell drugs in prison also means removing trusted sellers from communities, forcing users to buy from people they don’t know and making an already unregulated and unpredictable drug supply even less predictable.¹²

The relationship between drug markets and violence is complicated. In some contexts, drug prohibition has fueled organized crime and been associated with horrific violence and corruption.¹³ But drug markets are much more diverse than stereotypes suggest: many of them experience little or no serious violence, while many markets that sometimes do experience violence operate relatively nonviolently most of the time.¹⁴ Law enforcement crackdowns may actually increase violence in these markets by disrupting the interpersonal relationships and territorial agreements that keep some drug markets operating smoothly.¹⁵

While different individuals who work on the supply side of the drug economy have differing goals, priorities and knowledge levels about drug safety and harm reduction, there is evidence that some people who sell drugs take steps to ensure that their clients stay as safe as possible.¹⁶ Some people who use drugs report high levels of trust in the people from whom they buy, although in an unregulated drug market even the most ethical drug sellers have limited ability to know the composition of the product they are selling.¹⁷

The current system of supply-side criminalization disproportionately impacts people at the lowest levels of drug

supplying hierarchies. Available data suggest that the vast majority of people in prison for drug selling or distribution are not high-level suppliers or “kingpins”¹⁸ and have no history of violent conduct.¹⁹ The current system also has a discriminatory impact on communities of color,²⁰ despite the fact that the available data suggest that white people are slightly more likely than either Black or Latinx people to report having sold drugs.²¹

Our current approach to people who sell or distribute drugs in the United States does not reduce the harms of drug use or improve public safety. It is built on a foundation of stigma, ignorance and fear rather than evidence, and creates new problems while doing nothing to solve those that already exist.

The Drug Policy Alliance believes it is time to rethink the “drug dealer”. We must urgently assess what type of people actually fall into this category and how we as a society can respond to them in ways that will keep people and communities safer and healthier. Despite the challenges of discussing supply-side drug policy reform in the midst of an overdose crisis, we cannot be silent while policymakers repeat the discriminatory, ineffective, expensive and dangerous mistakes of the past.



“I served my time. I should go back home.” — Miguel Perez Jr.
(Read his story on p. 39)

Recommendations

Our recommendations are based on three broad principles. First, to the maximum extent possible, society should deal with drug-involvement outside the destructive apparatus of criminalization – and to the extent that the criminal justice system continues to focus on drug selling and distribution, it must do so with a commitment to proportionality and due process. Second, we should focus on reducing the harms of drug distribution (for example, reducing drug market-related violence), rather than attempting to eliminate drug market activity. Third, we must take seriously the criminal justice system’s discriminatory response to the drug trade, and work toward reforms that both repair the harm already done while preventing further harm to communities of color and poor communities.

There are many steps that police, prosecutors, policymakers, service providers, researchers, advocates, journalists and other cultural influencers can take to mitigate some of the worst aspects of the current system. People who are or have been involved in drug selling or distribution must be included from start to finish in developing these reforms.

Below is the beginning of a reform agenda – a series of incremental measures that advocates can start pursuing immediately. But beyond these steps, we must rethink the way we approach drug selling- and distribution-related activity on a more fundamental level. To this end, we conclude with a series of questions that we hope will spur further discussion about how to develop a comprehensive reform agenda for drug markets and those who work in them. Our recommendations and questions for further discussion can be found in full on p. 52; they are summarized below.

For police and prosecutors:

Police and prosecutors should treat drug law violations as possession for personal use unless there is clear evidence that a person was involved in selling or distribution for extensive financial gain. In most cases, they should deprioritize arresting, charging and prosecuting people for conduct related to selling and distribution alone. Instead, they should focus on enforcing laws against threats, coercion, exploitation, corruption and conduct that causes physical harm to another person.

Prosecutors should decline to prosecute certain selling- and distribution-related offenses altogether, such as: sharing or giving away drugs for free; subsistence selling; selling by people who are struggling to control their own drug use; drug-induced homicide charges; and conspiracy charges against low-level actors in drug supplying hierarchies. They should also stop prosecuting the family members of people who sell drugs for conduct that does not constitute substantive involvement in drug selling or distribution, such as witnessing drug transactions or taking phone messages related to drug selling.

For local, state and federal policymakers:

Policymakers should urgently reform all criminal laws and sentencing guidelines that result in disproportionate punishments for people convicted of drug selling- or distribution-related law violations. This includes reforming criminal history sentencing enhancements, expanding safety valve provisions, and eliminating mandatory minimum sentences. They should also repeal drug-induced homicide laws. In jurisdictions that specify weight thresholds for possession, lawmakers should review and revise these thresholds to ensure they reflect the amount of a drug that people who use drugs could be reasonably expected to possess, thus minimizing the number of people who possess drugs solely for personal use who are punished for drug selling or distribution.

Expanding 911 Good Samaritan laws to decriminalize selling- and distribution-related law violations at the scene of an overdose will encourage more bystanders to save lives by calling 911 without fear of arrest. Lawmakers should also take steps to ensure that people who have been convicted of drug selling or distribution are able to successfully reintegrate into their communities and access stable, legal income streams upon their release. This includes repealing laws, revising policies, and eliminating practices that obstruct access to housing, employment, education, professional licensing, and access to credit and financial aid on the basis of a person’s criminal record, as well as providing funding for reentry programs that support people leaving jail or prison.

Finally, federal policymakers should take significant steps to address the impact of drug selling and distribution laws on people without citizenship. They should amend federal immigration laws and practices to ensure that decision-makers in all immigration-related proceedings assess cases on an individualized basis, regardless of criminal justice contact; limit the amount of time that immigration decision-makers can take past criminal justice involvement into account in their deliberations; and prohibit decision-makers from considering convictions that have been expunged, sealed, pardoned, vacated, or are otherwise not recognized by the jurisdictions in which they occurred.

For service providers:

Service providers should equip retail-level drug sellers with the information they need to: educate themselves and their customers about drug effects and overdose risk; distribute sterile drug paraphernalia such as syringes, cookers and pipes; provide naloxone training and naloxone to their customers; and disseminate drug checking information and supplies to screen for adulterants. They should also explore the development of community-based mentoring programs led by former drug sellers and distributors, to encourage safer selling practices and violence reduction.

For advocates, journalists and other cultural influencers:

Advocates, journalists and other cultural influencers should work to destigmatize, humanize and end the blanket demonization of people who sell or distribute drugs. They should work to convince policymakers of the nuanced reality of supply-side drug market activity, as well as the failures of the current system.

For researchers:

To develop policy approaches appropriate for the diverse reality of supply-side drug market activity, we need significantly more comparative research on drug markets, including: online and offline drug markets; geographically variable markets; changes in drug market dynamics over time; drug markets catering to different demographics of clientele; indoor and outdoor drug markets; markets where buyers and sellers don't know each other outside of the sales relationship and markets that are dominated by social networks; markets that are more organized and those that are more casual;

markets that primarily involve youth buyers and sellers; markets that exist in the communities where sellers and/or buyers live compared to markets where actors travel from elsewhere to engage in transactions; and markets involving a variety of different types of drugs.

While pursuing this comparative research agenda, researchers should pay particular attention to the factors that lead some drug markets to involve violence while others operate relatively nonviolently. This information will be crucial to the development and evaluation of programs designed to stabilize more volatile drug markets. Researchers should also continue to explore the impact that law enforcement crackdowns on retail-level drug sellers have on people who use drugs, including the links between crackdowns and spikes in overdose rates and/or drug market-related violence.

Researchers should also more thoroughly assess which policies and incentives actually work to get people out of drug selling or distribution in a sustainable way, while further exploring the role that socioeconomic conditions play in contributing to people's participation in drug markets. They should also explore the ways that people who sell drugs are already involved in harm reduction initiatives, evaluate the impacts of these activities, and analyze existing barriers to their further involvement.

Key questions for reformers:

- Absent threats, coercion, exploitation, corruption and conduct that cause physical harm to another person, should volitional behavior between people related to drug selling or distribution be sanctioned? If so, on what basis?
- To the extent that it is necessary to do so, how should decision-makers determine whether someone possesses drugs solely for personal use or whether they are also involved in selling or distribution?
- To the extent that drawing a distinction between low-level sellers and distributors and other sellers and distributors may be strategically necessary when pursuing reform, how should this determination be made?

Recommendations, cont.

- To the extent that proportionate punishment may be appropriate for some distribution-related activity, how should we assess proportionality?
- What factors lead some drug markets to involve violent interactions, while others operate nonviolently?
- Are there circumstances in which it is legitimate for drug selling- and distribution-related penalties to vary by drug type, and if so on what basis?
- What modes of accountability other than incarceration are appropriate responses to drug market-related conduct that merits intervention or sanction?
- How can policymakers best address the economic challenges and lack of opportunity that push many people into the illegal drug economy?
- What are the potential advantages of legally regulating drugs? What are the risks, and how can we mitigate them? What models of drug regulation would reduce drug market violence, enhance consumer safety, and maximize public health? (see text box on p. 9)
- If we transition to the legal regulation of drugs, how can we do so in a way that repairs the harms to individuals and communities wrought by the criminalization of drug selling and distribution? How can we ensure that people who previously supported themselves through illegal drug market activity have access to legal, sustainable and dignified income sources?



Introduction

Policymakers in the United States increasingly recognize that drug use should be treated as a public health instead of a criminal issue. While politicians have been slow to actually undo the criminalizing apparatus of the drug war, and people of color who use drugs still do not receive the same sympathy as white and more affluent users, the mainstreaming of a public health approach to drug use represents a significant shift.

The softening of public opinion has not extended to people involved in drug selling or distribution, as politicians on both sides of the aisle have made clear. During the 2016 Republican primary, Jeb Bush declared, “For dealers, they ought to be put away forever, as far as I’m concerned. But users – I think we have to be a second chance country.” In early 2019, Peter Neronha, the Democratic Attorney General of Rhode Island, announced a proposal to defelonize drug possession, saying that it would “refocus our law enforcement efforts where [...] they truly belong, on drug dealers and not addicts. [But] if you deal drugs in any amount, the law remains the same – you are a drug dealer and a felon and we will prosecute you.”²² 2018 Ohio Democratic gubernatorial candidate Richard Cordray promised, “As governor, I will work with law enforcement to make sure drug dealers are convicted and serve long prison sentences, while people who need substance abuse treatment can get it in our communities.”²³

In March of 2018, President Donald Trump advocated for increasing penalties for drug selling- and distribution-related law violations, arguing that people who sell or distribute drugs “kill thousands of people over the course of their lives through drugs.”²⁴ State Senator Scott Cyrway, in support of a 2017 bill in Maine, even claimed that “there’s no difference between [people who sell drugs] and ISIS. It’s just a different method.”²⁵

People who sell drugs continue to be seen as predators who force drugs on the vulnerable, contributing to addiction, overdose and violent crime. The demonization of people who sell drugs in the context of the overdose crisis is a reiteration of a much older story: a deeply racialized narrative in which illegal drug use is driven by drug sellers (often portrayed as people of color) who push drugs on vulnerable people (often white people) to get them hooked.²⁶

This narrative has underpinned the United States’ response to drug selling activity for decades. In 1951 the New York Times reported that “[a drug seller] is worse than a murderer who shoots and kills and that is the end of it. [...] He kills hundreds of people, slowly but surely.”²⁷ In 1966, President Lyndon B. Johnson expressed some sympathy for people who use drugs, while advocating for “full criminal sanctions against those ruthless men who sell despair.”²⁸

Politicians of all stripes have argued that long sentences for people who sell drugs will reduce drug availability and make remaining drugs more expensive, driving down demand. But this is not how drug markets work. The United States has harshly criminalized people who sell drugs for decades, and over this period there has been no significant decrease in drug use or the availability of drugs.²⁹

Beyond merely ineffective, the harsh criminalization of supply-side drug market activity may actually be making drug use more dangerous, increasing overdose deaths and leading to additional violence in communities.³⁰ Law enforcement crackdowns on drug trafficking may be incentivizing the introduction of more potent, riskier drugs such as fentanyl into the drug supply.³¹ Harsh prosecution of even the lowest level drug suppliers is undermining 911 Good Samaritan laws, making it less likely that people will call 911 at the scene of an overdose.³² Indiscriminately putting people who sell drugs in prison is removing trusted sellers from communities, forcing users to buy from people they don’t know and making an already unpredictable drug supply even less predictable.³³

Our current approach to people who sell or distribute drugs in the United States does not reduce the harms of drug use or the availability of drugs, nor does it improve public safety. It is built on a foundation of stigma, ignorance and fear rather than evidence and creates new problems while doing nothing to solve those that already exist. The Drug Policy Alliance believes it is time to rethink the “drug dealer.” We must urgently assess how drugs are sold and how we as a society can respond in ways that will actually keep people and communities safer and healthier. Despite the challenges of discussing supply-side drug policy reform in the midst of an overdose crisis, we cannot be silent while policymakers repeat the discriminatory, ineffective, expensive and dangerous mistakes of the past.

International dimensions of drug selling

Drug markets are extremely diverse. Some are entirely domestic, while others cross international borders. Some are small-scale, localized markets, while others involve large transnational organizations and generate millions of dollars in profit. This report focuses on supply-side drug market activity that occurs within the United States, although some of this activity is connected to more expansive international supply chains.

Dynamics related to the supply of drugs – cultivation, production, transit and sale – differ widely depending on national and regional contexts. As this report focuses on people involved with domestic portions of drug supply chains, some of its conclusions are not generalizable to supply chains in other countries. An in-depth discussion of the international dimensions of drug selling and distribution is beyond the scope of this report. However, it is important to situate the domestic drug market within this broader international context.

In many countries, the illegal drug trade – combined with the enforcement of drug prohibition – is accompanied by large-scale violence and corruption. This is especially true for countries that are the principal producers of crops used to manufacture illegal substances – coca and poppy in particular – and countries with weak and/or underfunded state institutions.³⁴

In Mexico, for instance, around 200,000 people have been murdered and over 28,000 reported as disappeared since 2007, when former President Felipe Calderón launched a militarized offensive against drug trafficking organizations.³⁵ While security forces have perpetrated widespread abuses, drug trafficking organizations are also responsible for serious crimes, including killings, disappearances and kidnappings.³⁶ Impunity is rampant, human rights violations are pervasive, and reporters are routinely murdered for reporting on drug trafficking.³⁷

The current violence in Mexico mirrors in many ways the decades of ongoing drug war violence in Colombia. Starting in the 1970s, powerful organizations such as the Medellín, Cali and Norte del Valle Cartels have engaged in kidnappings, torture, murder and forced disappearances. After the dissolution of the large organizations, loose criminal networks

emerged to control parts of the illegal drug trade,³⁸ along with left-wing guerrilla groups and right-wing paramilitary forces. The illegal drug market has fueled the growth and expansion of these groups, which have in turn engaged in mass atrocities to seize and maintain control of territory, as well as widespread corruption of authorities, even at some of the highest levels of government.³⁹

Similar patterns are present in Afghanistan, where poppy cultivation is a major source of funding for both the Taliban and competing armed groups and criminal organizations.⁴⁰

There are also factors beyond drug selling and distribution that drive these high rates of violence. Colombia's war has been profoundly political, and criminal organizations in Mexico engage in other illegal activities as well as drug trafficking. However, drug trafficking provides the most substantial source of income for these organizations.⁴¹

Within these large and often violent drug supplying organizations are a wide range of actors who partake in an array of individual conduct – from those who transport small amounts of drugs for little economic remuneration to those who direct the whole network and accrue huge profits. Just as we will discuss in the case of the domestic drug market, these actors tend to get lumped together under the label “drug trafficker,” obscuring the need for diverse policy responses to people who fall into this broad category. Drug policy reform must take into account different levels of involvement in the drug trade and individual conduct when considering alternative approaches to criminalization and prohibition abroad, as well as at home.

There have been some examples of reform for people who sell or distribute drugs in Latin America that aim to introduce proportionality in sentencing. In 2008 for example, under the leadership of then-President Rafael Correa, Ecuador declared an amnesty for people imprisoned for a one-time offense of trafficking small quantities of drugs, which led to the release of 2,300 people from prison.⁴² In 2013, Costa Rica approved a bill that grants judges the discretion to reduce prison sentences or select alternatives to imprisonment for women who are convicted of smuggling drugs into prisons when the woman is in poverty, the head of an economically precarious household, or responsible for a minor, elder, or someone with a disability.⁴³

While proposing incremental reforms to mitigate some of the worst injustices produced by the criminalization of people who sell or distribute drugs, we recognize that ultimately only the end of drug prohibition can interrupt these international dynamics of violence, corruption and profit-making that characterize some portions of the global market for illegal drugs.

Looking Ahead: Legal Regulation of Drugs

As this report details, drug prohibition has been an abject failure that has resulted in untold human misery. We have proposed incremental reforms to mitigate some of the worst injustices that stem from the criminalization of people who sell drugs. These are important and needed changes. But ultimately, we need to completely interrupt the system of violence, corruption and profit-making that flows from the global market for illegal drugs. This means considering innovative models for ending prohibition and implementing a system for the legal regulation of drugs.

The reality is that a demand for drugs exists now and has throughout human history. Prohibition pushes the production and sale of these underground, empowering organized crime and creating systems where corruption and violence can flourish, while the substances themselves cannot be regulated in ways that protect the health and safety of consumers. In five decades, the drug war has done little if anything to stem the cultivation, production, sale and use of drugs; instead, it has contributed to the development of ever more potent and dangerous drugs, such as fentanyl. Because many popular, sought-after substances are illegal, there is a continual market incentive to tweak chemical formulas to create similar, often more potentially harmful, analog substances like fentanyl, and hundreds of other novel psychoactive substances.

As the failure of the war on drugs becomes ever clearer and the need to find solutions to protect the health and safety of individuals, families, and communities becomes more urgent, we are increasingly seeing a global movement calling for the thoughtful regulation of previously illegal substances. Marijuana legalization in the U.S. and elsewhere is one example. Leading health officials in Canada have turned their attention to creating a safe supply of legal opioids to address the overdose crisis there, while efforts to legally regulate psychedelics are taking root in the United States. In countries like Colombia, there's a nascent movement to regulate cocaine.

In a 2018 report calling for the legal regulation of all drugs, the Global Commission on Drug Policy noted:

A fundamental question regarding illegal drugs is still rarely asked. Who should assume the control of these substances that bear serious risks for health – the state or organized crime? We are convinced that the only responsible answer is to regulate the market, to establish regulations adapted to the dangerousness of each drug, and to monitor and enforce these regulations.

DPA believes that it is time to start a serious conversation about the legal regulation of drugs. While we do not yet have all the answers, it is time that our movement, policymakers and society at large begin to tackle fundamental questions. What regulatory tools could we use to better address the potential risks of drug use as well as the harms of drug prohibition? What are the potential advantages of legally regulating drugs? What models of drug regulation would reduce drug market violence and corruption, enhance consumer safety, and maximize public health? How do we adapt these models to different types of drugs? How can we design a regulatory system that minimizes the potential harms of commercialization and marketing? If we transition to the legal regulation of drugs, how can we do so in a way that repairs the harms to individuals and communities wrought by prohibition? How can we ensure that people who previously supported themselves through illegal drug market activity have access to legal, sustainable and dignified income sources?

We cannot wait to address the pressing problems currently facing people who sell drugs. But we can and should begin talking seriously about when and how we ultimately end prohibition and implement sensible forms of drug regulation that would not only eliminate the illegal market and the problems associated with it, but also protect the health and safety of our society.

Introduction, cont.

Terminology

The criminal justice system treats “people who sell and distribute drugs” as a very broad category: although there are minor variations between jurisdictions, in general anyone who is involved in getting drugs from one person to another, as opposed to people who acquire drugs exclusively for their own use, may be prosecuted as a “drug dealer.” As we discuss later in the report, however, the line between people who sell drugs and people who use drugs is much blurrier than most people think.

We use terms like “people who sell or distribute drugs,” “people who are involved with drug selling or distribution,” “people who supply drugs,” and minor variations on these terms to describe this group of people. This is a vast category that includes a wide range of roles in drug supply chains. It comprises everyone from those near the top of the distribution chain (sometimes referred to as “kingpins”) to street-level sellers who never sell more than a very small amount of a drug at a time.

Some distributors transport drugs from one place to another without ever interacting with users, while others oversee a supply network without ever coming in contact with drugs. Some drug suppliers are mid-level, purchasing drugs in wholesale quantities and reselling to other sellers and distributors, while others are merely involved in transporting these wholesale quantities from place to place: they may be caught with large amounts of a substance, but actually play a very low-level role in the supply chain. People involved with drug selling or distribution also include those who are involved with growing or manufacturing drugs, a category that is itself very broad: it includes everyone from people who illegally grow a few marijuana plants to those involved in larger-scale production.

People involved in drug selling or distribution also include those who buy a few doses of a drug to resell at cost to friends or family, or who broker drug transactions by connecting a potential buyer to a seller. Many jurisdictions even prosecute sharing drugs – when no money is exchanged – as a sales or distribution offense. Others involved in drug selling or distribution play parts in supply networks that are only tenuously related to drug transactions themselves: they act as lookouts or bodyguards, answer phone calls, or pass on messages.

Some researchers have suggested that lumping all these people together in a single category is inappropriate. They suggest that people who exchange drugs for money and make a profit should be distinguished from those involved in the supply side of the drug economy who do not meet this criteria.⁴⁴ Some also argue that those who participate in “social supply” – providing family or friends with drugs for little or no financial gain – are not truly drug sellers.⁴⁵ Others suggest that brokers are not drug sellers, since they merely connect an interested user with a seller or purchase drugs on someone else’s behalf.⁴⁶

However, we have chosen to discuss all of these actors under the banner of people who sell or distribute drugs because this categorization reflects the current reality of who is criminalized for drug selling or distribution. Today’s laws against supply-side drug market activity have the potential to punish anyone involved in transferring drugs from one person to another – including brokers and those involved in social supply – and it is the people targeted by our current system of criminal laws that this report seeks to examine.

We avoid common terms like drug dealer, pusher or trafficker as much as possible, given the long history of stigmatization and the many misconceptions associated with them. We have tried to use people-first language as much as practical (e.g. “people who sell drugs” instead of “drug sellers”); however, we do use “drug sellers,” “drug distributors” or “drug suppliers” in situations where doing so optimizes readability.

This report is limited to discussing people who sell or distribute substances that are illegal in their jurisdictions. It does not include people who sell legal substances in an unregulated or criminalized market (for example, people who sell marijuana illegally in jurisdictions that legally regulate marijuana, or people who sell untaxed cigarettes). It also does not discuss issues that arise when someone sells marijuana legally in one jurisdiction but is perceived as an illegal seller by another jurisdiction that still prohibits marijuana.

This report also does not cover those who sell or distribute drugs in legal markets: people who work at liquor stores or pharmacies, for example. While the issues discussed in this report are quite removed from those affecting these legal sellers and distributors, we recognize that the lines between legal and illegal drugs are a creation of criminal laws, not the result of inherent differences between drugs that are currently legal and those that are not.

Aron Tuff's Story

“I had about \$90 in my pocket. So naturally I’m selling drugs.”

In 1995, Aron Tuff was sentenced to life without the possibility of parole after being found near 0.3 grams of cocaine that had been dropped on the ground. He was 39 years old and didn't know if he would ever see his family again. He worried he would die in prison.

The night of his arrest, Tuff was in his hometown of Moultrie, Georgia. It was evening, and he was hanging out in a friend's front yard with fifteen or twenty other people. Suddenly, the police arrived and began searching the yard with flashlights. The officers found the 0.3 grams of cocaine in the grass near where the group had been standing. The police arrested Tuff, saying that they saw him making “hand motions” and that they had seen something fall from his hand. When they searched him, they found \$90 cash in his pocket.

On this evidence, the prosecutor charged Tuff with possession with intent to distribute. In cases like Tuff's involving small amounts of a drug, prosecutors have a great deal of discretion to decide whether they should charge the person as a drug user or a drug seller. Since drug sellers are punished much more harshly, the stakes of this decision are enormous. As Tuff's case demonstrates, the evidence that prosecutors use to support possession with intent to distribute charges can be very weak.

Tuff had been in the Army when he was younger and had hurt his back. As he grew older, it became clear that the injury was more serious than he had initially believed. He didn't have the money to see a doctor and used alcohol and drugs to cope with the pain. He struggled to control his drug use, and it became difficult for him to work and maintain his family life. As a result of his addiction, he had four previous nonviolent drug charges on his record.



These previous charges allowed the prosecutors to seek a life-without-parole sentence for the cocaine charge.

Black people such as Tuff are disproportionately likely to be prosecuted for drug offenses compared to white people. This means that they are severely impacted by sentencing regimes that penalize people harshly for previous contact with the criminal justice system. Many people, like Tuff, end up serving life sentences for a series of minor law violations connected to their drug use.

Tuff describes how, despite his frequent contact with the system, he was never able to access the drug treatment that he wanted: “Back then when you went [into the criminal justice system], there was no kind of treatment,” he remembers. “I mean, they had a class, where they told you the dangers of using drugs. They didn't tell you about support groups; they didn't tell you what to do if you start feeling an urge; they didn't tell you, you can call this person here, if you're feeling weak. We didn't have support groups.”

In 2016, after spending 22 years in prison, Tuff won an early release with the help of the Southern Center for Human Rights. He is now 63 years old. While he was in prison, his mother and brother had died, and his children had their own children. “I'm not trying to get back the life I lost,” he says. “What I want to do, I want to be happy, I want to see my family happy. You understand? And I want to see my kids grow up, my grandkids grow up.”

Interview conducted September 5, 2018.

Four Common Myths about Drug Selling and Distribution

The harsh criminalization of supply-side drug market activity has failed to reduce problematic drug use. It does not keep people who use drugs safer. It does not decrease (and may actually increase) the violence associated with some drug markets, while ignoring the fact that the majority of drug markets are non-violent. It further marginalizes some of the most vulnerable and stigmatized people in our society, disproportionately impacting people who use drugs, poor people, and people of color. It is built on a foundation of racism and originated as part of white society's desire to control communities of color.

Before we consider more effective, evidence-based approaches to supply-side drug market activity, we need to understand the assumptions that underpin our current system. Below, we explore four key misconceptions that drive policymaking in this area. Exposing these myths allows us to develop an accurate understanding of why the current system is failing and how we might effectively change it.

Myth 1: Harshly criminalizing those who sell and distribute drugs deters people from selling drugs, which will reduce the available drug supply and keep communities healthier and safer.

Since the early days of the drug war, politicians and journalists have perceived the harsh criminalization of people who sell or distribute drugs as a way to keep people who use drugs safer. They argue that putting sellers and distributors in prison will reduce the drug supply, making drugs more expensive and consequently reducing demand.⁴⁷ The bulk of available research, however, does not support these claims. It suggests that imprisoning people who work on the supply side of the drug economy does not result in any sustainable reduction in drug use or improve the safety of people who use drugs.⁴⁸ Emergency room visits related to drug use drastically increased between 1980 and 2011 – a period during which penalties for drug selling and distribution also drastically increased.⁴⁹

Fact: Demand, not supply, drives the majority of drug market activity

In most instances, demand for illegal drugs has driven supply, not the other way around – and people who sell or distribute drugs have little influence on the demand for drugs. As Dr. Lee Hoffer, a medical anthropologist with extensive experience doing research with people who sell and distribute drugs, commented, “I’ve never met any dealer who actually pushes drugs. They kind of sell themselves.”⁵⁰

There are many combinations of reasons that someone may start or continue to use illegal drugs. Some people use drugs for pleasure,⁵¹ while others experience physiological dependence and use to stave off withdrawal symptoms. Some people use drugs to manage physical pain,⁵² while others seek to control the effects of mental health issues, trauma, or structural inequities.⁵³ Some people use drugs because the people they are close to also use drugs.⁵⁴ Despite the stereotype of people who sell drugs seeking out and coercing new buyers, many sellers avoid new buyers without a current buyer vouching for them, for fear of selling to undercover law enforcement or someone who may harm them.⁵⁵

Fact: Imprisoning people who sell or distribute drugs does not make drugs less available or more expensive.

When a person who sells or distributes drugs is imprisoned, they are replaced by a new recruit or by remaining suppliers, as long as demand is unaffected. This is commonly referred to as the replacement effect.⁵⁶ In a 2017 interview, a Hartford County, Maryland police officer remarked, “I feel like we’re just playing whack-a-mole. Sometimes you feel like you’re just banging your head against a wall – because somebody else is going to pop up and take that business.”⁵⁷ New actors entering the market can also increase volatility, conflict and potentially violence, as discussed further on p. 16.

Macro-level trends also suggest that incarcerating people caught selling or distributing drugs does not reduce drug availability or increase drug prices. Between 1980 and 2011, increasing penalties played a significant role in raising average prison sentences for federal drug law violations by 35%. But rather than seeing a reduction in drug use or an increase in prices over this period, drug use increased while prices fell dramatically.⁵⁸ Between 1980 and 2000 – the height of draconian sentencing for suppliers – cocaine and heroin prices dropped 80% and 88% respectively, while methamphetamine prices dropped 68%.⁵⁹ As Mark Kleiman, a highly-regarded drug policy expert, explained, “We did the experiment. In 1980, we had about 15,000 people behind bars for drug dealing. And now we have about 450,000 people behind bars for drug dealing. And the prices of all major drugs are down dramatically. So if the question is do longer sentences lead to a higher drug price and therefore less drug consumption, the answer is no.”⁶⁰

Fact: Harshly criminalizing supply-side drug market activity may make drug use more dangerous and increase overdoses by incentivizing the development of more potent, riskier drugs.

Policymakers argue that harsh penalties for people who sell or distribute drugs keep people who use drugs safer. In reality, however, aggressive supply-side criminalization incentivizes the development of more potent, riskier drugs. When law enforcement cracks down on drug markets, suppliers have an incentive to trade in highly concentrated products, which can be more easily hidden than less potent, bulkier goods.⁶¹

Prior to the beginning of alcohol Prohibition, for example, most people in the U.S. consumed alcohol in relatively low-concentration forms, such as wine, beer and cider. Pre-prohibition, only 40% of the money spent on alcohol in the U.S. was spent on high-concentration spirits. But once alcohol supply shifted from the legal to the illegal market, the amount of money that Americans spent on high-concentration products like gin and moonshine shot up to almost 90%, as suppliers developed products that could be transported more unobtrusively.⁶²

This dynamic may have encouraged the introduction of fentanyl into the illegal opioid market, initiated by high-level actors at the top of the supply chain.⁶³ While the causes of the current overdose crisis are complicated, fentanyl certainly plays a significant role: data suggest that deaths involving fentanyl more than doubled from 2015 to 2016.⁶⁴

In addition to incentivizing the distribution of high potency drugs, prohibition may also have encouraged the proliferation of new psychoactive substances (NPS). These synthetic substances are designed to mimic the effects of more common, illegal drugs such as marijuana, ecstasy, opioids, cocaine and methamphetamine, but because of their distinct chemical composition they may not have yet been made illegal in some jurisdictions. When a particular NPS is made illegal, drug manufacturers often tweak the chemical composition in an effort to stay a step ahead of criminalization. Many of these drugs are considerably more dangerous and their effects are much less understood than the drugs that they are intended to mimic.⁶⁵

Fact: The current system of supply-side criminalization undermines 911 Good Samaritan laws, discouraging people from calling 911 at the scene of an overdose and putting lives at risk.

Our current approach to people who are involved in drug selling or distribution also puts people who use drugs at risk by undermining 911 Good Samaritan laws. The aim of these laws is to ensure that those at the scene of a drug overdose are able to call 911 without fear of criminal prosecution.⁶⁶ Forty states and the District of Columbia have enacted some form of 911 Good Samaritan law, but most of these laws only protect people from arrest for offenses related to drug use or possession, not selling or distribution.⁶⁷

People sometimes use drugs with the person who provided them with the drugs. This is especially common in situations when distribution is happening within a social network. For this reason, someone who could be criminalized for supply-side activity is often present at the scene of an overdose. When policymakers exclude selling- and distribution-related offenses from 911 Good Samaritan laws, it significantly undermines the effectiveness of these laws, and may cost people who overdose their lives.⁶⁸

Fact: Rather than keeping people who use drugs safer, laws that criminalize involvement in drug selling or distribution also criminalize people who use drugs.

Our criminal laws put people who use drugs and people who are involved in drug selling or distribution in completely separate categories. In reality, however, many people do both.⁶⁹ A study that examined Milwaukee's drug economy in the late 1990s, for example, found that most street-level sellers and distributors were not even paid in money, but rather in drugs.⁷⁰ A 2004 Bureau of Justice Statistics report found that 70% of people incarcerated for drug trafficking in state prison used drugs themselves in the month prior to their offense.⁷¹ A 2017 report by the same agency found that 29.9% of people in state prison and 28.8% of people sentenced to jail for drug law violations between 2007 and 2009 said their offense was committed to get drugs or to get money for drugs.⁷²

Four Common Myths about Drug Selling and Distribution, cont.

Politicians and prosecutors, who say they want a public health approach to drug use but harsh criminal penalties for anyone who sells, are in many cases calling for the imprisonment and non-imprisonment of the very same people. Furthermore, long prison sentences for people who sell or distribute drugs make it more challenging for people who use drugs to access treatment and health care: many of them will avoid seeking help due to stigma or fear of being punished as sellers.⁷³ For further discussion of how people who use drugs are criminalized by laws against drug selling, see p. 36.

Fact: In many cases, people who sell or distribute drugs want their clients to be satisfied.

People who sell drugs have a range of goals and priorities, as well as different levels of knowledge about drug safety, cross-contamination and safe selling practices. But in many cases, people who use drugs acquire them from people they know and care about – friends, coworkers or family members – who are invested in their well-being.⁷⁴ Even people who sell drugs to people they know less well often want to please their customers by providing them with a product that meets their needs and keeps them alive. As one seller noted, “Happy addicts come back, unhappy ones buy elsewhere, dead ones can’t buy anything.”⁷⁵ In competitive, higher-end drug markets or online marketplaces, people who sell or distribute rely heavily on their reputation and benefit from being known as a source of high quality drugs with predictable composition and potency.⁷⁶

Qualitative research suggests that individuals who use drugs have a range of relationships with and levels of trust in those from whom they buy drugs, and it is likely that higher levels of trust exist in some markets than others. But significant numbers of people who use drugs, even in lower-end drug markets, consistently report a high level of trust in these relationships.⁷⁷ A qualitative study from Vancouver, Canada found that “participants overwhelmingly discussed a high level of trust [...] for people who supplied their drugs.” One person reported, “I guess we’ve known each other for a long time and they’ve always had a good supply and treat me with respect,” when discussing the person from whom she buys drugs. “I have been buying off him for 15 years or better. I’m a long-time customer. I trust my dealer,” said another.⁷⁸

People who use drugs also reported in this study that many people who sell drugs tell them if they are aware of any changes in the supply. “I usually buy from the same person and it’s always the same. If it isn’t the same, they’ll tell me,” said one study participant. “Usually the guy will be honest and straight with me, saying if it’s a better batch or something,” reported another. “They’ll give me the heads up. Most of them are pretty good. They don’t want to lose a good customer, right?” Another participant said, “They don’t want people to die. I’ve known some dealers that had a bad batch, [and said] ‘hold on, give me an hour and I’ll come back.’ They are just not selling what they had because it was too strong, too weak, too something.”⁷⁹ A user named Sheryl interviewed for a study conducted in Rhode Island reported a similar level of responsibility on the part of her regular seller. She described how he saw on the news that one of his clients had died of an overdose, and called Sheryl right away to tell her to throw out any heroin that she had bought from him recently, fearing it was contaminated.⁸⁰

People who use drugs reported that buying from the same person, someone they know and who has historically had a product with consistent potency, is one of the ways that they try to keep themselves safe and prevent overdose.⁸¹ In a 2008 study conducted in New York City, one person who had been injecting heroin for 20 years reported that he bought drugs from the same person for this entire period: “[My seller] does the heroin himself too so he makes sure he gets the same stuff all the time. I’ll wait for him. If he can’t get it for a day or two, I mean, I’ll take off work and stay home sick waiting for him to get. He won’t buy from no one but his connect because he knows it’s not cut with pills or nothing and you know what I mean, this is the type of person. That’s why I’ve been dealing with him for so long.”⁸² Similarly, someone from Rhode Island interviewed for a different study reported, “If he [his usual seller] doesn’t take care of me, I go through the sickness ... I don’t want to die, you know. I don’t want to die.”⁸³ A study from Durham, North Carolina found that participants reported that they most frequently encountered unexpectedly high potency, fentanyl-contaminated heroin when they found themselves unable to purchase from someone they knew and trusted: “Once I do use different people [to buy drugs from], I run across [fentanyl]. If I can’t get my people... Sometimes I just wait, you know. Because in the end, like I said, a lot of my friends have died.”⁸⁴

One person from Vancouver who uses drugs reflected that even with the best of intentions, people who sell drugs cannot always keep their customers safe in an unregulated market. “Sometimes accidents happen,” she said, “but I don’t think they do it to rip you off. I just think they do it because they don’t know.”⁸⁵ A participant in the New York City study concurred: “You can know your dealer, but you don’t know what’s in the bag.”⁸⁶ People who sell drugs have limited ability to accurately know what is in the drugs they are selling: even those who do their best to communicate with their customers about the composition and potency of their product are operating with limited information and should not be held responsible for overdose deaths that result from the unpredictability of the drug supply. Nonetheless, it is clear that at least some people who sell drugs do the best they can with the information and resources available to them, warning their clients if they change suppliers or become aware of people having negative experiences with their product.

Fact: Indiscriminately arresting people who sell drugs may be putting lives at risk by removing trusted sellers from communities and making access to an already unpredictable drug supply even less predictable.

Multiple studies suggest that buying drugs from a single trusted person is an important strategy that many people who use drugs employ to keep themselves safe in an unpredictable market: as discussed above, while low-level sellers have no way of knowing the exact content and potency of their products, some still do their best to warn their customers if they notice any changes in their supply.⁸⁷

Researchers have speculated that increasing law enforcement focus on arresting low-level drug sellers might be playing a role in rising overdose rates.⁸⁸ “[R]emoving trusted sellers from the community,” one Durham, North Carolina-based study notes:

may have the opposite of the intended effect. People who use drugs consequently may be forced to obtain heroin from people they do not know and, according to our participants, purchasing from an unknown source more frequently results in a fentanyl-induced overdose. Similar patterns have been observed in Manchester, NH, where first responders have informally reported localized spikes in overdoses immediately following law enforcement interdiction in the local drug market.⁸⁹

Fact: People who sell drugs have significant potential to assist with harm reduction efforts.

Anecdotal evidence suggests that many sellers play an even more active role in keeping their clients safe by participating in harm reduction initiatives. Louise Vincent, the executive director of the Urban Survivors Union, a national drug users’ union (profiled on p. 33), reports teaching people who sell drugs to educate their clients about overdose risk and how to access naloxone.⁹⁰ Several sellers recently interviewed by researchers spoke of their commitment to carrying naloxone, with one stating, “I felt like it was my responsibility if I was going to sell someone a bag of heroin, [and] not know how their body would react to it, that it was my responsibility to save a life.”⁹¹ Multiple studies have found that some sellers occasionally assist people suffering severe withdrawal who cannot afford to buy drugs for themselves, offering them a small amount of a drug for low or no cost to reduce their risk of health complications.⁹²

Online drug markets have opened up new possibilities for people who sell drugs to be involved in harm reduction. They provide much more opportunity than in-person markets for sellers and their customers to exchange information on products and their potency, allowing people to make more informed decisions about their purchases. T-chka, an online drug market primarily serving European customers, explicitly forbids the sale of “research-chemical-type drugs that have a short history of human consumption,” in an effort to reduce their clients’ exposure to particularly high risk or untested products. Other online markets have begun selling naloxone, which some people have difficulty accessing legally in their communities. In 2016 the AlphaBay marketplace waived the usual vendor fee for anyone distributing naloxone, in an effort to facilitate access.⁹³

If drug checking equipment were made widely available, people who sell drugs might be enlisted to help provide these services, allowing people to get a more accurate sense of drug potency and to make better-informed decisions about dosing. One qualitative study of people who use drugs (some of whom had also been involved in drug selling) in Vancouver, Canada suggested that, although some people who sell drugs are interested in getting involved in drug checking, criminalization presents a huge barrier. One person interviewed commented that, “the time I dealt dope, I would’ve used that [drug checking] machine every single

Four Common Myths about Drug Selling and Distribution, cont.

day.” Another speculated that the person from whom she bought drugs would also be interested in participating in drug checking, “because a lot of dealers do care about their product and what they’re selling. [...] If they tell a customer this is whatever it is, then they know they’re not lying. They know they’re not [screwing] people over [...]. They’re going to have better business.”

However, the participants in this study also identified that, under the current system of criminalization, sellers are actively discouraged from engaging in drug checking. One study participant commented, “I don’t think they’d go into some government building, take out all their dope, and then put it on [the drug checking machine].”⁹⁴ Drug checking also has the potential to put people who sell drugs at greater risk of prosecution for drug-induced homicide, since knowing the composition of their drugs could increase their perceived liability if their customers overdose.⁹⁵

Myth 2: Policymakers can reduce violent crime with harsh penalties for those who sell or distribute drugs.

Policymakers have long justified harsh penalties for those who sell or distribute drugs by arguing that this approach will reduce violent crime. However, evidence suggests that law enforcement crackdowns on drug market activity may actually increase violent crime. In addition, while some drug markets do involve violence, others do not: many operate more or less nonviolently. Treating all drug selling- and distribution-related activity as if it is inherently linked to violence does not reflect the diverse reality of drug markets and the people who work in them.

Fact: Drug prohibition itself may be driving drug market violence.

The prohibition of drugs enhances their profitability – hundred-fold price increases from production to sale are common⁹⁶ – and creates significant financial incentives for large criminal organizations to enter the illegal market.⁹⁷ These organizations vie for market share ungoverned by the institutions that organize and regulate legal markets. Absent regulation or legal mechanisms for conflict resolution, violence and intimidation sometimes serve as means to assert control, grow in size and power, or settle disputes.⁹⁸

It is not the drugs themselves that cause violence, but rather the exclusion of those who sell and distribute drugs from the kinds of property protections and dispute resolution mechanisms available to those who operate legal businesses.⁹⁹ In addition, people selling illegal drugs are far more likely to have large amounts of cash than legal entrepreneurs who have more options for cashless transactions, making sellers easier targets for theft.¹⁰⁰

Efforts to decrease penalties for people who use, sell or distribute drugs are important steps toward reducing the harms of criminalization. But to tackle the violence, corruption and human rights abuses associated with some parts of the illegal drug market, a more broad conversation about the legal regulation of drugs is necessary. (See text box on page 9.)

Fact: The policing of drug selling- and distribution-related activity may be increasing drug market-related violence.

A 2011 systematic review of the effect of drug law enforcement on drug market violence reported that 91% of examined studies found that an increase in the intensity of enforcement was associated with an increase in drug market violence. Its authors concluded that,

“contrary to the conventional wisdom that increasing drug law enforcement will reduce violence, the existing scientific evidence base suggests that drug prohibition likely contributes to drug market violence.”¹⁰¹

Drug-Induced Homicide and the Overdose Crisis

As overdose rates continue to rise, policymakers in many jurisdictions have responded by harshly punishing those who sell or distribute drugs. One of the most egregious manifestations of this trend is the practice of charging a person who supplies the drugs involved in an overdose death with murder, or “drug-induced homicide.” As of 2019, 20 states had statutes that create specific criminal penalties for the delivery of an illegal drug when the recipient dies as a result of ingesting the substance. State penalties vary from two years to capital punishment, while six states – Colorado, Florida, Louisiana, Oklahoma, Rhode Island and West Virginia – set the minimum penalty as life in prison. The federal law includes a penalty of 20 years to life.

Drug-induced homicide prosecutions increased dramatically between 2011 and 2016. Although data on the precise number of people being prosecuted under these laws are unavailable, DPA’s 2017 report ***An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane*** tracks media mentions of drug-induced homicide prosecutions as a proxy for actual prosecutions. In 2011, there were 363 news articles about individuals being prosecuted for drug-induced homicide; in 2016 there were 1,178, an increase of over 300%.

New drug-induced homicide laws are being created and existing penalties are being made more severe: in 2017 alone, legislators in Connecticut, Idaho, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New York, Ohio, South Carolina, Tennessee, Virginia and West Virginia all introduced bills to create or increase penalties for drug-induced homicide. One federal proposal would have allowed prosecutors to seek the death penalty for drug sellers linked to an overdose death in some cases.

One factor driving the increase in overdose deaths is the introduction of fentanyl, a powerful synthetic opioid, into the U.S. drug supply. Often sold mixed into substances marketed as heroin, fentanyl – like any other additive that makes drug potency unpredictable – makes it challenging for someone to dose themselves safely. Policymakers routinely assume that people who sell products containing fentanyl (but do not market them as such) are aware of what they are selling and are purposefully misrepresenting their product to buyers. Available evidence, however, suggests that many street-level sellers do not know that the product they are distributing contains fentanyl. U.S. Sentencing Commission data show that of the 51 people convicted of a fentanyl-related offense under federal law in 2016, only 15% “clearly knew” they were distributing or selling fentanyl. In some areas, fentanyl has infiltrated the market to such a degree that it is present in virtually the entire heroin supply, meaning that people who sell drugs do not have other options, even if they had a way of measuring product content themselves.

Compounding the irrationality of drug-induced homicide charges, *An Overdose Death Is Not Murder* chronicles how recent prosecutions have targeted fellow drug users and friends of the person who died of an overdose, not high-level suppliers. It tells the story of Samantha Molken then, sentenced to 15 years imprisonment in Wisconsin for providing the heroin that was involved in her friend Dale Bjorklund’s overdose death; the two routinely shared drugs and used together. The report also profiles Erik Scott Brown, a 27-year-old currently serving a 23 year sentence in federal prison for supplying his friend Steven Keith Scott with 0.1g of heroin. The two were partying together, and Brown traded the heroin to Scott in exchange for 0.25g of a synthetic cathinone (colloquially known as “bath salts”). Jennifer Marie Johnson is serving six years for the overdose death of her husband, Denis Parmuat. After a night of drinking, Parmuat asked Johnson for some of her methadone prescription to help him fall asleep. She gave him some, and he took more without asking. When Parmuat started breathing strangely, Johnson called 911 immediately and tried to revive him while they were waiting for help, but he died anyway. She was eventually found guilty of third-degree murder.

Drug-induced homicide prosecutions unjustly intensify the criminalization of low-level sellers and sharers of drugs, sending them to prison while still grieving their deceased loved ones. This approach perpetuates the idea that sellers cause people to use drugs and are responsible for associated consequences. It also reinforces the myth that supply-side enforcement will reduce drug use, while discouraging people from calling for help at the scene of an overdose. Drug-induced homicide laws allow policymakers and law enforcement to feel like they are making a difference, when in reality they are doing nothing at all to keep people who use drugs safe.

For the full report and citation list, visit drugpolicy.org/DIH.

Four Common Myths about Drug Selling and Distribution, cont.

Criminologist Scott Jacques agrees, arguing that “police pressure [results in outcomes that] serve to increase the prevalence of predatory and retaliatory acts.”¹⁰²

A number of dynamics may be contributing to this increase in violence. Jacques observes that “real dealers” – those who sell high-quality drugs of reliable potency and composition – are more vulnerable to law enforcement arrest, because they generally control more significant market share than those with inferior products. But when these people are arrested, “fake dealers” – those who sell misrepresented, adulterated or counterfeit products – take advantage of their absence to sell to people looking for a new source. A higher proportion of fraudulent sales increases the likelihood of retaliatory violence in a market.¹⁰³

Jacques also suggests that during periods of intense policing of drug markets, people are more likely to rush exchanges to avoid detection. But rushing through exchanges means that buyers do not have time to check that they are getting the substance they paid for in the quantity that they are expecting, while sellers have less time to confirm that they are receiving appropriate payment and not being given counterfeit money. Rushed transactions provide additional opportunities for fraud, again potentially increasing violence.¹⁰⁴

The prevalence of police use of confidential informants is also a potential contributor to drug market violence. Jacques points to the fact that law enforcement frequently enlist confidential informants to assist them in policing drug markets – typically individuals who are involved in the drug economy and agree to provide information to the police, often as part of a plea agreement or in exchange for cash or other benefits. People who sell drugs and wish to avoid arrest have a strong interest in preventing such ‘snitching,’ and may retaliate against those who are suspected of working with the police.¹⁰⁵

Other researchers have suggested additional dynamics that may be contributing to increases in drug market violence associated with police intervention. Markets in which there are strong interpersonal relationships between people who sell or distribute drugs tend to be less volatile: these relationships facilitate the management of competition and the nonviolent resolution of disagreements. But when these people are arrested by law enforcement, their roles are taken over by new actors. These new individuals may lack the effective and stable working relationships of their predecessors, at least at

first, which may lead to more confrontations.¹⁰⁶ Competition among remaining suppliers to take over newly-vacated market share may also increase instability and conflict.¹⁰⁷

As law enforcement crackdowns make a particular drug market a more volatile and high-risk work environment, sellers and distributors who are more risk averse and consequently had a stabilizing effect on the market may choose to leave it.¹⁰⁸ Historian of organized crime Michael Woodiwiss observes, “If increased drug law enforcement has done anything over the past two decades it has been to create competitive advantage for criminal groups with skills, connections and capital to nullify enforcement with corruption and the firepower to resist theft and takeover bids.”¹⁰⁹ Increased law enforcement pressure on drug markets results in smaller, less sophisticated, less militant drug supply networks being driven out of operation, while more sophisticated and powerful organizations with more capacity to use force are often able to avoid disruption and increase their market share.¹¹⁰

In addition to increasing violence within the drug market, law enforcement activity in a particular area may itself generate violence for community members. Harsh enforcement of laws against low-level drug market activity may also contribute to community distrust of the police. Sociologists Waverly Duck and Anne Rawls observed in a neighborhood drug market they examined that, “for many residents police intervention is an intrusion that creates chaos and danger – not a source of order and protection.”¹¹¹

Fact: Drug markets are much more diverse than the stereotypes about them suggest.

The relationship between drug markets and violence is complicated, and in some contexts it is clear that drug prohibition has fueled organized crime and been associated with horrific violence and corruption. In Mexico, for instance, around 200,000 people have been murdered and over 28,000 reported as disappeared since 2007, around the time that former President Felipe Calderón launched a militarized offensive against drug trafficking organizations.¹¹² While security forces themselves have perpetuated widespread abuses, drug trafficking groups are also responsible for serious crimes, including killings, disappearances and kidnappings.¹¹³

In the domestic context, open air drug markets in high crime neighborhoods dominate both policy discourse and

popular culture. In reality, however, these markets represent a small fraction of the overall drug economy. Many people procure drugs from people they know – in private homes, dorm rooms or offices – rather than from strangers on street corners.¹¹⁴ Nonviolent networks of middle class people who sell and distribute drugs, sociologists A. Rafik Mohamed and Erik D. Fritzvold argue, constitute “the silent majority of US drug dealers.”¹¹⁵

Criminologists Scott Jacques and Richard Wright note that

“violence is not an invariant or inevitable feature of drug markets; many such markets experience little or no serious violence, and even the most violent drug markets are peaceful most of the time.”¹¹⁶

Public policy scholars Jonathan P. Caulkins and Peter Reuter agree, concluding “there is no necessary relationship between the quantity of drugs delivered and the amount of market-related harm generated.”¹¹⁷

A 2011 spatial analysis of drug market activity and violence in Seattle found “places [...] with high levels of drug activity but very little violence, places with high levels of violence but without drug activity and places where drug incidents and violent crimes overlapped,” suggesting that drug-related activity was not the primary driver of violence in Seattle.¹¹⁸ Few researchers have made this kind of attempt to determine whether or not drug market activity can be isolated as the sole or primary driver of violence in a particular area.¹¹⁹ Some hypothesize that many areas with both high rates of drug activity and high rates of violent crime would experience fairly high crime rates even absent drug market activity.¹²⁰

Drug markets differ from one another in a wide variety of other ways generally ignored by researchers and policymakers. Some drug markets are run by large organizations, while others are dominated by much smaller, local groups or individuals.¹²¹ In some areas, people who sell or distribute drugs and their customers live in the neighborhood where they work and/or buy drugs, while in other places some or all of these actors commute to engage in the drug market.¹²²

Supply-side drug activity has always been diverse, but in recent years new technologies have enabled even more variation. The rise of online drug marketplaces has expanded the range of buyers who have alternatives to public transactions,¹²³ while the ubiquity of cell phones has made it easier for buyers and sellers to meet more discreetly.¹²⁴

Even networks of sellers and buyers commonly considered to be a single drug market may in fact be a set of overlapping drug markets that intersect to varying degrees. In a single geographical area, for example, a network of youth who sell and distribute locally grown marijuana primarily to other youth may operate virtually independently of – and share few characteristics with – other parts of the market.¹²⁵ The need for more nuanced exploration of variation among drug markets is discussed further on p. 53.

Fact: Violence is not an inherent feature of drug market activity. In areas where drug market activity does drive violence, it is more likely an effect of prohibition and characteristics of particular markets, not of drug selling itself.

When people who work on the supply side of the drug economy are involved in threats, coercion or conduct that causes physical harm to another person, these people should be held accountable for their actions. But assuming an inherent connection between people involved in drug selling or distribution and violence, and criminalizing all people involved in drug selling as if they are inherently dangerous people, is both inappropriate and ineffective.

When policymakers assume an inherent connection between people involved in drug selling or distribution and violence, three negative outcomes result. First, we end up with a system that criminalizes people for nonviolent supply-side drug

Four Common Myths about Drug Selling and Distribution, cont.

market activity to a degree that is disproportionate to the harm that they actually caused. Second, we are far less likely to ask meaningful questions about the factors that actually do drive violence in communities. Finally, it distracts us from the questions that should be central to effective policymaking: why do some drug markets operate nonviolently while others are more volatile, and how can policymakers guide volatile markets to take more stable forms?¹²⁶

A few scholars have speculated about the specific characteristics of drug markets that may influence their relationship to violence, including: the proximity of the market to international borders,¹²⁷ gang dynamics (or lack thereof) within the distribution network,¹²⁸ the age of the participants,¹²⁹ whether drugs are typically being transported in bulk or in smaller amounts,¹³⁰ the size of the community where drug selling is taking place,¹³¹ the value by volume of the drugs being sold, the intensity of law enforcement, whether buyers and sellers come from the area where they are selling or whether they travel from elsewhere to conduct transactions,¹³² the availability of weapons, and the overall stability of the market.¹³³ Advocates and policymakers need to encourage more comparative research on drug markets to tease out the role of each of these factors.

Some hypothesize that the emergence of new technologies such as cell phones and online platforms for drug transactions have reduced the prevalence of drug market-related violence by making transactions more predictable and less reliant on foot traffic.¹³⁴ Without the need to control territory to make sales, drug suppliers find it less necessary to physically defend their turf to maintain market share. Testing such hypotheses is a crucial step toward more effective violence-reduction policies, discussed further on p. 52.

Fact: Researchers have understudied nonviolent drug markets, which has led to significant gaps in the academic literature.

Researchers have tended to focus most of their attention on drug markets that are associated with violence. They tend to study drug markets that they already know to operate in violent areas, without making enough effort to seek out less violent drug markets for examination.¹³⁵ They also tend to focus on the drug markets that are easiest for outsiders to locate: those that take place outdoors, where buyers and sellers don't know each other outside of the sales relationship, and that attract a lot of attention from the police and the media. Scholars who are not directly involved with drug market activity themselves have difficulty gaining access to more

discreet supply chains. This leaves significant portions of the supply side of the drug economy dramatically under-studied.

Law enforcement attention is also most likely to be directed at areas where drug market activity and violence overlap. This leads to a disproportionate number of arrested sellers and distributors coming from these areas, making data about these markets (via law enforcement) more available to researchers. But this can leave researchers, along with members of the public, with the mistaken impression that the majority of sellers and distributors operate in these markets.¹³⁶ The impact of research bias on current conversations about those who sell and distribute – and the need to address it – is discussed further on p. 53-54.

Myth 3: Most of the people who end up serving long prison sentences for drug selling- and distribution-related offenses are high-level suppliers who are violent and getting rich off the illegal drug market.

Policymakers justify harsh sentences for selling- and distribution-related law violations by saying that those who receive these penalties are high-level suppliers or kingpins.¹³⁷ In 2009, however, only 41.4% of people incarcerated in federal prison for drug law violations¹³⁸ (99.5% of whom were serving sentences for selling- or distribution-related offenses¹³⁹) were involved with the organization and management of a drug supply network in any way, even as mid-level managers. A mere 14% were considered importers, high-level suppliers, organizers or leaders.¹⁴⁰ The remaining 58.6% were a mixture of: low-level sellers who distributed retail quantities of a drug directly to people who use drugs; brokers, steerers and go-betweens who directed potential buyers to potential sellers; couriers and mules who transported drugs from one place to another; and “secondary” and “miscellaneous” people, including lookouts and bodyguards.^{141,142}

The available federal data also suggest that many of those in prison for distribution-related offenses had little criminal history or record of violent conduct. Thirty-eight percent of those convicted of a federal drug offense carrying a mandatory minimum penalty in 2016 had no criminal history; an additional 8%¹⁴³ had never been sentenced to a prison term of longer than sixty days or any “crime of violence”.¹⁴⁴ Most people in prison for a selling- or distribution-related offense are not locked up for an offense that caused anyone physical harm,¹⁴⁵ while 76% of people in federal prison for a drug law violation in 2012 had no weapon involved in their most recent offense.^{146, 147}

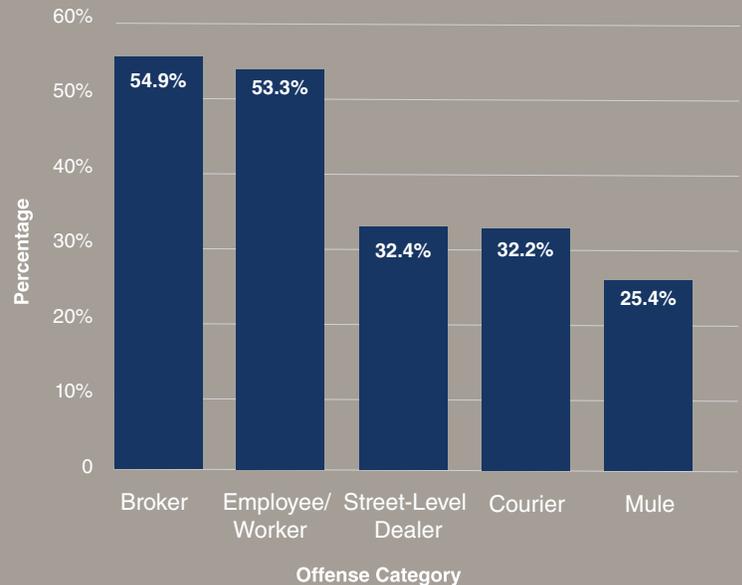
“Offender Function” According to the United States Sentencing Commission

The U.S. Sentencing Commission divides those convicted of federal drug trafficking into ten categories based on “offender function”: the role that a person played in a drug operation. The Sentencing Commission’s designation defines “importers and high level suppliers” as having engaged in the most serious conduct and “employees and workers” in the most minor conduct. The full range of offense categories are explained in detail below, in order of decreasing “culpability”(definitions are quoted verbatim from the U.S. Sentencing Commission’s 2017 report *Mandatory Minimum Penalties for Federal Drug Offenders*). While the Drug Policy Alliance does not endorse this typology, it is the only one currently used to report statistics on what kind of sellers and distributors are actually in federal prison.

- **Importer/High Level Supplier:** Someone who imports or otherwise supplies large quantities of drugs (generally sells/possesses or purchases 1 kilogram or more in a single transaction); is near the top of the distribution chain; has ownership interest in drugs; usually supplies drugs to other drug distributors and generally does not deal in retail amounts; may employ no or very few subordinates.
- **Organizer or Leader:** Organizes, leads, directs, or otherwise runs a drug distribution organization; has the largest share of the profits and the most decision-making authority.
- **Grower or Manufacturer:** Grows, cultivates, or manufactures a controlled substance and is the principal owner of the drugs.
- **Wholesaler:** Sells more than retail/user-level quantities in a single transaction; sells at least 1 ounce (28 grams) but less than 1 kilogram at one time; possesses or buys at least 2 ounces (56 grams) at one time, sells any amount to another dealer.
- **Manager or Supervisor:** Serves as a lieutenant to assist one of the above; manages all or a significant portion of a drug manufacturing, importation, or distribution operation; takes instructions from one of the above and conveys to subordinates; supervises directly at least one other co-participant in an organization of at least five co-participants.

Percentage of People in Federal Prison Convicted of an Offense Carrying a Mandatory Minimum Sentence (by Role)

Source: US Sentencing Commission



- **Street-Level Dealer:** Distributes retail quantities directly to the user; sells less than 1 ounce (28 grams) quantities to any user(s).
- **Broker:** Arranges for two parties to buy/sell drugs, or directs potential buyer to a potential seller.
- **Courier:** Transports or carries drugs with the assistance of a vehicle or other equipment. Includes situations where the offender, who is otherwise considered to be a crew member, is the only participant directing a vessel onto which the drugs had been loaded from a ‘mother-ship.’
- **Mule:** Transports or carries drugs internally or on their person, often by airplane, or by walking across a border. Also, includes an offender who only transports or carries drugs in baggage, souvenirs, clothing, otherwise.
- **Employee/Worker:** Performs very limited, low-level function in the offense (whether or not ongoing); includes running errands, answering the telephone, scouts, receiving packages, packaging the drugs, manual labor, acting as a lookout to provide early warnings (during meetings, exchanges, or on/offloading), passengers in vehicles, or acting as a deckhand/crew member on vessel or aircraft used to transport large quantities of drugs.

The full report, Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System, can be found on the U.S. Sentencing Commission website.

Four Common Myths about Drug Selling and Distribution, cont.

Mandatory minimum sentences are particularly hard on those at or near the bottom of drug supplying hierarchies. The U.S. Sentencing Commission has acknowledged that “while some legislative history suggests that drug mandatory minimums were aimed at ‘serious’ and ‘major’ traffickers, the data indicate the mandatory minimum penalties apply more broadly.”¹⁴⁸ Almost half of people sentenced for trafficking and distribution offenses at the federal level in 2016 (the most recent year for which data are available) were sentenced for offenses carrying mandatory minimum sentences.¹⁴⁹ Fifty-five percent of these individuals fell into the lowest five of the Sentencing Commission’s categories for drug trafficking law violations: they were street-level dealers, brokers, couriers, ‘mules’, employees and workers – not kingpins.¹⁵⁰ As depicted in the graph on p. 21, one in two brokers and one in two employees/workers (defined by the Sentencing Commission as those who “perform very limited, low-level functions in the offense”) were subjected to mandatory minimums despite their minimal roles. In addition, one in three street-level dealers, one in three couriers, and one in four mules were convicted of offenses carrying a mandatory minimum sentence. A mere 4.2% of those sent to federal prison for drug offenses carrying a mandatory minimum penalty in 2016 were convicted of conduct that resulted in bodily injury.¹⁵¹

Myth 4: The current system of supply-side drug market criminalization is race-neutral. The majority of people in prison for drug selling- or distribution-related conduct are people of color because sellers and distributors come mostly from these communities.

Since the early days of drug prohibition in the U.S., the criminalization of drug selling and distribution has been intimately tied to the criminalization of communities of color. While the discriminatory impact of the current system is well-documented (see p. 36, for example), the racism baked into the system from the beginning is less widely understood. There are clear continuities between the racist, classist and xenophobic attitudes that motivated drug prohibition in the first place and the dominant policy approaches to those who sell or distribute drugs today. These early stereotypes cast a long shadow, laying the groundwork for our current system of supply-side criminalization.

Fact: White people are slightly more likely than people of color to report having sold drugs.

Data on the demographics of people who sell and distribute drugs are scarce, and it is safe to assume that involvement in the illegal drug trade is under-reported due to stigma and fear of criminal prosecution. What data are available, however, suggest that white people are actually more likely than either Black or Latinx people to report having sold drugs.¹⁵²

SAMHSA’s 2012 National Survey on Drug Use and Health, which published the most recent data available, found that 3.4% of white people, 2.9% of Black people, 2.8% of Latinx people, 4.2% of people who identified as Native American or Alaskan Native, 3.5% of those who identified as Native Hawaiian or Other Pacific Islander, and 1.1% of people who identified as Asian reported selling drugs in the past year.¹⁵³ The National Longitudinal Survey of Youth (NLSY), which collected data between 1997 and 2005, found that 11.9% of white youth ages 15-17 reported having sold drugs compared to only 6.6% of Black youth,¹⁵⁴ a finding echoed by several older youth-focused surveys.¹⁵⁵ The NLSY also found that the average white youth drug seller earned more money from selling drugs than either Latinx or Black youth, with Black youth earning the least.¹⁵⁶

While evidence for significant racial disparities among people who sell and distribute drugs is lacking, there is clear evidence of massive racial disparities in who is searched, arrested, convicted and imprisoned for drug selling and distribution.

Fact: In the early days of the drug war, people of color were perceived to be providing drugs to white people as part of a plot to usurp control of white society.

One of the United States’ first anti-drug laws was passed in San Francisco in 1875 and made it a crime to operate a so-called “opium den.” White Californians closely associated these establishments with Chinese immigrants. Fear of Chinese people selling opium to white people, especially to white women, was one component of the rampant anti-Chinese sentiment of the time.¹⁵⁷ The rhetoric of opium use as a spreading disease intersected with a broader narrative of Chinese immigration as the “yellow peril.” In an 1887

publication on addiction, a medical doctor reported on a case in which he alleged a white woman who had taken opium literally turned “yellow” as a result of the Chinese influence.¹⁵⁸

White society, people believed, was falling prey to the “stupefying pipe of the Oriental.”¹⁵⁹ White people were convinced that Chinese immigrants were using opium to gain power over them, and early approaches to controlling the opium economy were grounded in this belief. Journalist Johann Hari describes the prevailing attitude of the time: “Once the Chinese dealers got you hooked on opiates,” the thinking went, “they would laugh in your face and reveal the real reason they sell junk: it was their way of making sure that ‘the yellow race would rule the world.’” Hari quotes a senior judge of the time who declared that the Chinese community was “too wise [...] to attempt to win in battle, but they would win by wits; would strike at the white race through dope and when the time was ripe would command the world.”¹⁶⁰ Positioning Chinese immigrants as drug sellers and scheming predators was consistent with pre-existing racist stereotypes. It also legitimized policies aimed at oppressing and maintaining control over the Chinese-American community and led directly to the passage of the Chinese Exclusion Act in 1882.¹⁶¹

The Chinese-American community was not the only community of color demonized through the specter of drug distribution. Harry Anslinger, the first Commissioner of the Federal Bureau of Narcotics and a leading figure in the early days of the American drug war, claimed that Black and Puerto Rican “dope pushers” were seducing “pretty blond girls” into using drugs and engaging in sex work.¹⁶² According to Anslinger, Mexican pushers and Black dealers from the inner city were “invading” white suburbs to force marijuana and heroin on white teenagers.¹⁶³ These racialized predators, white people assumed, were the only reason that drug use existed in suburban white communities at all.¹⁶⁴ This narrative simultaneously justified harsh laws targeting people who sell and distribute drugs and legitimized the criminalization of communities of color.¹⁶⁵

Fact: Racist assumptions about who sells drugs – and to whom – continued to underpin discourse about supply-side drug market activity throughout the 20th century and into the 21st.

Late 20th century rhetoric about those who sell and distribute drugs bore a striking resemblance to that of the 19th century. Historian Julilly Kohler-Hausmann notes:

[drugs] were presented as indigenous to inner cities; if they did appear in other communities, they were imagined as a weed or disease that had escaped from its traditional ecosystem to infect new territory. [...] [This narrative] located the genesis of social problems in urban communities of color and deflected attention from other social, economic, and cultural factors that could inspire young white people to use drugs.¹⁶⁶

When President Richard Nixon formally launched the war on drugs in 1971, Time magazine explained that “once confined to black urban ghettos,” drug use had “come to invade the heartland of white, middle-class America.”¹⁶⁷ Almost 20 years later, a 1989 New York Times Magazine article recycled this sentiment when it described crack cocaine as having “leaped across the city lines into the middle-class suburbs” as Black traffickers “invaded the heartland.”¹⁶⁸

Also in 1989, an HBO documentary about Palm Beach County, Florida, juxtaposed footage of a Black male drug seller boasting about the “money in the drug game” with two white fifteen year old girls guiltily discussing their recovery from cocaine addiction in a private treatment facility.¹⁶⁹ In the 1990s a Dateline NBC special positioned heroin as an “inner city drug” that “has jumped the tracks and has been killing kids in some of our most prosperous suburbs.”¹⁷⁰ Just as they had been at the turn of the century, people of color from urban neighborhoods were assumed to be travelling to white suburbs to push drugs on white suburbanites.¹⁷¹

As was the case in San Francisco in the late 1800s, policymakers today – either consciously or unconsciously – entwine rhetoric about people who sell drugs with racist tropes that go back over a century. Anxiety about white people using drugs remains bound up with the idea that these drugs are coming from racialized “others,” and this anxiety can still be mobilized in support of harsh policies criminalizing people involved in drug selling or distribution.

Caswick Naverro's Story

“Ever since the age of 13, I’ve been taking care of people.”

Growing up in New Orleans wasn’t easy for Caswick Naverro. His neighborhood was rife with gang activity and homicides were common. From a young age, he remembers people dying all around him. “A lot of friends of mine from the neighborhood were getting killed, and – you know, people from school were getting killed,” he says.

He began experiencing post-traumatic stress disorder symptoms early in life. When his grandmother died, he couldn’t take it anymore.

“That was around the time I started using marijuana and codeine,” Naverro remembers. “And when I smoked it or whatever it just made me forget about what was going on, like I didn’t have no feelings towards it, no – I kind of felt normal for a second.”

Naverro never met his father. His mother had lupus and struggled to provide food and housing for her and her five kids. They moved around all the time, crashing at other people’s homes, sometimes for weeks or months at a time. Naverro started selling drugs when he was 13 years old to help support his mother and siblings.

He describes how being able to contribute to his family gave him a sense of pride and stability in his otherwise chaotic life: “Ever since the age of 13, I’ve been taking care of people. I always had my mom and my two other younger siblings I had to take care of, so I’ve been selling drugs since 13. I always fell in love with being that big provider. You know, I loved it.”



Eventually, he was arrested and sent to juvenile detention. When he got out, he was determined to leave drug selling behind and provide for his family through legal employment. “So I filled out all of these jobs, at McDonald’s, Burger King, Walmart, and nobody ever called me back,” Naverro remembers. “I am still waiting on people to call me back from applications I filled out. I never had no — no job like that because nobody wants to hire no convicted felon, you know?”

With no other options, Naverro returned to selling and using drugs, particularly methamphetamine, marijuana and codeine. By his junior year of high school, his PTSD symptoms had become so intense that he wasn’t sleeping. He overdosed on over-the-counter cold medicine while at school and spent time in an inpatient mental health facility.

In his senior year he was shot in the side while picking up diapers at a gas station, leading to ongoing physical pain and worsening nightmares.

In the fall of 2016, Naverro was pulled over by the police for a broken taillight. The police searched him and found 91 methamphetamine pills in his pant leg and a gun that was registered to his girlfriend. At the time of his arrest, he explained, “I was using [...] every day. I never — I don’t recall not using it one day.” He was charged with possession with intent to distribute methamphetamine and illegal gun possession.

Naverro agreed to participate in a treatment program administered by the court, instead of going to prison. While he avoided incarceration, drug court brought a new set of challenges and burdens. He had to stop using drugs and struggled with the mental health impact of being unable to self-medicate. Through a local community program, Naverro was finally able to secure a legal job doing sanitation for the City of New Orleans, but the drug court program requires him to go to drug testing appointments at random times during the workday. So far he has had understanding supervisors who allow him to attend these appointments, but he worries that this won’t always be the case.

For now, he’s glad to have legal work, but fears it won’t last. “[I]t was so hard for me to get that job, like I was looking for work for years,” he said. The job doesn’t pay well, and with two children and a girlfriend to support, Naverro still struggles to make ends meet. The family is currently living with his brother while working to save money to move into their own place. Naverro sees how precarious their situation is, and worries about being forced back into drug selling in the future.

“I don’t want to be no drug dealer the rest of my life. I don’t want to be looking over my back thinking somebody’s going to rob me or kill me over no drugs, you know? I want to go work, wait on the paycheck, you know, like everybody else. It’s not — when you look at it, it really ain’t even worth it, not for drugs, you know what I’m saying? But sometimes that’s the only thing people have, you know? Because I was in a situation where I couldn’t find a job, all I had was drugs.”

Interview conducted October 5, 2018.

Four Common Myths about Drug Selling and Distribution, cont.

In January 2016, Maine governor Paul LePage blamed Maine's drug-related issues on racialized out-of-state sellers and distributors, linking this threat to the sexual purity of white women with rhetoric so explicit that Harry Anslinger would have been proud: "These traffickers – these aren't people who take drugs," he said. "These are guys by the name D-Money, Smoothie, Shifty. These type of guys that come from Connecticut and New York. They come up here, they sell their heroin, then they go back home. Incidentally, half the time they impregnate a young, white girl before they leave."¹⁷²

President Donald Trump has frequently connected the idea of white people using drugs to the threat he perceives as coming from people of color, especially immigrants. In January 2017, on a call with Mexican President Enrique Peña Nieto, Trump argued that New Hampshire was a "drug-infested den" because of Mexican immigrants "sending drugs to Chicago, Los Angeles, and to New York."¹⁷³ In 2015, he declared, "When Mexico sends its people, they're not sending their best. [...] They're sending people that have lots of problems, and they're bringing those problems with us [sic]. They're bringing drugs."¹⁷⁴ Building public support for draconian immigration policies and punitive drug policies is made possible by the deep cultural embeddedness of the racialized mythology of drug selling and distribution.



“You’re doing what you have to do.” — Louise Vincent
(Read her story on p. 33)

How many people are incarcerated for drug selling or distribution, and where?

According to the Prison Policy Initiative, there were about 2.1 million people incarcerated in the U.S. in 2019. About 20% of these are being held for drug offenses – 6% for possession and 14% for non-possession offenses (comprised of various selling- and distribution-related offenses).

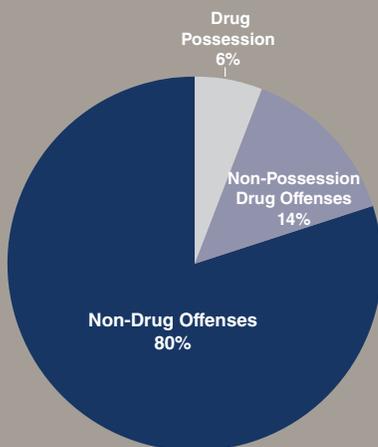
In 2019, there were roughly 300,000 people incarcerated in the United States for non-possession drug offenses (including those held both pre- and post-conviction) in state and federal prisons, local jails, and in the juvenile justice system. Just over half (51%, or roughly 153,000 people) were in the state prison system. Twenty-seven percent (about 80,000 people) were in federal prison, and 22% (about 67,000) were in local jails. There were also about 400 people in juvenile detention for drug trafficking in 2019 (because this number comprised less than 1% of the total it does not appear in the chart).

Almost everyone in federal prison for drug offenses was there for non-possession offenses, and this group formed just under half of the entire federal prison population. People incarcerated for drug law violations form a much smaller percentage of people in state prison, but of the people in state prison for drug offenses, three times as many are there for non-possession drug offenses compared to possession.

By contrast, a slim minority of those in local jails for drug law violations were there for non-possession offenses, although they still formed a significant proportion.

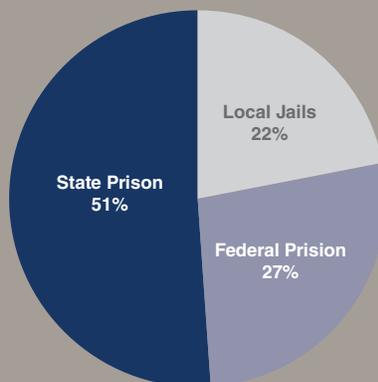
People Incarcerated in the U.S. in 2019

Source: Prison Policy Initiative *Mass Incarceration: The Whole Pie 2019* N=2,134,000



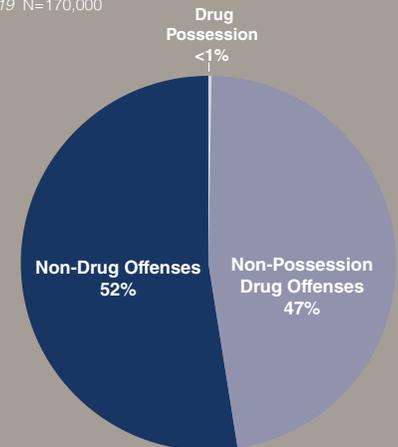
People Incarcerated for Non-Possession Drug Offenses in the U.S. in 2019

Source: Prison Policy Initiative *Mass Incarceration: The Whole Pie 2019* N=300,190



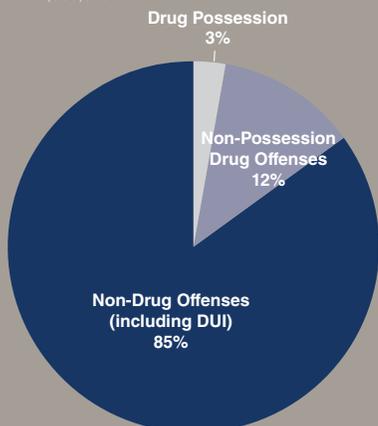
People Incarcerated in Federal Prison in the U.S. in 2019

Source: Prison Policy Initiative *Mass Incarceration: The Whole Pie 2019* N=170,000



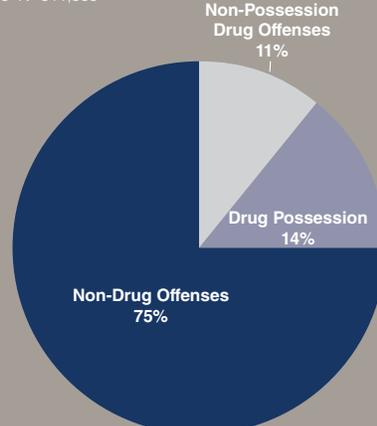
People Incarcerated in State Prison in the U.S. in 2019

Source: Prison Policy Initiative *Mass Incarceration: The Whole Pie 2019* N=1,306,000



People Incarcerated in Local Jails in the U.S. in 2019

Source: Prison Policy Initiative *Mass Incarceration: The Whole Pie 2019* N=611,000



This is a rough estimate based on the best available data. For more information about where this data comes from and some of the difficulties involved in measuring current prison populations in the United States, see www.prisonpolicy.org/reports/pie2019.html.

Note that our use of these numbers excludes those in U.S. Marshals' custody, Territorial Prisons, Immigration Detention, Indian Country jails and prisons, military prisons, and those held under psychiatric involuntary commitment laws, since specific data on those incarcerated for non-possession drug offenses in these sites is either not applicable or available.

What Does the Current System of Criminalization Look Like?

The current system of selling- and distribution-related criminalization is deeply flawed. It is arbitrary, overbroad and wastes massive amounts of money, while doing nothing to reduce – while perhaps even exacerbating – the harms it professes to address.

The current system wastes resources.

Not only does the current system fail to reduce drug addiction or community violence, it is also a huge drain on public resources. We could be redirecting these resources into health-focused, harm reduction-oriented, evidence-based approaches to drug use, and toward implementing policies that actually reduce the harms of drug selling and distribution. In 2017 it cost an average of \$36,300 to keep someone in federal prison for one year;¹⁷⁵ in 2015 (the most recent year for which 50-state data is readily available) it cost an average of \$33,274 at the state level.¹⁷⁶ Eight states had a cost per inmate above \$50,000, up to \$69,355 annually per inmate in New York.¹⁷⁷ One estimate suggests that roughly 233,000 people were incarcerated for drug selling or distribution offenses at the state and federal levels combined in 2019,¹⁷⁸ which means that the annual price tag of incarceration for supply-side drug offenses may be in the neighborhood of \$7.5 billion per year.¹⁷⁹ This excludes the roughly 67,000 people being held in local jails for non-possession drug offenses.¹⁸⁰

These figures also do not take into account the cost of criminalization before and after someone spends time in prison or jail. As one example of these costs, the Hartford County Sheriff's Office (in Maryland, just north of Baltimore) has committed to arresting the person who sold the drugs involved in every fatal or nonfatal overdose in their jurisdiction. In the first 11 months of 2017, this meant 411 investigations in a county of 250,000 people. Each case, on average, took more than 40 hours of police time to investigate and cost the Sheriff's Office between \$10,000 and \$15,000.¹⁸¹ Despite the law enforcement resources poured into prosecuting low-level sellers, overdoses in Hartford County are only going up.

Police and prosecutors determine who to treat as a person who uses drugs and who to treat as a person who supplies drugs.

Police and prosecutors have the power to decide who is a drug user and who is a drug seller or distributor in the eyes

of the criminal justice system. They also have the power to determine who the system will treat as a minor player in the drug economy and who it will treat as a high-level conspirator. And because of the vast gulf between how different drug-involved people are treated by the system, the stakes of these decisions are enormous. At the federal level, for example, simple drug possession carries a maximum punishment of one year imprisonment, a fine, or both.¹⁸² By contrast, possession with intent to distribute¹⁸³ is punishable by up to 20 years imprisonment – even for very low amounts – with the possibility of a life sentence for amounts above certain thresholds.¹⁸⁴

In states where low-level marijuana possession is punished with a civil citation rather than an arrest – or in jurisdictions where possession of marijuana is legal – it is the attending law enforcement officer who determines whether someone is possessing drugs for personal use or whether to arrest them for a selling- or distribution-related law violation. In Maryland, for example, possession of up to 10 grams of marijuana is decriminalized and punishable only with a citation. Yet an individual police officer also has the option to arrest someone caught with 50 pounds or less of marijuana for possession with intent to distribute. This means that an officer could arrest an individual with under 10 grams of marijuana for possession with intent to distribute since it is an amount that is also technically under 50 pounds.¹⁸⁵

Once someone is arrested for a drug law violation, the prosecutor decides what offense to charge them with. Someone could be charged with possession, possession with intent to distribute, or with a more serious sales- or distribution-related offense, depending on choices made by the prosecutor. Prosecutors also decide whether someone caught selling a small amount of a drug should be charged with the sale of only that amount, or whether they should be charged as part of a conspiracy for selling a much larger amount (conspiracy charges are discussed further on p. 30).

This wide discretion gives prosecutors a great deal of power over defendants during the plea bargaining process. Prosecutors are able to threaten defendants with more serious charges if they choose to take their case to court, offering relative leniency in exchange for a guilty plea. Prosecutors may also use this power to encourage people to share information about other individuals' involvement or to become confidential informants.¹⁸⁶

The impact of these plea bargaining dynamics are especially significant because the vast majority of these cases are resolved through plea bargaining: in 2016 a mere 2.4% of federal trafficking cases went to trial.¹⁸⁷ In addition, the enormous difference in potential sentence length for those charged with mere possession and those charged with selling- or distribution-related offenses means that the stakes of prosecutorial charging decisions are extremely high.¹⁸⁸

The indicia of sale by which police and prosecutors make decisions about who is a drug user and who is a drug seller or distributor are deeply flawed and often subjective.

Sometimes people are caught in the actual act of transferring drugs from one person to another. Many others, however, are charged with a selling-related offense after being found in possession of a drug. Police and prosecutors make decisions about whether the amount of a drug someone possessed and the circumstances in which they possessed it are more suggestive of possession for distribution or for personal use. They make these determinations based on factors called ‘indicia of sale.’ Drug quantity is the factor most consistently used as an indicia of sale: in general, the greater the quantity of a drug that someone possesses, the more likely police and prosecutors will be to assume that they were involved in selling or distribution.

Some jurisdictions’ criminal laws include weight thresholds for drug law violations: if an individual is caught with an amount of a drug that is greater than the threshold, they may be charged with a selling- or distribution-related law violation even with no other evidence that they intended to sell it. These weight thresholds are generally set with little consideration for how people actually purchase and use drugs. In Arizona, for example, possessing merely one gram of heroin creates a presumption of sales, despite the fact that one gram is a fairly typical daily use amount for a regular heroin user.¹⁸⁹ Someone living in a rural area may purchase several weeks’ supply of a drug at a time, even if they have no intention of reselling it, if they have only sporadic access to a seller. Groups of users sometimes purchase bulk quantities of drugs to share, hoping to save money and minimize risk by engaging collectively in a single transaction.¹⁹⁰

Other jurisdictions such as California and New York do not include specific weight thresholds in their statutes, but drug weight remains one of the primary factors that police and

prosecutors use to argue that someone possessed drugs for something other than personal use. In these states, individuals may be charged with selling- or distribution-related offenses for possessing any quantity of an illegal drug.¹⁹¹

Policymakers and criminal justice system actors generally assume that the more of a drug someone possesses, the higher up in the distribution hierarchy they are, and thus the more deserving of punishment. Many mandatory minimum sentences are based on this assumption, tying long sentences to drug quantity and eliminating judicial discretion.¹⁹² This assumption, while central to our current system, is inaccurate. Those high up in a drug operation may never actually possess drugs themselves, while those who merely transport drugs from one place to another are low in the organizational hierarchy but face severe penalties because of the quantity of drugs that they handle.¹⁹³ Weight-based sentencing, in the words of one former federal prosecutor, “allows law enforcement to arrest mules and street dealers and claim they are kingpins.”¹⁹⁴ Even the U.S. Sentencing Commission admitted in a 2011 special report to Congress that the “quantity of drugs involved in an offense is not as closely related to the offender’s function in the offense as perhaps Congress expected.”¹⁹⁵

Prosecutors often use drug weight in conjunction with other indicia of sale when building a case against a particular individual. Like drug weight, however, many other indicia are deeply flawed determinants of whether someone was involved in drug selling or distribution. For example, possessing drugs that are packaged in separate containers is viewed as an indication that someone was selling, despite the fact that it is common for people who use drugs to purchase multiple baggies at a time for personal use. The possession of scales may also be used, although people who use drugs sometimes have their own scales to confirm that they are getting as much of a drug as they paid for. Having a firearm or carrying cash is also a common indicia of sale, even absent any evidence that the firearm or the cash was related to drug market activity.

Aron Tuff, profiled on p. 11, was charged with possession with intent to distribute after being found standing near a mere 0.3g of cocaine that had been dropped on the ground at a party. The police reported that they had seen him making “hand motions” and that he had \$90 in cash in his pocket at the time of his arrest. These allegations were used as indicia of sales to support possession with intent to distribute charges, despite the fact that 0.3g of cocaine is an amount consistent with possession for personal use.

What Does the Current System of Criminalization Look Like?, cont.

The current system of supply-side drug criminalization casts a wide net, capturing a range of conduct far beyond many people’s understanding of what it means to be a “drug dealer”

Offense categories in the current system are extremely broad. Many people whose conduct bears little resemblance to that of a traditional “drug dealer” face very harsh sentences. In many jurisdictions, someone can be charged with a selling or distribution offense any time they transfer ownership of an illegal drug to someone else, even if they do not receive any money in exchange. This means that a person who shares a single dose of a drug with a friend may be prosecuted as a distributor.¹⁹⁶ In some states, someone who splits drugs into separate baggies, changes packaging, or labels containers may be charged as a manufacturer, although they had nothing to do with actual drug synthesis.¹⁹⁷

Selling and distribution laws often capture people who run errands, answer telephones, receive packages, or act as lookouts as part of drug distribution operations, even if these roles are very casual – for example, a roommate or family member taking a phone message for a person involved in a drug supply operation.¹⁹⁸

Someone can be legally considered in possession of a drug even if they do not physically have the drug at all. This is referred to as constructive possession. In some states, two

or more people can also be charged with possession of the same drug, referred to as joint possession.¹⁹⁹ This means that if the police locate drugs in a car with several people in it, each person in the car can be charged with constructive joint possession with intent to sell as if the drugs were in their unique possession, even if they did not have any knowledge of the drugs or any role in their distribution.²⁰⁰

Drug conspiracy statutes allow prosecutors to charge very minor players in drug supplying networks as if they were high-level distributors, often resulting in sentences that are vastly disproportionate to the severity of an individual’s actual conduct. Conspiracy laws allow prosecutors to charge two or more people involved in a supply network with the same offense, even if they were not caught taking part in the same conduct or playing a similar role.²⁰¹ These charges were designed to be used against high-level distributors who may never actually possess drugs themselves.²⁰² But prosecutors have often used them instead against people who play minor roles in drug supply operations, penalizing them as harshly as if they were near the top.²⁰³

Corvain Cooper, profiled on p. 42, was charged along with fifty other people for conspiracy to possess with intent to distribute 1000 kg of marijuana, along with several other offenses related to the financial side of the drug selling operation. Cooper was low in the hierarchy and hadn’t made much money from his participation, but because of conspiracy laws he faced the same penalties as those near the top. Cooper received a life sentence without the possibility of parole.

In addition to harsh sentences for low-level sellers and distributors, conspiracy charges can lead to even more unjust outcomes when used against peripheral actors in drug supplying hierarchies who were not at all involved with selling or distribution in a meaningful sense. This includes people who share an apartment with or take phone messages for those more directly involved in the drug economy.

Crystal Munoz received a 19-year sentence in Texas for drawing a map of a road in Big Bend National Park on a piece of notebook paper (her sentence was later reduced to 15 years). She was 25 years old and gave birth to her second daughter while incarcerated. Her only prior convictions were for misdemeanor drug possession. She drew the map for some acquaintances from high school, who used it to get around a drug checkpoint while transporting marijuana. Her acquaintances were also arrested and testified against

her, hoping to lighten their own sentences. Munoz was found guilty of conspiracy to possess with intent to distribute 1000 kg of marijuana, despite the fact that all she did was draw the map.²⁰⁴

Women are especially vulnerable to the perverse effects of drug conspiracy laws. This is discussed further on p. 41.

Many jurisdictions have laws that apply particularly harsh penalties to people convicted of certain selling- or distribution-related offenses if they already have prior convictions, even minor ones.

Policy makers often treat people with a history of criminal justice involvement as the worst of the worst: they are seen as dangerous people who refuse to change their behavior.²⁰⁵ Under federal law, for example, penalties become dramatically more severe if someone has one or more prior convictions for particular types of offenses, including felony drug offenses. Depending on the offense, some mandatory minimum penalties jump from ten years to twenty years for a second offense, and if someone has two or more prior convictions, they could – at least until recently – find themselves facing mandatory life imprisonment.²⁰⁶ The First Step Act, passed in 2018, reduced the automatic penalty for someone with three or more eligible convictions from a life sentence to 25 years – an improvement over a life sentence, to be sure, but still incredibly severe.²⁰⁷ A prior conviction may also make someone ineligible for statutory safety valve provisions, which allow a court to sentence a person below the mandatory minimum in strictly limited circumstances.²⁰⁸

Many people assume that if someone has multiple felony drug offenses on their record, they have participated in conduct that is egregious enough to warrant such a harsh sentence. For the purpose of the federal statute, however, “felony drug offense” is defined extremely broadly. It refers to any drug law violation that is punishable by more than one year of imprisonment under the law of any jurisdiction,²⁰⁹ which frequently includes simple possession offenses or other offenses considered misdemeanors by the jurisdictions in which they occurred.

About half of U.S. states also have their own laws harshly criminalizing people for past convictions.²¹⁰ While there is some variation among states as to which past offenses count, the inclusion of drug selling and distribution offenses is common.

Someone convicted of a single selling or distribution offense who has two prior convictions for simple possession could end up in prison for life.

Aron Tuff, profiled on p. 11, and Corvain Cooper, profiled on p. 42, both received life sentences without the possibility of parole for alleged low-level selling and distribution-related activities on the basis of past convictions. In Tuff’s case, his past convictions were all for nonviolent drug offenses connected to an addiction that began as an attempt self-medicate for the pain of a back injury sustained in the Army. Cooper’s two prior convictions were both for possession, one for marijuana and one for codeine cough syrup.

Criminal history-related sentencing enhancements disproportionately impact the members of drug supplying hierarchies who are most vulnerable to arrest. As discussed further on p.20, these are generally the lowest level sellers and distributors, particularly people of color. The U.S. Sentencing Commission notes:

The cumulative sentencing impacts of criminal history [...] appear to be particularly acute for Black drug offenders. Three-quarters (75.6%) of Black drug offenders convicted of an offense carrying a mandatory minimum penalty in fiscal year 2010 were excluded from safety valve eligibility due to criminal history scores of more than one point. [...] Only 14.4 percent of Black offenders convicted of a drug offense carrying a mandatory minimum penalty received safety valve relief (either by itself or in combination with substantial assistance), compared to 48.4 percent of Other Race offenders, 46.3 percent of Hispanic offenders, and 39.5 percent of White offenders.²¹¹

What Does the Current System of Criminalization Look Like?, cont.

People who are the targets of discriminatory law enforcement attention, including those in over-policed communities of color, are more likely to circulate through the criminal justice system multiple times, while high-level suppliers, white suppliers, and others who are more likely to avoid arrest are less likely to generate the criminal justice system histories that result in the harshest of sentences.²¹² Both Tuff and Cooper are Black.

People who are involved in drug selling and distribution may be designated as violent offenders even if they never threatened anyone or caused anyone physical harm.

Being categorized as a violent offender by the criminal justice system has significant consequences. This group may be ineligible for diversion programs and have limited access to programming within prison. Upon release, they face much greater stigma than other formerly incarcerated people. Many people who are not familiar with the criminal justice system understandably hear the phrase “violent offender” and assume this means someone physically threatened or hurt someone. But some states – including South Carolina,²¹³ Rhode Island²¹⁴ and Alabama²¹⁵ – consider drug selling and distribution to be inherently violent crimes. The mere act of distributing drugs may be considered a “violent crime,” even when done nonviolently.

Other states – such as Arkansas,²¹⁶ Virginia²¹⁷ and Pennsylvania²¹⁸ – have laws that categorize someone’s drug selling- or distribution-related offense as violent if they possessed a weapon, even if that weapon was legally registered and was never brandished or used.²¹⁹ In Arkansas, possessing drugs and a firearm at the same time is punishable by 10 to 40 years or life in prison.²²⁰ Pennsylvania’s five-year mandatory minimum sentence for violation of a drug selling-related law while in possession of a firearm specifies that the firearm need not have been physically possessed by the defendant: it can be in the possession of “the person or the person’s accomplice [...] or within the actor’s or accomplices reach or in close proximity to the controlled substance.”²²¹ This means that if someone else possesses a gun during drug selling- or distribution-related activity, an individual who never touched the gun can be convicted of distribution while in possession of a weapon. At the federal level, anyone found guilty of possession of a weapon is ineligible for safety valve provisions that allow judges to depart from mandatory minimum penalties at sentencing.²²²

In 2004, Weldon Angelos was sentenced to a mandatory 55 years in prison for selling marijuana while in possession of a firearm. Mr. Angelos had received three months of probation for a minor charge as a juvenile, but other than that he had no history of criminal justice involvement. On three separate occasions, he sold eight ounces of marijuana for \$350 to a confidential informant. The informant testified that he saw a gun in Angelos’ possession during two of the transactions, once on his person and once in his car, although the transactions were conducted peacefully and Mr. Angelos never brandished the gun. In his lengthy sentencing decision, Judge Paul G. Cassell objected strenuously to the fact that he had no choice but to impose such an extreme sentence, writing that “the court believes that to sentence Mr. Angelos to prison for the rest of his life is unjust, cruel, and even irrational.” Mr. Angelos, he went on to point out, faced “a prison term which is more than double the sentence of, for example, an aircraft hijacker, a terrorist who detonates a bomb in a public place, a racist who attacks a minority with the [intention] to kill and inflicts permanent or life-threatening injuries, a second-degree murderer, or a rapist.” Mr. Angelos was released in 2016 after a federal court reduced his sentence.²²³

Michael Alonzo Thompson received a comparably long sentence for selling drugs while in possession of a firearm, despite the fact that he was not actually armed at the time of the sale. Mr. Thompson sold three pounds of marijuana to an acquaintance in Flint, Michigan, who had been pressured to participate in the sale by law enforcement. He was arrested and the police searched his house, where they found two antique guns and a third gun belonging to Thompson’s wife. Thompson was found guilty of possession of a weapon during the commission of a felony, even though the drugs did not actually change hands at his house where the guns were stored, and he had no weapons on him at the time of his arrest. Since he had prior convictions for other drug offenses, he was sentenced to 40 to 60 years in prison.²²⁴

The selling and distribution of some drugs are penalized more harshly than others, driven by fear and stereotypes rather than any scientific or public health rationale.

Drug selling and distribution are severely criminalized regardless of the type of drug, but the particular criminal penalties for selling and distribution vary from drug to drug. Law enforcement prioritizes arresting people who sell or distribute certain drugs, while lawmakers often pass laws that include especially harsh sentences for drugs that are perceived to be particularly dangerous.

Louise Vincent's Story

“I knew [prison] was a possibility. But when you’re surviving, those aren’t the things on your mind. You’re doing what you have to do.”

Before Louise Vincent became the woman to see for clean syringes or naloxone in Greensboro, North Carolina, she had struggled with drug use her whole life. She describes how as a youth she could not find an effective treatment for her bipolar disorder and turned to drugs to self-medicate. She says she used drugs not to avoid her feelings, but to cope with them.

Although many people think that people who use and sell drugs fall into two separate categories, in reality this line is very blurry. Many people who sell drugs, including Vincent, do so to support their own drug use.

“It’s very expensive to use drugs,” Vincent explains. “You have to hustle, and everybody that uses drugs – who doesn’t have loads of money – hustles.” She sold a considerable amount, she says, but still had enough money only to barely get by day to day. “I knew [prison] was a possibility,” she says, “but when you’re surviving, those aren’t the things on your mind. You’re doing what you have to do.”

In 2003, Vincent was charged with possession with intent to sell cocaine. She pled guilty, and – unlike many others in the same position – was able to go to a residential treatment program in lieu of prison time. With support from her family, especially her mother, she was able to piece things back together and earned a Master’s degree in public health.

Then, in 2013, Vincent was hit by a car in a hit and run accident. She was in a great deal of physical pain, which her doctors were unable to

manage effectively, and she returned to drugs to cope once again. Around this time she became involved with the Urban Survivors’ Union, a group of people who use drugs who advocate for drug policy reform. She became very involved in the group and helped found the local chapter in Greensboro, North Carolina, which provides support to former and active drug users. With the help of this new community and medication-assisted treatment, she was able to stabilize her life again. Now, she also works with the North Carolina Harm Reduction Coalition, which provides syringe exchange and other harm reduction interventions.

In the course of her work, Vincent sees the potential effectiveness of engaging people who sell drugs in reducing the harms of drug use. She encourages people who sell drugs to get fentanyl test strips and to carry naloxone. She also teaches sellers to educate their clients about overdose risk and harm reduction. She knows that communities of people who use and sell drugs are often close knit and overlapping – in fact, she believes that someone she bought drugs from for many years saved her life when her daughter died in 2016. Vincent, stunned and grieving, called her former seller for support.

“I called after my daughter died with no desire to go on,” she explained. “He came and sat with me. Talked to me about how his mother died. He did not sell me drugs this day. His compassion in my time of need sticks out to me, especially when you hear people talk about how exploitative dealers are. He could have easily taken advantage of my state of mind, however this is not who he was.”

Despite her devastating loss, Vincent keeps going, educating people who use and/or sell drugs and running the local syringe exchange. She says she can’t imagine doing anything else.

Interview conducted September 20, 2018.

What Does the Current System of Criminalization Look Like?, cont.

As discussed earlier on p. 12-16 there is little evidence to suggest that harsh criminalization keeps people who use drugs or their communities safer, so responding to particularly risky drugs with additional police enforcement and severe penalties is not an effective way to minimize harm. Police and policymakers, moreover, tend to decide what drugs to single out based on moral panic and stereotypes, often rooted in racism, classism and fear instead of an evidence-based assessment of the risks associated with particular drugs. Crack cocaine and methamphetamine are two drugs that have been singled out for particularly harsh criminalization.

The disparity in sentences for crack and powder cocaine is one of the best known and most egregious examples of the criminal justice system singling out a particular drug for especially harsh penalties. The two are merely different forms of the same drug and produce identical physiological and psychotropic effects. The only difference is the speed and intensity of their effects due to different methods of ingestion: crack cocaine (like powder cocaine that is taken by injection) impacts people more rapidly, and its effects are of shorter duration compared to powder cocaine ingested nasally. Even the U.S. Sentencing Commission now acknowledges that lawmakers significantly overstated the difference in their effects.²²⁵

Despite these similarities, the Anti-Drug Abuse Acts of 1986 and 1988 created mandatory minimum sentences for sale and distribution offenses involving crack cocaine that were 100 times more severe than those for the same offenses involving powder cocaine.²²⁶ These laws imposed a five-year mandatory minimum penalty for trafficking 500 grams of powder cocaine and a 10-year mandatory minimum penalty for trafficking 5000 grams. By contrast, they imposed a five-year mandatory minimum for trafficking a mere five grams of crack cocaine – the same penalty as 100 times that amount of powder cocaine – and a 10-year mandatory minimum for just 50 grams. This sentencing regime meant that a street-level seller of crack cocaine could end up with a far more severe sentence than a wholesale supplier of powder cocaine.²²⁷ Compounding the impact of these disparities, law enforcement often made crack arrests and prosecutions a higher priority than powder cocaine: crack laws were both harsher and more harshly enforced than powder cocaine laws.²²⁸

The National Institute on Drug Abuse's 1991 National Household Survey on Drug Abuse found that 52% of those reporting crack cocaine use were white, 38% were Black and 10% were Latinx.²²⁹ Since Black people were significantly more likely to use crack cocaine than white people, harsh sentencing for crack cocaine effectively became a tool to criminalize this community. In 1993, Black people made up 88.3% of federal crack cocaine distribution convictions, while Latinx people made up 7.1% and white people made up only 4.1%.²³⁰ The Fair Sentencing Act of 2010 reduced the disparity in crack and powder cocaine sentencing from 100-to-1 to 18-to-1, a change that was made retroactive as part of the 2018 First Step Act – a dramatic improvement, but one that fell far short of equalizing the penalties.²³¹

Along with crack cocaine, methamphetamine is among the drugs whose sale and distribution are most harshly penalized by the current system. Under the federal sentencing guidelines, involvement in the sale of between four and five grams of pure methamphetamine is treated the same as 22.4 to 28 grams of crack cocaine, 80 to 100 grams of heroin, or 400 to 500 grams of powder cocaine.²³² In 2017, 36.9% of people sentenced for supply-side drug offenses at the federal level were involved with methamphetamine, more than any other drug by a significant margin.²³³ Methamphetamine use, however, was comparatively low relative to other common drugs in 2017: only 0.6% of people in the U.S. reported using methamphetamine in the past year, compared to 2.5% for crack or powder cocaine, 1.9% for psychedelics, and 15% for marijuana.²³⁴

Like crack cocaine, methamphetamine has been the subject of several waves of moral panic, which has in turn ensured continued support for the exceptionally harsh punishment of its sale.²³⁵ Law enforcement allocation of significant resources to targeting methamphetamine production operations, along with the media's misleading reporting of methamphetamine use and sales, played a central role in creating this panic.²³⁶

While the societal panic about crack cocaine was deeply bound up with its association with Black people in urban areas, the panic around methamphetamine in the early 2000s linked the drug to poor white people in rural areas.²³⁷ Social scientists have speculated that widespread concern about methamphetamine was driven less by its actual dangerousness or widespread use and more by white middle and upper class fear and revulsion of poor white people. The visibility of poor white people led to societal anxieties about the precarity of white privilege at a time of worsening economic inequality. People using methamphetamine were positioned as not-quite-fully-white through their association with Black users of crack cocaine: the drug was sometimes called “white man’s crack.”²³⁸ Blaming poverty on methamphetamine use and positioning it as an irresponsible individual choice provided a convenient explanation for white poverty that did not threaten the dominant economic or racial orders.²³⁹

Both methamphetamine and crack cocaine use can have negative consequences for some people who use them. But singling out certain groups of people who sell and distribute these drugs (many of whom are also users) for especially harsh penalties does nothing to reduce these harms.



Who is Most Harshly Criminalized by Selling and Distribution Laws?

People involved with drug selling and distribution come from all segments of society. Sociologist Mike Salinas observes,

Just as anyone may be an illegal drug user – from unemployed homeless ‘junkies’ to students, professors, attorneys, lawyers, and dentists – so too can anyone become involved in the supply of these drugs, including gang members, fast-food workers and shop assistants, suburban middle class youth, working professionals, affluent college students studying in prestigious universities, and legitimate business entrepreneurs.²⁴⁰

While qualitative research indicates that the demographics of people who sell drugs are significantly more diverse than stereotypes suggest, quantitative data on who is involved with the supply side of the drug economy is sparse and difficult to gather. We have a much better idea of who is criminalized for drug selling and distribution than who actually supplies drugs. Those who are arrested for supply-side drug market activity come largely from marginalized communities and have roles at the lowest rungs of drug supplying hierarchies. This includes people who use drugs, people living with poverty, people of color, non-citizens and women.²⁴¹

People who use drugs

Many people who are criminalized for drug selling and distribution also use drugs. Selling drugs is a way to fund one’s own drug use, especially for those whose use keeps them from maintaining more regular employment, or those who are unable to secure legal jobs because of past criminal justice system contact, racial discrimination, or other barriers.²⁴² In addition, selling drugs provides access to an income stream that rises and falls with drug prices, allowing people to maintain their use even if drug prices rise.²⁴³ Indeed, many low-level actors in the supply chain are not paid in money, but rather in drugs.²⁴⁴

A 2004 Bureau of Justice Statistics report found that 70% of people incarcerated for drug trafficking in state prison reported that they had used drugs in the month prior to their offense.²⁴⁵ A 2017 report by the same agency found that 29.9% of people in state prison and 28.8% of people sentenced to jail for drug offenses between 2007 and 2009 said their offense was committed to acquire drugs or to get money for drugs.²⁴⁶ In 2012, 84% of those arrested for distribution offenses in Chicago, 92.9% in New York, 87.8% in Sacramento, and 38.1% in Washington, D.C. tested positive for drug use.²⁴⁷ The 2012 National Survey on Drug

Use and Health found that 87.5% of people who reported selling drugs in the past year also reported using drugs in the past year, while 43.1% of people who said they had sold drugs in the past year reported that they met the criteria for a substance use disorder.²⁴⁸

Ohio Democratic gubernatorial candidate Richard Cordray stated during his 2018 campaign, “As governor, I will work with law enforcement to make sure drug dealers are convicted and serve long prison sentences, while people who need substance abuse treatment can get it in our communities.”²⁴⁹ But the fact that so many people who are criminalized for drug selling or distribution also use drugs demonstrates that

lawmakers’ push to keep people who use drugs safe by more harshly criminalizing sellers is misguided: these are often the same people.

People who sell or distribute drugs to support their own drug use are often more vulnerable to arrest than other suppliers, since they frequently play low-level public roles as runners or liaise directly with customers (who could be confidential informants or undercover police officers).²⁵⁰

People living with poverty

While middle and upper class people are also involved in selling drugs, the people most harshly criminalized are overwhelmingly poor. This is especially true for people who do not have a formal education²⁵¹; in 2016, 42.9% of those sentenced for drug trafficking offenses at the federal level had not graduated from high school, while an additional 35.9% had graduated from high school but had no post-secondary education.²⁵²

Low-income people who sell or distribute drugs are also more likely than affluent people to conduct their business in public, which increases their vulnerability to law enforcement.²⁵³ If middle- or upper-class drug suppliers are arrested, moreover,

they are more likely to post bail and fund their legal defense, significantly lessening the consequences of criminal justice system involvement. Those with more money and education are also better able to pursue income-earning options beyond drug supplying, should they choose to do so. “Without the encumbrance of a criminal record or time-served in prison,” sociologist Mike Salinas observed, “[middle-class drug sellers are] free to naturally age out of these [...] roles unharmed and largely unnoticed.”²⁵⁴

The disproportionate criminalization of people who live with poverty is deeply entwined with the disproportionate criminalization of Black and Brown people. People who are perceived to be poor – particularly if they are also people of color – are more likely to attract law enforcement attention or to spend time in areas that are intensely policed compared to more affluent people.²⁵⁵ Former New York Police Commissioner Lee Brown explained:

In most large cities, the police focus their attention on where they see conspicuous drug use – street-corner drug sales – and where they get the most complaints. Conspicuous drug use is generally in your low-income neighborhoods that generally turn out to be your minority neighborhoods. . . . It’s easier for police to make an arrest when you have people selling drugs on the street corner than those who are [selling] in the suburbs or in office buildings. The end result is that more blacks are arrested than whites because of the relative ease in making those arrests.²⁵⁶

Poor people often become involved with selling or distribution because they are not able to access adequate economic opportunities in the legal economy, whether because of racial discrimination, discrimination based on past criminal justice system involvement,²⁵⁷ or because of declining or changing job opportunities in the communities where they live. In his study of people selling crack cocaine in East Harlem, anthropologist Philippe Bourgois notes that between 1950 and 1990 the proportion of factory jobs in New York City decreased threefold, in the 1980s the real value of minimum wage declined by one-third, and over the same decade the federal government’s contribution to New York City’s budget decreased by 50%.²⁵⁸ Similar trends have also deeply impacted more rural areas of the country: Martinsburg, West Virginia, for example, used to be an industrial center full of textile plants, and in the 1950s one of its factories alone employed three thousand people. By 2004, however, every textile mill

in town had closed. In 2017, their overdose death rate was among the highest in the country.²⁵⁹

While these economic shifts were taking place, political trends at both the state and federal levels led to the shrinking of the social safety net.²⁶⁰ As government assistance became more limited and available to fewer people, many people’s financial struggles worsened. Faced with no or only minimum wage employment options, people may become involved in drug selling and distribution as a way to make ends meet. Journalist Tom James argues that drug selling became “a kind of safety net,”²⁶¹ in the absence of one provided by the government. Outdoor drug market activity is often misrepresented as a cause of urban decline, but it is more appropriately understood as an effect of the loss of living wages and the dismantling of the social safety net.²⁶²

Caswick Naverro, profiled on p. 24, began using drugs at a young age to self-medicate for the post-traumatic stress symptoms he was experiencing, a result of growing up in a New Orleans neighborhood where violence was common. When he was 13, he began selling drugs to help support his single mother, who had lupus, and his younger siblings. Now 23, Naverro has a legal job, but worries about being forced back into drug selling if that falls through. “[I]t was so hard for me to get that job, like I was looking for work for years,” he said. “I don’t want to be no drug dealer the rest of my life. I don’t want to be looking over my back thinking somebody’s going to rob me or kill me over no drugs, you know? I want to go work, wait on the paycheck, you know, like everybody else. [...] But sometimes [drug selling is] the only thing people have, you know? Because I was in a situation where I couldn’t find a job, all I had was drugs.”

A Seattle resident named Terry began selling marijuana as a 16-year-old when his mother lost her job. “If I didn’t provide money, no one else would,” he said. “I couldn’t just wait there and pray that someone would pay the rent.” Terry began working as a dishwasher, which became his primary source of income. But, paid only \$11 per hour, unable to get more than part-time hours, and with a child to support, he made only about \$300 per week. He continues to sell drugs on the side, because, as he says, “Unless you’re the budgeting king of the world, you’re not going to be able to make it on \$300 a week.”²⁶³ Like Terry, the people selling crack cocaine interviewed by Bourgois repeatedly expressed frustration about their inability to find steady, dignified, legal employment. Many had previously worked in New York City’s factories before they shut down and would much rather return to union jobs than continue to sell crack.²⁶⁴

Who is Most Harshly Criminalized by Selling and Distribution Laws?, cont.

People of color

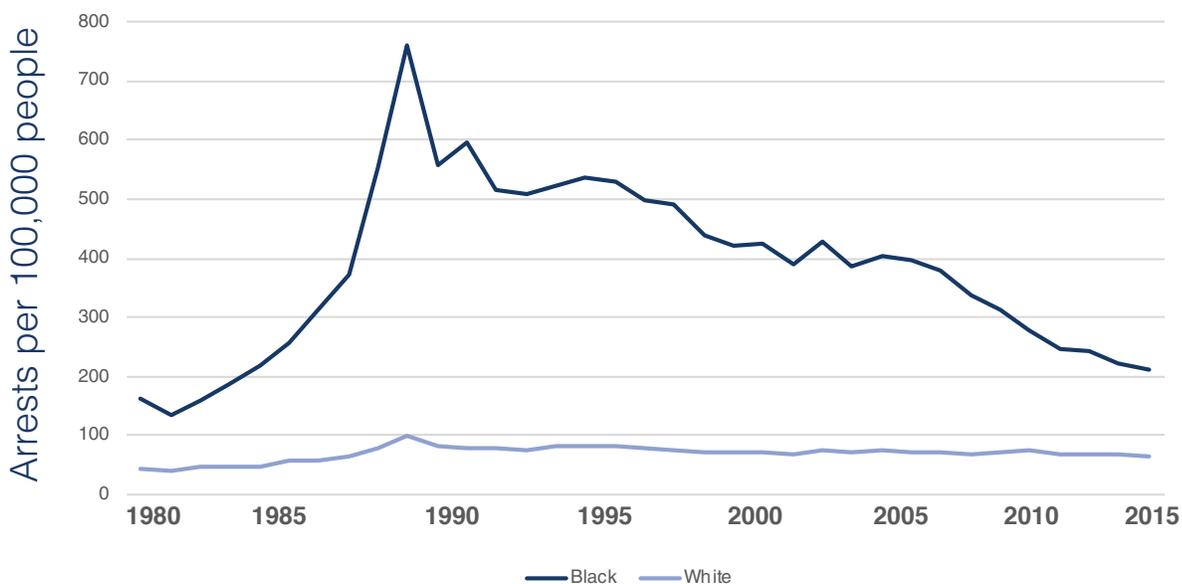
As discussed on p. 22 what data are available suggest that white people are slightly more likely than people of color to report having sold drugs. But people of color are searched, arrested, convicted and imprisoned for drug selling and distribution at far higher rates than white people. The fact that people of color are more likely to be locked up for selling and distribution reinforces the racist stereotype that it is mostly these communities who are involved in the drug trade.²⁶⁵

In 2012, 78% of people in federal prison for drug offenses (99.5% of whom were there for selling and distribution) were people of color: 38.8% were Black and 37.2% Latinx,^{266,267} although these groups made up only 13% and 18% of the total population, respectively.²⁶⁸ In 2016, more than half (50.8%) of those sentenced for drug trafficking offenses at the federal level were Latinx, while 23.3% were Black, 22.9% were white, and 3% were identified as “other.”²⁶⁹ Black people were about eight times more likely than white people to be arrested for selling or distributing drugs in 1989, and by 2014 they were still over three times more likely (see Fig. 1).²⁷⁰

A 2006 study that examined drug markets in Seattle found that the majority of those selling most drugs were white.^{271, 272} Despite this – and the fact that Seattle was less than 10% Black at the time – nearly two-thirds (64%) of those arrested for drug delivery during the 2.5-year study period were Black.²⁷³ Examining outdoor arrests at two different open-air drug markets, the authors observed discriminatory enforcement in both racially mixed and majority white areas. In the drug market in a racially mixed area, 38% of observed drug transactions involved Black drug sellers and 39% involved white drug sellers, but 58.6% of those arrested for drug delivery in that census tract were Black while only 20.8% were white. In a drug market in a whiter area of the city where only 4% of sales involved a Black seller, 32% of those arrested for drug delivery were Black.²⁷⁴

Sociologists A. Rafik Mohamed and Erik D. Fritzvold argue that white people are “the silent majority of U.S. drug dealers.” The network of white college student sellers whom they study constitute the “anti-targets” of criminalization. Despite dealing with significant quantities of drugs and money while taking few precautions to avoid detection, these

Figure 1. Arrest Rates for Drug Sales and Manufacturing in the U.S.



Miguel Perez Jr.'s Story

“I served my time. I should go back home.”

Miguel Perez Jr. moved to Chicago when he was eight years old after his father got a job as a coach for the Chicago Sting soccer team. The family moved together as legal permanent residents in the mid-1980s.

When Perez was 18 years old he joined the Army. He served in Afghanistan with the 2nd Battalion, 3rd Special Forces Group in 2002 and 2003, and was discharged in 2004. After he returned home from military service, he began experiencing the debilitating symptoms of severe post-traumatic stress disorder (PTSD). He got sweats, shakes and nightmares, and felt constantly overwhelmed with anxiety.

“If I was stuck in traffic,” he says, “I would start panicking because somebody is going to hurt me, or [I] have this sense somebody is coming to get [me].” When there were too many people in the grocery store, he felt on high alert as if his life was at risk. He couldn’t shake the sense of constant threat or danger. Other people seemed like enemies.

Desperate for a reprieve, Perez started to use alcohol and drugs – which he procured from a friend – to cope with the symptoms. By 2006 he was using drugs on a daily basis. In 2008, he was out with the same friend when he was asked to carry a package of two kilograms of cocaine across the street and drop it off with another person, who turned out to be an undercover police officer. Both Perez and his friend were arrested and charged with manufacturing and delivering an illegal drug.

Perez was not involved in actually making any drugs, but manufacturing charges are used to capture a wide variety of conduct that has little to do with actual manufacturing. Perez explains, “If you grab some drugs and put it inside a bag, that’s manufacturing.” Perez pleaded guilty and was sentenced to seven and a half years in prison.

Mental health support is often hard to access in prison. Perez got lucky, however, and did manage to access treatment for his PTSD symptoms for

the first time while incarcerated. “I saw the same psychiatrist once a month and a psychologist twice a month, plus I had support groups,” he said. His symptoms improved with treatment, and he planned to continue working with mental health professionals through Veterans’ Affairs after his release. He had served his sentence, addressed his drug use, and stabilized his PTSD. He was ready to begin a new chapter in his life.

Instead of being released, however, Perez was transferred from prison directly into ICE custody, where he spent time in a detention center. Then, he was deported to Mexico in March of 2018.

Drug trafficking convictions are among the most damaging types of convictions for a non-citizen to receive. Under immigration law, all selling- and distribution-related offenses, even minor ones, are considered drug trafficking. Any non-citizens (be they permanent residents like Perez, people in the U.S. on visas, refugee claimants, or undocumented people) convicted of trafficking are subject to mandatory detention and virtually assured deportation, with no possibility of ever returning to the U.S. In these cases, immigration judges are not permitted to consider the particulars of an individual’s situation. Like judges forced to impose mandatory minimum sentences, they must pursue deportation, no matter how minor the sales offense.

Now living in Tijuana, Mexico, Perez’s access to mental health treatment is limited. Veterans’ Affairs can’t ship medication to him, and specialized therapy for PTSD is unavailable. He has had two major PTSD episodes since his arrival and is terrified that they will continue. He lives alone with no family or support network nearby and doesn’t know when he’ll see his two young children (both U.S. citizens) or his parents again.

Perez understands that he broke the law, but he served his sentence and worked hard to control his drug use and improve his mental health. “Yes, I committed a crime,” he says. “Yes, I pled guilty. But yes I served my time. I should go back home where my father, my mother, my nieces, my son, daughter, my whole community is in Chicago. That’s where I belong.”

Interview conducted October 12, 2018.

Who is Most Harshly Criminalized by Selling and Distribution Laws?, cont.

suppliers attract little police scrutiny. “While not entirely surprising,” the researchers note, “we were still taken aback by the lack of criminal justice and university administration attention paid to these dealers, despite the brazenness, incompetence, and general dearth of street smarts that tended to characterize the dealers’ daily practices.”²⁷⁵

Low-level sellers and distributors

The vast majority of people involved in drug supplying are low-level: there are simply not that many people at the top. Most people who sell or distribute drugs do not make much money, have little knowledge of the distribution network as a whole, and are not involved in profit sharing.²⁷⁶ Many at the very bottom of the supply chain are not even paid in cash: they receive drugs for their own use, food, or small consumer goods.

Low-level sellers and distributors are among the easiest targets for law enforcement, who are often incentivized to seek large numbers of arrests to meet quotas.²⁷⁷ Former federal public defender Tanya Coke recalls representing “Jose, a 17-year-old foster kid who steered customers around the corner to a drug dealer whose real name he didn’t even know. His cut of the profits? Regular Happy Meals at McDonald’s and a new pair of sneakers.” Jose was charged with conspiracy to distribute an illegal drug and was facing 10 to 12 years in prison. Cases like his, she said, represented half her caseload.²⁷⁸ Daniel Conklin, former staff attorney at the Pennsylvania Immigrant Resource Center, commented, “I represent a lot of guys with drug trafficking convictions, but I’ve never represented a drug trafficker.”²⁷⁹

As a result of their greater numbers and disproportionate vulnerability to arrest compared to those higher up the supply chain, low-level suppliers make up the majority of people in prison for selling- and distribution-related offenses. In 2016, only 12.5% of those sent to federal prison for selling or distribution were high-level suppliers or importers.²⁸⁰ In the same year, 55% of people sentenced for federal trafficking law violations carrying mandatory minimum sentences were found guilty only of the lowest-level selling offenses.²⁸¹ For more on who is in federal prison for drug selling broken down by their role in the offense, see p. 20.

The plea bargaining process exacerbates the harsh criminalization of low-level sellers and distributors. Prosecutors commonly offer those charged with selling- or

distribution-related offenses more lenient treatment in exchange for providing information leading to additional arrests. Those higher up the supply chain are more likely to be able to take advantage of such offers, while those lower down may not have any information or contacts to share. In the federal system, those with high-level involvement in drug distribution networks are similarly able to benefit from a mechanism called the “substantial assistance departure,” which allows a judge to give a sentence below the mandatory minimum if someone is willing and able to offer the government assistance with other criminal investigations.²⁸² As legal scholar Jane Froyd observes, “The combination of mandatory minimums for low-level offenders and the substantial assistance downward departure for high-level offenders has led to disparity in sentencing between offenders with varying levels of culpability.”²⁸³

Cynthia Powell is currently serving a 25-year prison sentence in Florida for agreeing to sell 35 of her prescribed painkillers and some muscle relaxant to a confidential informant. The informant called her repeatedly before Powell agreed to the sale, saying that she was sick and in pain and needed the pills to self-medicate. Powell had no prior convictions or arrest record and was unemployed and disabled at the time. She was offered two years in prison and ten on probation if she agreed to assist with one other arrest, or no prison time and ten years of probation if she assisted with three arrests. As a one-time seller talked into the sale by an informant and who had been legally prescribed the drugs in question, Powell had no information or meaningful assistance to offer the prosecution, leading to her 25-year sentence.²⁸⁴ A 2009 report published by the Florida Senate Committee on Criminal Justice suggests that Powell’s experience reflects a broader trend, noting that “the average sentence of inmates who have a lower-level trafficking offense is above the mandatory minimum sentence, while the average sentence of inmates with a higher-level trafficking offense is below the mandatory.”²⁸⁵

Non-citizens, including lawful permanent residents

Drug trafficking convictions are among the most damaging types of convictions for a non-citizen to receive²⁸⁶ – and under immigration law, all selling- and distribution-related law violations, even minor ones, are considered drug trafficking.²⁸⁷ Conklin, the former staff attorney at the Pennsylvania Immigrant Resource Center, commented in an interview with Human Rights Watch that it is easier to gain legal status for a refugee or asylum-seeker with robbery or assault charges than

low-level drug selling or distribution.²⁸⁸ Between 2007 and 2012, almost 266,000 non-citizens who had a drug conviction as their most serious offense were deported; of these, at least 31% had been convicted of a selling- or distribution-related law violation.²⁸⁹ One of these individuals, Miguel Perez Jr., is profiled on p. 39.

Any non-citizens (permanent residents, people in the U.S. on visas, refugee claimants, or undocumented people) convicted of drug trafficking are subject to mandatory detention and virtually assured deportation, with no possibility of ever returning to the U.S. They are disqualified from almost every defense or waiver that might have been available to them if their conviction was not selling- or distribution-related.²⁹⁰ In these cases, immigration judges are not permitted to consider the particulars of an individual's situation: like judges forced to impose mandatory minimum sentences, they must pursue deportation, no matter how minor the sales offense or how compelling the extenuating circumstances.²⁹¹

If immigration authorities have “reason to believe” that a non-citizen has ever participated in drug trafficking or that they are the spouse or child of someone who has benefited from trafficking in the last five years, they are considered inadmissible to the U.S., even if they have no convictions themselves.²⁹² A person with a drug selling- or distribution-related conviction can have their asylum or refugee status revoked or their application denied, even if the individual can show that they would be in danger if they returned to their home country.²⁹³ In many cases, someone will be deported only after they have already served their sentence in a U.S. prison, resulting in double punishment. Nearly a quarter of those in federal prison for drug selling and distribution offenses are non-citizens,²⁹⁴ including 28.9% of those sentenced in 2016.²⁹⁵

Stereotypes about those who supply drugs also significantly impact U.S. immigration policy more broadly. For well over a century, non-citizens have been accused of causing problematic drug use in the U.S., by pushing them on innocent Americans (as previously discussed on p. 21). The fear of and stigma around people who sell drugs and the racist xenophobia of much of the anti-immigration movement are mutually reinforcing, and these narratives exert significant influence on public opinion and policymaking around both issues.²⁹⁶

Women

The 2012 National Survey on Drug Use and Health found that just 1.9% of female respondents reported selling illegal drugs in the past year, compared to 4.7% of male respondents.²⁹⁷ Women also represent a minority of those in prison for selling or distribution. Despite this, incarcerated women are much more likely than incarcerated men to be in prison for selling offenses. In 2015, 18.5% of women in state prison were sentenced for non-possession drug offenses, compared to 11.7% of men.²⁹⁸ Of women sentenced to federal prison in 2016, 31.6% were sentenced for drug trafficking.²⁹⁹ Women who are involved with drug selling and distribution are disproportionately represented at the lowest levels of distribution hierarchies³⁰⁰ and so are disproportionately impacted for many of the same reasons as other low-level sellers and distributors. (For more on the disproportionate criminalization of low-level sellers and distributors, see p. 40.)

Drug conspiracy charges are particularly damaging for women. Women who live with men involved in drug selling or distribution (such as their sons or partners) may be prosecuted as members of a drug conspiracy for conduct such as taking phone messages, collecting the mail, or simply living in a house or apartment where drugs are stored or exchanged. For a variety of reasons – including but not limited to domestic violence, economic dependence, or dependent immigration status – women may have difficulty removing themselves from a relationship or a household involved with drug selling or distribution, leaving them vulnerable to prosecution.³⁰¹ These challenges increase exponentially if the women have children whom they are reluctant to leave behind but unable to support financially on their own.³⁰² Mothers also face losing custody of their children due to alleged drug selling or distribution activity – which they may be engaging in to support their children in the first place.³⁰³

Ramona Brant – sentenced to life in prison in 1995 for conspiracy to possess and distribute cocaine – observed: “There are a lot of women who are in prison because of their association with a man. We may not necessarily be involved with the crime, but knowing about it is what makes us guilty. Just knowing that they’re dealing drugs will bring about a guilty conviction.”³⁰⁴ Brant never actually sold any drugs. Her abusive boyfriend did, however, and she had been present during the transactions. She had tried to leave the relationship, but her boyfriend retaliated by beating her brother and threatening to beat her mother if she did not return to him. In 2015, having served 21 years, Brant’s sentence was commuted by President Obama.³⁰⁵ Brant passed away in February 2018.³⁰⁶

Corvain Cooper's Story



“The judge said on the record that he was extraordinarily uncomfortable with giving a life sentence, without the possibility of parole, to a 34-year-old man with children.”

Corvain Cooper's mother, Barbara Tillis, used to travel five hours each way with her husband, daughter and granddaughter to visit him in the federal prison in Atwater, California. Now, she doesn't know the next time she'll see him. Cooper has been transferred away from his home state of California to a federal prison in Louisiana and the family can't afford the trip to visit him.

In January of 2013, Cooper was arrested in California and charged along with fifty other people for conspiracy to possess with intent to distribute 1000 kg of marijuana, along with several other offenses related to the financial side of the drug selling operation. Cooper was low down in the hierarchy of the operation, and hadn't made much money from his participation. But

conspiracy charges allow prosecutors to charge everyone involved in a drug supply operation for the same conduct, regardless of their individual role. This means that people near the bottom, like Cooper, may face the same penalties as those near the top. Cooper received a life sentence without the possibility of parole.

Cooper grew up in South Central Los Angeles. He loved fashion, and after high school he went to work at a clothing store. Around this time, he began getting into trouble, and between 1998 and 2012 he was convicted of a few low-level offenses, including petty theft, marijuana possession, and possession of cough syrup with codeine for which he did not have a prescription. He served nearly a year in state prison.

After he was released in 2012, Cooper worked hard to get his life back on track. He began focusing on his family, including his two young daughters and his passion for clothes. He opened a small clothing business in his old Los Angeles neighborhood, which his mother says became popular in the community.

But in 2013, federal agents showed up at Cooper's house and arrested him as he was about to drive one of his daughters to a sports competition. Everyone was confused. The family knew that Cooper had a tough time several years before, but they had watched him mature into a devoted father and pour himself into his clothing business. The arrest, it turned out, was related to a shipment of marijuana that the government had intercepted in 2009, years before the arrest. A childhood friend of Cooper's had testified that Cooper had been involved in the shipping operation, which was sending marijuana from California to North Carolina.

The prosecutor offered Cooper a plea deal of 10 to 20 years if he agreed to testify against others. People with minor roles in drug distribution operations are often threatened with severe sentences for conspiracy charges if they do not testify. Cooper chose to exercise his right to trial, believing that the charges he faced were unfair given his relatively minor conduct and low-level role in the hierarchy. Investigators estimated how much marijuana the network might have distributed over its entire history of operation, and then tried Cooper as if he were personally responsible for all of it. He was found guilty on October 21, 2013.

At sentencing, the prosecutor sought a life sentence for Cooper under the federal “three strikes law,” since Cooper had two previous possession charges for marijuana and codeine. Black people, such as Cooper, are disproportionately likely to be prosecuted for drug possession compared to white people. For this reason, three strikes laws have a particularly severe impact on their communities. Many people, like Cooper, have ended up in prison for life after a single nonviolent possession with intent to distribute charge, because of prior possession arrests.

His mother described how awful it was to be far away during the trial. “We weren’t there for the sentencing, and we weren’t there for anything. And none of us had money to go, so you know, we did the best we could. We sent him a suit to go to court in and tried to send whatever he needed, you know. But that was, you know, all that we could do.”

Cooper challenged the sentence as “cruel and unusual punishment”; forbidden by the Eighth Amendment of the Constitution, but the U.S. Court of Appeals for the Fourth Circuit and later

the Supreme Court denied his appeal. His 2015 petition to President Obama for clemency was denied.

Since then, voters in California have approved two measures, reducing many drug felonies like Cooper’s to misdemeanors and legalizing marijuana. Under the new laws, Cooper’s conviction for possession of cough syrup with codeine and his felony marijuana charge were both reduced to misdemeanors. These new laws gave Cooper and his lawyer fresh hope.

Early last year, Cooper went back to court to explain that his two prior felonies were no longer considered felonies and therefore should not be considered “strikes.” The court refused to reconsider his sentence. In July 2018, Cooper filed a new petition with the Supreme Court, which was recently denied. As of now, his only hope is that the president will grant him clemency and commute his life sentence.

“When they led him into the courtroom,” Patrick Megaro, Cooper’s lawyer said, “the judge said on the record that he was extraordinarily uncomfortable with giving a life sentence, without the possibility of parole, to a 34-year-old man with children on a case like this. Since then, we’ve been fighting and fighting and fighting and we’re hoping that somebody will see the madness in all of this.”

Interviews conducted September 7 and 18, 2018.

Who is Most Harshly Criminalized by Selling and Distribution Laws?, cont.

The lived experience of women who are involved with drug selling or distribution is complex, bound up with gender presentation, class, race, and other intersecting axes of identity. Some women involved with drug selling or distribution report feeling they are less likely than men to attract law enforcement attention, since they do not fit the stereotype of typically-male drug sellers. This is especially true for women who are some combination of white, conventionally feminine, and can pass as middle class. Some women who sell drugs perceive that customers appreciate that they seem less threatening and more discreet than men who sell drugs, and prefer to buy from them when possible.³⁰⁷ Others suggest that men prefer to hire women to play peripheral roles in their distribution networks because they are less likely to be suspected of drug-related activity.³⁰⁸ Criminologist Jamie J. Fader found that the male Philadelphia drug sellers that she interviewed liked to use women's places of residence to store their drug supply, because the men believed that women were less likely to attract police attention.³⁰⁹

By contrast, other women who sell drugs, especially women of color, feel that they stick out to law enforcement.³¹⁰ They report facing extremely harsh treatment if arrested, in part because they are being punished not only for their drug-related conduct but for deviating from behavior perceived to be gender-appropriate.³¹¹ Women who sell or distribute drugs are also vulnerable to gender-based violence, both from law enforcement and from male buyers or fellow sellers.³¹² In addition, women may be paid less than men who play comparable roles in the supply chain, mirroring the workplace discrimination of the legal labor market.³¹³



Rethinking the Criminalization of People Involved in Drug Selling or Distribution

The contrast between the professed purpose of our current system of supply-side criminalization and its actual impact is stark. It does not reduce problematic drug use or keep people who use drugs safer. It does not reduce violence. It does not reduce the availability of drugs. It disproportionately impacts the lowest-level people in the supply chain and does little to change the behavior of those at the top. It is a system built on a foundation of racism that continues to have a discriminatory impact on people of color and other marginalized communities.

The vilification of people involved with drug selling and distribution has been so successful that few people, even within the drug policy reform movement, have challenged the myriad injustices of this aspect of the drug war.

It is time to change this. It is time to rethink how we address the supply side of the drug economy with the same goals that drive our approach to drug use: reducing harms, promoting health and well-being, preventing violence, and repairing the damage done by the war on drugs. Policymakers, advocates, researchers and drug-involved people must together develop an evidence-based, equity-oriented policy framework for addressing illegal drug markets.

While working toward an approach to the supply side of the drug economy that keeps communities safe and healthy, we must remember that people who sell or distribute drugs are also part of these communities: they are parents, grandparents, children and friends who often cannot be distinguished from the other residents of the neighborhoods in which they live and work.³¹⁴ They are also experts on the functioning of the

supply side of the drug economy and the incentives that drive their choices. Their input will be crucial to any evidence-based policymaking process.

Below, we lay out the beginning of a reform agenda, starting with the kind of incremental reforms that advocates can start pursuing now. We then pose a series of key questions that we hope will spur further discussion and exploration. Answering these questions is central to pursuing more fundamental changes to the current system.

Our recommendations are based on three broad principles. First, to the maximum extent possible, society should deal with drug-involvement outside the failed apparatus of criminalization – and to the extent that drug selling and distribution remain part of the criminal justice system, they must be approached with a commitment to proportionality, racial equity, and due process. Second, we should focus on reducing the harms of drug distribution, rather than attempting to eliminate any and all drug market activity. Third, we must take seriously the discriminatory past and present of the criminalization of drug selling and distribution, while working toward reforms that both repair the damage already done and prevent further damage to communities of color and poor communities.

Policing and prosecutorial reform

District attorneys and police departments, as well as individual prosecutors and police officers, play an outsized role in criminalizing selling and distribution: they decide who to target for arrest, who to charge, and what to charge them with. Reform in this area will begin to address the disproportionate criminalization of people who are low-level sellers and distributors, live with poverty, sell to support their own drug use, or are people of color impacted by discriminatory enforcement practices. Policing and prosecutorial reform can also help to address the problematic ways that the system determines who to treat as a drug user and who to treat as a drug seller, as well as how the plea bargaining process disadvantages those who are lower down in drug supplying hierarchies.

Police departments must incentivize officers to focus on investigating situations that pose a bona fide threat to public safety, rather than simply making large numbers of arrests. This must involve, among other things, reviewing performance metrics and assessing staff culture. While it may at times be appropriate for police to devote attention to those

Rethinking the Criminalization of People Involved in Drug Selling or Distribution, cont.

at the very top of drug distribution hierarchies, in general they should deprioritize conduct related to selling and distribution alone. Instead, they should focus on enforcing laws against threats, coercion, or conduct that causes physical harm to another person. Laws against harassment, assault, homicide and so on give law enforcement ample grounds on which to arrest people – be they drug-involved or not – who pose a true threat to public safety.

Racial bias in law enforcement extends far beyond drug selling and distribution, but limiting discretion in drug selling- or distribution-related arrests and prosecutions – for example by narrowing what constitutes acceptable indicia of sale – can help reduce its impact. Law enforcement should develop guidelines that require police officers and prosecutors to treat drug cases as simple possession unless there is clear, objective evidence that a person was involved in selling or distribution. They must stop using indicia like drugs packaged in separate baggies and weight thresholds for personal use that are unreasonably low.

Better data collection – by both police departments and district attorneys – is also a crucial step toward reforming the current system. Timely, publicly available data about arrests and charging decisions in all drug cases, disaggregated by alleged role in the supply chain, race, ethnicity, gender, drug type, and other relevant factors, is vital to monitoring and addressing the role that bias plays in these decisions. Evidence suggests that a white person caught with the same amount of a drug as a person of color, and with similar indicia of sale, is more likely to be charged with possession for personal use while a similarly situated person of color may be more likely to be charged with possession with intent to distribute. Given the racist history of the enforcement of drug selling- and distribution-related laws, this claim is a critical one for further exploration. Currently, however, we lack the necessary data.

Advocates should work to elect and support district attorneys who commit to not prosecuting low-level selling- and distribution-related offenses, including: sharing or giving away drugs for free; subsistence selling; selling by people who are struggling to control their own drug use; drug-induced homicide charges; and conspiracy charges against low-level actors in drug-supplying hierarchies. Prosecutors must also stop the practice of deliberately overcharging drug-involved defendants to compel plea bargains or to coerce people into becoming confidential informants. In general, district

attorneys should decline to prosecute cases when someone's involvement in drug selling- or distribution-related activity was peripheral to the supply chain or when they are not part of a sophisticated drug distribution operation or involved in violence. If low-level actors are prosecuted at all, they should be prosecuted only for their specific conduct, rather than the conduct of the entire drug supplying network. Prosecutors should also avoid requesting criminal history-based sentencing enhancements, especially in cases when someone's criminal history is the result of cycles of drug involvement and when someone poses a limited threat to public safety.

Finally, both police departments and district attorneys should cooperate with harm reduction advocates, public health professionals, and social service organizations to develop specialized pre-arrest and pre-arrest diversion programs for people involved in the supply-side of the drug economy. These programs must also be accessible to people without going through the criminal justice system. Any diversion program for people involved in drug selling or distribution must be tailored to address the specific needs that someone is addressing through supply-side drug activity. For example, this could include education, job training or mentorship if they are selling because they can't access legal employment, or voluntary referrals to treatment or harm reduction services if they are selling to fund their own drug use.

While custom-designed programs for people involved on the supply side of the drug economy are vital, good models already do exist for programs that include at least some people who sell or distribute drugs. The Law Enforcement Assisted Diversion (LEAD) program in Santa Fe, New Mexico provides an opportunity for law enforcement to refer people who otherwise would be arrested for certain low-level drug offenses to intensive, trauma-informed case management. LEAD is based on a harm reduction model for all services, does not require abstinence, and includes no sanctions for continued drug involvement. While Santa Fe's LEAD program does exclude people who are believed to be "selling illicit substances for profit above a subsistence income," people who sell drugs to support their own drug use and survival at a subsistence level are explicitly designated as LEAD-eligible.³¹⁵

Sentencing Reform

Any criminal sanctions for drug selling or distribution should be proportionate to the real damage caused by someone's conduct. Any sanctions must reflect the fact that in most

cases it is not sellers or distributors who cause the harms of chaotic drug use. At both the federal and state levels, policymakers should review and revise all sentencing policies that result in disproportionate punishments for supply-side drug market activity, especially for low-level actors. This includes reforming criminal history sentencing enhancements, expanding safety valve provisions, and eliminating mandatory minimum sentences so that judges may make decisions on an individualized basis.

Sentencing reform advocates have already made some headway in this area. The federal First Step Act, signed into law in December 2018, reduces (from life to 25 years, and from 20 to 15 years) the enhanced mandatory minimum sentences imposed on people convicted of multiple selling- and distribution-related offenses. For those convicted of a first time selling or distribution offense or a subsequent law violation involving a small amount of a drug, it cut the mandatory minimum sentence in half, from 10 years to 5 years. It also retroactively applies the reforms from the Fair Sentencing Act of 2010 (which reduced the crack and powder cocaine sentencing disparity from 100-to-1 to 18-to-1 and is discussed further on p. 34). The First Step Act also expands safety valve eligibility, giving judges more leeway to impose sentences below the mandatory minimums. Further expansion of safety valve eligibility or – better yet – elimination of mandatory minimum sentences altogether would allow judges to consider an individual’s circumstances and the severity of their specific conduct before sentencing.

California’s Repeal Ineffective Sentencing Enhancement (RISE) Act is a state-level example of sentencing reform that mitigates some severely disproportionate sentences for people involved in supply-side drug market activity. Signed into law in October 2017, the RISE Act amends a section of California’s criminal code that added three years to sentences for people convicted of certain nonviolent drug offenses if the person had previously been convicted of a similar offense, an enhancement that affected many with low-level sales cases. The RISE Act will meaningfully reduce the degree to which low-level sellers and distributors are over-criminalized in California, while mitigating the discriminatory impact of criminal history-based sentencing.

Advocates can also push back on drug-induced homicide laws and other criminalization-based responses to the current overdose crisis, such as increasing penalties for fentanyl distribution. In 2016 Senator Kelly Ayotte introduced an

amendment to an unrelated bill that would have dramatically reduced the weight thresholds triggering mandatory minimum sentences for those who sold or distributed any product containing fentanyl, setting the thresholds so low that they would have almost certainly ensnared users as well. If the amendment had passed, selling 0.1 grams of fentanyl would have received a ten-year mandatory minimum sentence – the same sentence as 50 grams of methamphetamine, 100 grams of PCP, 280 grams of crack cocaine, 5000 grams of powder cocaine, or 1000 grams of heroin. Thanks to the work of advocates, the amendment never came up for a vote.

Those pushing defelonization initiatives in their states can engage with supply-side reform in two ways. These initiatives typically aim to reclassify drug possession from a felony to a misdemeanor; to date, no state has defelonized any low-level selling offenses. In jurisdictions where it is politically viable, advocates working on defelonization should push for low-level selling- and distribution-related offenses to be reclassified as misdemeanors as well. Even advocates working to just defelonize possession, however, can incorporate measures to reduce the over-reach of supply-side criminalization.

Over the past several years, states such as California, Oklahoma, Utah, Connecticut, Alaska and Oregon have reclassified drug possession from a felony to a misdemeanor. In most of these states, no maximum weight threshold was set to qualify for a misdemeanor possession charge; Oregon, however, set the maximum weight threshold for defelonization extremely low (for example, one gram of heroin or two grams of cocaine). To keep as many drug-involved people as possible from being prosecuted for felony drug offenses, thresholds for defelonization of possession – where they exist – must be set as high as possible and reflect realistic understandings of how much of a drug a regular user is likely to have on hand. Otherwise, people who use drugs – even those who were not involved in selling – will continue to get charged as sellers with felonies, despite the defelonization of possession.

While forward-looking reforms like those outlined above are essential, prisons are already full of people serving decades-long sentences for minor selling- and distribution-related conduct. Retroactive resentencing and offense reclassification is a vital component of any supply-side criminal justice reform agenda. Proposition 64, which legalized marijuana in California in 2016, is an example of how such reforms can be built into broader drug policy and criminal justice reform legislation. In addition to legalizing marijuana possession,

Rethinking the Criminalization of People Involved in Drug Selling or Distribution, cont.

Prop. 64 reduced penalties for other marijuana-related law violations, including non-possession offenses. Eligible offenses include cultivation of marijuana, possession with intent to sell marijuana, and sales or transport of marijuana. Possession with intent to sell marijuana, which was formerly a felony punishable by up to three years in prison, became a misdemeanor in most circumstances, punishable by a combination of drug education and community service. Prop. 64 also provided a mechanism for people with qualifying prior convictions to petition a court to have their sentences reduced or reclassified to bring them in line with Prop. 64 reforms.³¹⁶

We lack vitally important data on who is ending up in prison for these offenses and what role they played in drug supplying hierarchies. While some publicly available data at the federal level does disaggregate those sentenced for supply-side drug offenses by their role in the supply chain, these data are the exception rather than the rule, and are often outdated by the time they are made available. They also do not break the data down further to examine the race, ethnicity and gender of those incarcerated for their role at the various levels of the supply chain, or to explore the length of sentence each group received for comparable conduct.

Publicly available state data is often abysmal, failing even to separate those sentenced for possession from those sentenced for sales-related offenses. No state makes data available on people incarcerated for selling- and distribution-related conduct disaggregated by their role in the supply chain, much less data cross-tabulating this information by demographic details. To lay the groundwork for evidence-based evaluation and reform, state and federal court and prison systems must make more comprehensive data available on who is in prison for drug selling- or distribution-related offenses.

Immigration reform

Selling- and distribution-related offenses result in particularly severe consequences for those without U.S. citizenship. These consequences are in many cases vastly disproportionate to the actual harm caused by someone's conduct and can have serious impacts on an individual, their family, and community when they result in denial of legal status or deportation. Human Rights Watch's report, *A Price Too High: U.S. Families Torn Apart by Deportations for Drug Offenses*³¹⁷ highlights this issue and provides the foundation for DPA's recommendations below.

The immigration system, like the criminal justice system, currently lumps a broad range of drug selling- and

distribution-related conduct together, under the assumption that any involvement at all on the supply side of the drug economy means that an individual is a threat to public safety and should not be permitted in the U.S. An Attorney General opinion issued in 2002 states that for immigration purposes, "unlawful trafficking in controlled substances presumptively constitute 'particularly serious crimes' [...] and only under the most extenuating circumstances that are both extraordinary and compelling would departure from this interpretation be warranted or permissible."³¹⁸

The federal government must enact reforms to the immigration system that ensure the totality of an individual's conduct and circumstances are considered in immigration-related decisions. Decision-makers must be empowered to assess drug selling- or distribution-related activity on a case by case basis while determining eligibility for U.S. visas, permanent residency, citizenship or deportation. These decisions must be based on whether an individual poses a true threat to public safety, instead of assuming that people involved in drug selling or distribution are inherently dangerous or violent. Any criminal justice contact must be weighed against the negative effects of deportation or denial of status on the individual, their family, and their community. The federal government should also implement a "statute of limitations" in the immigration system, requiring that convictions for selling- and distribution-related offenses that took place a certain number of years ago do not trigger deportation or mandatory detention, absent other conduct suggesting that an individual poses a current threat to public safety.

Currently, people without U.S. citizenship are not able to fully benefit from many aspects of well-meaning criminal justice reform. Even if a past conviction has been expunged, pardoned, vacated or is otherwise no longer recognized by the jurisdiction where it occurred, it may still be considered a conviction for the purposes of immigration decision-making. All branches of government must work together to ensure that non-citizens do not face immigration consequences for criminal justice conduct that is no longer recognized in the jurisdiction where it occurred.

State and local governments must ensure that any diversion programs they develop do not require guilty pleas from individuals wishing to participate, since for non-citizens guilty pleas may trigger deportation, mandatory detention, and other immigration consequences, even if an individual successfully completes the diversion program. Local law

enforcement and prosecutors must also consider potential immigration consequences while engaging in plea negotiations with someone who is a non-citizen, or when considering a non-citizen's application for post-conviction relief. Generally, advocates and policymakers should consult with immigration policy experts and consider the potential immigration consequences of any reform for those involved with drug selling or distribution, to ensure that non-citizens are not excluded from its benefits.

Addressing collateral consequences

Reducing – and when possible, eliminating – collateral consequences for criminal justice system involvement helps to ensure that people who have been in the system are able to meet their needs and those of their families through legal labor market participation. This includes eliminating restrictions on obtaining professional or business licenses for those with selling and distribution convictions, absent a specific public safety concern arising out of the particulars of an individual's case.

Policymakers must also restore the eligibility of people who have been convicted of supply-related offenses for the Supplemental Nutrition Assistance Program (SNAP, colloquially known as food stamps) and Temporary Assistance for Needy Families (TANF, short-term cash benefits). Currently, people with one conviction are ineligible for two years and ineligible for life after a second conviction.³¹⁹ Any restrictions on who can live in public housing must be based on actual evidence that a person is likely to pose a safety threat to the community; currently, blanket bans for any drug involvement are the norm.³²⁰

Similarly, the child welfare consequences of drug selling- or distribution-related charges must be based on actual evidence that a child's safety is at risk, rather than on the assumption that no one who has ever been charged with these offenses is fit to parent. This is especially crucial in light of the fact that some women, many of whom are caregivers, are criminalized for drug selling or distribution due to a partner or family member's involvement, as discussed on p. 41.

In addition to removing the above-noted barriers, policymakers and criminal justice system actors must support robust re-entry programs to ensure people leaving prison are able to access affordable housing, meaningful, living wage employment, and other support programs as they transition back into their communities. The more successful people leaving prison can be at achieving a

sustainable and satisfying existence through legal channels, the less likely it is that they will become involved in drug selling or distribution post-release.

Reducing the harms of drug distribution

Adopting a harm reduction approach to the supply side of the drug economy means two things: first, it means ensuring that the criminalization of selling- and distribution-related activity does not get in the way of existing harm reduction initiatives aimed at people who use drugs, and that retail-level drug sellers are fully engaged in keeping their customers safe.

Second, it means developing policies that reduce the harms caused by supply-side drug market activity, rather than focusing only on the elimination of drug markets. Absent the legal regulation of drugs, illegal drug markets are here to stay – and while we should ultimately consider legal regulation as the most comprehensive way to eliminate harms related to the illegal market,³²¹ in the meantime a harm reduction approach to the supply side of the drug economy can encourage these markets to operate as safely as possible for both drug-involved people and those who share communities with them.

To ensure that the criminalization of selling- and distribution-related activity does not get in the way of existing harm reduction policies aimed at people who use drugs, state governments should expand their 911 Good Samaritan laws to decriminalize selling- and distribution-related offenses at the scene of an overdose. This is necessary to ensure that fear of arrest for selling and distribution does not undercut the life-saving intent of these laws. Vermont's 911 Good Samaritan law offers a good model: it provides immunity at the scene of an overdose for any drug-related offense, including selling and distribution.³²²

While anecdotally it is clear that some people involved in drug selling and distribution are already involved in harm reduction initiatives, stigma and harsh criminalization currently get in the way of unlocking the full potential of drug sellers as harm reductionists on a broad scale. Public health officials and service providers who work with drug-involved people should provide retail-level drug sellers with the resources they need to educate their customers about drug effects and overdose risk; distribute sterile drug equipment such as syringes, cookers and pipes; provide naloxone to their customers; and disseminate drug checking information and supplies. This work can be aided by federal and state governments repealing criminal penalties for possession of drug checking equipment and drug paraphernalia, and by creating funding streams for the distribution of sterile supplies and naloxone.

Kenneth Mack's Story



“It’s really bad, that they go to the extent that they do to get a bust.”

Until Kenneth Mack entered a long-term methadone treatment program, the only thing he cared about was getting his next bag of heroin. He would do almost anything not to feel the sickness of withdrawal. His struggles to control his drug use had left him isolated from his family and friends, but methadone opened a new chapter in his life.

Mack was introduced to heroin at the discos in New York in the 1970s. He started going to enjoy the freedoms the discos offered, a place where people of different backgrounds could come together and have a good time. “I was introduced to cocaine, heroin, and things of that nature in the club. At first it was just fun, but after a while it was an area to escape from the realities of everyday living,” he explained.

Selling drugs helped him to pay for the drugs he needed to self-medicate for mental health issues related to his rocky childhood. Mack’s mother is Jewish, and his father is African American. In the Brooklyn projects in the 1960s when he was growing up, it wasn’t easy to be biracial. “On our way to school, we used to get ridiculed,” he explained, “we used to be called zebras, have eggs thrown at us, rocks, all types of stuff.”

When Mack was six years old his parents split up, and his mother was left to raise him and his siblings on her own. As a teenager, Mack got a job at a bead shop to help support his family. He made only minimum wage, but it helped supplement his mother’s low income.

When he moved out on his own as a teenager, he wasn’t able to support himself on minimum wage. He hadn’t completed high school, so better paid work was hard to find, and he started selling drugs to make ends meet. He continued to help out his mom and siblings as well. In his early twenties, he was arrested and sentenced to two-and-a-half to five years in prison. He left prison committed to piecing his life back together. He had earned his GED, and managed to get a job for the neighborhood work program. He later became a site supervisor.

Mack eventually relapsed and began using heroin again. He had tried taking prescription psychotropic medication to help with his mental health issues, but they made him feel like a zombie and like he couldn’t take care of himself effectively. Heroin had fewer unpleasant side effects, and he was completely reliant on it for his daily functioning.

“I was using heroin anywhere from ten bags to 20 bags a day. That may sound insane, but the craving for it is outrageous – because you want to feel normal.” He describes how withdrawal led to unbearable vomiting, diarrhea, and hot and cold flashes. He remembers feeling like he couldn’t tolerate being in his own skin.

Mack relied on heroin for years, until he connected with a methadone treatment program.

“It keeps you from going out there and having to steal, sell drugs, or anything else to get high. It’s really hard to explain because I can hold a job now, but with active addiction it was hard to hold a job because you always had to be after the heroin.” He now works part time and has reconnected with his family.

He travels by bus and then train, one hour each way, from the Bronx to his methadone program in Brooklyn, which dispenses the medication to him each morning. He goes every day except Sunday, when the clinic is closed. For his Sunday dose, the clinic sends him home with a take-home bottle of tablets on Saturday. On Mondays, he brings the bottle back to the clinic.

Police routinely hang out in the area around the clinic, stopping and frisking patients. They say that this is necessary to stop people from selling their methadone on the street. But this police preoccupation with criminalizing people who might be selling drugs is actually getting in the way of people who use drugs – like Kenneth – accessing effective treatment. Treating everyone accessing the methadone program as potential drug sellers contributes to the ongoing stigmatization of methadone patients, turning many off the idea of seeking this life-saving treatment.

Mack dreads Mondays especially, since he has an empty methadone bottle with him. He worries the police will use this as evidence that he’s been selling. “They make me take my socks off in the street to see if I have something in my shoes. And I mean it’s really bad. They – the only thing they don’t do is have me take my pants off, you know? And that is – it’s just bad. It’s really bad, that they go to the extent that they do to get a bust.”

Some days, his anxiety about interacting with the police is so severe that he skips going to the program altogether. He feels it’s only a matter of time before it’s his turn to be arrested on a selling-related charge. “I am supposed to go every day but I just sometimes don’t go because I don’t want it to be my turn.”

Interview conducted September 23, 2018.

Rethinking the Criminalization of People Involved in Drug Selling or Distribution, cont.

Harm reduction offers a powerful framework for policy approaches to the subset of drug markets that are associated with violence. Traditional law enforcement responses to these markets have failed to decrease their volatility, and may be making them more dangerous.³²³ As many drug markets operate largely violence-free, however, policy interventions should aim to guide violent drug markets to operate more like those that are nonviolent. By focusing on the specific characteristics of specific drug markets that may be driving violence – rather than assuming that drug markets must be eradicated altogether to reduce violence – policymakers and advocates stand a much better chance at improving public safety.

Researchers Jonathan Caulkins and Peter Reuter, for example, propose that if the police identify a particular drug supplier who is known to engage in violence, they should offer that individual incentives to behave in a less violent way rather than immediately prosecuting them. “Sellers,” they observe, “are primarily motivated by something other than thwarting harm reduction.” They speculate that “there are ways of manipulating the market into achieving more of what law enforcement wants (less harm) without inducing pushback by the market.”³²⁴ More research is needed to develop and evaluate evidence-based best practices about what these approaches could look like.

While we are aware of no community-based violence reduction programs aimed specifically at people who sell and distribute drugs, there are analogous programs that work to reduce other types of violence. Such programs offer instructive models for the kind of approaches that may more effectively address supply-side drug market violence. Advance Peace, for example, is an organization dedicated to ending cyclical and retaliatory gun violence in urban neighborhoods by investing in the development, health and wellbeing of those at the center of these dynamics. Through their Peacemaker Fellowship program, they provide responsive developmental services to young adults identified as most likely to be perpetrators and/or victims of gun violence, with the goal of connecting these youth to culturally responsive and empathetic human, social and economic opportunities. They also hire formerly incarcerated people as street outreach leaders who intervene in conflicts, broker social services and steer individuals away from violence.³²⁵ Their programs developed out of the Richmond,

California Office of Neighborhood Safety and received a positive evaluation from the National Council on Crime and Delinquency.³²⁶ While a great deal of further study is needed to assess what kinds of programs are the most effective at reducing drug market-related violence, models like this offer a promising place to start.

Some have speculated that the emergence of new technologies such as cell phones and online platforms for drug transactions have reduced the prevalence of drug market-related violence by making transactions more predictable and less reliant on foot traffic, and by providing online forums where buyers can exchange information about reliable sellers and the potency of available products.³²⁷ Some online drug markets are already involved in harm reduction by forbidding the sale of substances that have a “short history of human consumption” or incentivizing vendors to sell naloxone, as discussed on p. 15.³²⁸ Policymakers and researchers should continue to explore the potential of online drug markets to reduce the harms of drug distribution.

Education and destigmatization

The stigmatization of people who sell or distribute drugs shows little sign of weakening and may even have worsened in the context of the current overdose crisis. But until we recognize that people who sell drugs are people – and often not the people that stereotypes would suggest – it will be challenging to gain support for changing policy in this area. The Drug Policy Alliance is committed to advocacy and communications campaigns that destigmatize people who sell or distribute drugs, while teaching people about the truth behind the stereotypes. We must also educate policymakers and the public about the nuanced and diverse reality of supply-side drug market activity, as well as about the failure of the current system of criminalization to keep communities healthy and safe.

Demonstrating that supply-side approaches do not reduce – and may actually increase – the harms of drug use is especially urgent. Absent widespread understanding of what actually does put people’s well-being at risk, the notion that people who sell or distribute drugs are to blame for overdoses and other harms of drug use continues to flourish. Along with assumptions about the relationship between drug markets and violence, this is a particularly pernicious barrier to reform.

We cannot develop effective approaches to the supply side of the drug economy without evidence – and existing research in this area is riddled with gaps. In some cases, it also reflects researcher biases and is grounded in many of the same stereotypes that inform our failed system of criminalization. Advocates and policymakers must work with researchers to pursue research on drug markets that overcomes common biases and fills gaps in the existing literature, and government agencies must fund this kind of policy-relevant research.

Researchers tend to focus on the most conspicuous drug markets: those that are associated with violence and those that take place outdoors, in urban locations, and involve buyers and sellers who don't know each other outside of the sales relationship. They also tend to draw their samples from drug markets that resemble those that the researchers already assume exist. If they assume that violence is an inherent component of drug markets, for example, they may look for drug markets to study by examining areas where violent crime rates are high. If they assume that drug selling and distribution take place primarily in communities that are poor, urban and non-white, they are likely to look for drug markets to study in such neighborhoods.³²⁹

Markets that are the most stereotypical, obvious and accessible to researchers end up over-sampled in the literature.³³⁰ These are the same markets that are already over-represented in the criminal justice system, the media, and political discourse, which perpetuates the stereotypes that drove researchers to produce biased research in the first place.³³¹ Nonviolent drug markets, those that take place indoors, those outside of urban areas, and those that exist primarily within social networks remain understudied.³³²

We especially need more comparative research on drug markets. Ross Coomber calls for “a research approach that starts from expecting difference [between drug markets] rather than attempting consolidation.”³³³ Drug markets are not monolithic, and we can learn a lot from exploring the effects of their differences on how they operate. Researchers should explore the similarities and differences between a wide range of drug markets, including but not limited to: online and offline drug markets; geographically variable markets; historical analyses of drug markets over time; drug markets serving different demographics of clientele; indoor and outdoor drug markets; markets where buyers and sellers don't know each other outside of the sales relationship and

markets that are dominated by social networks; markets that are more organized and those that are more casual or smaller scale; markets that take place in communities where sellers and/or buyers live as well as those where actors travel from elsewhere to engage in transactions; markets for a variety of different types of drugs; and markets in which buyers are able to access relatively reliable products and those that are more unpredictable.

If reducing the violence associated with some drug markets is a central policy goal, studying nonviolent drug markets is especially urgent: Ross Coomber calls for “data and analyses that focus not on why violence does occur [in some drug markets] but on why it doesn't [in others].”³³⁴ Researchers who examine drug markets that are associated with violence often do not explore in detail whether or not the violence observed is driven solely or primarily by drug activity. In some cases, the examined areas would likely experience fairly high rates of violence even absent drug activity.³³⁵ A more nuanced examination of the factors that drive drug market volatility – without assuming an a priori link between drug market activity and violence – is an urgent priority, along with research on and evaluation of programs designed to guide more volatile drug markets to take more stable forms.

Sociologists Waverly Duck and Anne Rawls observed that while much of the existing literature focuses on drug markets in large cities, this research had little relevance to the small city drug market where they conducted their research. They note that “the lack of anonymity, inability of dealers to choose better locations, and their long-term resident status” all influenced the form that their small city drug market took, with significant implications for policymaking.³³⁶ In addition to drug markets in both small and large cities, researchers should explore other forms of geographical variability, including drug markets that operate in rural areas, in different regions, and online.

While assessing the actual demographics of those who participate in supply-side drug market activity presents significant methodological challenges, we need better information about who participates and their roles in the supply chain. Researchers should pay particular attention to the experiences of non-Black, non-Latinx people of color, as well as LGBTQIA+ and non-binary people – groups who are all but absent from the existing literature. Researchers can also support advocates and policymakers by comprehensively examining the ways that people who sell drugs are already

Rethinking the Criminalization of People Involved in Drug Selling or Distribution, cont.

involved in harm reduction initiatives, evaluating the impacts of these activities, and analyzing existing barriers to expanding successful programs and practices.

Little research currently exists on the impact of harsh supply-side criminalization on overdose rates. Preliminary evidence suggests that the current system may be undermining 911 Good Samaritan laws³³⁷ and increasing overdoses by removing trusted sellers from the market,³³⁸ but more research is urgently needed in this area, particularly given the magnitude of the current crisis.

Researchers should also explore the drug quantities that people who use drugs can be reasonably expected to have in their possession (taking into account geographical variation) to provide an evidence base for the creation of realistic weight thresholds when required to make statutory distinctions between people who possess drugs for personal use and those who are involved in drug selling and distribution. While such clear cut distinctions between people who use or sell drugs should be avoided when possible (as discussed on p. 36), ensuring that existing weight thresholds are realistic and reflect actual patterns of drug use can minimize the likelihood that people who possess drugs solely for personal use will be criminalized under laws against drug selling and distribution.

Researchers should further explore the role that economic and social conditions play in contributing to people's decisions to participate in drug markets, and the kinds of social policy that can impact these decisions. Further study is also needed on the types of policies and incentives that actually work to get people out of drug selling or distribution in a sustainable way.

Finally, researchers and policymakers should include people who are or have been involved in drug selling- and distribution-related activity in every step of their research and policymaking processes. People with selling- and distribution-related experience are experts in how drug markets function and the incentives and pressures that drive their choices, and their involvement will be crucial to crafting effective policy solutions to drug market harms while minimizing unintended consequences. Researchers and policymakers should recruit people with experience working in as wide a range of drug markets as possible to develop policies that are relevant to an array of different supply chains.

Where to Begin

For police and prosecutors:

- In most cases, police should deprioritize arresting people for conduct related to selling and distribution alone. Instead, they should focus on enforcing laws against threats, coercion, exploitation, corruption and conduct that causes physical harm to another person.
- Police departments should review performance metrics and address issues that may encourage officers to pursue a large number of low-level sales and distribution arrests.
- Prosecutors should decline to prosecute certain selling- and distribution-related offenses, such as: sharing or giving away drugs for free; subsistence selling; selling by people who are struggling to control their own drug use; drug-induced homicide charges; and conspiracy charges against low-level actors in drug supplying hierarchies.
- Prosecutors should not prosecute family members of people who sell drugs for conduct that does not constitute substantive involvement in drug selling or distribution, such as witnessing drug transactions or taking phone messages related to drug selling.
- Prosecutors should treat drug cases as possession for personal use unless there is clear evidence that a person was involved in selling or distribution for extensive financial gain.
- Prosecutors should not seek to enhance sentences based on prior drug-related criminal justice contact.
- Prosecutors should stop overcharging drug-involved defendants to compel plea bargains or to coerce people into becoming confidential informants.
- Prosecutors should take potential immigration consequences into account during plea negotiations and while considering applications for post-conviction relief.
- Police and prosecutors should collect and publish data on arrest, charging and sentencing decisions in all drug cases, disaggregated by alleged role in the supply chain, race, ethnicity, gender, drug type, and other relevant factors.

- Police, prosecutors and defense attorneys should collaborate in the development of pre-arrest and pre-arrest diversion programs aimed specifically at people who sell or distribute drugs. They must make every effort to minimize the potential immigration consequences of participation so that non-citizens are not further harmed or excluded from these programs.

For local, state and federal policymakers:

- Review and revise all sentencing policies that result in disproportionate punishments for people convicted of drug selling- or distribution-related offenses. This includes reforming criminal history sentencing enhancements, expanding safety valve provisions, and eliminating mandatory minimum sentences so that judges may make decisions on an individualized basis.
- Enact defelonization initiatives that reclassify low-level selling- and distribution-related offenses as misdemeanors.
- In jurisdictions with laws that specify weight thresholds for possession, review and revise thresholds to ensure they take into account the amount of a drug that a heavy user could be reasonably expected to have in their possession. Involve people who use drugs in setting these weight thresholds. Remove statutory presumptions that amounts over the weight threshold are evidence of a supply offense.
- Ensure that all sentencing reforms are retroactive, allowing for resentencing or offense reclassification for people in prison for selling- and distribution-related conduct, as well as for those who have already served their sentences.
- Repeal criminal penalties for possession and distribution of drug paraphernalia to allow for the distribution of sterile supplies and the expansion of drug checking programs.
- Create funding streams for the distribution of naloxone, drug checking equipment, and sterile drug paraphernalia, and include people who sell drugs in the distribution of these materials.

Where to Begin, cont.

- Expand 911 Good Samaritan laws to decriminalize selling- and distribution-related offenses at the scene of an overdose, to encourage bystanders to call 911 without fear of criminalization. Publicize these laws widely to maximize their effectiveness.
- Repeal drug-induced homicide laws.
- Amend federal immigration laws and practices to ensure that decision-makers in all immigration-related proceedings assess a person's case on an individualized basis, regardless of criminal justice contact. Decision-makers should assess the actual harm caused by a person's specific conduct, rather than relying on stereotypical, homogenized understandings of people who sell drugs.
- Amend federal immigration law to limit the amount of time that immigration decision-makers can take past criminal justice conduct into account in their deliberations.
- Amend federal immigration law to prohibit decision-makers from taking into account convictions that have been expunged, sealed, pardoned or vacated, or are otherwise not recognized by the jurisdictions where they occurred.
- Consult with immigration law experts when pursuing any criminal justice reforms, to ensure that those without citizenship are able to benefit from these reforms to the maximum extent possible.
- Repeal laws, revise policies, and eliminate practices that obstruct access to housing, employment, education, professional licensing, credit and financial aid on the basis of a person's criminal record.
- Provide funding for re-entry programs that support people leaving prison, helping them access stable housing, legal employment, and social welfare programs.
- Policymakers should include people who are or have been involved in drug selling- and distribution-related activity in every step of the policymaking process.

For service providers:

- Provide retail-level drug sellers with the information they need to: educate themselves and their customers about drug effects and overdose risk; distribute sterile drug paraphernalia such as syringes, cookers and pipes; provide naloxone and naloxone training to their customers; and disseminate drug checking information and supplies.
- Develop community-based mentoring programs led by former drug sellers and distributors, to encourage safer selling practices and violence reduction in markets where violence is an issue.

For advocates, journalists and other cultural influencers:

- Learn about the racialized and stigmatizing history of media and pop culture representations of people who sell and distribute drugs, while holding each other accountable for disseminating more accurate, nuanced representations.
- Educate policymakers about the nuanced and diverse reality of supply-side drug market activity, as well as the failures of the current system of criminalization.

For researchers:

- Pursue comparative research on drug markets, including:
 - Online and offline drug markets.
 - Geographically variable markets, including those in urban, suburban and rural areas, as well as in different regions of the country.
 - The way that drug market dynamics have shifted over time in response to changing demand, policy environments, and other factors.
 - Drug markets serving low-, middle- and high-income clientele, and differently racialized clientele.
 - Indoor and outdoor drug markets.
 - Markets where buyers and sellers don't know each other outside of the sales relationship, as well as markets that are dominated by social networks.

Markets that are more organized (e.g. involving established, hierarchical organizations) and those that are more casual or localized.

Markets that primarily involve youth buyers and/or sellers.

Markets that exist in the communities where sellers and/or buyers live compared to markets where people travel from elsewhere to engage in transactions.

Markets involving a variety of different types of drugs.

Markets in which individuals are able to access relatively reliable products and information and those that are more unpredictable.

- Examine the factors that lead some drug markets to involve violence while others operate nonviolently, and use this research to participate in the development and evaluation of programs designed to guide more volatile drug markets to take more stable forms.
- Attempt to gather further data on the demographics of people involved on the supply side of the drug economy, across multiple roles and levels in the hierarchy when possible. Current research gaps in need of particularly urgent attention include the experience of non-Black and non-Latinx people of color; LGBTQIA+ and non-binary people; and women across multiple ages, classes and racial groups.
- Assess the drug quantities that people who use drugs can be reasonably expected to have in their possession, taking into account geographical variations (urban versus rural, as well as regional differences) and use experience (e.g. level of tolerance), to provide an evidence base for the creation of realistic weight thresholds when necessary.
- Research the ways that people who sell drugs are already involved in harm reduction initiatives, evaluate the impacts of these activities, and analyze existing barriers to their further involvement.
- Continue to research the impact of law enforcement crackdowns on people who use drugs and retail-level drug sellers, including the possible links between such crackdowns and spikes in overdose rates.
- Conduct more thorough research on the types of policies and incentives that actually work to get people out of drug selling or distribution in a sustainable way.
- Further explore the role that economic and social conditions play in people's decisions to participate in drug markets, and the kinds of social policies that can impact these decisions.
- Include people who are or have been involved in drug selling- and distribution-related activity in every step of the research processes.

Looking Ahead: Key Questions for Reformers

While there are many ways to begin reforming our approach to the supply side of the drug economy, significant questions remain about what a comprehensive reform agenda in this area should look like. Beyond the incremental policy changes outlined above, we must fundamentally rethink the way that the criminal justice system categorizes and responds to people who sell and distribute drugs. Below, we lay out nine key questions that drug policy reformers must grapple with going forward. We hope that they become a starting point for future conversations involving policymakers, advocates, community groups, and people who use and sell drugs.

Absent threats, coercion, exploitation, corruption and conduct that causes physical harm to another person, should volitional behavior between adults related to drug selling or distribution be sanctioned? If so, on what basis?

We need to build a system that takes into account what a particular person actually does and what harms they actually cause when assessing what sanctions, if any, are appropriate. Coercive behavior, physical harm to others, and adults enlisting minors to assist with selling and distribution-related activities likely require some sort of intervention. Knowingly cutting drugs with a harmful product or knowingly misrepresenting the content or potency of drugs to customers may also be an issue. However, we must recognize how challenging it is for any individual who works on the lower tiers of a supply chain to get accurate information about the composition of an illegal product. We must also explore whether drug conspiracy laws are necessary for capturing any of this truly problematic behavior, and (if they are necessary at all) how they can be reformed to minimize their vulnerability to abuse.

To the extent that it is necessary to do so, how should decision-makers determine whether someone possesses drugs solely for personal use or whether they are also involved in selling or distribution?

On p.28, we argue that the way the criminal justice system currently decides who is involved in drug selling or distribution and what their role is in the hierarchy is nonsensical and results in severely unjust outcomes. It is clear that drug quantity, drugs packaged in separate baggies, or the presence of scales or cash are problematic when used as the sole indicators of sales-related conduct, and that they are easily abused by law enforcement. Is it necessary for the system

to make this distinction at all? Or should we work toward a system that focuses more on someone's harmful conduct – their involvement in violence, for example – and not on the specific nature of their drug involvement? To the extent that the system should assess whether someone is involved in drug selling or distribution, this assessment must be based on fair indicia of sale. The burden must be on law enforcement to clearly demonstrate that an individual does not possess drugs solely for their personal use before pursuing a sales-related arrest or prosecution.

To the extent that drawing a distinction between low-level sellers and distributors and other sellers and distributors may be strategically necessary when pursuing reform, how should this determination be made?

It is both empirically challenging and ethically sticky to draw lines between two (or more) levels of involvement with the supply-side of the drug economy. However, drawing a distinction between low-level sellers or distributors and those who operate higher up in the hierarchy may be strategically necessary when pursuing reforms. We must ensure that to the extent that we must draw these lines, we are drawing them in ways that are as accurate and fair as possible. The amount of a drug that someone possesses, as we have seen, is not at all related to their place in the hierarchy. More accurate metrics are necessary, perhaps including such factors as whether an individual was involved in profit-sharing in the supply network or how many people they supervise.

To the extent that proportionate punishment may be appropriate for some distribution-related activity, how should we assess proportionality?

The severity of punishment for drug selling- and distribution-related activity originated in part with the belief that people who sell drugs are more or less murderers: as the 1951 New York Times story said, drug sellers were thought to kill “hundreds of people, slowly but surely.”³³⁹ This is an extremely inaccurate assessment of the harms caused by people involved in drug selling or distribution, and the penalties that flowed from this way of thinking are vastly disproportionate to the actual harm caused in most cases. But to the extent that some people who sell or distribute drugs do cause harm, how should we assess its severity to determine what consequences would be proportionate and appropriate?

What factors lead some drug markets to involve violent interactions, while others operate nonviolently?

As noted above, the limits of existing research mean that, while we know some drug markets involve violent interactions and others operate nonviolently, we do not have a comprehensive understanding of the factors that determine these differences. Scholars hypothesize that a variety of characteristics of drug markets may influence their relationship to violence, including: the proximity of the market to international borders,³⁴⁰ gang dynamics (or lack thereof) within the distribution network,³⁴¹ the age of the participants,³⁴² whether drugs are typically transported in bulk or in smaller amounts,³⁴³ the size of the community where drug selling is taking place,³⁴⁴ the value by volume of the drugs sold, the intensity of law enforcement, whether buyers and sellers come from the neighborhood or municipality where they are selling or whether they travel from elsewhere to conduct transactions,³⁴⁵ the availability of weapons, and the overall stability of the market.³⁴⁶ Some have speculated that the emergence of new technologies such as cell phones and online platforms for drug transactions have reduced the prevalence of drug market-related violence by making transactions more predictable and less reliant on foot traffic.³⁴⁷

We need more comparative research on drug markets to tease out the role of each of these factors. Advocates must then work to devise appropriate and effective policy responses to reduce drug market-related violence where it exists. While existing violence reduction programs such as those run by Advance Peace provide an ideal place to start, there is much more work to be done.

Are there circumstances in which it is legitimate for drug selling- and distribution-related penalties to vary by drug type, and if so on what basis?

The degree of criminalization of supply-side drug market activity has frequently varied by drug type: generally, the selling or distribution of drugs that are perceived to be more dangerous is more harshly punished. This approach is often implemented problematically, as discussed on p. 34. We need to grapple with whether there are circumstances when the system should treat people involved with different kinds of drugs differently when they engage in otherwise similar conduct.

What modes of accountability other than incarceration are appropriate responses to drug market-related conduct that merits intervention or sanction?

In some cases, sanctions or some other mode of accountability may be appropriate responses to problematic supply-side drug market behavior. However, we must look beyond incarceration and explore approaches that genuinely reduce recidivism and improve community well-being. We need ways to hold people accountable for their actions and to repair harm they cause, with a focus on support, healing, and rehabilitation for everyone involved. Locking people up for their roles on the supply side of the drug economy has not been in the best interest of public health or public safety, and we urgently need to consider different options. Many different models for restorative justice already exist in various parts of the country, and we should examine these models to see how they can best meet the needs of those impacted by drug distribution-related harm.

How can policymakers best address the economic challenges and lack of opportunity that push many people into the illegal drug economy?

Many people who are involved in drug selling or distribution – and a disproportionate number of the people who are criminalized for it – would not be involved if they had access to dignified, living-wage employment or adequate social assistance. Drug policy reformers have not typically gotten involved in debates about minimum wage, large-scale jobs programs, or expanding welfare. A reform agenda for the supply side of the drug economy, however, necessarily implicates these issues, and drug policy reformers need to work with anti-poverty advocates to explore how to position themselves in these debates.

What are the potential advantages of legally regulating drugs? What are the risks, if any, and how can we mitigate them? What models of drug regulation would reduce drug market violence, enhance consumer safety, and maximize public health? (See text box on p. 9.) If we transition to the legal regulation of drugs, how can we do so in a way that repairs the harms to individuals and communities wrought by the criminalization of drug selling and distribution? How can we ensure that people who previously supported themselves through illegal drug market activity have access to legal, sustainable and dignified income sources?

Ultimately, we need to look toward legal regulation as the only way to eliminate the harms that flow from the illegal drug market. But while thinking about what the most effective models for legal regulation look like, we must also be thinking about what a just transition to this system looks like with respect to those who have been historically involved in the illegal market. As has been the case with marijuana legalization, the legal regulation of other drugs will inevitably impact the livelihoods of those who have been surviving off the illegal drug economy, many of whom are among the most marginalized people in our society and have few other options. As we move toward legal regulation, we must explore ways to connect these people with sustainable, dignified income-generating opportunities, while considering ways to repair the harm caused by decades of harsh criminalization for drug market participation.



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About the Drug Policy Alliance

The Drug Policy (DPA) Alliance is the nation's leading organization promoting alternatives to the drug war that are grounded in science, compassion, health, and human rights. For more than 25 years, DPA has served as an advocate for sane and responsible drug policies at local, state, and federal levels that best reduce the harms of both drug use and drug prohibition. Together with our allies, we work to ensure that our nation's drug policies no longer arrest, incarcerate, disenfranchise and otherwise harm millions – particularly young people and people of color who are disproportionately affected by the war on drugs. DPA is headquartered in New York and has offices in California, Colorado, New Mexico, New Jersey, and Washington, D.C.

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