



LAW ENFORCEMENT AGAINST PROHIBITION

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Criminal Justice Reform Subcommittee New Mexico Legislative Interim Committee

Testimony of:
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on behalf of
LAW ENFORCEMENT AGAINST PROHIBITION (LEAP)

RE: Support of Criminal Justice Reforms

July 30th, 2014

Distinguished Chair and Members of this important subcommittee, thank you for giving me the opportunity to present the views of Law Enforcement Against Prohibition (LEAP). As a mother, a grandmother and a career law enforcement professional who spent years fighting both gangs and narcotics, I have come to the conclusion that it is the illicit market and prohibition itself that fuels most drug-related crime and believe we need to greatly reform our criminal justice system in accordance with this fact.

LEAP does not condone drug use but believes chronic substance misuse is best dealt with through a sound public health policy that mitigates and reduces the harms of drugs through evidence-based best practices rather than through law enforcement. We also believe in eliminating the many criminal and civil collateral consequences affecting custodial rights, voting rights, employment, business loans, professional licensing, student aid, public housing and other social welfare benefits for those convicted of drug offenses. Not even murderers, rapists or pedophiles are denied some of these rights once they have completed their sentences.

We believe strongly that people can get over an addiction, but many will never get over a drug conviction. These harsh and unjust policies have historically fallen disproportionately on communities of color and has impoverished rather than improved our cities. Yet only recently have we started to address the systemic failures of the emphasis on zero-tolerance law enforcement policies rather than on public health. No matter how much money we throw at attempting to achieve the impossible dream of a "drug-free America," all the current metrics provided by our government clearly show that we have failed in this endeavor.

Despite the exorbitant amount of arrests, convictions, drugs and money seized, the purity level of drugs is at an all time high, the price is at an all time low¹, and America continues to lead the world with the highest rate of incarceration, illicit drug use² and prescription use and misuse in the world³. Clearly, the conversation surrounding the drug war has changed. We are starting to accept that we can no longer incarcerate our way out of America's drug problem and must evolve to include the implementation of policies that support harm reduction and decriminalization as a necessary step to reduce the harms of prohibition.

LEAP Background

LEAP is an international nonprofit educational organization founded by five police officers, but now representing well over 150,000 police, judges, prosecutors, prison officials, federal agents, and civilian supporters in 120 countries. In January 2014, LEAP was accepted as an NGO with consultative status to the United Nations.

We believe the U.S.-instigated war on drugs is not only a failure but worse, it is a self-perpetuating, constantly expanding policy disaster⁴. LEAP members know that only control, regulation and legalization of all drugs will end the violence, while lowering the incidence of death, disease, crime, and addiction—without destroying generations of our children by arrest and imprisonment.

LEAP wants to end drug prohibition just as we ended alcohol prohibition in the United States in 1933. When the prohibition of alcohol ended we dealt a more serious blow to Al Capone and other criminals than law enforcement ever could and we can do the same to the drug lords and terrorists who make over 300 billion dollars a year⁵ selling illegal drugs around the world.

Control, regulation and legalization of drugs will remove them from the control of criminals, reducing the violence and property crimes that are a result of prohibition of those drugs. That means drug dealers will no longer be shooting each other to protect their turf, no longer killing our children caught in the crossfire and drive-by shootings, no longer killing law enforcement officers charged with fighting this useless war. When we treat drug abuse as a health problem instead of a crime problem we improve the lives of those people targeted by the 1.5 million drug arrests per year⁶, and the lives of their families, by restoring them as productive members of society.

¹ Lopez, G. (2014, July 14). The case for decriminalizing heroin, cocaine, and all other drugs. *Vox*. Retrieved July 28, 2014, from <http://www.vox.com/2014/7/14/5889293/war-on-drugs-case-against-decriminalization-cocaine-heroin/in/5653520>

² UNODC, World Drug Report 2012 (United Nations publication, Sales No. E.12.XI.1).

³ Americans consume 80% of the global opioid supply, 99% of global Hydrocodone supply and 2/3 of worlds illicit drugs (Source: Pain Physician 2010: 13:401-435)

⁴ 2013 Rasmussen Public Opinion Poll concluded that just 4% of American Adults believe the US is winning the war on drugs. (82% disagree, 13% undecided)

⁵ Szoldra, P. (2014, May 8). Nobel-Prize Winning Economists: The War On Drugs Is A Catastrophic 'Billion-Dollar Failure'. *Business Insider*. Retrieved July 28, 2014, from <http://www.businessinsider.com/economists-war-on-drugs-2014-5>

⁶ <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/persons-arrested/persons-arrested>

We have many examples of failures of the drug war and the inevitable consequences of our policy resulting in more harm. A recently released RAND report found there are close to 1.5 million “chronic heroin users” in America that transitioned from prescription opioids⁷. Heroin today is cheaper, easily accessible even in our high schools, and more lethal than it was when Nixon declared the war on drugs. Despite the increase in heroin seizures, drug trafficking organizations have won the economic battle by flooding the market and capturing the market share. This has resulted in over 100 heroin overdose deaths a day (38,329 in 2010)⁸ and is now capturing the media’s attention.

Although we continue to make progress in de-stigmatizing chronic substance misuse from being thought of as a moral failure, our communities, politicians and law enforcement leaders struggle with supporting harm reduction models such as medical assisted treatment for heroin, safe injection facilities and needle exchange programs that have been scientifically proven to reduce death, disease, and addiction while enhancing public safety⁹.

By continuing to criminalize drug addiction we give more resources to supply reduction rather than focusing on demand reduction and implementing public health policies that promote positive public health outcomes. In an article that was published in the *Huffington Post* I posited that law enforcement has evolved and is starting to recognize that we can no longer arrest our way out of America’s drug problems. Those working in public health understand that harm reduction strategies produce many benefits to our communities. There have been many studies that demonstrate that drug treatment is both cheaper and more effective than arrest and prosecution.

Lawmakers, conservative criminal justice policy organizations such as Right on Crime and even law enforcement are beginning to understand the necessity of thinking outside the “drug war” paradigm to save lives by implementing and supporting harm reduction programs. By enacting and supporting “Good Samaritan” laws we have recognized that the threat of criminal sanctions has contributed to too many deaths and have created a safe space for witnesses to an overdose to save a life by calling 911 without threat of criminal prosecution.

These ideas are neither radical nor new – Chief August Vollmer, widely considered to be the father of modern policing – promoted harm reduction in the 1930s and wanted to develop a policy that required the government to dispense opioids to drug addicts as a means to prevent and reduce criminal activity¹⁰. If that sounds familiar, that’s because it is. Similar programs have been working in other countries for years. Even American methadone programs are based on the principles of harm reduction. Yet the ideology of many law enforcement professionals ignores its success and their former leader’s wisdom in refusing to manage death, disease and crime by emphasizing public health outcomes.

⁷ Wolfson, E. (2014, May 28). Prescription Drugs Have Pushed Heroin Into the Suburbs. . Retrieved July 28, 2014, from <http://www.newsweek.com/prescription-drugs-have-pushed-heroin-suburbs-252625>

⁸ <http://www.newsweek.com/prescription-drugs-have-pushed-heroin-suburbs-252625>

⁹ Csete, J. (2010, January 1). From the mountaintops: What the world can learn from drug policy changes in Switzerland. http://www.opensocietyfoundations.org/sites/default/files/from-the-mountaintops-english-20110524_0.pdf There was a significant reduction in criminal acts among the patients, to the point where the estimated benefits of this effect well exceeded the cost of the treatment. This comprehensive public health approach saved money in terms of court time, police time, reduced crime rates and public health costs.

¹⁰ August Vollmer, *The Police and Modern Society*, (Berkeley, 1936)

We must remember that the term “war on drugs” was created as an expediency to justify a policy designed not by evidence-based best practices but by political rhetoric and fear. The phrase is problematic but apt, then, as we try to figure a way to graciously exit what has quickly become a quagmire. We are now in a moment where both opportunity and a path for law enforcement leaders exists to negotiate an honorable truce and develop an exit strategy to America’s longest conflict through the adoption of harm reduction policies.

The United Nations in 2013 held a discussion on ways to modernize policing at which Seattle Police Department Interim Chief Jim Pugel spoke about the Law Enforcement Assisted Diversion (LEAD) program¹¹, a harm reduction strategy that gives officers the ability to connect low-level, non-violent drug dealers and users with treatment and services as an alternative to jail. The accomplishments of the program are being touted by politicians, civil rights organizations, and most importantly, street-level cops. As you have heard, the success of LEAD resulted in the City of Santa Fe recently implementing its own version after collaboration with a multitude of community stakeholders.

Chief Pugel, who is now retired, explained that he and other law enforcement leaders support this type of community collaboration and innovation to solve crime because it represents a return to the principles of Robert Peel, the 19th Century British legislator whose policing reforms still influence the way law enforcement professionals conduct themselves today. Peel argued that the “test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.” Chief Pugel believes, as I do, that “helping addicted people out of crime and disorder into a safer place for all is a measure of a caring society, and certainly a caring police department.”

By recognizing that our obligation to public safety also includes saving lives we can strive to implement programs such as that of the Quincy, Massachusetts Police Department, which has saved hundreds of lives by stocking naloxone, a cheap and effective drug that can reverse opiate overdoses¹². It is evident to me that implementing harm reduction strategies are necessary steps on the way to a smarter drug policy and should be supported. But we cannot stop there as it will leave unresolved the violence associated with the illicit market, as well as the inevitable consequence of an ineffective drug policy based on politics rather than what we know works.

School-to-Prison Pipeline and Drug-Free School Zones

I have discussed the broad implications of our drug policy on America as a whole but wanted to bring in my personal experience in developing the Redondo Beach Police Department’s School Resource Officer program during the height of the drug war and how the implementation of zero-tolerance and sentencing enhancement zones has helped to exacerbate the school-to-prison pipeline that disproportionately affects communities of color¹³. One of many problems with Drug

¹¹ <http://spdblotter.seattle.gov/2013/11/07/chief-pugel-tells-the-united-nations-about-seattles-law-enforcement-assisted-diversion-program/>

¹² http://opinionator.blogs.nytimes.com/2014/05/21/an-antidote-to-overdose-in-time-to-save-lives/?_php=true&_type=blogs&_r=0

¹³ Advancement Project, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK (Mar. 2005), p. 8. Across the board, the data shows that Black and Latino students are more likely than their White peers to be arrested in school, regardless of the demographics of the school’s enrollment. Researchers conclude that racial disparities cannot be accounted for by the socioeconomic status of students. Nor is there any evidence that Black and Latino students misbehave more than their White peers. Race does, however, correlate with the severity of the punishment imposed with students of color receiving harsher punishments for less severe behavior.

Free School Zones (DFSZ) is that protected areas tend to cluster in urban and high-density population areas. This cluster effect imposes excessive penalties by subjecting those residing in areas of urban poverty to harsher penalties. But this “urban effect” does not account for the disparate treatment of African-Americans in rural areas. Blacks are far more likely than whites to be arrested and convicted for drug-free zone offenses in urban and rural areas alike¹⁴. This structural racism has been prevalent throughout the history of drug enforcement as our drug laws dating back to the early 1900s have been not about the harms of drugs but about who is using drugs.

Although DFSZ were designed to create “safe havens” by reducing the supply and demand for illicit drugs, we know through Monitoring the Future (MTF) surveys that illicit drugs continue to be readily available on and off campus¹⁵. DFSZ zones and zero tolerance policies have not resulted in safeguarding our children from drugs or violence but have contributed to further stigmatizing not just communities of color but all our children that may run afoul of these overly broad laws.

The implementation of zero-tolerance drug policies and safety enhancement zones have contributed to an increase in suspensions, expulsions, and school dropouts, which in turn makes students targeted more likely to end up in prison¹⁶. Research has shown that “high school dropouts are three and one-half times more likely than high school graduates to be arrested, and more than eight times as likely to be incarcerated¹⁷.” The criminalization of our children has resulted not just in a college attainment gap, but has assured that children from communities of color, most targeted by these policies, are most at risk for a ride on the school-to-prison pipeline, virtually guaranteeing them a lifetime of poverty rather than the chance to attain economic mobility. Researchers and civil rights advocates alike have noted the effect of this disparity with data demonstrating that African-American students are three times more likely to be suspended or expelled than their white counterparts.

Recently the Justice Department sued the State of Mississippi and local officials after the Meridian Police Department was shown to violate the rights of children, including special

¹⁴ Judith, G., Pranis, K., & Siedenberg, J. (2006, March 1). Disparity by Design: How drug-free zone laws impact racial disparity – and fail to protect youth. Yet even after controlling for population density, blacks are far more likely than whites to be arrested and convicted for drug-free zone offenses. For example, blacks in suburban areas are nine times more likely to be arrested – and 19 times more likely to be convicted – for a drug-free zone offense than whites.⁴¹ The disparity is even greater in rural centers, where blacks face a 14-times greater risk of arrest and 24-times greater risk of conviction than their white counterparts. In fact, blacks in rural areas are twice as likely to be arrested for drug-free zone offenses, as are whites in densely populated urban suburbs. Likewise, blacks in rural centers were more likely to be convicted of drug-free zone offenses than whites in urban centers where the zones are much more pervasive. The disparities are most severe in less-densely populated rural and suburban areas, where school-zone arrests and convictions are less common. This raises questions about whether the disparities built into the drug-free zone laws are being exacerbated by disparate enforcement patterns.

¹⁵ Johnston, L. D., O’Malley, P. M., Miech, R. A., Bachman, J. G., & Schulenberg, J. E. (2014). Monitoring the Future national results on drug use: 1975-2013: Overview, Key Findings on Adolescent Drug Use. Ann Arbor: Institute for Social Research, The University of Michigan.

¹⁶ Judith, G., Pranis, K., & Siedenberg, J. (2006, March 1). Disparity by Design: How drug-free zone laws impact racial disparity – and fail to protect youth.

¹⁷ Bridge, B.J., Curtis, L.E., Oakley, N., “No Single Source, No Simple Solution: Why We Should Broaden Our Perspective of the School-to-Prison-Pipeline and Look to the Court in Redirecting Youth from It,” *Journal of Educational Controversy*, Fall 2012/Winter 2013.

education and black students, through routine arrest of suspended students even when they lacked legal grounds to do so. The Attorney General stated that:

“Ordinary troublemaking can provoke responses that are overly severe, including out-of-school suspensions, expulsions and even referral to law enforcement and then you end up with kids that end up in police precincts instead of the principal’s office.”¹⁸

In America there are many factors that contribute to the high incarceration rates in our society. Students who are unable able to complete their education are more likely to be imprisoned¹⁹. In 2000 an economic analysis of the prison industrial complex was conducted, attempting to determine if the growth of the prison industry was good for the economy. What their results showed is a clear causal link between a lack of education, unemployment, and under-employment and one’s chance of being imprisoned in America. In 2000 most prison inmates were low skilled, under-educated males. These males had a high incidence of unemployment prior to incarceration. In their analysis of other research they noted, “estimates that three-quarters of inmates are functionally illiterate, 47% of inmates had not graduated from high school – versus 17% of the U.S. adult population... only 16% of all inmates had some college education” as compared to the overall educational level of America where over 50% have attended college.

One early example of how some communities, educators and law enforcement viewed drug offenders can be seen in a 1988 DFSZ implementation manual developed by the Chiefs of Police National Drug Task Force where the Chiefs refer to students that are subject to zero tolerance drug policies as “taking out the garbage”²⁰ as one of the steps in instituting DFSZ. It is troubling to me that our law enforcement communities view our children (even those that commit criminal offenses) as easily discarded and not worth rehabilitating. Clearly the many years of ‘tough on crime’ rhetoric has resulted in contributing to the disenfranchising of those that deserve our compassion and our help.

LEAP has long advocated that the over-criminalization of our society and in particular the use of law enforcement to solve what is clearly a public health issue results in disrespect for the laws, law enforcement corruption and, most importantly, destruction of the relationship between law enforcement and the communities we serve. The drug war, the militarization of our police departments, mandatory minimum sentencing, zero-tolerance policies and drug free enhancement zones have cost us over one trillion dollars since the start of modern drug-war with little results.

We know that reality based public health education and increased regulation worked to reduce the use of tobacco in this country for adults and kids. Isn’t it time that we address and resolve the issues and public health harms caused by illegal drugs as well?

¹⁸ Government offers guidelines to end 'school-to-prison pipeline' | Al Jazeera America. (2014, January 8).

¹⁹ Pigeon, M., & Wray, L. R. (2000). Can penal keynesianism replace military keynesianism? an analysis of society. *Social Justice*, 27(2),

²⁰ National Coalition For Drug Free School Zones: Implementation Manual . (1988, January 1). Retrieved July 28, 2014, from <https://www.ncjrs.gov/pdffiles1/Digitization/140213NCJRS.pdf>