Sanctions Against Users of Illegal Drugs

As traditionally conceptualized, the two prongs of drug control policy are supply reduction and demand reduction. Supply reduction is usually understood to be synonymous with enforcement of drug law prohibitions and international interdiction activities, whereas demand reduction is usually thought to encompass clinical treatment of drug abuse and addiction as well as the spectrum of activities aiming to prevent youths from using drugs (e.g., media campaigns, school-based education programs). This conceptualization is imperfect for two reasons. First, a large component of drug law enforcement focuses directly on reducing demand (e.g., apprehending and punishing users for possessing drugs). Second, the standard menu of demand-reduction activities tends to overlook (or take as given) the rich fabric of deeply ingrained social controls against illicit drug use, including legal controls.

LEGAL SANCTIONS AND SOCIAL CONTROL

In this chapter, the committee addresses sanctions against using drugs within the broad framework of social control. In people’s daily lives, almost all of their behavior is shaped, channeled, and controlled by the expectations and norms embedded in their relationships with their families, friends, teachers, employers, and various social groups and organizations, and these norms and expectations vary substantially over the life course. Informal social controls may discourage drug use or, conversely,
may encourage and reinforce it, depending on the social and development context. Some norms and expectations discouraging drug use (including alcohol and tobacco use) are formalized and "enforced" in social groups and organizational settings through various mechanisms of social discipline; sometimes such "private" sanctions are explicitly permitted and enforced by law (e.g., dismissals for using illegal drugs or alcohol on the job or for testing positive for illegal drugs).

A central point of dispute in the drug policy debate is the nature of the link between the drug laws and other forms of social control against drug use. On one side, critics of harsh penalties and zero-tolerance policies argue that over-reliance on formal controls can displace or weaken informal controls, especially when the intrusiveness and severity of the laws generate alienation and discord (National Commission on Marihuana and Drug Abuse, 1973; Erikson, 1993). Despite its importance, the relationship between law and other forms of social control is poorly understood (Black, 1976; Eliockson, 1987), although the "expressive" function of law, and its relation to social norms, are receiving increasing attention in the legal literature (Lessig, 1995; Sunstein, 1996).

Sanctions against drug use are a preeminent feature of policy on illegal drugs, yet very little is known about the actual effects of these sanctions on drug use (independent of the effects of other social controls). Some observers have argued that enforcement of sanctions against users imposes substantial costs on individuals and society without a demonstrable preventive effect beyond that achieved by the underlying illegality of the drug and strong social disapproval (New York County Lawyers' Association, 1996). Supporters of these sanctions argue that strong penalties against use, including criminal punishment, are necessary to deter drug use, to facilitate treatment of drug users, and to register social disapproval in the strongest possible terms—often called "zero tolerance" (DuPont, 1996). These arguments raise important empirical issues regarding the declarative, deterrent, and therapeutic effects of criminal punishment and other sanctions. This chapter addresses these issues.

**Sanctions against users of illegal drugs**

what is known about the preventive effects of various methods of enforcing prohibitions against trafficking in illegal drugs. The question of interest in this section is what is known about the added preventive effects achieved by prescribing and enforcing sanctions against users.

Possession of any amount of illegal drugs is a crime under both federal and state law, typically punishable by incarceration. (The only exception is possession of small amounts of marijuana, which, in a handful of states, is punishable only by a fine.) Although possession offenses are typically prosecuted as misdemeanors, punishable by up to a year in the local jail, about 30 states classify possession of opiates or cocaine as a felony, punishable by a prison term and all the collateral consequences that accompany a felony conviction, such as loss of occupational licenses and the right to vote. In addition, all states punish possession on federal drug paraphernalia, including syringes, and other consumption-related behavior.

**Enforcement**

The federal government concentrates its enforcement effort on trafficking offenses—only 2 percent of the 27,000 federal drug arrests in fiscal year 1998 were for possession, and most of these were misdemeanor arrests in the District of Columbia. By contrast, 80 percent of the drug arrests made by state and local law enforcement agencies are for simple possession (i.e., possession of small amounts without evidence of intent to distribute). More than 1.2 million arrests were made for drug possession offenses in 1998, and half of these were for possession of marijuana (Bureau of Justice Statistics, Drug and Crime Facts). The proportion of these arrests resulting in criminal convictions is unknown. Most people convicted of simple possession are sentenced as misdemeanants to probation or, in cases involving repeat offenders, short terms in local jails. (In 1996, for example, 11.3 percent of all jail inmates were incarcerated for a drug violation as their most serious offense.) However, more than 135,000 persons were convicted of felony possession charges in 1996, representing about 14 percent of all state felony convictions (Brown and Langan, 1999). And 70 percent of these offenders were sentenced to prison (29 percent) or local jail (41 percent). The mean maximum sentence length for felony drug possession offenders serving prison time was 42 months; for those sentenced to local jail, the mean maximum sentence was 5 months.

One of every seven drug arrestees in 1997 was a juvenile (Snyder, 1998). The number of juveniles arrested for drug offenses has increased...
In Chapter 8, the committee addresses the effects of enforcing sanctions against both users and dealers of illegal drugs. The committee focuses on the utility of sanctions as a means of discouraging drug use and crime. It examines the effectiveness of sanctions in reducing drug use and crime, and discusses the potential trade-offs between the benefits and drawbacks of sanctioning drug users and dealers. The committee also considers the implications of sanctions for public health, law enforcement, and social welfare.
INCREASING AMERICA'S ISSUES OF ILLEGAL DRUGS

Loss of Benefits and Privileges

In the Anti-Drug Abuse Act of 1986, Congress invoked new penalties. Persons convicted of drug violation were authorized to deny benefits of Federal credit, the savings and loan insurance fund, and the Federal Home Loan Bank Board. The act also provided for the denial of Federal housing if the defendant violated a community service program.
The Anti-Drug Abuse Act, as amended in 1990, requires public housing authorities to include lease provisions providing that drug-related activity on or near the premises is cause for termination of the lease, even in the absence of arrest or conviction for a drug offense, and also made lease holders subject to forfeiture for drug-related activity. In 1997, the Department of Housing and Urban Development promulgated a “one-strike” regulation empowering public housing authorities to terminate a resident’s tenancy for “any drug-related activity on or near the premises,” including activity “by a tenant, any member of the household, a guest, or another person under the tenant’s control.” Application of this policy to persons other than tenants, including guests or adult children who do not live in the covered housing, and eviction of entire households because of a violation by one of its members, has been challenged in court, largely unsuccessfully (see Weil, 1991; Yoskovitz, 1992; Mock, 1998). The impact of this policy on drug-related activity does not appear to have been evaluated, either as a deterrent or as a mechanism to enable willing communities to root out local drug markets.

The precedent established by the 1988 act was extended in 1996 to welfare benefits. Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 permanently denies food stamps or cash assistance to persons convicted of a drug felony. Although the federal law allows states to opt out of the ban, only eight have done so, and some states have gone further, excluding drug felons from state assistance programs as well as the federal program. A few states modified the ban to apply only to persons whose convictions were for drug trafficking (rather than possession), or to exempt persons who are enrolled in or who have successfully completed drug treatment (National Governor’s Association, 1997). Although it has been estimated that Section 115 permanently denies welfare eligibility to as many as 200,000 people per year (Harvard Law Review, 1997), data regarding its application are not available.

The ban on welfare benefits is under constitutional challenge. Its defenders rely on both the declarative effects (emphasizing the need to promote personal accountability) and the deterrent effects. Critics of the welfare ban argue that it has a disproportionate impact on minority women, who are more likely to be economically dependent on the drug industry, and that loss of economic support increases the already heightened risk of abuse and neglect in families without stable income and housing, and that loss of support will also increase foster care costs. Indeed, if the committee can ascertain, the welfare ban has not been evaluated.

These practices raise two important questions regarding the premises and consequences of current policy on illegal drug use. First and most important, what is the added value of benefit deprivation in determining who has drug-specific deprivations against users of illegal drugs

Second, what are the costs or side-effects of these practices? In some ways, this is a subset of more general questions now being raised about the costs of stigmatization associated with criminalization of drug offenders, including the consequences of imprisoning, as felons, such a large proportion of the nation’s young black male population (Nagin, 1998).

However, the specificity of the supplemental sanctions for drug offenders (denial of housing and welfare benefits) raises further questions about the desirability of further stigmatizing people who have used illegal drugs. Denial of benefits and privileges implicates a key ethical issue in drug abuse prevention. Sanctions and punishments, of whatever kind, exert their preventive effects at the population level—by symbolizing strong social disapproval and thereby reinforcing drug-free social norms, by deterring initiation by youths, and by encouraging recreational users to terminate use as they move into traditional social roles. However, denial of benefits and privileges intended to maintain normative disapproval and credible deterrent threats, tend to fall largely on the most disadvantaged part of the population.

The committee recommends that the National Institute of Justice and the National Institute on Drug Abuse collaborate in stimulating research on the effects of supplemental sanctions, including loss of welfare benefits, driver’s licenses, and public housing, on the use of illegal drugs.

EMPLOYMENT SANCTIONS

In 1986, President Ronald Reagan issued an executive order directing federal agencies to establish a comprehensive employee drug testing program, setting the stage for adoption of drug testing policies throughout the workforce. In 1989, the National Drug Control Strategy, predicted that workplace drug testing would prove to be a powerful deterrent to drug
use (1999:57): "Because anyone using drugs stands a very good chance of being discovered, with disqualifications from employment as a possible consequence, many will decide that the price of using drugs is just too high." The American Management Association reports that the proportion of its 700,000 members operating drug testing programs rose from 21 percent in 1987 to 81 percent by 1996 (American Management Association, 1999). Similar trends are reported by the nation's largest companies. The percentage of medium-to-large firms using some form of drug testing, nearly doubled from 32 percent in 1988 to 62 percent in 1993 (Hartwell et al., 1996). However, despite these trends among larger firms, small businesses do not require drug testing.

According to the National Household Survey of Drug Abuse in 1994, one third of adults in the workforce reported that their employers operate a drug testing program. About 14 percent of the employed respondents reported that their employers tested only at hiring, whereas the remainder (18 percent) reported that their firms conducted random postemployment testing (Hoffman and Lavison, 1999). Under a random testing protocol, employers are automatically selected for periodic testing in the absence of any dangerous incident or individualized suspicion. Some employers limit the classes of employees subject to random testing to "safety-sensitive" positions, requiring only "for-cause" testing for other employees. Presumably, a large proportion of employers conduct for-cause testing on the basis of an injury or suspicion of intoxication or impairment. For-cause testing is uncontroversial because it is generally perceived as fair and most likely helps to deter workers from becoming intoxicated on the job. Because random testing is the only policy likely to exert a significant deterrent effect on whether workers continue to use drugs at all, this discussion focuses exclusively on this practice.

In the public sector, drug testing practices are circumscribed by the Fourth Amendment’s ban against unreasonable searches. In general, random testing of public employees is permitted if the program applies only to employees holding safety-sensitive positions or perhaps to positions implicating the integrity of the agency’s mission. Otherwise, the courts have ruled that random testing constitutes an unreasonable invasion of employee privacy (Harmann v. Thurber, 879 F.2d 484 (D.C. Cir., 1989) cert. denied 493 U.S. 1056, (1990)).

In the private sector, the law generally leaves employers free to adopt whatever testing policy they choose. Federal law encourages drug-free workplaces, and drug testing is explicitly authorized under the Americans with Disabilities Act. (This act prohibits disability-based discrimination against persons with histories of drug addiction as long as they are SANCTIONS AGAINST USERS OF ILLEGAL DRUGS
tated by most states. However, at least eight state legislatures have prohibited random testing of employees in positions that are not safety-sensitive, and a few state supreme courts have embraced a similar approach in the absence of legislative action. As indicated, however, the law in most states leaves employers free to adopt a random testing program for all employees, and it appears that many employers have done so.

The question of interest is whether the expanding practice of workplace drug testing deters drug use by employees. In 1994, the National Academies’ Committee on Drug Use in the Workplace concluded that the preventive effects of drug testing have never been adequately demonstrated and that there existed no conclusive “scientific evidence from properly controlled studies” that employment drug testing programs widely discourage drug use or encourage rehabilitation. Subsequent research has provided some additional evidence bearing on the deterrent effect of drug testing in the military, but this evidence does not cast much light on the effect of testing in civilian employment.

Testing in the Military

In the U.S. military services, random testing is required of the entire workforce and, since 1995, all services have automatically imposed a severe sanction (discharge) on all violators. Two recent studies yield evidence that the military’s zero-tolerance drug policies, including routine drug testing (adapted in 1980), have deterred illegal drug use among enlistees. One study, by Bachman et al. (1999), based on the longitudinal panel data from the Monitoring the Future survey, tracked cohorts of seniors (classes of 1976 to 1995) for two years after graduation, and compared active-duty recruits with nonmilitary classmates who entered college and civilian employment. The study found that the prevalence of marijuana or cocaine use before graduation was about the same among seniors who chose to enlist in the military as it was among those who chose to go to college or enter the civilian workforce. However, during the follow-up interview two years

There are other goals that could be served by employee drug testing, including screening employees to identify applicants or employees at high risk for impaired performance or reduced productivity. However, a 1994 National Academies report found that “clear evidence of the deleterious effects of drugs other than alcohol on safety and other job performance indicators” is lacking. (National Research Council, 1994, p.107). Random testing is a costly and imperfect method of identifying poorly performing employees (Rothstein, 1991).
later, the prevalence of marijuana use and cocaine among people on active duty was substantially lower than it was among their classmates. Although it is possible that the self-reports by active-duty personnel are less trustworthy than those of other respondents, the data are suggestive of a deterrent effect and also tend to show, somewhat surprisingly, that there was no substantial self-selection (i.e., high school drug users were no less likely than their peers to enlist in the military), even though such a self-selection effect was evident for smokers after the military toughened its smoking policies in the late 1980s.

The second study, conducted by Mehay and Pacula (1999), used data from the National Household Survey on Drug Abuse and the Department of Defense's Worldwide Survey of Health Related Behaviors to compare military and civilian populations before and after adoption of the military's zero-tolerance policy in 1981. They concluded that, in 1995, military employees were about 16 percent less likely to report using drugs during the past year as their civilian counterparts, and that very little of this difference appears to be attributable to self-selection bias. Noting, however, that selection bias might more heavily influence younger age groups, they estimated that the deterrent effect might be as low as 4 percent.

Testing in the Civilian Workforce

Mehay and Pacula observed that a zero-tolerance, frequent testing protocol, similar to the military approach, probably would not be cost-effective in the civilian sector, but they suggest that a less frequent testing policy, with a more lenient second-chance sanction, might yield a 10 percent decrease in the use of illicit drugs, much as is the case for Canadian workers who have a zero-tolerance policy.
alcohol (87 percent), tobacco (79 percent) or illegal drugs (88 percent)

(Zero tolerance in this context refers to a school or district policy mandat-
ing predetermined punishments for specific offenses.) High schools were

slightly less likely to have zero-tolerance policies on tobacco use (72 per-
cent) than for alcohol (86 percent) or illegal drug use (89 percent). One-

fourth of the principals (27 percent), representing about 1,500 schools

nationwide, reported having taken significant disciplinary action against

student use of alcohol, tobacco, or illegal drugs during 1995-1996. These

actions included expulsion (18 percent), transfers to alternative schools or

programs (20 percent), and suspension for periods of five days or more

(62 percent). About half of high schools (45 percent) and a third of middle

schools (36 percent) reported conducting occasional “drug sweeps”

(locker searches or dog searches) during 1994-1995.

Additional data can be gleaned from the National Study of Delin-

quency Prevention in Schools, a national study of schools conducted dur-

ing spring 1997 and the 1997-98 school year, which included principal

reports of school sanctions (Gottfredson et al., 2000). The survey found

that almost all schools had written policies about drugs, and almost all

schools report that they usually expel or suspend students for possession

of alcohol or illegal drugs. A substantial majority of schools report that

they impose these sanctions automatically for possession of illegal

drugs (77 percent) or alcohol (67 percent). The study also revealed that

46 percent of high schools conducted routine locker searches and 31 percent

of high schools used dogs to sniff for drugs, guns, or bombs. No evaluative

data on the effectiveness of these practices is available.

Drug Testing in High Schools

Drug testing programs have become well established in professional

and college sports. Notwithstanding occasional highly publicized viola-
tions, it is generally agreed that drug testing in this setting, for both deter-
rent and declarative purposes, is both legitimate and effective.*

In contrast, the legitimacy (and value) of mandatory drug testing of

high school athletes is much more controversial. On one hand, wide-

spread implementation of mandatory drug testing programs for high

school athletes could deter use among students who want to participate

in athletics and could also help to establish a drug-free culture in the

schools when combined with other norm-setting activities. On the other

hand, such programs involve a significant coercive element, because test-
ings is linked to participation in an activity that might be regarded as a

core educational and developmental opportunity for many students.

Although the constitutionality of mandatory drug testing for high school

athletes has been affirmed by the U.S. Supreme Court (515 U.S. 466, 1995),

many students and parents are strongly opposed to these programs.

Although no systematic survey of drug testing has yet been con-
ducted, the study by Gottfredson et al. (2000) reveals that approximately

9 percent of secondary schools conduct some sort of testing program,

presumably focused on athletes. Newspaper and litigation reports indi-
cate that some school districts are requiring testing as a condition for

participation in all extracurricular activities. At the present time, how-
never, there is no scientific evidence regarding the effects of these pro-
grams, either on drug use or on the learning environment. The National

Institute on Drug Abuse has recently funded a three-year randomized

controlled trial of drug testing in 18 schools, to be conducted by the Or-

ergon Health Sciences University (Linn Goldberg, personal communi-
cation). Data from a pilot study conducted by these investigators sug-

gests that testing of athletes does have a significant deterrent effect—a note-

worthy and intriguing finding in light of the fact that the testing protocol

being implemented in this study has been designed to eliminate any risk

to the students that positive tests could be disclosed to law enforcement

authorities or lead to any form of school discipline beyond suspension

of athletic participation.

The committee recommends that the National Institute on Drug

Abuse and the Office of Educational Research and Improvement sup-
port rigorous research on the preventive effects, costs, and cost-effect-

iveness of drug testing in high schools, with a particular emphasis on

the relationship between drug testing and other formal and informal

mechanisms of social control.

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*Drug testing for professional athletes is on strong ethical footing because an opportunity to participate in professional sports, and to reap the rewards of doing so, is a "priceless" privilege, and athletes who want to reap those rewards can fairly be expected to submit to drug testing as a condition of participation. Such contractual arrangements are wholly different from coerced testing. These observations are generally applicable to college athletes as well, although a connection between tuition and athletic scholarships for many athletes does