

# Drug Policy and Families: Casualties of the War

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**ABSTRACT.** This paper explores the consequences of drug policies, especially punitive criminal sanctions, for the families of offenders. Mandatory minimum sentences and certain legal developments have created substantial growth in the prison industry with a likely increase in the number and intensity of harms to drug offenders and their families. Negative outcomes include at-risk developmental pathways for children, uncertain quality of care and parenting, family dissolution, and weakened communities. The evidence suggests that punitive drug policies come at great social and economic cost with minimal benefits. Harm-reduction is offered as a framework for change in relation to drug offenders and their families. Recommendations for family preservation and sentencing reform are discussed. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <getinfo@haworthpressinc.com> Website: <http://www.HaworthPress.com> © 2001 by The Haworth Press, Inc. All rights reserved.]*

**KEYWORDS.** Drug policies, family, incarceration

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## INTRODUCTION

The purpose of this paper is to consider the implications of federal drug policies that emphasize criminal sanctions (i.e., the "war on drugs") for families. We believe these policies do more harm than good by exempting drug offenders and family members from judicial protections and expanding the definition of drug use via a lengthened list of illegal substances and drug testing technology (Bovard, 1998; Donzinger, 1996; Miller, 1996). In addition, civil liberties are threatened through the loss of judicial protection and lack of government accountability. Economic, health, and social harms, especially for the less politically powerful, are increased through the application of harsh criminal sanctions for nonviolent offenses.

Central to understanding the effects of drug policies that emphasize criminal sanctions is the imprisonment of millions of parents and spouses for nonviolent offenses. Given the upward incarceration trends outlined in the next section, there is a remarkable lack of discussion regarding the implications of drug policy in the family studies literature. Norris, Conrad, and Resner (1998) provide a rare glimpse through a pictorial entitled "Human Rights and the Drug War," that puts a human face on the drug war, focusing on the harm to families, including the separation of nonviolent drug offenders from their spouses and children. Empirical studies of the effects of drug policy on offenders' families are virtually nonexistent. Much of what we can infer regarding the drug war's impact must be drawn from the field of corrections, which focuses on inmates and provides little data about family relationships and communities (Johnson, Selber, & Lauderdale, 1998). Despite these limitations, the criminal justice literature identifies disturbing trends regarding the impact of the war on drugs on civil liberties and families of nonviolent offenders.

## DRUG LAWS AND THE PRISON-INDUSTRIAL COMPLEX

Declaring a "war" on drugs results in militaristic strategies such as interdiction of supply and reduction of demand through incarceration. The resultant draconian drug laws provide a broad gateway into the criminal justice system with high rates of recidivism, given mandatory minimum sentences and lengthy probationary periods with a punitive, rather than rehabilitative focus (Donzinger, 1996). For example, Bloom (1995) provides a conservative estimate that approximately one-third of

the growth in the prison industry is due to the increased number of parole/probation violators.

The Justice Policy Institute's (JPI) recent report, "America's One Million Nonviolent Offenders," notes that 1998 earned the "dubious distinction of being the first full year in which more than 1 million non-violent prisoners were held in America's jails and prisons for the entire year" (Irwin, Schiraldi, & Ziedenberg, 1999). This population of prisoners overlaps significantly with drug offenders. Bloom (1995) attributes 40% of prison population growth to predominantly nonviolent drug offenders.

Zimring and Hawkins (1992) examination of drug control strategies in the U.S. details how the drug policy process is permeated with ideology rather than coherent and consistent responses to the real conduct norms of the citizenry. Baum (1996) and Gray (1998) trace the emergence of drugs as a socially constructed public threat. This trend, beginning during the 1930s and resurfacing in the Nixon presidency, identified marijuana as a part of a *counterculture* posing a dangerous challenge to traditional American values. "Cultural threat" became the ideological cornerstone for "get tough" policy to reduce the supply of drugs from other countries and to reduce domestic demand through incarceration. However, these policies have done little to lessen the availability or use of drugs (Bikel, 1998). Fagan (as cited in Skolnick, 1995) concluded that criminal sanctions have no impact on drug sales. If anything, they destabilize the "drug market" and increase black-market prices, resulting in an increase in violent crime. Similarly, Clear's (1994) empirical analysis demonstrated that incarceration (or "penal harm" to use his terminology) was unrelated to crime rates, and he concluded that the lack of efficacy of a penal response simply tempts society to use more extreme measures in an effort to affect crime.

Indeed, as Clear (1994) predicted, public policy continues to emphasize lengthy periods of incarceration for drug offenders, despite the failure of this approach to reduce usage as well as its considerable social and economic costs. Why is this? Critics argue that a "war on drugs" is essential to maintain political support for the drug control bureaucracy and prison industry. Indeed, the National Criminal Justice Commission (NCJC) report points out that for the supply of prisoners to grow, criminal justice policies *must* ensure a sufficient number of incarcerated Americans regardless of whether crime is rising or incarceration is necessary. These processes seem to be most visible at the federal level. By 1992, the number of incarcerated federal drug offenders exceeded the total of *all* federal prisoners when President Reagan declared another

war on drugs in the early 1980s (Miller, 1996). Skolnick (1995) described an "explosion" of arrests and convictions and increasingly longer sentences for possessing and selling drugs. He cited a 1994 Justice Department study that revealed one fifth of federal prisoners were low level, nonviolent drug offenders with no previous prison time. Many independent analyses confirm this trend. Between 1981-1991, the federal prison population more than tripled, with federal drug offense convictions more than doubling, signaling the importance of the "drug war" in this change (Duster, 1995). Skolnick (1995) estimated the number of federal prisoners will have risen another 50% between 1991 and the century's turn. The NCJC estimated that drug-related offenses accounted for 71% of federal prisoners, and, more recently, U.S. Department of Justice statistics attributed 80% of the increase in the federal prison population (1985-1995) to drug convictions (cited in Wright and Lewin, 1998). Nearly one fifth of these prisoners were imprisoned for marijuana-related offenses (Donzinger, 1996).

Related to the trends outlined above is the disproportionate impact that an over-reliance on incarceration has on minorities and women. (Donzinger, 1996). For example, Irwin, Schiraldi, and Ziedenberg (1999) point out that as more people are incarcerated for nonviolent offenses, African-Americans and women comprise a growing percentage of the prison population. Today, minorities represent 70% of all new admissions. The JPI report further states that African-Americans are now imprisoned at eight times (and Latinos at three and one half times) the rate of Caucasians, largely due to increases in drug incarceration rates over the past two decades (Irwin et al., 1999). Currently, one out of three African-American men can be expected to be incarcerated and/or under supervision by the criminal justice system at some point in their lives (Norris et al., 1998). Equally alarming is the fact that women are the fastest growing, least violent group of prisoners. Although current trends in incarceration affect all Americans, there is considerable overlap between gender and minority status as well. For example, in 1995 the combined incarceration rate for Caucasian and Latin-American women was 68 per 100,000. For African-American women, the rate was close to eight times that at 456 per 100,000 (Bureau of Justice Statistics as cited in Norris et al., 1998).

In summary, there is considerable agreement among criminologists that drug control policies account for most of the increase of the U.S. prison population, largely through incarceration of nonviolent, lower level drug offenders (Duster, 1995; Lynch & Sabel, 1999; Sabol & Lynch, 1997). And given the political popularity of tough drug policies,

incarceration of drug offenders provides the "raw material" to sustain demand for a prison-industrial complex in the U.S., especially through its disproportionate impact on less powerful groups such as minorities and women. Indeed, Reinerman (1999) contends that racism has been a core feature of nearly every drug scare throughout history and incarceration rate data show this trend continuing.

### **LEGAL DEVELOPMENT ENHANCING THE "ABILITY TO CONVICT"**

Statutory requirements and law enforcement procedures are designed to ensure arrest, conviction, and imprisonment for drug offenders (Bloom, 1995; Donzinger, 1996). Miller (1996) describes a variety of reasons for the increase in drug offenders, especially at the federal level. For example, "escalator clauses" expand prison populations by transforming a misdemeanor offense into a felony with lengthy mandatory imprisonment. Also, "dealer status" (often times, this designation includes only sharing drugs with friends), and "repeat offender" laws, at the discretion of a prosecutor, are frequently layered onto a possession charge that lengthens sentences.

A key element in the increased conviction and imprisonment rates is the power prosecutors hold through plea bargaining and conspiracy laws. Prosecutorial power encompasses considerable discretion concerning what charges can be brought against an individual, including the use of plea bargaining, which occurs in more than 90% of criminal felony cases (Donzinger, 1996). Plea bargaining also results in a reduction of judicial involvement and discretion. "Conspiracy laws" coupled with prosecutorial power provide an almost certain means of conviction for drug offenses (currently, it is estimated that the federal government has a conviction rate well over 90%, see Bikel, 1998).

Norris et al. (1998) describe the nation's conspiracy laws as "thought crime" reflecting, in part, on how broadly the drug war's net has been cast. Quietly enacted in the late 1980s based on a technical addition to existing law, conspiracy laws are attached to most drug-related offenses serving as a threat and an actuality of longer sentences (Bikel, 1998). Federal conspiracy law applicable in non-drug cases, such as murder, requires proof of an "overt act to affect the object of the conspiracy." Drug conspiracy law requires no such proof providing simply that "any person who attempts or conspires to commit a drug crime is guilty of conspiracy and subject to the same penalties as those who carry out the

offense" (Norris et al., 1998, p. 13). Consequently, people with no active participation in a drug offense may be penalized simply for knowing about a situation and not reporting to the police; they can even be sentenced for *not* knowing about a situation that prosecutors believe they should have known about. No corroborating evidence is required, and no crime need be committed (Norris et al., 1998). It is not surprising that in the first 6 years after drug conspiracy laws went into effect, a 300% increase in the number of drug cases in federal prisons was realized and that over 12 years, from 1986-1998, federal drug cases in prison increased 450% (Bikel, 1998).

As part of the plea bargaining process, family members are often coerced to inform on one another, pitting spouse against spouse, sibling against sibling, and even putting children and their parents at odds (Bikel, 1998; Miller, 1996). Informing (i.e., "government cooperation"), virtually the only recourse left in the system for sentence reduction, contributes to conflict and instability in families and communities.

### **JUSTICE WITHOUT COMPASSION: MANDATORY MINIMUM SENTENCES AND DRUG OFFENDERS**

The use of mandatory minimum sentencing represents one of the most significant aspects of the war on drugs impacting families today, especially among minorities, by contributing substantially to prison population growth (Bales & Dee, 1992). Contrary to their stated purpose, mandatory minimum sentences have intensified discrimination. Tonry's (1997) comment, offered with regard to his detailed empirical analysis on race and sentencing, poignantly sums up the current state of affairs: "The cruelest irony of the . . . sentencing reform movement is that diminution of racial discrimination in sentencing was a primary aim and exacerbation of racial disparities is a major result" (p. 217). In fact, some critics argue that, if anything, mandatory minimums stemming from drug offenses are used to *target* a specific racial group (McDonald & Carlson, 1997; Miller, 1996; Norris et al., 1998).

Another effect of mandatory minimum sentencing on families involves its impact on the judiciary. The use of mandatory minimums creates a situation whereby *prosecutors*, not judges, have discretion to decide whether to reduce a charge, accept or deny a plea bargain, reward or deny a defendant's "substantial assistance" (i.e., informing), and to ultimately determine the final sentence (Donzinger, 1996; Miller,

1996; Wright & Lewin, 1998). Mandatory minimums thereby limit the possibility that an offender's extenuating circumstances are considered by the court. Such circumstances previously would have included whether or not an individual has children or other dependents.

A variety of consequences beyond the shift of power in justice systems have emerged as a result of mandatory minimum sentencing. Most notable have been changes in the criminality and dangerousness of prisoners resulting in less space for violent offenders, thus encouraging their early release, in order to make room for the growing number of nonviolent drug offenders (Miller, 1996). For example, Sabol and Lynch (1997) document the *decrease* in the proportion of prisoners incarcerated for violent crimes with a corresponding *increase* in the number of offenders incarcerated for nonviolent drug offenses, which they attribute to mandatory sentencing. Another negative consequence, beyond the scope of this paper, is prison overcrowding which involves health risks, poor living conditions, and the victimization of nonviolent drug offenders in high security facilities designed for violent criminals (Braithwaite, Hammett, & Mayberry, 1996).

Mandatory sentencing laws have been repudiated by the American Bar Association, Federal Courts Study Committee, the Model Penal Code, most criminal law scholars, and, more recently, by the American Psychological Association, yet elected public officials continue to promote them. Indeed, numerous legal impact evaluations have shown no lasting deterrent effects on drug-related supply and demand patterns (Tonry, 1997) or drug crimes (Sabol & Lynch, 1997). In fact, Drucker (1999) concludes, based on a detailed analysis of data on adverse outcomes and drug enforcement, that the greater the intensity of criminal penalties, the *greater* the public health danger of drugs. Similarly, Sabol and Lynch (1997) conclude that longer sentences, when they apply to nonviolent drug offenders, most likely yield "zero crime control benefits" (pg. 6).

Drug offense mandatory minimums also have hampered the U.S. Sentencing Commission's efforts to devise comprehensive sentencing policies—actually a moot point given the notable fact that at the time this article was first drafted, *all seven seats on the Commission were currently empty*. Congress' failure to make appointments has been criticized as paralyzing the federal criminal justice system ("News in Brief," 1999). According to Federal Bureau of Prisons statistics, the average sentence for a first-time drug offense was 82.4 months, a duration that is almost a third longer than for sexual abuse, more than twice as long as for assault, and four times longer than for manslaughter (Norris et al., 1998).

This review of the legal aspects of the war on drugs highlights the civil liberties harms from criminal sanctions policy. Considering that many nonviolent drug users are also parents, another category of harm relates to the long-term economic and social well-being of offenders, their families and communities.

### ***HARM TO CHILDREN, FAMILIES, AND COMMUNITIES WITH PARENTS IN PRISON***

Lynch and Sabol (1999) contend, based on their extensive review of the level and distribution of incarceration in the United States, that as the level of incarceration has dramatically risen, so has the likelihood of disrupting groups rather than individuals. In one of the few empirical studies testing the effects of incarceration on families, Lynch and Sabol (1998; cited in Lynch & Sabol, 1999) found that both admissions and releases from prison were positively related to the percent of female headed households, particularly for African-American families, suggesting the destabilizing effects of high rates of incarceration. They warn, given the accumulative effects of the volume of persons passing through or exposed to prison, the disruptive potential on families, children, and communities is enormous.

Estimates drawn from 1991 Bureau of Justice figures conservatively indicate that approximately 1.5 million children have an incarcerated parent while another 3.5 million children have a parent on parole or probation (Seymour, 1998). Reed and Reed (1998) estimate, based on the little available data that more likely, that about *10 million* children are affected by current or past parental involvement with the criminal justice system. Sixty percent of male prisoners and three quarters of female prisoners (female prisoners have increased 5-fold since 1980) are parents (USDJ, 1993). Most of the women are incarcerated for nonviolent, drug-related offenses in facilities typically far away from their families. According to the NCJC, "the failure to deal with the problem of children separated from their parents not only creates the risk of deep emotional wounds for million of children but may create more crime over the long run" (Donzinger, 1996, p. 152).

While data specifically describing drug offenders and their families is virtually unavailable, preliminary analyses conducted by the first author on data drawn from the pre-sentence reports of persons convicted of felony offenses in Virginia offer some suggestive information (Arditti, 1999). In 1998, there were approximately 9,800 dependents in Virginia



that had a parent/caregiver who was convicted of a felony. Fully 98.7% of narcotics offenders had dependents, *and they had more dependents than any other type of offender* ( $n = 1,816$  dependents), out of 14 felony categories. The difference between narcotics offenders and other types of felony offenders in terms of the "number of dependents" was statistically significant lending support to research that suggests that drug offenders tend to have stronger family ties than other types of felony offenders (Sabol & Lynch, 1997).

Unfortunately, there is no requirement that agencies such as social services, children's bureaus, foster care, law enforcement, or correctional institutions, systematically collect data on children and families of incarcerated individuals. A critical empirical gap is the lack of longitudinal data that would portray children's economic status and developmental pathways as a function of disrupted parental attachment patterns (Seymour, 1998). The United States Bureau of Justice Statistics has no data on the children and families of drug offenders. Instead, they have various survey data sets on the family backgrounds and prior experiences of incarcerated persons, including drug use and child abuse histories (e.g., Beck, Kline, & Grenfeld, 1988; Harlow, 1998).

Despite the lack of systematic data on the families of drug offenders, numerous studies have begun to document the nature of harms due to the increasing incarceration rates for offenders who are parents. In addition to direct harms such as family dislocation, indirect harms to families and communities can be traced to the damaging psychological, health, social, and economic effects of incarceration for the drug offender. The most obvious harms to incarcerated drug offenders stem from imprisonment itself. Furthermore, prisoners seldom have any meaningful treatment available if they have a drug dependency problem. And, as with any prisoner, they are victims to disease such as HIV infection and tuberculosis, become isolated from the labor market, and are increasingly segregated and incapacitated as normally functioning adults (Braithwaite et al., 1996; King, 1993; Skolnick, 1995).

If mere *arrest* can harm an ordinary citizen and his/her family (see, for example, Carlson & Cervera, 1992; Johnston & Gabel, 1995; Miller, 1996; Schoenbauer, 1986; Seymour, 1998), clearly the effects of incarceration can be dramatic. Lengthy prison sentences contribute to offenders' psychological problems and social stigma due to isolation and deviant status, making it less likely they will be able to function well in their families or communities (Bloom, 1995; Carlson & Cervera, 1992; Irwin et al., 1999; King, 1993).

The notion of *stigma* (Goffman, 1963) is useful in understanding the effects of criminal sanction policies on drug offenders and their families. The tendency for shame to spread from incarcerated individuals to their family members and friends provides reason why such relations are avoided or terminated, thereby contributing to family instability. In addition, Miller (1996) discusses how ostracism restricts access to employment leading offenders to resort to welfare or crime to earn a living. Sabol and Lynch (1997) also confirm the effect incarceration has on diminishing a drug offender's capacity to engage in legitimate work after release thereby increasing the likelihood of a return to drug and property crimes after release.

Prolonged incarceration reduces parenting capacity and attachment to children. Due to geographic distance and inhospitable conditions in prisons, incarcerated parents have few, if any, visits with their children, and, as a result, they may lose contact with them, have a reduced opportunity for parenting, and be threatened with loss of parental rights (Bloom, 1995; Seymour, 1998). These losses are significant, since the evidence shows that the majority of incarcerated parents have the potential to contribute positively to the economic and emotional support of their children (Hairston, 1998).

Based primarily on these analyses as well as related studies of offenders who are parents, the harms to children, families, and communities from a parent's incarceration include the following:

1. Traumatic separation from a parent can worsen academic achievement, lead to antisocial behavior, and intensify feelings of fear, anxiety, anger, sadness, loneliness, and guilt (Johnston, 1995). Given growth in incarceration rates for women along with mandatory minimum sentences, these outcomes increasingly stem from maternal-child separation. In addition, lengthy sentences put mothers at great risk for their parental rights to be terminated, an emerging but remarkably hidden phenomena (Genty, 1995). Permanent separation of mothers and children is a growing risk due to female recidivism, which is in turn driven by the increase in incarcerated mothers and long probationary periods (Johnston & Gabel, 1995).

2. Uncertain and shifting quality of care can result from loss of a parent, especially if the incarcerated person is a single parent, with resultant increase in risk for child safety and healthy development (Gaudin & Sutphen, 1993). Risks to children include foster care, child abuse and neglect, and sexual abuse. Siblings may be separated, with some cared for by family members, while others rotate through institutional care settings, creating additional family disruption (Bloom, 1995). The eco-

conomic costs of institutional care are also a harm to society in general. Estimates are that it costs taxpayers an average of \$20,000 a year per child for foster care (Norris et al., 1998).

3. Parental incarceration can reduce harms in the short run when the offender has created family problems such as domestic violence (Johnston & Gabel, 1995). Although a drug "offense" does not necessarily mean drug "abuse," many offenders may have treatment needs. Where substance abuse is a threat to children and families, the question still remains whether an incarceration solution creates more total harm in the short run than a treatment intervention. Prolonged separation of offenders from families and communities is likely to increase difficulties of social integration upon release (Hairston, 1998; Hairston & Lockett, 1985).

4. Family systems are severely stressed by incarceration, with a high incidence of separation and divorce, even for short periods of imprisonment (Carlson & Cevera, 1992). One study found that 43% of the prison population could potentially experience family dissolution as a result of imprisonment (Lynch, Smith, Graziadei, & Pittayathikin, 1994). The risk of family dissolution obviously creates additional problems for children, as described above. Seymour (1998) identifies length of separation/incarceration as a crucial variable influencing child well-being. Despite efforts in a few states to strengthen the connections between prisoners and their spouses and children (Bloom, 1995), termination of parental rights is an increasingly common phenomenon due to child permanency planning legislation, and prosecutorial pressure to gather additional incriminating information on an offender.

5. Communities are weakened when families are fragmented and large segments of the population are stigmatized from imprisonment (Carlson & Cevera, 1992; Donzinger, 1996; King, 1993). This "tainting" phenomenon is hard to document due to its indirect and long-term nature (Lynch & Sabol, 1999). Many of these communities are already stressed economically, and the loss of adults to prison, mostly men but increasingly women, weakens them further. There is empirical evidence suggesting that nonviolent drug offenders are more "socially integrated" (with ties to legitimate institutions such as families, education, and labor markets) than violent offenders. Hence, removing integrated persons from the community is highly disruptive and actually makes these communities less able to prevent criminal behavior (Lynch & Sabol, 1999; Sabol & Lynch, 1997).

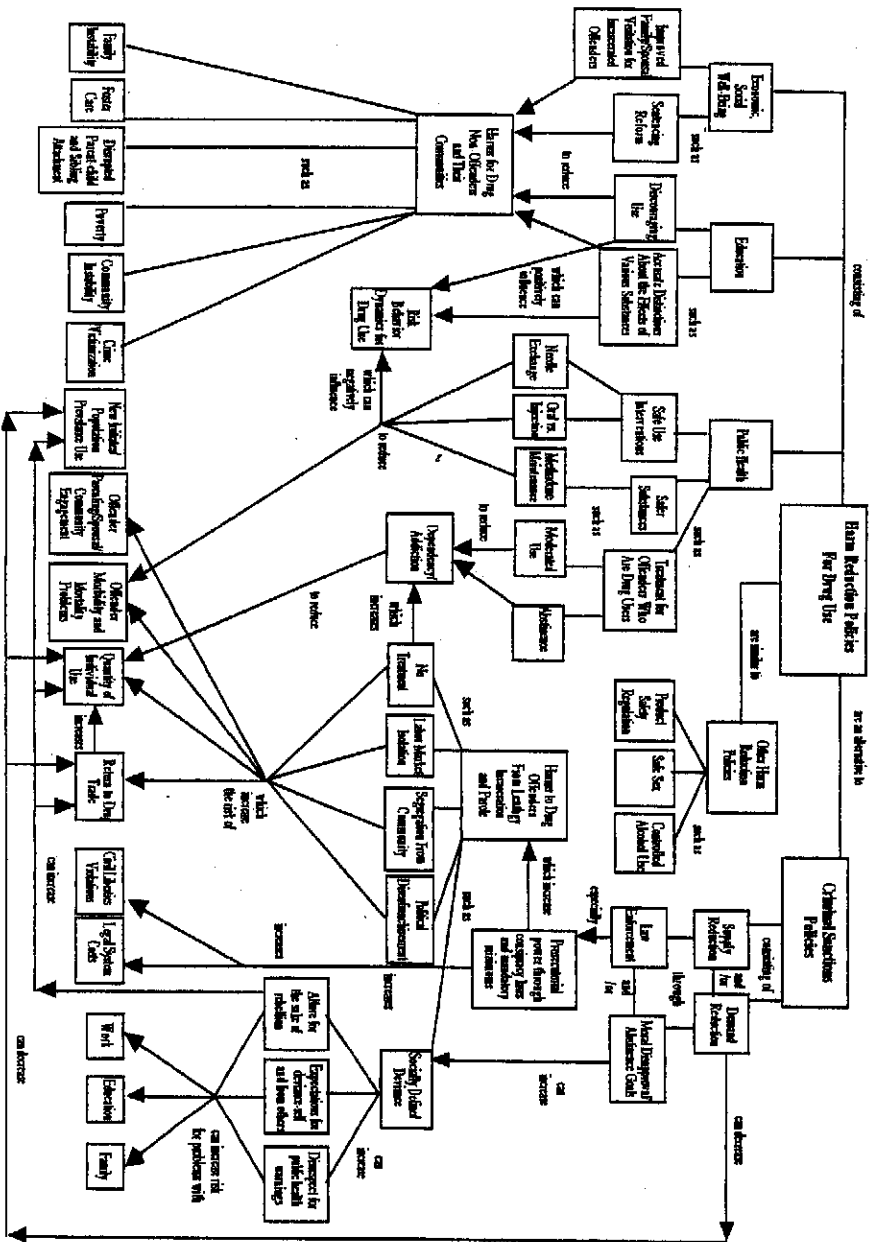
### ***HARM REDUCTION AS A FRAMEWORK FOR REFORM***

In relation to drug use, harm reduction is based on the idea that "... it is possible to modify the behavior of drug users and the conditions in which they use, in order to reduce many of the most serious risks that drugs pose to public health and safety" (MacCoun, 1998, p. 1199). Harm reduction shifts the definition of drug use from one that emphasizes criminal sanctions to one of public health, education, and net well-being or total harm to society. In calculating total harm, our analysis draws attention to the harms to offenders' families and communities. These consequences are largely invisible to society for several reasons, including the lack of systematic data collection about them, the longer time period it takes for the harms to become salient, and the fact that they are borne disproportionately by ethnic minorities and the poor who lack the political power to make themselves heard.

Drug policies typically emphasize incarceration for drug offenders based on a belief that reducing supply and demand for drugs through the deterrent effect of imprisonment will reduce use. As noted earlier, the evidence strongly suggests this relationship does not hold, although it is difficult to assess what the effects would be on use, including new users, if drug use were decriminalized. Even if total use increased under decriminalization, total harm might be less than under current criminal sanctions policy since there is no careful measurement of the kinds of harm to families and communities that we are highlighting.

Figure 1 consists of a concept map that illustrates many of the dynamics and outcomes of harm reduction and incarceration drug policies. Concept maps are ways of summarizing knowledge about a topic, including research-based and experiential evidence (McClintock, 1999). Many of the linkages in Figure 1 are substantiated by research, while others are more speculative or experiential in nature. As such, Figure 1 outlines a set of arguments, hypotheses and necessary research to more fully evaluate current and alternative drug policies. Figure 1 should be read from top to bottom moving laterally when necessary to explore crosscutting relationships. Examples of outcomes that need to be considered in drug policy analysis are shown at the bottom of the map. For the most part, there are no systematic data sets that allow comprehensive analysis of the effects of current policies on this range of outcomes. This situation contributes to the ideological tone of debates about drug policy and makes it difficult to examine alternative policies such as harm reduction. There is little empirical research that examines harm to

FIGURE 1. Harm Reduction vs. Criminal Sanctions



offenders and their families although harm reduction analyses are growing in recognition (Marlatt, 1999).

We hypothesize that policies emphasizing incarceration for nonviolent drug offenders are likely to create the seeds of their own destruction. As shown on the right hand side and bottom of Figure 1, while incarceration without treatment and moral disapproval may reduce the prevalence of drug use, they are also likely to increase total harm through higher average harm per use *both* for offenders and their families. The increase is due to the lack of treatment options and harmful effects of imprisonment for offenders and the additional harms that are created for their families. The left side of Figure 1 shows the foci of harm reduction both in terms of treatment and safe use strategies for drug users as well as reducing harms for offenders' families and communities.

As Figure 1 depicts, there are many interacting factors involved in an analysis of harm reduction and incarceration. Some relationships are well established, while others remain speculative or highly controversial given the moral and political positions surrounding drug use. For example, MacCoun (1998) notes that sound scientific evaluations of safe use interventions such as needle exchange and methadone maintenance indicate little increase in risk behavior. More important, as we have argued earlier and is shown in Figure 1, draconian criminal sanctions policies can create many additional harms for offenders as well as increase drug use prevalence, especially among adolescents (Drucker, 1999). Contrary to this evidence, however, punitive drug policies are maintained with little apparent impact on reducing drug use as well as likely increases in harmful effects for children, families, and communities.

### **BARRIERS TO HARM REDUCTION**

Proposing harm reduction is a decidedly uphill battle for several reasons. First, given the substantial increase in funding for the penal system and law enforcement bureaucracy, there is likely to be institutional resistance to harm reduction policy that might threaten this budgetary and agency growth (Hagedorn, 1995). For example, since the enactment of mandatory minimum sentencing for drug offenders, the Federal Bureau of Prisons' budget has increased by more than 1,350%, from \$220 million in 1986 to about \$3.19 billion in 1997 (Wright & Lewin, 1998). Total growth in budgeted drug control expenditures from 1981

to 1998 was 800% overall, with 66.6% of the 1998 budget allotted for enforcement rather than treatment (Drucker, 1999). Norris et al. (1998) summarize 1998 drug control appropriations for 44 agencies receiving federal funding totaling over \$16 billion, which does not include state spending or unfunded mandates. Current budgetary allocations reflect a continuation of this exponential growth. Core drug control appropriations (not including the BOP budget) for the 1999 fiscal year exceed \$11 billion dollars for at least 9 federal department and agencies ("Conference Report on H.R. 4328," 1999).

Second, the intense moral judgments and complex causal dynamics associated with risk behaviors, such as drug use, make it politically difficult to move from an emphasis on criminal sanctions to harm reduction (MacCoun, 1998). Reducing harms associated with risky behavior is an accepted public policy approach in the area of product safety where the government enforces standards for motor vehicles, workplaces, food, pharmaceuticals, alcohol, and many other consumer goods. Harm reduction does not *require* decriminalization of drug use (although that is a policy option tried in other countries) but rather emphasizes actions that reduce total harm to society. Moving away from incarceration and the associated legal policies of mandatory minimum sentences and conspiracy laws, especially for nonviolent offenders, would be consistent with a harm reduction strategy.

A challenge for harm reduction policy is to gain acceptance for balanced education that includes accurate information about the effects of different drugs, the varied motivations for use, and the wide range of individual differences in tolerance for use. In addition to the purposes of pleasure and euphoria that give rise to moral concerns among the public, drugs are used to aid religious practices and self exploration, stimulate artistic creativity, treat disease, enhance social interaction, improve physical performance, reinforce a need for rebellion, and conform to peer pressure (Weil & Rosen, 1993). Unfortunately, in contrast to legal products, we know very little about how usage might change in response to safer and regulated use of illegal drugs. In addition, possible increases in prevalence, intensity, and duration of use under circumstances of decriminalization might vary widely by the type of drug and the presence of responsible education and information dissemination by health and government authorities.

A third barrier to the adoption of harm reduction policy is the fact that the causal dynamics of addiction are complex involving a mixture of biological, psychological, and social factors (Marlatt & Tapert, 1993). Consequently, harm reduction seeks any movement along a continuum

from high risk and high frequency to moderate risk and frequency and possibly to abstinence. For example, it would be a reduction in harm to the user (and to nonusers with whom the user had contact) to move along a continuum of harmful to less-harmful use, e.g., from injecting street heroin of unknown potency with shared needles, to injecting prescribed and regulated legal heroin, to not using shared needles to using oral or smoked drugs.

Criminal sanction policy, however, has a "zero tolerance" ideology and high threshold entry barriers for drug treatment programs that require total abstinence. These standards drive away many drug users who cannot make the change from high frequency to abstinence in one step. These are likely to be the people who most need assistance and who impose higher costs on nonusers. Similarly, safe use policies such as methadone maintenance are often under political attack, since they most often do not result in abstinence (MacCoun, 1998). Harm reduction includes temperance, not just abstinence, hence giving it more flexibility as a public policy to accommodate the wide variation in individual and social circumstances likely to be found in the population.

Emphasizing harm reduction and de-emphasizing criminal sanction policy need not be an all or nothing prospect. Diversion from the criminal justice system might be enacted in "phases," beginning with the least harmful substances. As Marlatt and Tapert (1993) note, the Dutch have decriminalized marijuana and other cannabis products but not riskier substances such as cocaine and heroin. Similarly, Australia has decriminalized cannabis in two territories and enacted *de facto* decriminalization in another as part of a national harm-reduction strategy (Abel, 1997). One reason that these countries make a distinction between marijuana and other substances is to enhance the credibility of their public health messages geared towards youth. Equating the risks of all drugs mis-educates the public about risk taking and can increase problems of abuse. In addition, making less harmful substances illegal increases their allure for those who want to rebel or establish identities in contrast to mainstream norms. As shown in Figure 1, making a behavior deviant can nurture a set of related deviant expectations of someone who engages in the behavior. For example, someone who uses drugs to any degree may be expected to avoid normal responsibilities in relation to work, education, and family.

A fourth barrier to instituting harm-reduction policies is that the full transaction costs of criminal sanctions are not documented. An economic perspective on harm reduction might examine costs and benefits in terms of related product safety policies (Gerner, 1988). In the area of



product safety, costs are allocated to consumers and/or producers. Criminal sanctions policy is essentially a consumer liability or “caveat emptor” approach, which assumes that the consumer bears all the costs for use of illegal and unsafe substances including incarceration for use. From this perspective, producer costs are completely passed on to consumers. With respect to illegal drugs, however, there are considerable prosecution, defense, incarceration, and parole costs required to adjudicate consumers. The cost of these systems is shifted to the public at large through taxes. Hence, drug policy that emphasizes criminal sanctions is not just consumer liability strategy but instead imposes considerable “producer” costs on all citizens through legal and penal system costs that would be lessened if one shifted to harm reduction options such as safe use and treatment.

Cost-benefit analysis of harm reduction versus criminal sanction policy could illuminate these issues and has the advantage of being intuitively appealing for politicians. It is far more difficult to argue, for example, that a policy as well established as prohibition is *constitutionally wrong* than it is to argue that a more *cost-effective* alternative exists (Stewart, 1999). Again, more systematic data across a wide range of outcomes are needed to adequately conduct such analyses.

Finally, there is recognition that the human service system could do more to alleviate the harms to children and families of adjudicated drug offenders, including better data collection and collaboration among social services, foster care, and the criminal justice system (Hairston, 1998; Seymour, 1998). We limit our discussion of human service interventions, since, while necessary to reduce harm in the short run, they often are treating the symptom and not the cause of the harms, especially in the case where nonviolent drug law offenders who are otherwise functioning parents are incarcerated. Our analysis seeks to illuminate the harms that are produced by reliance on criminal sanction policies and that could be avoided by more emphasis on harm reduction.

### **CRIMINAL SANCTION REFORM AND FAMILY PRESERVATION EFFORTS**

Conrad (1998) notes that the United States has well-over one million people in prison, and that this represents the highest per capita incarceration rate of any industrialized nation. Millions more are under the control and supervision of the criminal justice system through parole, probation, and/or community supervision of deferred adjudication. Within

the context of the drug war, we agree with Conrad (1998) when he states, "The criminal sanction is only one tool available to shape public policy and it is a dumb, blunt, dangerous weapon of a tool" (p. xviii). As we have discussed in the previous section, the criminal sanction for nonviolent drug offenders is a particularly damaging tool not only to the individual but also to families and communities. Our first priority for reform should be minimizing the use of criminal sanction with nonviolent drug offenders.

We have discussed the war on drugs not only in terms of its failure to affect positive change, but also in terms of its harmful consequences for drug offenders and their families. Given the scope and nature of the criminal justice scenario we described, we believe that family preservation policies should be enacted within the context of harm-reduction and sentencing reform. A first priority for reform would be *narrowing the pool of those eligible for incarceration*. As discussed in the previous section, repealing criminal sanctions for drug use and adopting alternative approaches to the regulation and control of drugs can accomplish this objective. Sentencing reform is also necessary, and we believe that *any discussion of family preservation efforts apart from sentencing reform is incomplete*. We concur with Conrad (1998) and others (Donzinger, 1996; Norman, 1995) about the need to remove laws and procedural barriers that place "form over substance, procedure over justice" (p. xix).

Some child welfare advocates call for family preservation efforts within the current context of criminal sanctions. For example, Seymour (1998) assumes that incarceration is a symptom of "complex family problems" rather than a symptom of a politicized and institutionalized bureaucracy. Such an assumption draws attention away from government's responsibility for much drug-related incarceration and maintains an incomplete view of drug use and the harms created by criminal sanctions for nonviolent offenders.

It is also important to reform mandatory minimums and conspiracy laws and restore judicial discretion in sentencing in order to more fully consider the presence of children and family needs. Bloom (1995) notes that legislation repealing mandatory minimums sentences would not only reduce current incarceration rates, but would also increase the amount of public resources that could be diverted from prisons and jails to prevention and other harm reduction strategies.

Within a context of harm reduction and sentencing reform, interventions in correctional facilities would serve to preserve families. Key interventions include strengthening parent-child visitations by keeping offender parents closer to home, providing transportation and/or finan-

cial resources to support visits, and improving the quality of visits via child friendly visiting rooms and other parenting resources (Bloom, 1995; Johnson et al., 1998; Schoenbauer, 1986; Seymour, 1998). We also support conjugal/family visiting and the full use of furloughs for nonviolent drug offenders, when possible, to strengthen and sustain marital bonds. Carlson and Cervera (1992) note that conjugal visiting is rarely allowed at the state level and that furloughs are underused because of various technicalities, making most inmates ineligible. At the federal level, conjugal visiting is prohibited completely. These practices run counter to family stability, and our recommendations for change should be considered as part of a comprehensive family preservation strategy within correctional facilities.

### SUMMARY

In our review of the evidence, the casualties of the drug war very likely outweigh any societal victories. We have concentrated on the casualty costs in terms of losses to civil liberties and the families and communities of those arrested for nonviolent drug offenses. As shown in Figure 1, we note the need for more systematic data collection that would allow a comparison of the net effects of harm reduction vs. criminal sanctions drug policy. Finally, we make several recommendations for policy change that would reduce many of the harms for drug offenders and their families. It is our hope that analyses such as this one can begin to lift the curtain on the unhealthy impact of U. S. drug policies on our society and its families.

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