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Issues and Practices

Prosecutorial Response to Heavy Drug Caseloads: Comprehensive Problem-Reduction Strategies

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U.S. Department of Justice
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Comprehensive Problem-Reduction Strategies

by
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and
Kerry Murphy Healey, Ph.D.

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Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Each report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion on the subject. The intent is to provide information to make informed choices in planning, implementing and improving programs and practice in criminal justice.

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Foreword

In recent years, management of heavy drug caseloads has become a challenge for all prosecutors, even many who are not in urban jurisdictions. While most prosecutors are no longer experiencing the dramatic increases in drug caseloads that were common at the end of the 1980's, drug prosecutions continue to dominate the caseloads of many offices. Successful management of drug cases has emerged as a critical component of the prosecutor's mission.

This report focuses on the experiences of five prosecutors' offices that implemented innovative ways to reduce their drug caseloads by redefining and expanding the role of the prosecutor to include civic activism and policymaking with respect to the entire drug problem in their communities. These offices have sought to lighten drug caseloads by spearheading or cooperating with a proactive, multipronged attack on all aspects of the drug problem. They have brought an array of antidrug programs under their auspices, including school-based drug education, close cooperation with drug treatment programs and special drug courts, targeting

repeat offenders for aggressive prosecution, and participation in multijurisdictional task forces to pursue high-level drug traffickers.

The prosecutors in these case studies have committed themselves to a management strategy that several National Institute of Justice reports have called the "comprehensive problem-reduction approach." But the details of their programs are not similar, and no one program or set of programs has emerged as the key to implementing this strategy. The Institute hopes that this report will provide a road map and helpful examples for prosecutors who are taking a broad view of their role in the community, and who are interested in long-term strategies for the reduction and management of heavy drug caseloads.

Michael J. Russell
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Chapter 1

Introduction

Scope and Objectives

This report is intended to assist elected prosecutors and their top administrators in formulating an effective response to heavy drug caseloads. Since the mid-1980's, heavy drug caseloads have placed an enormous burden on prosecutors across the country. In response to this challenge, prosecutors have instituted a number of programs to make drug prosecutions more efficient and effective. In some offices, prosecutors are combining a wide range of programs—from prevention to interdiction—to create a new, comprehensive approach to managing heavy drug caseloads. This report reviews the spectrum of programs that selected prosecutors have used to respond to the problem of heavy drug caseloads, and singles out a promising managerial approach, comprehensive problem reduction, which is common to a number of jurisdictions that reported success in coping with heavy drug caseloads. In addition, this report highlights and discusses two specific programs that some prosecutors considered to be particularly effective in controlling drug caseloads in their jurisdictions.

Background: The Emergence of Heavy Drug Caseloads

The advent of heavy drug caseloads coincided with the emergence of crack and street trafficking as a major law enforcement concern. Although widespread use of cocaine among the general population began in the mid-1970's, and peaked in the early 1980's, it was not until the mid-1980's—when crack appeared—that large numbers of police arrests for drug offenses began to show up in the felony courts. Media accounts, official government statements, and recent case studies by scholars provide a consistent account of the change in drug use and trafficking patterns that occurred in the mid-1980's. These sources suggest that, with the advent of crack, the use of cocaine shifted from predominantly casual to addictive use. This change was facilitated by drug

traffickers who focused on a new group of potential cocaine users—disadvantaged residents of inner cities. The aggressive marketing of cocaine wholesalers and the proliferation of street dealers triggered a response in the law enforcement community that produced record increases in drug arrests in many urban jurisdictions by 1987.¹

Early Prosecutorial Responses

Statistics alone suggest that prosecutors responded to the surge in drug arrests generated by the crack epidemic in a new and innovative manner. A 1989 review of arrest dispositions in Los Angeles, Manhattan, San Diego, and Washington, D.C.—cities that were hit early by the explosion in drug cases—showed that prosecutors in all four cities responded to the increase in caseloads by “getting tough” on defendants arrested for drug crimes. Arrest disposition data from these cities for 1982 and 1987 show that while the number of felony arrests increased dramatically, the proportion of arrested defendants convicted and sent to prison increased even more rapidly. Specifically, the prosecutors in all four jurisdictions responded to heavy drug caseloads by indicting a higher fraction of arrested felony drug offenders in 1987 than in 1982. Consequently, they obtained a disproportionately greater number of drug convictions to felony charges in 1987 than in 1982. Once defendants were convicted in the felony court, judges either maintained prior rates of imprisonment or sentenced an even higher fraction to prison. The end result was that while felony drug arrests increased by 136 percent from 1982 to 1987, the number of imprisonments increased 317 percent. In other words, the chance that a defendant arrested on a felony drug charge would go to prison more than doubled.² The opposite had occurred two decades earlier, when street crime increased rapidly while prison populations declined.³

Recent statistics concerning commitments to prison on drug charges indicate that the “crack down” response was widespread. A 1991 survey of drug arrests and prison commit-

ments in 18 States in 1985 and 1989 found that every State during this period increased the rate of imprisonment for drug arrests. Overall, the ratio of prison commitments to arrests doubled. In some States, such as New York and Florida (both of which experienced high volumes of drug arrests), the arrest to imprisonment ratio tripled.⁴

The statistical evidence of a “crack down” by police, prosecutors, and judges is supported by our interviews with prosecutors in jurisdictions with heavy drug caseloads. As discussed in chapter 2, after the initial crisis created by the flood of new cases was brought under control by a combination of aggressive prosecutions and additions to staff, many prosecutors began to look for more long-term solutions to the elevated level of drug prosecutions. This report looks at several jurisdictions that have made a commitment to long-term, comprehensive strategies to manage drug prosecutions, and attempts to illustrate how such highly individualized strategies are designed and implemented.

Defining Comprehensive Problem Reduction

A comprehensive problem-reduction strategy involves a proactive, multipronged attack on drug abuse formulated to examine all levels of the drug problem in a jurisdiction—from drug education in the schools, to the deterrence and treatment of users, to the prosecution of street sellers and the pursuit of high-level drug traffickers.⁵ The combination of programs included in such a strategy is highly specific to the needs of a given jurisdiction and must take into account the character of the community, the nature of local drug abuse, and any requirements imposed by State and local government. Comprehensive strategies do, however, have in common three broad stages:

- *Problem definition*—in which the prosecutor increases his or her contacts with the community and with relevant law enforcement agencies in order to understand the full scope of the drug problem in the jurisdiction. Problem definition is both the first task in the creation of a comprehensive problem-reduction strategy and an important ongoing, evaluative component of the strategy itself.
- *Formulating an appropriate response*—in which the prosecutor designs and implements a range of programs to respond to the specific needs of the community. This is also the stage at which problems within the criminal justice system are addressed: legislative reform may be sought (e.g., to raise the penalties for

specific drug crimes, to simplify an onerous administrative procedure); and cooperative efforts with other local agencies may be instituted to increase overall prosecutorial efficiency (e.g., joint efforts between police and prosecutors, or between judges and prosecutors, such as the creation of special drug dockets).

- *Defendant targeting*—intensive case screening is then needed to ensure that defendants are placed in appropriate programs.

Some aspects of comprehensive problem reduction are reminiscent of strategies that were part of the response to street crime two decades ago, such as intensive case screening and career criminal targeting. Those that are new for prosecutors, and are more commonly thought of as aspects of community policing programs, are those that emphasize interagency cooperation, community involvement, and preventative education. In our interviews, prosecutors who had implemented a comprehensive attack on drug abuse in their jurisdictions viewed such efforts as essential to their mission as elected officials and justified the effort as an investment in lower future caseloads.

Information in This Report

This report was prepared with information from four sources: a literature review; an analysis of the FBI’s Uniform Crime Report (UCR) data; telephone interviews with prosecutors in jurisdictions with heavy drug caseloads; and visits to five case-study sites during 1991, with updates of the site-visit information to reflect current practice at the end of 1992. The literature review included media articles, research literature, government documents, and statistical publications relevant to the current drug problem. The literature review was supplemented by secondary analyses of the UCR 1989 arrest data to identify jurisdictions experiencing high levels of cocaine and heroin arrests (see appendix A). The results of this analysis and the literature review were used to develop a structured interview guide for a telephone survey of prosecutors in jurisdictions that were experiencing a high volume of drug arrests (see chapter 2, table 1, for a listing of jurisdictions in which prosecutors were interviewed). The interview guide was designed to elicit two types of information: first, the prosecutors’ views on the scope of drug crime in their jurisdictions; and second, a description of how drug cases are handled in their offices, including any program or combination of programs specifically designed to expedite or reduce heavy drug caseloads.

Five case-study sites were chosen from the interview sample on the basis of the broad range of programs in place at each

site, a reported high level of control over their drug caseloads, and geographical distribution. Site visits were conducted by the authors at Miami, Florida; Oklahoma City, Oklahoma; Oakland, California; Portland, Oregon; and Seattle, Washington. Four of these sites were selected as examples of comprehensive problem-reduction strategy. In chapter 3, case studies for these sites provide brief descriptions of the range of programs comprising the jurisdiction's comprehensive problem-reduction strategy; however, the authors have not undertaken an evaluation of the efficacy of the component programs. The two programs presented in separate case studies in chapter 4, the Oakland probation revocation model and the King County Special Deputy Program, are considered in greater depth.

Survey results and case-study information are presented as follows:

- *Chapter 2* provides an overview of information collected in interviews with prosecutors in 22 jurisdictions, including prosecutors' opinions concerning the character of their local drug problem, initial and revised responses to heavy drug caseloads, and trends in drug abuse.
- *Chapter 3* focuses on four jurisdictions where the elected prosecutors employed comprehensive problem-reduction strategies. Case studies review a wide range of programs in Miami, Florida; Oklahoma City, Oklahoma; Portland, Oregon; and Seattle, Washington.
- *Chapter 4* highlights and critiques two programs that have been particularly successful in helping to control heavy drug caseloads in their jurisdictions. Case studies are presented on the Oakland, California, probation revocation program, and the Seattle-based King County Special Deputy Program. The *Oakland Probation Revocation Model* is currently in use in several urban jurisdictions in California. The Oakland model involves the use of prosecutor-initiated probation revocations to speed the incarceration of offenders who are on probation when arrested on drug charges. The *King County Special Deputy Program* trains and uses volunteers from private law firms to prosecute a limited number of selected drug cases.
- *Chapter 5* reviews the major findings of the report and summarizes the key steps in implementing a comprehensive problem-reduction strategy to control heavy drug caseloads.

Endnotes

1. See Herbert I. Abelson and Judith Droitcour Miller, "A Decade of Trends in Cocaine Use in the Household Population," *Cocaine Use in America: Epidemiologic and Clinical Perspective*, eds. Nicholas J. Kozel and Edgar H. Adams, NIDA Research Monograph 61 (Washington, DC: U.S. Government Printing Office, 1985); Federal Bureau of Investigation, *Uniform Crime Reports, 1989* (Washington, DC: U.S. Government Printing Office, August 5, 1990); *Crime in Florida: 1989 Annual Report* (Tallahassee, FL: Florida Department of Law Enforcement); *National Household Survey on Drug Abuse, 1974-1990* (Rockville, MD: National Institute on Drug Abuse); Office of National Drug Control Policy, *National Drug Control Strategy* (Washington, DC: The White House, U.S. Government Printing Office, September 1989); Michael Manning, "Crack's Destructive Sprint Across America," *The New York Times Magazine*, October 9, 1989; Terry Williams, *The Cocaine Kids* (New York: Addison-Wesley Publishing Company, Inc., 1989); Marcia R. Chaiken, "Identifying and Responding to New Forms of Drug Abuse: Lessons Learned from 'Crack' and 'Ice'" (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1993).
2. Barbara Boland, personal memorandum to Stephen Goldsmith, June 13, 1989, Abt Associates, Washington, DC.
3. James Q. Wilson and Barbara Boland, "Crime" in *The Urban Predicament*, eds. William Gorham and Nathan Glazer (Washington, DC: The Urban Institute, 1976).
4. Kenneth E. Carlson and Tammy Enos, "Bulletin: Recent Effects of Increased Drug Offense Sanctions on State Prison Populations," unpublished paper, Abt Associates July 6, 1992.
5. Jan Chaiken, Marcia Chaiken, and Clifford Karchmer, *Multijurisdictional Drug Law Enforcement Strategies: Reducing Supply and Demand* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1990).

Chapter 2

Overview of Prosecutors' Response to Heavy Drug Caseloads

How the Prosecutors Were Selected

In 1989, 50 metropolitan areas accounted for 76 percent of the nation's arrests for cocaine offenses (see appendix A). Selection of sites for telephone interviews with prosecutors who had experience managing heavy drug caseloads was based on several priorities. First, the participation of as many prosecutors in the top 10 cocaine arrest areas as possible was sought, since these areas alone accounted for 45 percent of all cocaine arrests in 1989. The response rate for the top 10 cocaine arrest areas was 70 percent. Second, to capture any geographic variation in the nature of the drug problem or in the prosecutorial response to high volume drug arrests, sites surrounding each of the four major drug import cities (New York, Los Angeles, Miami, and Houston), as well as five noncoastal jurisdictions, were selected.¹ All of these jurisdictions were among the top 50 arrest areas in 1989, except one interior jurisdiction that was included on the basis of its highly publicized, aggressive prosecutorial response to a sudden increase in drug cases. (See table 1 for a complete listing of interview sites.)

Prosecutors' View of the Drug Problem

The project sought to ascertain whether the drug problem, in the view of local prosecutors, was consistent with that chronicled by journalists and researchers in specific city case studies. In telephone interviews, prosecutors in the 22 cities were asked to state their view of the problem—specifically, whether their drug caseloads had increased; the drug that accounted for the increase; when the increase first began; the types of offenders that accounted for the high volume of arrests; how the police were generating large numbers of arrests; and whether they knew how drugs

entered their communities and who was dealing which drugs to different user groups.

The description of the caseload problem provided by the prosecutors was highly consistent both across offices and with the media, case-study, and official accounts. All prosecutors reported caseload increases, in most cases sharp and unexpected increases, beginning in the mid-1980's; the increases were attributed to crack; and the largest volume of cases involved street dealers and, in some cities, a combination of street dealers and users. East Coast and West Coast cities typically identified the year of onset of the problem as 1985. Interior cities and those located some distance from the major import points typically identified the onset of the local drug problem as one or two years later. Although police tactics for making arrests (buy and bust, informants, reverse stings, street sweeps) varied among the cities surveyed, no one complained that the police were bringing bad cases. In the case of street-sweep arrests, prosecutors were specifically asked their opinion regarding the quality of arrests. Where street sweeps were commonly used, prosecutors reported that they typically produced good arrests.

Prosecutors were also asked what their offices' priorities were in prosecuting drug offenders, and in particular, their opinion regarding the effectiveness of street-level enforcement versus the disruption of local dealer networks and their connections to national suppliers (e.g., local interdiction). All reported that street dealers and dealer networks were a prosecution priority, but difference in opinion regarding the most effective drug enforcement and prosecution strategy was considerable. Some prosecutors thought street enforcement was most effective in their community, some thought local interdiction was the most effective strategy, and some felt both strategies were necessary. At least in part, these responses appeared to be related to geographic location. The drug unit prosecutor in Oakland, California, for example,

Table 1

**Jurisdictions Included in Telephone Survey by Geographic Location
Relative to Major Drug Import Cities**

New York Area

- * New York City, NY
- * Philadelphia, PA
- Middlesex County, NY
- Bridgeport, CT
- Trenton, NJ
- * Baltimore, MD

Los Angeles Area

- * Los Angeles, CA
- * Oakland, CA
- * San Francisco, CA
- * San Diego, CA
- Portland, OR
- ** Seattle, WA
- Denver, CO

Miami Area

- Miami, FL
- Tampa, FL
- Atlanta, GA

Houston Area

- Houston, TX
- New Orleans, LA

Noncoastal Areas

- Detroit, MI
- ** Kansas City, KS
- Oklahoma City, OK
- Dayton, OH

* These jurisdictions were among the top 10 arrest areas in 1989 (according to UCR data; see appendix A). Top 10 jurisdictions not interviewed were Washington, DC; Newark, NJ; and Riverside, CA.

** Two jurisdictions in the interview sample—Seattle and Kansas—are not among the top 50 in appendix A. The Seattle Metropolitan Police Department did not report arrests to the FBI in 1989. Other available information indicates that Seattle would be among the top 50 if arrests had been reported. Kansas City was added to ensure representation of noncoastal midwestern cities that typically did not show up among the top 50. A number of midwestern cities, however, were just below the 50-jurisdiction cutoff point. Kansas City was chosen because of its highly publicized problems and apparent success in dealing with Jamaican gangs.

thought that, given their close location to major points of entry for virtually all types of drugs, their local strategy could do little to dent the flow of drugs into their area. He was convinced, however, that they could have an impact on supply and demand on the street. On the other hand, a drug unit prosecutor in Oklahoma City was adamant that a strategy of local interdiction, diligently pursued, worked in her community. Their drug prosecution strategy included aggressive efforts to identify members of drug networks and lock them up for long periods of time.

Not all respondents were able to answer questions about who brought drugs into their communities and who was dealing which drugs to different user groups. Those who could, it was later discovered, were among the group of offices identified as having the most innovative and comprehensive approaches to the current drug problem. In short, they appeared to have an understanding of the overall problem their communities faced that went beyond the immediate problem of processing heavy caseloads.

Initial Response: Coping With the Sudden Caseload Increase

The three most common initial responses to the sharp increase in cocaine arrests that occurred in the mid- to late 1980's were to increase staff, to reorganize the department to allow for the creation of a special drug unit, and to intensify prosecutions. In this initial response stage, most prosecutors reported that their offices had attempted to manage the increase in drug cases with heightened efficiency and larger staffs. Some were able to operate with traditional prosecutorial methods for a year or more before reorganizing their staffs to include one or more drug experts. However, at the time of the interviews, only one office among the interview sample had no specialized unit to deal with drug cases. Roughly half of the jurisdictions interviewed reported that their offices had responded by instituting a "get tough" policy on drug cases—tightening plea policies, seeking higher sentences, and using repeat offender statutes more often; another 23 percent reported that their office's plea policy on drug cases had always been strict, and that the increase in cases had no effect on this policy. Only three jurisdictions (14 percent) reported a relaxed plea policy in response to the increase in drug cases (two of these jurisdictions were major urban centers).

Other responses that were reported as occurring during this initial stage included legislative reform; the formation of local or State/Federal task forces; application for grants to institute task forces, address special problems, or create special dockets; the use of drug forfeiture; and more intensive case screening. None of these responses was widespread. Slightly less than one-fourth of the jurisdictions created horizontal (across local jurisdictions) or vertical (incorporating State or Federal agencies) task forces to tackle drug problems. Only 2 of the 20 prosecutors reported that their District Attorneys had actively campaigned at a State level for mandatory sentencing for drug crimes (as part of a general "crack down" response).

Revised Response: Managing Ongoing Heavy Drug Caseloads

Most prosecutors' offices had been caught off guard by the sudden increase in drug cases in the mid-1980's. As a result, time was needed to assess the problem and to formulate a coherent response. The steep caseload increases reported during the early years of the crack epidemic made this process of evaluation even more difficult. It was impossible for many prosecutors to estimate what sort of resources

would be necessary even a year in advance. As of 1991, however, almost 60 percent of the prosecutors interviewed reported that their office's drug caseloads had either plateaued (36 percent) or begun to decline (23 percent); only three prosecutors (14 percent) reported a continued sharp increase in drug cases (these prosecutors were all located in major urban centers); and the rest reported continued gradual increases. As drug caseload growth has slowed, a broader range of more organized responses has been implemented. The revised response, as described by the respondents, included a continuation of the "crack down" response seen in the first stage, paired with a range of new programs. The majority of these new responses to heavy drug caseloads fall into three broad categories:

- *defendant targeting* (including the targeting of repeat offenders, programs to revoke probation of drug offenders, and intensive case screening).
- *expediting cases* (including special drug dockets, programs to expedite pleas, and ad hoc arrangements to process arrests from street sweeps)²; and
- *cooperation* (including State and Federal cooperation, cooperation with local law enforcement, and community programs and drug education).

In addition to these types of programs, prosecutors reported the following: extensive use of cross-designation to prosecute high-level drug dealers; participation in various grant programs, such as multijurisdiction task forces; aggressive legislative reform efforts; and the widespread use of forfeiture in drug cases.

In terms of the day-to-day management of heavy drug caseloads, most prosecutors relied on intensive case screening and local cooperation (police and community):

- *Case screening.* The most common drug case management strategy emphasizes the careful screening of cases. In some jurisdictions this involves the full-time assignment of a prosecutor to assist the police in the preparation of cases; in others, prosecutors make daily trips to precincts to meet with police and screen cases. By contrast, in other jurisdictions, there is little contact between prosecutors and police, but careful consideration is given to charging in order to elicit a particular sentencing outcome or to place appropriate defendants in diversionary programs.
- *Local law enforcement and community cooperation.* The second most widespread case management tool is the development of programs or informal arrangements with local law enforcement. The content of these

programs appears to be less important than the fact of cooperation between prosecutors and police. Prosecutors in jurisdictions that reported a close cooperative relationship with police were more likely to take a proactive approach to case management and to be well informed about their communities' drug problems. In most cases, close cooperation with law enforcement was accompanied by or complemented with involvement in community programs. Prosecutors involved in both police and community programs were more likely to advocate a holistic approach to case management, that is, one that attempts to address all levels of the drug problem, from drug education to the interdiction of high-level traffickers.

Targeting repeat offenders for special treatment was also a common caseload management tool (especially in regard to the revocation of probation; see chapter 4). Approximately half of the prosecutors interviewed emphasized the importance of State and Federal cooperative efforts to the overall success of their programs. In five jurisdictions, legislative reform was considered a cornerstone of the District Attorney's program.

The primary finding from interviews with prosecutors concerning their drug caseload management was that those offices with a wide range of programs—as opposed to any particular set of programs—appeared to be better equipped to cope with the large volume of cases than those that relied on a few programs or those that had resisted specialization. Jurisdictions that pursue a deliberate policy of diverse programs are labeled as those with comprehensive problem-reduction strategies. As will be seen in the following chapter, the two most common approaches to case management—case screening and cooperation—are both extremely important elements in building a comprehensive problem-reduction strategy. Thus, the interviews with prosecutors would suggest that many offices that have not actively pursued a comprehensive antidrug strategy in the past already may have programs in place on which to build such an effort.

Perception of Drug Abuse Trends

Prosecutors were asked to comment on the current trend in drug caseloads in their jurisdiction and, where appropriate, to answer whether they felt the trend toward lower caseloads in their jurisdiction was significant. All but one respondent were hesitant to equate a leveling off in drug cases with an actual decline in the drug problem in their area. Thirty-two percent of the prosecutors interviewed attributed fluctuations in drug arrests (either the initial increase or the current

decline) to shifts in law enforcement tactics or funding. Others were less willing to speculate as to the reason for the decline but were skeptical about declaring a victory over drug crime in their jurisdiction. These concerns were supported by discussions with prosecutors and District Attorneys visited for this study. One District Attorney raised the question whether the structure of drug distribution is again undergoing fundamental changes, and whether law enforcement and prosecutors are once again one step behind. In particular, several prosecutors noted an increase in the sale and use of heroin, and a breakdown in the traditional groups associated with the sale and use of heroin, crack, and methamphetamines. In other words, the sale and use of various drugs are no longer limited to specific ethnicities or socioeconomic groups.

These speculations intensify the need for the sort of interagency and community-based efforts described in the case studies in chapter 3. One clear advantage of a comprehensive problem-reduction strategy is that it provides the avenues for communication—between police and prosecutors, between criminal justice agencies and the community—that can help alert prosecutors to new trends in drug crime and avert a repetition of the crisis in criminal justice that accompanied the appearance of crack. Comprehensive problem-reduction strategies are also conducive to the development of an information base that can help prosecutors to assess more confidently the effectiveness of their, and other criminal justice agencies', efforts to combat drug crime.

Endnotes

1. Generally, the top 50 cocaine arrest areas have large urban populations. The geographic location of high arrest areas, however, exhibits a pattern that is distinct from that of all large cities. High cocaine arrest areas are concentrated in the population corridors surrounding four cities—New York, Los Angeles, Houston, and Miami—where international cocaine trafficking organizations have located their importation and domestic distribution operations. Of the top 50 metropolitan areas in cocaine arrests, 37 are located in either California, Florida, Texas, or the northeastern seaboard, north and south of New York City. Only six are located in noncoastal, or interior, States.
2. See Joan E. Jacoby, Edward C. Ratledge, and Heike P. Gramckow, *Expedited Drug Case Management Programs: Issues for Program Development* (Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1992).

Chapter 3

Comprehensive Problem-Reduction Strategies for Prosecutors: Four Case Studies

As discussed in chapters 1 and 2, the prosecutors who reported the greatest degree of control over their drug caseloads shared a common managerial approach: a proactive, comprehensive attack formulated to address all levels of the drug problem in their jurisdiction, from the need for early drug education to the pursuit of high-level drug dealers. In the case studies that follow, the common thread is the three-stage process used to arrive at the drug strategies:

- problem definition;
- formulating an appropriate response; and
- defendant targeting.

Defendant targeting, the final matching process between defendants and appropriate dispositions, is the essence of the comprehensive problem-reduction approach. When the majority of lower-level drug violators can be deterred by education and public relations campaigns, or diverted to treatment or other community programs, prosecutors are better able to focus their attention on violent drug crime, repeat offenders, and the investigation of higher-level drug cases. The process of evaluation and response is, of necessity, ongoing, since it is the nature of the drug problem to change rapidly in response to the introduction of new products or to evade successful law enforcement tactics.

One other characteristic ties these case studies together: the elected prosecutor's commitment to community involvement and drug education. Regardless of whether the overall philosophy of the prosecutor is traditionalist or innovative, all actively involve their offices in community drug education and problem-reduction efforts. As will be discussed

below, the prosecutors in all four of the case-study sites employ full-time community liaisons who oversee their offices' community involvement and who act as resources for citizens concerned about drug crime. The prosecutors in these districts view their participation in drug education and community programs as an investment in lower future drug caseloads and crime.

Enhancing Traditional Prosecutorial Methods to Suit Modern Needs: A Case Study in King County, Washington

Background

In King County, Prosecuting Attorney Norm Maleng has kept the focus of his office on refining the effectiveness of traditional prosecutorial methods. His goals have been the maintenance of careful case screening, appropriate and prompt charging, minimal plea bargaining, and a high trial and conviction rate. Although in some prosecutors' offices the effectiveness of these processes collapsed in the face of heavy drug caseloads, Maleng has kept them alive by a large investment in prosecutor training, frequent rotations of prosecutors between units, aggressive pursuit of funding for staff increases, and selective incorporation of new programs that are aimed to enhance—rather than to replace—existing prosecutorial methods.

The King County Prosecuting Attorney announced his comprehensive drug program in 1986, but it continued to take shape over the next few years as the Prosecuting

Attorney, working in conjunction with law enforcement and the community, confronted the full scope of the drug problem in Seattle. Initially, the program included the formation of a Special Drug Unit within the prosecutor's office and a call for more efficient charging of drug dealers as well as higher sentences for drug crimes. Maleng also directed his office to focus more intently on street-level drug crime, targeting the low-level buyers and sellers of the then relatively new drug crack. At the same time, the Prosecuting Attorney emphasized the need for better treatment options for addicts and the importance of drug education both in the schools and in the community at large.

Between 1986 and 1989—some speculate as a result of the Prosecuting Attorney's aggressive new antidrug policies¹—drug arrests in King County skyrocketed. In 1986, only 450 drug cases were filed; by 1989, drug filings peaked at 2,504 cases.² After a drop in filings in 1990 (2,054) and 1991 (2,034), the office's drug caseload appears to be stabilizing. At its peak, drug cases comprised approximately 40 percent of the office's felony caseload (up from 10 percent in the early 1980's). Today that number is somewhat lower—approximately 30 percent of the total felony filings—but the absolute volume of drug filings remains high.

To accommodate this explosion of drug cases, the Special Drug Unit has been expanded from 2 deputies in 1986 to 21 deputies in 1992. This staff increase has allowed for specialization within the unit: 2 deputy prosecutors are full-time case filers; 2 deputy prosecutors are full-time administrators—1 heads the unit, the other heads the unit's trial division; 12 deputy prosecutors are in the trial division; 1 is a gang specialist; and 4 are assigned full-time to major police precincts under the Case Development Deputy Program. In addition, the unit is supported by one person who calendars cases and two paralegals who focus on coordinating witnesses for trials. On average, deputy prosecutors other than the two senior administrators and the Case Development Deputies are rotated out of the unit after four to six months. The Chief Deputy of the Criminal Division considers these frequent rotations a key aspect of prosecutor training, and, from a practical standpoint, they have the effect of preventing prosecutor burnout under the weight of the unit's heavy trial schedule. Outside the unit, a coordinator for the office's drug education and community programs lends indirect support, including passing drug crime information from community members to the drug unit.

Four aspects of the King County Prosecuting Attorney's drug program are outlined below: first, the role of Case Development Deputies as in-house police advisors; second, an overview of the programs supported by the community drug education liaison; and third, the use of off-limits or

SODA orders to exclude known drug traffickers from frequenting designated high drug-crime PADT areas. Finally, a campaign for a countywide sales tax to benefit criminal justice agencies (a new project designed to increase staffing resources) is discussed. One further program, the King County Special Deputy Program, is described in more detail in chapter 4.

Case Development Deputies

The Special Drug Unit currently has four deputy prosecutors working full-time on-site with local police in different precincts: one with the Seattle Police Department; two with the King County Sheriff's Narcotics Unit; and one in Bellevue with the East Side Task Force. The program, which has been in operation for less than two years, grew out of one deputy prosecutor's work with the King County Police. His original job description was to assist the King County Police in clearing a backlog of forfeiture cases, and to provide ad hoc assistance and advice to police regarding the investigation and filing of drug cases. As the deputy prosecutor spent more time with the police and learned how cases progressed, the enormous benefits of prosecutorial input at the level of police investigation became clear to both police and prosecutors. As a result, the experiment was expanded to include three more deputy prosecutors.

One interesting aspect of the program is that the role of the Case Development Deputy is not predetermined—it is allowed to develop according to the needs of the precinct or unit to which the Deputy is assigned. Although the primary assignment of the first Case Development Deputy was forfeitures, he soon was assisting with investigative work, accompanying police on raids (as an observer), and providing seminars on legal aspects of case preparation. Another deputy prosecutor began work by advising a federally funded multijurisdictional task force that targets higher-level drug dealers, but now is expanding her duties to include the coordination of the complicated financial asset and real property forfeitures that accompany such cases. To date, the presence of a Case Development Deputy has offered the police the following basic services:

- assistance with forfeitures (both personal and real property);
- immediate legal advice for officers planning a case;
- seminars and memos on recent legal rulings affecting search and seizure and forfeiture;
- 24-hour review of search warrants and the guarantee that approved warrants will be defended in court;

- assistance with cooperation agreements; and
- limited case filing.

According to a police sergeant who works closely with one Case Development Deputy, having instant access to a prosecutor allows police to avoid the frustration of presenting cases that are not accepted by the prosecutor's office. Although similar legal advice could, in theory, be obtained by contacting a prosecutor based in the prosecutor's office, the fast-paced nature of drug investigations discourages officers from pausing to seek formal advice. The program has also given police an opportunity to explore the more complex legal issues affecting their investigations with someone who is more closely attuned to police priorities and concerns than is the average prosecutor.

Benefits for the prosecutor. These greatly intangible advantages for the police have yielded a quantifiable effect on drug prosecutions. The head of the Special Drug Unit, Alfred Matthews, credited the Case Development Deputies with an increase in successful prosecutions, as well as a contribution to the decrease in the time lag between felony drug arrests and trial (down from approximately 1 year to 3 months).³ Better police awareness of search and seizure limitations, more carefully drawn search warrants, and improved police-prosecutor relations have resulted in a higher quality of filings and have greatly simplified the task of the prosecutor. Both police and Case Development Deputies suggest that even greater efficiencies could be achieved if certain cases were prosecuted vertically—that is, if deputy prosecutors who have been involved in advising police on a specific investigation were able not only to file the case but to take it to court.

That no extra funding is required to place a deputy prosecutor in a police precinct is another notable aspect of the program. In some cases, due to the Case Development Deputies' involvement with forfeiture and federally funded programs, Case Development Deputies have been removed from the prosecutor's payroll, creating a cost savings. For example, in the first year of the program's operation, the Case Development Deputy working with the King County Police Department was able to help them to reduce their backlog of 200 forfeiture cases significantly, thereby generating some \$800,000 in forfeitures, and seizures totaling \$2 million; his salary is now paid by a transfer of funds from the Sheriff's Drug Forfeiture Fund to the Prosecuting Attorney. A second Case Development Deputy, whose duties are to assist with real property forfeitures, will be paid by transfers from the same fund.

Legal issues. Although the Case Development Deputy program is the sort of cooperative effort that should lead to enhanced protection of the rights of suspects and defendants, prosecutors participating in such programs should be aware of their potential liability for damages if their advice to police results in a rights violation. Although prosecutors have traditionally been immune from civil liability in their role as legal advisors, that position has recently been modified by the Supreme Court. In *Burns v. Reed* (1991),⁴ the Court extended only qualified immunity from civil liability to prosecutors who advise the police. The greatest danger lies in legal advice given without obtaining sufficient information from the police concerning the nature of the investigation and who is involved. John M. Wulfers (a former assistant district attorney who is now in private practice in Chicago), in his remarks to the National District Attorneys Association Summer Conference⁵ in 1991, urged prosecutors to continue providing assistance to the police, but also to take adequate precautions to protect themselves against litigation:

[I]t will now be important for prosecuting attorneys to perform this role [police advisor] very deliberately. This approach will require the prosecutor to develop a clear understanding of the facts, frequently from the officer over the telephone. If the officer's questions involve the gathering of evidence, it is essential for the prosecutor to know what information the officer is attempting to develop and by what means. Is the officer interviewing a witness or a suspect? Does the officer already have a search or [an] arrest warrant? These obvious points and others should be quickly clarified by the prosecutor, so that appropriate advice can be given on an informed basis.⁶

As an additional safeguard, Wulfers suggests that prosecutors keep a memorandum describing each call for legal advice. *Burns* poses a dilemma for prosecutors: their options are either to refuse to advise the police, or to withhold advice until they have become thoroughly apprised of the details of the investigation (thus opening themselves to potential liability). Since most prosecutors would find the first option unacceptable, the increased information and familiarity with investigations offered by the Case Development Deputy program would offer a higher degree of protection for prosecutors than occasional contact with police by phone. In addition, the ongoing legal training offered by Case Development Deputies should reduce the likelihood of accidental violations of suspects' or defendants' rights by the police—with or without advice from a prosecutor.

Community Coalition Building and Drug Education

Like the first Case Development Deputy, the Community Programs Liaison came to her job with only a general mandate and has been permitted to develop the position to serve the needs of the community and the King County Prosecuting Attorney's drug program. In the position's current form, the Community Programs Liaison focuses on three areas:

- Legislative initiatives undertaken or supported by the Prosecuting Attorney. These projects range from lobbying for a local sales tax to increase criminal justice revenues, to the creation of model legislation requested by the community, such as the Drug Loitering or SODA (Stay Out of Drug Area) ordinance (discussed below).
- Contact with local criminal justice and community-based antidrug organizations. In this capacity, the Community Programs Liaison assists community organizations in coordinating programs, exchanging information, or seeking funding from business or various government sources. She also schedules speaking engagements and meetings between civic groups and the Prosecuting Attorney.
- Representing the Prosecuting Attorney on advisory boards and other bodies that direct the funding or programming of community projects.

The primary community program with which the King County Prosecuting Attorney's office is involved is a countywide program called *Drugs: Draw the Line!*. This program, which is funded under the 1989 Omnibus Drug Bill, is an umbrella organization brought together by the United Way in Seattle to receive and redistribute State monies allocated for local programs aimed at drug education, community action against drugs, and drug treatment. The program's fiscal agent is the King County Department of Human Resources, and there is general oversight by the Human Resources Council, a coalition of county and local officials. The King County Prosecuting Attorney's Community Programs Liaison was appointed by the Human Resources Council to sit on the steering committee of *Drugs: Draw the Line!* and thus the King County prosecutor's office has valuable input into the kinds of drug programs fostered by the community.

To date, *Drugs: Draw the Line!* has distributed between 40 and 60 grants, ranging in value from \$20,000 to \$80,000, with the average grant being around \$20,000. The projects that have received support are extremely diverse:

- *Drug education programs*, including straightforward school-based drug education programs, as well as less direct approaches to the problem, such as the provision of drug-free dances or other positive activities for youth and parents.
- *Community programs*, including community policing teams, a program to assist low-income tenants in identifying and eliminating drug problems in their buildings, and the creation of drug-free zones around specified schools.
- *Treatment and support groups*, including drug abuse hotlines and a program to assist African-Americans in gaining access to drug treatment and counseling.

The Community Programs Liaison also serves on the steering committee for an antigang organization, the Regional Alliance on Gang Activity (REAGA). REAGA is funded by schools on a voluntary basis at 50 cents per pupil. In return, REAGA provides teachers with in-service training on gang activity, an educational video, and a handbook. The program focuses on truancy issues and attempts to develop lines of communication among schools, the community, police, and the King County Prosecuting Attorney's office.

Off-Limits or Stay Out of Drug Area (SODA) Orders

Perhaps the most important law enforcement program to grow out of the prosecutor's increased contact with the community is a drug loitering ordinance that designates specific zones as Protected Against Drug Trafficking (PADT) areas. The authority for such designations grew out of a State Omnibus Drug Bill passed in 1989. In response to community complaints that known drug traffickers, once free on pretrial or supervised release, returned immediately to certain communities to resume selling drugs, the Prosecuting Attorney implemented a provision of the act that permits prohibiting known drug traffickers from frequenting high-drug-activity areas (these orders are popularly referred to as SODA orders). Most commonly, SODA orders are issued under the following circumstances:

- as a condition of pretrial release;
- as a condition of sentencing—which may include all periods of community placement or community supervision; and
- as part of an eviction action for drug trafficking or permitting drug trafficking on a premises.

How SODA orders work. There are four police precincts within the city of Seattle. Each precinct was requested to prepare an affidavit certifying certain zones as areas of high narcotics activity (see appendix B). These affidavits designate a total of 11 PADT areas. PADT areas are only generally described in the legislation as “any specifically described area, public or private, contained in an off-limits order” (see appendix C for the full text of the legislation); but, with each SODA order, a precise written and graphic representation of the proscribed PADT area or areas is included.

A “known drug trafficker” is defined as “any person who has been convicted of a drug offense in this State, another State, or Federal court who subsequently has been arrested for a drug offense in this State.” The term “drug offense” is defined as a felony drug violation under Washington State law or any violation in another jurisdiction involving the “manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.” SODA orders generally restrict the known drug trafficker from entering or remaining in the restricted area for a period of 1 year. If the known drug trafficker is found to be in violation of his SODA order, he is subject to arrest and is held without bail until a defense attorney schedules a bond hearing with the court. Exceptions to SODA orders may be given by the court under special circumstances. For example, a known drug trafficker may be permitted to enter the restricted area to reach a place of employment or to receive health care. Recently, a new policy to “rush file” all cases concerning drug traffickers (even those currently arrested for drug possession) has used SODA orders to deter these offenders from returning to their ordinary sales areas. Although this is a new program, it has received strong community support and the initial response from the residents of PADT areas has been positive. Programs such as this assist the police in making more lasting inroads on street-level drug crime, and offer hope to neighborhoods that have become centers for drug activity.

Looking to the Future: The King County Criminal Justice Sales Tax Campaign

In 1990, the Washington State Legislature was approached by group of law enforcement officials, including the King County Prosecuting Attorney, Norm Maleng, who were concerned that the burden of financing criminal justice efforts to fight drug crime was placing a severe drain on local government and starving other needs within the county. The legislature responded with the Criminal Justice Funding

Act, which made funds available to counties from two sources (the full text of the act is found in appendix H). First, it drew on monies raised by the motor vehicle excise tax to provide immediate relief for counties with the most severe crime problems (in the case of Seattle, the assistance took the form of a lump sum, followed by ongoing payments for 3 years). Second, the legislature authorized three urban Washington counties, including King County, to go to the voters to request a 0.1 percent sales tax to support criminal justice programs in their respective counties.

The proposed sales tax—which amounts to a penny on a \$10 purchase—was projected to raise an estimated \$20 million per year. Under the legislature’s plan, the revenues would be split evenly between King County and various cities, including Seattle. The monies were earmarked for “public safety purposes” only, and the legislation was accompanied by a provision that prohibited the supplanting of existing local criminal justice programs. The coalition of local criminal justice officials, plus the King County Executive, Tim Hill, put together a comprehensive plan outlining how the additional funding would be distributed among criminal justice agencies and then embarked on an aggressive lobbying campaign directed both at the County Council and the voters. Dan Satterberg, who coordinated the Prosecuting Attorney’s efforts in favor of the tax, credits the careful planning and presentation of a spending plan *before* going to the voters or the County Council with the tax plan’s acceptance.

A public relations campaign organized by the Citizens for Public Safety (COPS) produced an effective pamphlet outlining for voters the costs and benefits of the plan (see appendix I). Major points of the plan outlined in the pamphlet included the addition of

- 8 judges;
- 22 deputy prosecutors;
- 42 King County police officers;
- 6 special assault investigators;
- a countywide program for family violence victims;
- an information sharing network for police agencies;
- a community police team for crime prevention; and
- increased courtroom security.

Although these benefits were yet to be realized at the time of our site visit, the Prosecuting Attorney expected the increase in staffing to improve the efficiency of drug pros-

ecutions significantly and to relieve some of the burden on the unit's trial attorneys.

Comprehensive Problem Reduction with Emphasis on Demand Reduction: A Case Study in Portland, Oregon

Background

Portland is the urban center of Multnomah County, a metropolitan area with a population of approximately 1.3 million. For a city of its size, it has surprisingly serious drug and crime problems. As noted in chapter 2, Portland ranks among the top 50 metropolitan areas in the nation for volume of cocaine arrests. Between 1985 and 1988, Multnomah County experienced a 106 percent jump in drug cases. In addition, drug testing of arrestees in Portland jails suggests that drug-related crime is a serious concern; the District Attorney has estimated that roughly 90 percent of the burglaries and robberies in the county are motivated by drug abuse. Portland's drug problem is also more diverse, and affects a wider range of demographic populations, than in many cities of its size. Crack and powdered cocaine arrests are only part of the problem faced by police and prosecutors; black tar heroin and methamphetamines are also widely sold and used in specific communities.

The Multnomah County District Attorney, Michael D. Schrunk, has responded to this challenge by formulating what he has called a "comprehensive drug strategy." In 1986, Schrunk branched out from case processing and traditional supply reduction efforts to help lead an effort to form a community coalition for combating drug abuse in the Greater Portland area. The result was the establishment of the Regional Drug Initiative (RDI). Although the idea of a communitywide effort did not come directly from the District Attorney's office, the office has provided active oversight and made significant efforts to build coalitions with all relevant sectors of the public and private community. Schrunk has summarized his office's drug policy as follows:

Success in dealing with drug abuse requires a strategy of reducing the supply of illegal drugs by enforcement efforts, while at the same time reducing the demand by fostering changes in social attitudes and increasing opportunities to recover.⁷

The idea that the war on drugs must be fought from all fronts is not new; however, the idea that prosecutors can—and

should—try to incorporate all facets of the antidrug effort into their programming is a significant departure from the traditional role of the prosecutor.

In Portland, discussions with prosecutors, the Public Defender, the Director of Community Corrections, a Circuit Court judge, and community leaders suggest that coordinating the efforts of all these agencies and actors against drug abuse is working. Especially in the area of treatment, one finds an unusual degree of cooperation among the Public Defender (whose office maintains a database of some 800 drug treatment and community placement options in the Greater Portland area), the District Attorney, and the courts. STOP (Sanction-Treatment-Opportunity-Progress), a pre-trial release supervision program, outlined below, is one such interagency effort. With the addition of the new Law Enforcement Committee in 1991, the Regional Drug Initiative is also becoming involved in advancing the idea of an integrated regional drug enforcement policy.

The District Attorney's emphasis on treatment and public education, exemplified by RDI and the STOP program, is balanced with the third program outlined briefly below, the Regional Organized Crime/Narcotics Task Force (ROCN). ROCN maintains law enforcement pressure on the supply of drugs entering the community. Like many other supply-reduction task forces operating throughout the country, ROCN is a multiagency, cooperative program that draws on State and Federal resources, as well as those of local law enforcement.⁸

In the program outlines below, the role of the prosecutor is not always dominant. In programs such as RDI, the District Attorney has simply chosen to play a major role and to involve his office in a broad-based effort. Similarly, in the STOP program, the prosecutor's office is one of several agencies needed to make the process work. The connection between these programs and the District Attorney's drug strategy is his conscious effort to build and support these multiagency and community programs, and his belief that such programs will ultimately redound to the benefit of law enforcement.

The Regional Drug Initiative (RDI)

History of the program. RDI was formed in December 1986 by a small group of Portland law enforcement and business leaders as a vehicle to explore and address the full range of community and law enforcement issues raised by drug abuse. The aim of RDI's founders was to create a powerful coalition of public- and private-sector leaders who not only could explore what needed to be done in the Portland area

to combat drug abuse but also were able to make policies and mobilize people and resources to meet those needs. The RDI Task Force was initially chaired by Schrunk and was composed of approximately 50 policymakers from government, education, law enforcement, corrections, citizens' groups, religious organizations, treatment providers, and private business. Later, representatives of health insurance agencies were added.

Although RDI was chaired by the Multnomah County District Attorney until October 1992, Schrunk made a concerted effort to distance law enforcement from the initial stages of the Task Force's development. The Task Force's policy has been to try to encourage participation from all sectors of the community; because, it was thought that a law enforcement—rather than a *community*—orientation might discourage the development of a diverse membership. Other underlying principles of the Task Force's operation include decision making by committee and nonpartisanship. Although it might have been feared that such a democratic and unstructured approach would be inefficient, a quarterly meeting observed for this case study suggests that government by committee has fostered a sense of group responsibility and mutual respect among the participants (some of whom are political or institutional adversaries outside the forum of the Task Force). The majority of the Task Force members—despite demanding positions in government, business, or other fields—appear to be active, contributing members. Potentially valuable members are not removed for nonparticipation, but the overall ethic of the Task Force is one of great personal commitment.

RDI literature documenting the development of the Task Force emphasizes their common belief that

- the problem of drug abuse cannot be solved by law enforcement alone;
- drug abuse is not a victimless crime;
- no one single agency or organization has the resources to combat drugs;
- responsibility for changing the trend of use and abuse belongs to all members; and
- the few available resources must be leveraged to achieve a focused impact.

The Task Force also formulated a common goal that was politically and institutionally acceptable to all members: a drug-free county. Schrunk credits the early consensus of the group on a common goal with their ability to move on to the

difficult tasks of problem definition and the creation of specific plans of action.

The Task Force's first course of action was to gather accurate and complete information concerning the scope of the drug problem in the Portland area. Eight study groups, comprising Task Force members and 100 volunteer experts, were formed to focus on specific populations and topics:

- offenders and drug abuse;
- low-income populations and drug abuse;
- drugs in the workplace;
- barriers to treatment for minorities and special-needs populations (including deaf and handicapped groups);
- dual diagnosis clients and drug abuse (the dual diagnosis client is one who is both drug involved and suffering from some form of mental illness);
- youth and drug abuse;
- women and drug abuse; and
- families and drug abuse.

Each study group was directed to determine the impact of drug abuse on the particular population and to formulate recommendations. The work of these groups was augmented by public meetings and interviews with experts in the various fields.

The culmination of this first stage of Task Force development was a plan of action entitled Community Agenda to Combat Drug Abuse (hereafter the Community Agenda), which was approved by the full Task Force in October 1987. The Community Agenda identified six primary goals and sample actions;

Goal 1. Foster and change social attitudes regarding drug use.

Sample Action Direct a public information campaign directed at youth.

Goal 2. Make communities safe from drug abuse and crime.

Sample Action Eliminate neighborhood drug houses.

Goal 3. Support healthier lives for citizens and families.

Sample Action Prevent fetal drug syndrome; provide detoxification services for drug addicts.

Goal 4. Promote a more productive work force.

Sample Action Adopt substance abuse policies in all workplaces.

Goal 5. Provide an attractive climate for economic development.

Sample Action Encourage businesses to use vacant commercial space in target areas.

Goal 6. Increase coordination among government, business, schools, service providers, and citizens.

Sample Action Develop coordinating bodies to focus on service for youth, mentally ill drug abusers, and minorities.

The Task Force urged government agencies, schools, businesses, and other organizations and institutions to support these goals by formally adopting them and to incorporate them in their programs. The Drug Enforcement Administration (DEA) recognized the RDI Community Agenda as a model community coalition document for demand reduction.

Since that time, RDI has begun to implement projects relating to these goals and increased their efforts to monitor community attitudes and other, more quantifiable, drug indicators (see below). RDI's funding—which until 1990 had consisted primarily of private grants, pro bono services, donations of material, and small grants from government agencies—was altered dramatically in 1990 by a \$2.25 million grant from the Federal Office for Substance Abuse Prevention (OSAP). The Federal grant permitted RDI to add 5 staff persons and to branch out into drug-abuse prevention programming. One other significant public information project, a position paper (see appendix D) that focuses on the potential impact of legalization in the arenas of health, workplace, crime and criminal justice, was completed in 1990. The position paper has been distributed to antidrug organizations in Portland and elsewhere around the country, and has been used in legislative hearings in Oregon.

Focus on drugs in the workplace. The strong positive response to the Community Agenda from the business sector led to RDI's first major venture: a campaign to educate employers and the public about the problem of drugs in the workplace and the resources available in the community to assist employed drug abusers. This campaign included a series of employer workshops on drug abuse issues; the production of a videotape promoting workplace drug abuse policies; and various documents and pamphlets for employers. These projects were funded under a grant from the

Occupational Safety and Health Administration (OSHA) that was awarded to RDI in conjunction with a local business organization.⁹ In addition, RDI assisted with distribution and encouraged the production of similar documents and programs by other groups, and held a conference for more than 200 employers called *Drugs in the Workplace: Practical Solutions for Employers*. The information campaign aimed at employers was supplemented with a highly successful media campaign centered on the theme "Drugs Don't Work." In 1990, RDI was called on to share information about its Drug-Free Workplace Project at a seminar, sponsored by the World Affairs Council of Oregon, that was attended by delegates from 21 countries.

Ongoing problem assessment and program evaluation. RDI's efforts to define and monitor the problem of drug abuse in Portland have continued beyond the initial planning stages of the Task Force. In 1990, RDI published its first annual Drug Impact Index. The purpose of the Index is to attempt to quantify the impact of drug abuse on the area and to provide a means of monitoring progress toward the Task Force's goal of a drug-free county. The Index relies on existing data and is not presented as a scientific measurement or evaluation device. It seeks to draw attention to the fact that no one indicator or measure of the drug problem in a community is sufficient. It is also intended to serve as a model for other communities that are looking for ways to comprehensively define the drug problem in their areas (a copy of the Index is included in appendix E). Ten indicators have been selected, although data are not available in all of these categories in Portland at present. (The Task Force felt that it was important to establish that a particular indicator was needed, even if information was not currently available.) The 10 indicators are as follows:

- *Annual number of drug overdose deaths* (as reported by the State Medical Examiner's Office)
- *Annual number of births of drug-affected babies* (as reported to the State Children's Services Division)
- *Percent of adult arrestees testing positive for specified drugs* (data from the National Institute of Justice's Drug Use Forecasting [DUF] Project)
- *Annual number of hospital emergency room visits for drug- or alcohol-related causes* (data potentially available from the Drug Abuse Warning Network [DAWN]; data currently not available in Oregon)
- *Annual number of students referred for alcohol and drug policy violations* (data from self-reported school surveys and Oregon public schools)

- *Annual number of adult arrests for drug offenses* (data from the Uniform Crime Report)
- *Annual number of juvenile arrests for drug offenses* (data from the Uniform Crime Report)
- *Parent training participation* (data reported by Portland Public Schools)
- *Positives in pre-employment drug testing* (data reported by Oregon Medical Laboratories)

To assist other communities in the development of similar indexes, the Western Center for Drug-Free Schools and Communities in Portland has produced a companion guide for the Index, "Developing a Community Profile: A Handbook for Using Pre-existing Data in Prevention Planning."

Another undertaking of the Task Force was to draft and administer a survey of Multnomah County adults concerning community attitudes about alcohol and other drugs. The survey results are expected to serve as a baseline from which it will be possible to track the evolution of community attitudes toward drugs. The survey was administered to 500 randomly selected people over the age of 18. The survey covered a broad range of topics, including attitudes concerning the severity of various social problems; perceptions of abuse patterns; perceptions concerning the safety of various drugs; the availability of drugs; access to treatment; the adequacy of laws; and the respondents' degree of contact with people who have drug abuse problems.

Advantages of participation for prosecutors. The projects discussed above may be worthy, but they may not seem immediately relevant to the priorities of some prosecutors. Schrunk addressed this issue in a presentation to the Law Enforcement Demand Reduction Symposium in 1988. He argued that in addition to the intrinsic value of demand reduction efforts,

[t]here are other advantages that come with the Regional Drug Initiative model. It is an opportunity to really build bridges and move law enforcement into collaborative policy development instead of the adversarial or confrontational roles that sometimes develop between law enforcement and community groups. [By] building these bridges in a nonadversarial setting, law enforcement has the opportunity to work with community groups in a positive, constructive mode before significant controversies develop. This makes law enforcement's job easier in the long run. The collaboration not only allows everyone to share in the solution

but also allows everyone to share in the problem. Each person owns the problem rather than law enforcement owning the entire problem of drug abuse.

The other advantage is, of course, that the process can be applied to small, medium, and big cities. If there are those who wish to step back initially and not participate, they can be drawn in at a later date. It is a process that can proceed at the pace and resources of those who are engaged in it.¹⁰

After over five years of operation, RDI appears to have yielded the sort of benefits that Schrunk anticipated in regard to increased community/law enforcement cooperation and goodwill.

Pretrial Release

Supervision: The STOP Program

Background. STOP (Sanction-Treatment-Opportunity-Progress) is designed to avoid the prosecution of drug offenders who are also drug users by getting them directly into treatment from court. A number of factors contributed to the creation of this program. First, in Multnomah County a high proportion of all adult males arrested are confirmed recent drug users: 64 percent in 1989; and 60 percent in 1992.¹¹ Although these figures are declining, the Circuit Court judges of the county estimate that 85 to 90 percent of all criminal defendants are involved in at least occasional drug use. In addition, county judges feel that drug involvement is a major contributing factor to these defendants' arrests on nondrug charges. County judges were also frustrated that, because of procedural changes accompanying the institution of sentencing guidelines, many drug-involved offenders were unable to receive treatment until after the adjudication of their criminal charges -- thus increasing the chance that further drug or drug-related crimes would be committed by drug users awaiting trial

At the same time, experiments with special drug dockets were demonstrating to both the courts and other criminal justice agencies that focusing judicial resources on drug cases can successfully expedite a large volume of cases. (In 1990, the "fast track docket"—two judges hearing exclusively drug cases—resolved between 2,800 and 3,000 cases.) Following a visit to Miami, where a similar program is in place (described later in this chapter), Judge Harl Haas submitted a proposal to create a special drug docket that not only expedited cases but also channeled drug-using offenders directly to treatment as a part of pretrial supervision. The resulting program, which had the support of the District

Attorney, corrections officials, and treatment providers, had been in operation for only a few months when this case-study site was visited. Since it was too early to offer any comments on the program's operation, this section focuses on the structure of the STOP program and its aims.

Who is eligible for STOP. The eligibility criteria for STOP were developed by the District Attorney's office. The initial criteria for participating were as follows:

- person is charged with a drug offense and is in possession of a small amount of a drug consistent with personal use;
- defendant has not participated in the Conditional Discharge Program or this program before;
- there is no evidence of significant and substantial drug dealing;
- there are no other felony crimes or serious misdemeanors pending or charged in the same charging instrument other than traffic offenses;
- the defendant's criminal history places him in the proper sentencing range for eligibility for the program (specific guidelines are given, subject to review of the Senior Deputy, who may decide that a defendant's criminal history is too serious for him to be included in the program);
- if the defendant has a hold from another jurisdiction, the Senior Deputy will review the case to determine if the defendant is eligible to participate in STOP;
- there is no gang affiliation; and
- those charged with driving under the influence of intoxicants (DUII) in the same charging instrument will be excluded.

Under these criteria, it was hoped that approximately 50 arrestees could be diverted to treatment per month.

How STOP works. Under the STOP program, the arrestee waives his right to a jury trial and grand jury, undergoes a period of prescribed drug treatment and counseling, and—if treatment is successful—has his charges dismissed with prejudice and sealed (see appendix F for sample forms used in this process). Supervision of the arrestee is supplied by the court itself; the arrestees must present themselves to the court every 30 days or be subject to rearrest. Judge Haas had expected that some arrestees might not appear for monthly supervision, but to date this aspect of the program has presented no special problems. The following steps describe

a typical defendant's progress through the system leading to his participating in STOP:

Day 1: Arrest—Following arrest, defendants will be interviewed by recognizance officers and released or retained in custody.

Day 2: Arraignment—At arraignment, defendants will be advised of their rights to a speedy trial, court appointed attorney, etc., as well as their opportunity to apply for the STOP program. Defendants who are interested in STOP will be referred to the STOP courtroom on day 3.

Day 3: STOP Hearing—Defendants will be advised of their rights to trial, attorney, etc., and also be advised as to the STOP program. The defendant will be told that the STOP program will run for a period of 12 months and that treatment will commence that day. The court retains the right to add up to 4 additional months to provide the defendant additional opportunity to complete his obligation under the program. The defendant will be advised that the court will be notified of any missed urinalysis tests or failure to appear for treatment or of any other problems complying with the program. Failure to comply will result in a court appearance on a show of cause order or arrest warrant within 2 days of court notification.¹²

The treatment component of the program, which is based on a Miami program discussed later in this chapter, uses acupuncture to stabilize the drug user so that intensive drug counseling can begin (a similar treatment program in the South Bronx has experienced considerable success in treating cocaine addiction).¹³ The defendant's progress is tracked by periodic urinalysis.

Aims of the STOP program. The STOP program is designed not only to expedite cases and to avoid the prosecution of users, but also to benefit drug-addicted defendants and to create systemwide economies in the administration of criminal justice. Some of the STOP program's primary goals are the following:

- to get the defendant into treatment faster;
- to reduce property crimes associated with drug-addicted defendants;
- to cut the cost of indigent defense (estimated cost savings for Multnomah County generated by 600 diversions: \$150,000);

- to cut police overtime for testifying before grand juries in drug cases (total estimated savings: \$110,000);
- to cut probation costs (total estimated savings: \$100,000; or a reduction in existing caseloads);
- to increase monitoring of defendants while in treatment; and
- to move toward the provision of drug treatment on demand.

In addition to savings generated by the program, STOP requires the defendant to pay a compensatory fine of \$300. Assuming that only half of all defendants will be able to pay, Judge Haas estimated that the total annual savings and revenues for Multnomah County generated by the program could be as much as \$500,000. The benefits of the STOP program are, however, expected to be considerably broader than economic efficiency, because it attempts to reduce one of the underlying causes of crime in the community—untreated drug addiction.

Supply Reduction Under the Regional Organized Crime/Narcotics Task Force (ROCN)

In 1987, the multiagency effort that eventually became known as the Regional Organized Crime/Narcotics Task Force (ROCN) was brought together by the Multnomah County District Attorney, with the support of the Portland Mayor. The Task Force, which encompasses Clackamas, Multnomah, Washington, and Columbia counties, was intended to investigate mid- to high-level drug cases in an effort to stem the supply of drugs that was then flooding the jurisdiction. The idea of a task force to pursue higher-level drug cases received strong support from the local office of the Drug Enforcement Administration (DEA), and police drug and vice squads contributed four or five narcotics detectives to the effort. Initially, the Task Force was headed by a police captain; a lawyer was added to assist with forfeitures and search warrants, and clerical support was obtained. At the same time, the District Attorney's office noted that Federal grants to assist such local efforts were available under the Bureau of Justice Assistance's (BJA) Organized Crime Narcotics Trafficking Enforcement Program (OCN). The receipt of an OCN grant provided the fledgling Task Force with "buy money" to purchase drug information and other services necessary to cooperatively investigate cases. This grant money, essential to the Task Force, allowed it to make major drug buys for the first time. In 1988, further funding for the effort was obtained from the

State of Oregon under the Drug Control and System Improvement Formula Grant Program. (This program was intended to support the development of task forces such as the one already under way in Portland.)

These grants required the Task Force to build a more formal structure (see figure 1). The cooperative effort, which until this time had been led by the District Attorney and run out of his office, was given a new name—ROCN—and the relationships between various government agencies participating in the effort were laid out in an intergovernmental agreement. The Task Force was also expanded to include drug enforcement activities in three Oregon Counties—Multnomah, Washington, and Clackamas. In addition to the formal governing structure, a management team consisting of one elected official from each signing jurisdiction was formed. This management team, which is composed of District Attorneys, Chiefs of Police, and Sheriffs from participating counties and cities (eight members total) meets quarterly to review the funding and activities of the Task Force, and to provide counsel to the governing board of commissioners and the current director.

Between 1988 and 1990, ROCN concentrated on building staff and resources. Forfeitures generated by the Task Force began to generate profits, and all the involved agencies agreed to leave these funds with the Task Force. One goal of the effort is to become independent of outside funding, or to at least become less vulnerable to grant loss; to this end, an endowment for the Task Force is being built. As of mid-1991, some \$2.5 million had been accumulated; but with an annual operating budget of approximately \$1 million, the Task Force still needs to seek grants and other assistance. A requirement for participation in the Task Force continues to be that the participating agencies donate not only manpower but also basic salaries for their representatives (ROCN provides fringe benefits, overtime, and training).

Apart from forfeitures, the Task Force has been successful in generating a large number of high-level drug arrests. Between 1987 and 1991, 357 persons were arrested by Task Force agents and 176 of these have been prosecuted federally. These Federal prosecutions were undertaken primarily by cross-designated members of the Multnomah County District Attorney's office with the assistance of the U.S. Attorney. Overall, the District Attorney considers these supply-reduction efforts to be "[t]he first point of attack in any effort in combatting drugs."¹⁴ He emphasizes, however, that all levels of supply must also be pursued, and that high-level programs, such as ROCN, must be supported by aggressive street enforcement.

Figure 1
ROC N TASK FORCE
ORGANIZATIONAL CHART

GOVERNING BODY

BOARD OF COMMISSIONERS

REPRESENTATIVE,	CITY OF PORTLAND
REPRESENTATIVE,	CITY OF GRESHAM
REPRESENTATIVE,	CITY OF ST. HELENS
REPRESENTATIVE,	CITY OF LAKE OSWEGO
REPRESENTATIVE,	CITY OF HILLSBORO
REPRESENTATIVE,	MULTNOMAH COUNTY
REPRESENTATIVE,	WASHINGTON, COUNTY
REPRESENTATIVE,	CLACKAMAS COUNTY
REPRESENTATIVE,	COLUMBIA COUNTY

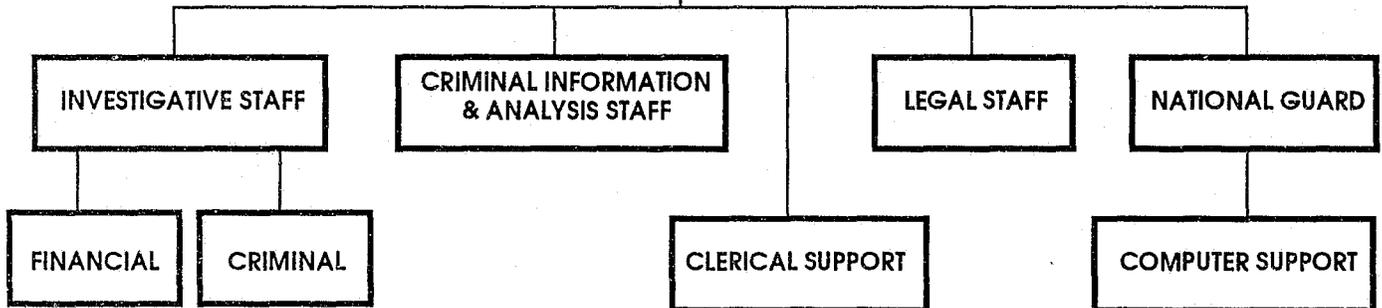
MANAGEMENT TEAM

DISTRICT ATTORNEY, MULTNOMAH
DISTRICT ATTORNEY, CLACKAMAS
DISTRICT ATTORNEY, WASHINGTON
DISTRICT ATTORNEY, COLUMBIA
CHIEF, PORTLAND POLICE
CHIEF, GRESHAM POLICE
CHIEF, LAKE OSWEGO POLICE
CHIEF, HILLSBORO POLICE
SHERIFF, WASHINGTON COUNTY
SHERIFF, MULTNOMAH COUNTY
SHERIFF, CLACKAMAS COUNTY
UNITED STATES ATTORNEY*
DRUG ENFORCEMENT ADMINISTRATION*
OREGON STATE POLICE*

DIRECTOR, ROCN

TECHNICAL OPERATING STAFF (TOS)

DISTRICT ATTORNEY
CHIEF, POLICE DEPARTMENT
SHERIFF
OTHERS, AS APPOINTED BY MANAGEMENT TEAM.



* - DENOTES A SEPARATE AGREEMENT WITH ROCN.

Zero Tolerance and Prevention: A Case Study in Oklahoma County, Oklahoma

Background

Metropolitan Oklahoma City, with a population of 1 million, is one of the few noncoastal jurisdictions to fall among the top 50 cocaine arrest areas, although the arrest rate for drug offenses is generally below that of large cities on the East Coast and West Coast. The Oklahoma County District Attorney, Robert Macy, and his experienced narcotics prosecutors view Oklahoma County as particularly vulnerable to the marketing activities of domestic drug traffickers because of their location at the crossroads of several interstate highways connecting cocaine import cities to major interior markets. They are quite specific about connecting the increase in their drug caseload with the appearance of crack and the arrival of gang members from Los Angeles. Before 1986, the local cocaine trade was limited to cocaine powder that was sold in gram amounts at \$100 per gram to upper-income buyers. Los Angeles gang members first appeared in Oklahoma County in 1985. By 1986, they had established a visible presence in the African-American community, a network of local drug retailers, and a thriving trade in crack rocks at \$5 per rock. The low cost and easy access to crack from local street dealers quickly created a new population of users, a sudden and sharp increase in arrests for drug sales and possession, and an upsurge in reported thefts and burglaries. The latter was interpreted by local authorities as the direct result of crack users' need for money to buy drugs. From 1985 to 1987, the number of felony drug cases more than doubled, and thefts and burglaries reported to the Oklahoma City police increased 20 percent.

The initial response of the District Attorney was two pronged. First, he established within his office a policy of zero tolerance to all types of drug offenses, which meant all drug offenders, including users, received some kind of formal sanction. Second, he led the community effort to mobilize a law enforcement response to the gang problem. When leaders from the African-American community failed to persuade other elected officials to recognize the presence of Los Angeles gang members in specific neighborhoods and their connection to the drug trade, they came to the District Attorney for help. He worked with African-American community leaders to get an organized police response and followed up police efforts with tough prosecution of drug/gang crimes. The office Narcotics Unit was able to get jury

sentences of 20 to 30 years for several gang members convicted on drug sale charges. The District Attorney personally sought and obtained the death penalty for a gang member/distributor who murdered a local drug dealer.

When the crack epidemic hit Oklahoma County, a quick response was facilitated by the fact that several components of the current antidrug strategy were already in place. The District Attorney had a Narcotics Unit with several years' experience in prosecuting drug cases. A Controlled and Dangerous Substances (CDS) revolving fund for the repository of local drug forfeiture money already existed, and the distribution of the fund monies is controlled by the District Attorney's office. The availability of forfeiture money allowed the office to quickly fund a number of antidrug activities that they would not otherwise have been able to afford, particularly the purchase of equipment and training for the police. Finally, jury sentencing was effectively used by the Narcotics Unit prosecutors to obtain substantial sentences for defendants in high-profile drug cases even before drug penalties were stiffened by the State legislature. By statute, Oklahoma juries sentence all defendants convicted at trial. Waiver of jury sentencing requires the consent of both the defendant and the prosecutor.

The cornerstone of the office's revised, or long-term, response to the drug problem is still a policy of zero tolerance. Direct enforcement efforts, however, are now supplemented by vigorous involvement in the initiation of community prevention efforts focused on youth. The Oklahoma County District Attorney provides public leadership for these efforts. Day-to-day activities are the responsibility of the Special Programs Coordinator, who was hired in 1987 to work with a wide range of community organizations and agencies to develop coordinated approaches to prevention. Also, the comprehensiveness of zero tolerance enforcement has been enhanced by the expansion of the Narcotics Unit and the creation of three additional special units: an Asset Forfeiture Unit, a Multijurisdiction Task Force run by the District Attorney's office, and, recently, a new Gang Unit that will handle drug cases involving gang members. The organization and activities of these specialized prosecution units are discussed below. Most attention is devoted to the operation of the Narcotics Unit, which handles the bulk of the narcotics cases. The development and operation of the first youth prevention effort aimed at the problem of school truancy is also described. Each discussion points out the importance of legislative reforms initiated by the District Attorney's office to enable and enhance the effectiveness of Oklahoma County's antidrug efforts.

Narcotics Enforcement: Specialized Units

About a year after taking office in 1980, the Oklahoma County District Attorney observed that once drug cases passed the legal hurdles of search and seizure, the defendants almost always plead guilty. He concluded that drug cases are unique and that their successful prosecution required specialized legal skills, particularly in the area of search and seizure. To acquire these skills, he created a two-attorney Narcotics Unit in the early 1980's, long before heavy drug caseloads became a problem. In 1985, just before the crack epidemic, the Narcotics Unit still had only two attorneys who handled all drug cases as well as forfeitures and drug-related gang cases. By 1991, the Narcotics Unit included eight attorneys, and forfeiture and gang cases were handled by separate units. Three to four of the Narcotics Unit attorneys were funded out of the CDS revolving forfeiture fund. The Asset Forfeiture Unit, which was set up in 1988, includes one attorney with a background in civil law, and two support staff. Every drug case is now reviewed within a few hours of arrest to identify potential assets for seizure. The forfeiture cases proceed simultaneously in civil court, but much of the civil paperwork is included in the criminal case file to reduce the administrative cost of civil notification requirements. Typically, the forfeiture case is not closed until after the conclusion of the criminal case, to prevent civil discovery from jeopardizing the criminal case outcome. In the first 3 years of operation, collections increased from approximately \$230,000 to \$800,000. The primary mission of the unit, however, is not to raise money but to end drug dealers' enjoyment of the fruits of the drug trade.

At the time of the site visit, a Gang Unit had just been formed. A description of the unit is not included here other than to note that its creation was intended in part to alleviate some of the caseload pressure on the Narcotics Unit. Finally, a Multijurisdiction Task Force was formed in the prosecutor's office in 1988 with funding from the Bureau of Justice Assistance. The task force includes two attorneys and one investigator from the prosecutor's office and another 12 to 13 investigators from local, State, and Federal agencies. The mandate of the task force is to target mid- to high-level traffickers who are not the target of other local, State, or Federal investigations. In the first 2 years of operation, the unit succeeded in "bringing down" a locally based network involved in the manufacture and national distribution of methamphetamines. At the peak of the investigation, a minimum of 30 additional investigators were recruited from local, State, and Federal agencies to help with the investigation. At the time of the site visit, cases resulting from the

investigation were still being tried and more arrests were expected.

In short, the Oklahoma County District Attorney has created an organizational structure that seeks to ensure that drug defendants at all levels, from users to high-level traffickers, are aggressively pursued for prosecution and are subject to both criminal and civil penalties. The special unit structure has also resulted in a high degree of integration of police and prosecution activities, a characteristic that all the individuals who were interviewed saw as an essential component of effective narcotics enforcement and prosecution.

The Narcotics Unit. Other than proactive targeting of trafficking networks (the role of the Multijurisdiction Task Force), the Narcotics Unit handles the prosecution of all levels of drug defendants. The head of the unit from 1989 to mid-1991 estimated the composition of the caseload to be 50 percent users, 25 percent street dealers, and somewhat less than 20 percent local distributors. A small percentage of cases involve top-level national or international traffickers arrested either through their connections to local networks or through the interdiction efforts of the State Highway Patrol. Oklahoma County does not have open-air drug markets or "street bazaars," so the police do not generate arrests through street sweeps. Most drug arrests are generated by routine patrol officers through observation on the street, traffic stops, arrests for other crimes, or the investigative activities of narcotics detectives. The zero tolerance policy means a formal sanction is sought for defendants at all levels. Convicted first-time users typically have their cars seized and are put on probation with a condition of treatment and/or community service, or receive a deferred sentence with similar conditions. Prosecutors pursue incarceration sentences for all levels of sellers, with the amount of time tied to the amount and level of dealing.

The current head of the Narcotics Unit, who has been trying drug cases for several years, strongly believes that specialization is critical to effective narcotics prosecution. Drug dealers and, in big cases, their defense attorneys are narcotics experts. To have the upper hand, the prosecutor must also be an expert. From his or her perspective as a trial lawyer, being an expert means having detailed and thorough knowledge of search and seizure as well as State narcotics law. It also means detailed knowledge of the ins and outs of the drug trade. Knowing how dealers and drug organizations operate helps attorneys make points in court and develop arguments for trial. This knowledge also provides a sound empirical foundation for developing strong office policies and for seeking legislative changes that help prosecutors win cases and get effective sentences. The office has aggressively

pursued a variety of legislative reforms, including redefining narcotics violations and restructuring penalties to put teeth into prison sentences for major narcotics dealers; the adoption of a State RICO statute to simplify the prosecution of major networks; and the reform of asset forfeiture laws to reduce the burden of proof and allow net worth forfeitures, thereby expanding the potential targets for seizure.

A second benefit of a specialized Narcotics Unit is that it creates the collective knowledge required to distinguish among different types of drug defendants and to match defendants to appropriate dispositions. In drug cases, more information than the immediate charge is often required to determine the type of defendant one is dealing with. Even prior records may not be very helpful. A number of prosecutors interviewed for this report remarked that, typically, higher-level drug dealers will not have prior records. By concentrating all cases in one unit, attorneys begin to recognize names and see patterns in the arrest caseload that provide clues to identifying the most serious defendants. Regular day-to-day contact with police officers and narcotics detectives also allows prosecutors to tap their superior knowledge about drug operations. The District Attorney's development of a close working relationship with the police in Oklahoma County was repeatedly mentioned as an advantage by members of all the specialized narcotics units. The District Attorney, a former cop, generally views the police and the prosecutor as a single team in law enforcement, and thinks this teamwork is especially critical with respect to narcotics enforcement. Up to the point of arrest, the police take the lead, with backup provided by the prosecutor. After arrest, the roles reverse, with the prosecutor taking the lead and backup provided by police.

Perhaps the most important payoff of a close working relationship with the police is that prosecutors can pass back to the police the specialized knowledge they have acquired regarding search and seizure through routine communication as well as formalized training. The head of the Narcotics Unit believes that if the police are given the tools, they will produce better arrests and be more aggressive in enforcing the narcotics laws. Without specific knowledge of search and seizure law and how it applies to particular situations, the prudent patrol officer typically errs on the side of caution to avoid potential violations of Fourth Amendment restrictions. From the police perspective, to fully use the legal knowledge of the prosecutor's office, officers need to feel free to call on prosecutors for help in nonroutine emergency situations involving search and seizure or other legal issues. In drug arrests, timing is often critical and a quick response to officers' questions is essential. This type of interaction is easier if officers and prosecu-

tors know and trust one another. It also means that an important operational aspect of a Narcotics Unit is that at least one member of the Narcotics Unit is on call on a 24-hour basis.

Finally, prosecutors in Oklahoma County have capitalized on their relationship with the police to increase their knowledge of the drug trade by having them bring in informants to talk about the drug business. All prosecutors agreed that for both the police and the prosecutor, informants are the best source of information on the local drug scene. Drugs are in essence the center of their lives. They know who is dealing what kind of drugs to which users and the major sources of supply. They also like to talk about what they know. The police have always known this, and Oklahoma County prosecutors are now effectively using the same tactic to inform themselves about drug use and supply trends. It was obvious in telephone and in-person interviews that the Oklahoma County District Attorney and his narcotics attorneys had clear and consistent views on the nature of drug use in the community and the national and international routes of supply by type of drug.

Oklahoma County prosecutors have also learned that the most effective tool for getting arrests of top-level drug dealers is through informants. Without informants it is extremely difficult to reach the high-level dealers who know how to insulate themselves from other enforcement tactics. The key to making cases through informants, though, is the existence of stiff mandatory prison sentences to create an incentive for cooperation. One former head of the Narcotics Unit has worked with the State legislature since the mid-1980's to make sure that the Oklahoma drug statutes provide the kinds of sentences they think they need to control drug dealing in their community. Prosecutors in other jurisdictions often report that to obtain appropriate sentences for high-level dealers, they must work with the local U.S. Attorney to get cases tried in the Federal courts, where the penalty structure provides stiff sentences for drug dealers.

Drug Abuse Prevention Efforts for Youth

The Oklahoma County District Attorney began prevention efforts in 1987 by hiring a Special Programs Coordinator and charging her with the broad mandate of "doing something in the area of prevention for youth." For 1 year, she talked to everyone in Oklahoma County who had anything at all to do with youth and youth services. At the end of 1 year, the Oklahoma County Coalition of Citizens and Professionals for Youth was formed to identify specific gaps in youth services in Oklahoma County. The Coalition is

composed of representatives of 40 agencies, including police, human services, schools, State welfare agencies, and the District Attorney. After another year of committee studies and planning meetings, the Coalition identified school truancy as a problem that was not being addressed.

The schools did not have the resources to track down absentee students on a daily basis, and the police had no authority to stop school-age youth they observed on the street and return them to school. In short, because no one was assigned to handle the task, nothing got done. To fill the gap, the Coalition created a nonprofit community-based organization, Youth Cornerstone, to design and implement a truancy prevention program. The Youth Cornerstone board is composed of community and business representatives who are independent of the various agencies who serve on the Coalition. The Oklahoma County District Attorney's Special Programs Coordinator serves as the board's executive director. A second staff member, a Project Coordinator, was also donated by the District Attorney's office to help with the development and implementation of the truancy program.

In designing the program, they built on the experience of the police in San Jose, California, who had set up a truancy program with the specific goal of reducing daytime burglaries by truant youth. In San Jose, when the police were given the legal authority to pick up and detain youths of school age on the street during school hours, daytime burglaries were reduced by 40 percent.

Based on the San Jose program, it was clear that two initial steps were required. First, legislation was needed to give police the authority, in essence, to act as truant officers. Second, a mechanism needed to be created to hold the truant youth, to notify their parents to retrieve them from truant custody, and then to remind parents of their legal responsibility to keep children in school. The Oklahoma County District Attorney worked with the State legislature to pass the necessary legislation. The Program and Project Coordinators worked with the schools, the police, and youth services to design the operations and staffing of the THRIVE (Truancy Habits Reduced, Increasing Valuable Education) program's first truancy center.

The THRIVE Truancy Center. The first THRIVE center opened in 1989; a second had just opened at the time of the site visit for this report. The Youth Cornerstone board planned to have a total of four centers, one for each quadrant of the county. The truancy-center concept was based on the recognition that, for the program to work, the police would need a place to bring truant youth so they could quickly return to patrol. If the police had to find parents or negotiate

with school authorities, they would have little incentive to pick up truant youth. It was also decided that the center would have to operate with existing resources. Staff and facilities had to come from in-kind donations based on agreements among the cooperating agencies.

The first center operated out of a single classroom of a specialized middle school just south of downtown Oklahoma City. The staffing of the center consisted of one police officer donated by the Oklahoma City Metropolitan Police (to ensure security); one employee of the Oklahoma City school system; a social work practicum student; and the center director, who is the Oklahoma County District Attorney's Special Projects Coordinator. The center also had an agreement with the county Youth Services Agency to take youths at the end of the day if center staff could not locate their parents.

When a police officer sees school-age children or youths on the street during school hours, he or she is authorized to pick them up and bring them to the center. The majority of the kids are ages 14 to 15, but center staff have processed children as young as 5 and as old as 17. The center does not deal with intoxicated youths or those high on drugs. The first step in processing is a background check to determine if there are any outstanding warrants or if the child is a runaway. The patrol officer is responsible for returning runaways to parents directly; youths wanted on a warrant are taken directly to court. For all others, center staff fill out an intake form to record essential identification information, current school enrollment and attendance status, prior agency involvement, and the circumstances of the immediate police pickup. Center staff then call parents to inform them that they need to be at the center within an hour to pick up the truant youth. Parents are responsible by law, and they are told that they must come (almost all do).

Finding a parent is the most common problem faced by staff in processing cases. The Center Director estimated that in about half the cases a parent cannot immediately be located, but the kids usually come up with information—such as the name of a neighbor or relative—that eventually allows a parent to be contacted. The center also has an on-site computer connection to school records that helps with phone numbers and addresses. They will not release youths to friends or neighbors and almost always insist on the appearance of a parent. In rare instances, they may release to a close relative.

Center staff follow up by checking with the school to determine if the youth is attending class. The District Attorney's juvenile division also checks the intake list to identify youths who, by virtue of being picked up for truancy,

have violated the terms of their juvenile court probation. Also, the District Attorney sends a letter to the parents of every youth processed by the center, to formally remind them that by law in the State of Oklahoma they are responsible for keeping their child in school.

During the 1990–1991 school year, the center processed 627 youths, with a recidivism rate significantly below 10 percent. The Oklahoma City school system recorded a significant reduction in the dropout rate, and the Oklahoma City Police Department measured a 24 percent decline in daytime burglaries during this period, although neither of these indexes was set up to serve as a rigorous evaluation of the programs' impact. To the Program Coordinator, the most encouraging indicator of the center's value was that in community areas that did not yet have a THRIVE center, residents were eager to establish one.

Comprehensive Problem Reduction in an Import City: A Case Study in Miami, Florida

Background

The Dade County State Attorney's office has been dealing with a narcotics enforcement problem of national significance since the increase in Colombian cocaine exports to the United States began in the late 1970's and early 1980's. The head of the Narcotics Unit, which handles high-level distribution cases, dates the increase in the unit's trafficking caseload to 1982–1983. Florida Department of Law Enforcement arrest reports indicate that between 1981 and 1982, arrests for the sale of narcotics increased by 84 percent in Dade County. Between 1982 and 1983, trafficking arrests increased by another 50 percent. Possession arrests of users and street dealers during this time period were essentially flat.

At one time, the Drug Enforcement Administration estimated that 75 percent of all cocaine imported to the United States came through Dade County. In the early 1980s, routine police stops by local police departments began to produce arrests of defendants in possession of very large amounts of cocaine. The Narcotics Unit's cases are basically kilo (and above) arrests of national-level distributors working out of Miami for Colombian cartels. The Dade County State Attorney's Narcotics Unit handles about a thousand trafficking cases per year. Most are arrests made by local police agencies, but the unit also handles Federal cases (involving amounts of less than 3 to 4 kilos) declined by the

U.S. Attorney. In the view of the Miami enforcement community, kilo dealers are a dime a dozen.

Long before the appearance of crack, the Florida State Legislature responded to international and national cocaine trafficking operations in Florida by passing stiff mandatory minimum sentences for drug trafficking. Sale of as little as 28 grams of cocaine is punishable by a mandatory minimum prison sentence of 3 years. Sale of 400 grams is punishable by a mandatory minimum sentence of 15 years. The penalty schedule is tied to drug amounts and provides for prison sentences up to life without parole regardless of prior record. Narcotics prosecutors in Miami, as elsewhere, pointed out that high-level cocaine dealers typically do not have prior records. In line with the statutory intent, the State Attorney's disposition policy regarding both high- and low-level dealers is "sales mean jail," regardless of amount.

Within the Dade County State Attorney's office, the intensity and longevity of cocaine trafficking has resulted in a high degree of integration of narcotics enforcement among units within the office and with outside agencies, such as cooperation between local and State police and between local agencies and Federal investigators and prosecutors. Within the office, Narcotics Unit attorneys screen all trafficking arrests. Cases involving less than a kilo are handled in regular felony trial units on a random assignment basis, like other felony cases. Narcotics Unit prosecutors, however, screen and file the initial charges, and the head of the Narcotics Unit reviews the disposition of every trafficking case to ensure that office plea policies are followed.

Cross-designation of the eight Narcotics Unit attorneys to prosecute cases in Federal court is common. Prosecutors are cross-designated on a case-by-case basis; even so, the head of the Narcotics Unit has been cross-designated continuously since he came to the office 4 years ago. He is also on call, via a beeper, on a 24-hour basis to respond to ad hoc requests for advice from police officers and to approve search and arrest warrants. Other prosecutors in the Narcotics Unit may be assigned to similar 24-hour on-call duty to provide legal advice to long-term investigations. In long-term, targeted investigations by local or State police, Narcotics Unit prosecutors get involved early and help on a day-to-day basis to decide investigation strategy and to build cases.

The then Dade County State Attorney, Janet Reno, and the head of the Narcotics Unit, were also notified in advance of any major operation of the Metro-Dade police TNT (Tactical Narcotics Team). The TNT program is designed to go after street crack dealers. Location targeting is highly sophisticated, beginning with geographic analysis of em-

pirical data on crime and drug dealing. Statistical information is then supplemented with qualitative information from neighborhood residents, informants, and surveillance teams. The investigation ultimately culminates in a "street-sweep-buy-bust-reverse-sting operation." First, narcotics officers go in and arrest dealers in a buy and bust operation; officers then pose as dealers to arrest users. In advance of such operations, the Narcotics Unit prepares special training sessions for police officers on search and seizure law. The State Attorney's office also augments the staff available to process the resulting arrests, which may number as many as 60 to 70 arrests in a single night.

The level of antinarcotics practice in Miami, in short, is highly sophisticated and exhibits a high degree of cooperation among levels of government and across criminal justice agencies. Some of this cooperation is formal and takes the form of joint task forces under the aegis of Federal initiatives such as HIDTA (High Intensity Drug Trafficking Areas) and OCDEF (Organized Crime and Drug Enforcement Task Force) programs. A great deal of the cooperation, however, is informal. As the head of the Narcotics Unit pointed out, even though the trafficking problem is large, the number of people involved in enforcement on a daily basis is relatively small. Over time, drug enforcement personnel get to know each other well and are joined by a common mission.

Despite the high level of sophistication and dedication to antidrug trafficking efforts, Miami, like most other East Coast and West Coast urban areas, was hit hard by the crack epidemic. In 1986, a second sharp increase in drug arrests occurred in Dade County. From 1985 to 1986, drug possession arrests increased by 55 percent; the 2-year increase from 1985 to 1987 was 72 percent. Arrests for narcotic sales also went up, but much less dramatically. Although the State Attorney's office had in place many of the mechanisms that other offices would initiate in response to crack (e.g., changes in drug statutes, specialized units, and cooperative law enforcement initiatives), it was not prepared for a new class of defendant created by crack—the addicted user. The remainder of this case study describes the Miami response to the nonviolent defendant user. In response to this new problem, cooperative efforts were forged with the courts, the Public Defender, and treatment professionals to create Miami's Drug Court.

The Miami Drug Court

The impact of crack on crime and the community was first recognized by the Dade County State Attorney's Chief Assistant for Community Affairs. One aspect of the Chief

Assistant's formal duties is to serve as legal counsel to the Dade County grand jury, which hears all capital murder cases. In the summer of 1986, the number of murders that were related in some way to crack struck both the Chief Assistant and the members of the grand jury as a new and serious problem. Subsequently, the grand jury initiated an investigation of a host of drug-related issues and local government responses to specific drug problems.

One aspect of the grand jury investigation involved a random urinalysis study of arrestees held by the Dade County Department of Corrections. In Dade County, all felony arrestees are routinely processed through the jail before court arraignment and release. The study conducted in 1986 included a sample of 450 arrestees who were tested within 24 hours of arrest. Seventy percent of the sample tested positive for cocaine; 90 percent tested positive for one or more drugs other than alcohol. This finding, combined with the fact that by 1987 fully one-third of the felony court caseload involved defendants arrested on drug charges, led the grand jury to conclude that drug abuse was creating the court's caseload, yet nothing was being done to address defendants' drug problems. A subsequent grand jury documented the lack of treatment for drug-dependent defendants and came up with a list of recommendations, which basically instructed the judiciary to explore the possibility of developing special courts devoted to drug treatment. In making its charge to judges, the grand jury stated the following in its report:

Unfortunately, it has come to the point where judges must become trained in the area of substance abuse. *The Final Report of the White House Conference for a Drug Free America* (June 1988) concluded that, "Judges should use more innovative measures to deal more effectively with first time drug offenders . . . so they (offenders) learn that illicit drug use has negative consequences." The report suggests the establishment of special courts to deal with this drug problem and the imposition of restrictive yet rehabilitative treatment.¹⁵

In the words of the Dade County State Attorney's Chief Assistant, she and the grand jury came to realize that with the appearance of crack and intensified narcotics street enforcement, the criminal justice system had become responsible for a host of nontraditional defendants. Because no mechanism existed to deal with these defendants' specific problem—drug addiction—they were merely being cycled and recycled through the court system with no consequence or any help. Furthermore, because so many of

these defendants had a host of social problems in addition to being arrested, regular judges were not equipped to deal with them. A specialized court was needed.

Previously, the State Attorney had tried to work out a probation-based treatment program for drug defendants, but it was ultimately scrapped. The key problem was that judges did not like it. Inevitably, defendants with drug problems end up back in court for a wide variety of probation violations. From the judges' point of view, these defendants merely clogged their dockets and diverted time and resources from more serious cases involving violent crimes. In Miami, the Dade County State Attorney knew that convincing judges to take low-level drug cases seriously would require taking them out of the regular dockets and obtaining the backing of the Chief Judge. Once the Dade County State Attorney and the Chief Judge agreed on the need for a drug treatment court, the judiciary took the lead in setting up a court. In November 1988, the Florida Supreme Court granted the Associate Chief Judge in Dade County a 1-year leave from the bench to create a plan.

In addition to agreement between the judiciary and the prosecutor, involvement of the Public Defender and the treatment community was necessary. To obtain their cooperation, the State Attorney conceded that the drug court would be a diversion program. This was necessary to persuade the public defense bar to relax the traditional adversarial approach of criminal defense. If the defense bar had challenged every move, the discretion of the judge to use treatment to deal with defendants' problems would have been constantly thwarted. The creation of a nonprobation diversion program was also important for obtaining the cooperation of treatment professionals.

*How the Miami Drug Court Works.*¹⁶ Miami's Drug Court, officially known as the Diversion and Treatment Program (DATP), began operation in June 1989. About 4,500 defendants had entered the program as of February 1993. The principal criterion for participation is an arrest for possession of any controlled substance other than marijuana. Defendants with a history of violent crime or more than two previous felony convictions that are not drug related are ineligible. The program is also not open to drug sellers. Despite these relatively strict criteria for program participation, the caseload of the special drug court accounts for about 20 percent of all the felony drug cases.

Initial intake screening is done by the Pretrial Services Agency in the jail immediately after arrest. People who meet the eligibility criteria are celled separately in the jail from other defendants. Their first appearance in court is before Judge Goldstein, the Drug Court judge. A treatment special-

ist explains the program to each defendant and tells them that participation in the program is voluntary. If the defendant does not want to participate, which is not common, he or she will be sent to an initial appearance court for routine felony case processing. Defendants who agree to participate remain under the custody of Judge Goldstein for the duration of the Diversion and Treatment Program. Within about 2 weeks, the case is also screened by the Dade County State Attorney's felony trial screeners to ensure that a valid legal case exists. Participants are sent to the Drug Court from other courtrooms when a judge thinks an addicted defendant can benefit from the program, and the defendant's current and prior offenses are close to the program eligibility criteria.

Once in the custody of the Drug Court, defendants must report immediately to one of two treatment clinics to begin the first phase of a three-phase treatment program. The first two phases concentrate on making the defendant drug free through acupuncture, counseling, and regular urine screening. Acupuncture treatment for addicts started in China, when doctors observed that surgery patients who also happened to be addicts experienced reduced withdrawal symptoms as a side benefit of acupuncture prescribed for pain relief.¹⁷ During Phase I of the program (2 or more weeks of detoxification), the defendant reports to the treatment clinic daily for urine screening and a voluntary 45-minute acupuncture session. To graduate from Phase I, the defendant must have seven consecutive clean urines and regular attendance at the treatment clinic. During Phase II (2 or more months of stabilization), defendants report periodically for urine screening, individual and group counseling, and, if desired, further acupuncture sessions. In Phase III, the aftercare phase, participants change sites to one of the campuses of Metro Dade Community College. During Phase III, which lasts at least 8 months, random urine screening and counseling remain central to the program, but education and job skills training are also major goals. At each phase, graduation depends on remaining substance free; showing up for treatment, counseling, and training sessions regularly; and being assessed by treatment counselors and Judge Goldstein as progressing toward a permanently drug-free life-style. In addition to the availability of acupuncture, a unique aspect of the Miami Drug Court treatment program is that the defendant's progress is tracked regularly and personally by Judge Goldstein.

At a final court appearance, Judge Goldstein releases the client from the program and court supervision. Twelve months later, the court seals the arrest record of any graduate with no previous felony conviction who has not been rearrested and has paid the program fee. First-time offend-

ers may then legally report on any job application that they have never been arrested.

The daily Drug Court docket is both similar to and different from that of regular courts. All the traditional actors are present: the judge, prosecutor, public defender, court clerks, pretrial services representatives, and Department of Corrections officers. In addition, however, there is a treatment specialist who acts as a liaison between the court and the treatment clinic, a community treatment specialist who finds residential facilities for defendants who need residential care, and a social worker who works for the Public Defender's office to help it keep track of defendants with mental-health as well as drug problems. Like all courts, the docket is heavy, about 80 cases a day; but the nature of the interaction is personal, not adversarial. The defendant speaks to Judge Goldstein directly and not through the Public Defender. Judge Goldstein, in turn, knows defendants by name and directly questions defendants about their treatment progress and failure. He typically does not call them defendants but "patients," and refers to the jail as "his hotel" to which he will send "patients" for 2-week periods of "motivation" if they fail to stay clean or do not show up at the treatment clinic. A computer link to treatment attendance records and urinalysis results that is right on the judge's bench is an obvious aid in promoting patients' truthfulness. While the prosecutor is there to represent the interests of law enforcement, and the Public Defender is available to represent the interests of defendants, both join the judge either in praising defendants who are doing well or in reprimanding defendants who are not trying.

The National Institute of Justice and the State Justice Institute have jointly funded a rigorous treatment outcome evaluation of the Miami Drug Court.¹⁸ Independent program data, although not as complete as the evaluation data, are encouraging. Among the approximately 4,500 clients admitted since the program began, about 60 percent either have graduated or are still in treatment. Program staff estimate that whereas typical recidivism rates range up to 60 percent, only 11 percent of defendants who have completed the program have been rearrested in Dade County on any criminal charges in the year after charges were dismissed. (However, follow-up information on participants who failed to complete the program is not yet available.) Judge Goldstein is obviously highly motivated and skilled in dealing with addicted defendants and their many personal and social problems. Along with Judge Goldstein's dedication and skill, the most striking aspect of the Drug Court is the degree of enthusiasm that courtroom participants, from the prosecutor to clerical staff, expressed in reporting their

opinion that the program is working. All indicated that they had been skeptical initially, and all also said they had *seen* sufficient success to convince them that the Drug Court works.

Endnotes

1. "Holdin' the Line: Drug Prosecutors Fight to Stay Ahead of New Cases," *Seattle's Police Beat*, August 1989, p. 7.
2. Statistics concerning case filings were provided by the King County Prosecutor's Office during on-site interviews in September 1991, and were updated in 1992.
3. "Police Depend on Legal Help in Drug Cases," *Seattle Post-Intelligencer*, November 6, 1990, p. B2.
4. 111 S.Ct. 1934 (1991).
5. July 17, 1991, as excerpted in John M. Wulfers, "Prosecutors: Beware Your Legal Advice," *National District Attorneys Association Bulletin*, Vol. 10, Nos. 3 and 4, 1991, pp. 25-27.
6. *Ibid.*, p. 27.
7. Michael D. Schrunck, Task Force Concept Paper entitled, "Regional Drug Initiative, the Foundation of a Local Task Force to Combat Drug Abuse," internal memorandum, n.d.
8. Jan Chaiken, Marcia Chaiken, and Clifford Karchmer, *Multijurisdictional Drug Law Enforcement Strategies: Reducing Supply and Demand* (Washington, DC: U.S. Department of Justice, National Institute of Justice, December 1990). This report includes an earlier case study of the Regional Drug Initiative.
9. *Ibid.* See pp. 52-54 for a thorough description of this and other early RDI projects, as well as a discussion of starting similar programs.
10. Michael D. Schrunck, "Comprehensive Approach to Demand Reduction," unpublished typescript of presentation to the Law Enforcement Demand Reduction Symposium (Atlanta, GA, April 12, 1988), pp. 12-13.
11. Based on urinalysis tests. See *1989 Drug Use Forecasting Annual Report: Drugs and Crime, 1989* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1990), and later reports in this series.

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12. Excerpted from STOP project proposal, prepared by Judge Harl Haas.
 13. See "Needling Addiction," in newsletter of National Association of Criminal Justice Planners, April 7, 1987.
 14. Michael D. Schrunk, "Comprehensive Approach to Demand Reduction," p. 3.
 15. *Final Report of the Grand Jury*, The Circuit Court of the Eleventh Judicial Circuit of Florida in and for the County of Dade, Spring Term A.D. 1988, filed November 16, 1988. The 1988 grand jury report documented the investigation of both the 1986 and 1988 grand juries.
 16. Peter Finn and Andrea K. Newlyn, *Drug Offenders Get Treatment, Not Jail, in Miami's "Drug Court"* (Washington, DC: U.S. Department of Justice, National Institute of Justice, forthcoming).
 17. Metropolitan Dade County, Department of Human Resources, "Acupuncture Treatment for Substance Abuse," (Miami, FL: 1991).
 18. John Goldkamp, "Assessing the Impact of the Dade County Drug Court on Drug-Related Felons," National Institute of Justice, Interagency Agreement No. 91-IJ-CX-A030 with the State Justice Institute.

Chapter 4

Expediting Cases and Increasing Staff: Two Case Studies

The following case studies focus on programs which address two of the most common concerns of prosecutors with heavy drug caseloads: the need to process cases more efficiently and the need for more staff. The two programs discussed below are considered effective by the prosecutors in the jurisdictions in which they originated, and one program—the Oakland Probation Revocation model—was formally evaluated in 1988 by the Center for the Study of Law and Society, University of California at Berkeley, as part of its report on the Targeted Urban Crime Narcotics Task Force. Although no such empirical evaluation exists for the King County Special Deputy Program, the case study highlights possible concerns for prosecutors who might be interested in implementing a similar program in their jurisdictions.

Prosecutor-Initiated Probation Revocation for Drug Offenders: A Case Study in Alameda County, California

Background

The Alameda County District Attorney's office handles the fourth highest volume of cocaine arrests in the nation.¹ The majority of these arrests are generated from one district in Alameda County, the city of Oakland. In the early 1980's, the appearance of paramilitary organizations—a local precursor to drug gangs—permanently changed the character of drug crime in Oakland. These new organizations were more violent and took a bolder approach to drug sales, moving the retail cocaine trade from behind closed doors to the streets. This shift in marketing strategy roughly coincided with the appearance of "rock" or "crack" cocaine. By 1984, community groups were urging stronger law enforce-

ment efforts to curb the drug-related violence which had come to dominate certain parks and neighborhoods in Oakland. As in many other jurisdictions in the mid-1980's, police response to these new conditions and the community's pleas for help led to a sudden escalation of drug arrests which sent ripples throughout the local criminal justice system, straining prosecutorial resources and eventually threatening to overload the Alameda County court system.

Following an initial period in which the District Attorney focused on traditional administrative means of rapidly disposing of the influx of cases, a more comprehensive plan of drug case management was formulated. As in Portland and Seattle (see chapter 3), the aim of the District Attorney's new approach was overall problem reduction. The plan consisted of a broad spectrum of components, including (1) increased contacts and cooperation with community groups, health agencies, law enforcement, and city officials via a community council (the Oakland Community Council on Drugs); (2) a well-publicized "get tough" policy for drug offenders; (3) legislative reform (regarding prison terms for the use of automatic weapons); (4) increased staffing; and (5) a multiagency approach to drug crime, the Targeted Urban Crime Narcotics Task Force.

The Targeted Urban Crime Narcotics Task Force was funded by the California State Assembly² to encourage the development of innovative, cooperative programs among the various branches of the Alameda County criminal justice system. The underlying philosophy of the act was that increased efficiency and interagency cooperation would lead to a reduction in narcotics violations. The act laid out nine objectives for the Task Force, including the following:

- to reduce the elapsed time between arrest and trial in narcotics cases;

- to reduce the number of narcotics crimes committed by defendants while awaiting trial; and
- to increase the number of trials and convictions in narcotics crime-cases in both municipal and superior courts.³

The program created to accomplish these particular objectives—a system of prosecutor-initiated probation revocation for drug offenders already on probation for a felony conviction—became the centerpiece of the Task Force’s programs, and has been modeled successfully in other urban districts in California that prosecute exceptionally high volumes of drug cases.⁴ Due to its success, the probation revocation program was continued after the close of the Task Force and has become an important component of the Oakland District Attorney’s drug case management strategy.

How Prosecutor-Initiated Probation Revocation Works: The Oakland Model

The core idea of the Oakland probation revocation model is to speed the revocation process in order to achieve two goals: first, to prevent felony probationers who are arrested on felony drug charges from being immediately rereleased into the community;⁵ and second, to minimize the court and prosecution costs associated with repeat offenders. The District Attorney also believes that by shortening the time between arrest and punishment, deterrence may be enhanced and the danger of nonappearance (and the resulting loss of court, prosecutor, and police time) is eliminated. To this end, the prosecutor is prepared to resolve probation violations at the first appearance. Due in part to the extremely low evidentiary standard required in probationary hearings under California law (only a preponderance of evidence indicating a violation is needed), the vast majority of defendants are willing to accept additional probationary conditions, including jail or prison terms, at their first appearance.⁶ As discussed below, should a defendant refuse the prosecutor’s offer at the first appearance, he or she will be given two subsequent opportunities to settle before the first evidentiary hearing. According to the judge in charge of the drug-offense probation revocation docket, these quick settlements—all to some term of incarceration—have allowed the courts to process more cases while insisting on some jail time for drug offenders and reducing the court’s case backlog by half.

Key actors. Establishment of the Oakland probation revocation program required a great deal of interagency communication and cooperation, but it now operates with a mini-

um of supervision from the Deputy District Attorney in charge of filing revocation petitions. The primary actors from each agency are

- *a vice officer* whose duty is to review the arrest reports and rap sheets of defendants arrested on drug charges during the previous night;
- *a secretary* (from the District Attorney’s office) to retrieve the files of defendants found to be on felony probation, and to process probation violation petitions;
- *a deputy district attorney* in charge of probation revocations, whose duty is to review the files, make charging decisions, complete the probation violation petitions and arrest packets, and appear in court;
- *an inspector* from the District Attorney’s office (who is a peace officer under California law) whose duty is to check all documents, rearrest those in violation of probation, and nullify the new charges for those against whom no new charges are to be filed;
- *a lab* capable of delivering overnight drug analyses;
- *a court docket* dedicated to the processing of drug-related probation violations; and
- *a public defender* to advise all defendants at first appearance and any subsequent hearings.

Since timing lies at the heart of the effectiveness of this program, all of the actors must cooperate to fulfill their roles promptly and consistently. Aside from initial hesitance on the part the police—who worried that their arrests were being compromised by a system designed to avoid the prosecution of new charges—the District Attorney’s office has encountered little difficulty obtaining the necessary ongoing cooperation.

Procedure. The bulk of arrests for narcotic offenses in Oakland occur at night, often as the result of undercover buy-bust operations.⁷ Although a few of these defendants make bail the same night, the majority are held over for first appearance the following morning. Early each morning, an officer from the Oakland Police Department Vice Division reviews the arrest reports from the previous night to ascertain which of the felony drug arrestees are on active felony probation. Between 8:30 and 9:00 AM the Vice Officer telephones the District Attorney’s drug unit secretary and relays the felony probation docket numbers of those arrestees who fit the program’s profile. The drug unit secretary then pulls each of these files from their computer system and delivers them to the Deputy District Attorney in charge of

the probation revocation program. Before 9:00 AM, the Deputy reviews the probation files of the new arrestees and phones the Vice Officer to discuss the facts of the new allegations. Based on this information, a decision is made whether to file the new charge or to nullify the arrest and seek a probation revocation on the basis of the previous conviction. Revocations generally are sought unless one of the following factors is present:

- a large amount of contraband;
- a codefendant situation, which would raise questions of equity if the nonprobationer were charged alone; or
- the seizure of monies, which would trigger forfeiture proceedings.

In some instances, the decision is made both to file the new charges and to seek probation revocation.

In cases where a probation revocation is to be filed, the Deputy fills out a simplified "Petition to Revoke Probation" form (see appendix G), which includes information about the offense leading to the original probation, the date and type of probation violation alleged, and the police report number. In addition, the Deputy encloses the police report, attaches a brief summary of the facts to the front of the file, and sets an agreed-on time for the defendant's first appearance in Superior Court. (The District Attorney's procedural guidelines state that this date is to be set a minimum of 2 and a maximum of 5 days ahead; it appears that the common practice is to accelerate this first appearance to 48 to 72 hours following the arrest, except in the case of weekend arrests.) The completed file is then passed to the department secretary.

Meanwhile, the Vice Officer, who has been told by the Deputy which arrestees are to be included in the revocation program, delivers the arrest packets for these individuals, as well as information concerning their court dates, to the District Attorney's Inspector. As a matter of convenience, the Inspector's office is close to that of the Vice Officer. One special characteristic of inspectors under California law is that they are peace officers and therefore can order the re-arrest of defendants under the petitions to revoke probation. The Inspector is also responsible for filing under section 849b of the Penal Code to nullify the most recent arrest of probationers against whom no new charges are to be filed. Once the form is filed nullifying the new arrest, the defendant continues to be held under a "no bail hold" arising from his re-arrest for the alleged probation violation. The key element here is that the defendant's release and re-arrest are effected entirely on paper—no prisoner is moved (the

Deputy in charge of the program has observed that an officer comfortable with automation could accomplish the same procedure entirely by computer, thus eliminating the need for an investigator on site). The Inspector then delivers the arrest reports, including a presumptive lab analysis of the drugs taken as evidence, to the District Attorney's drug unit secretary at Superior Court. Since the petition to revoke probation cannot be filed without a lab report, a presumptive drug test, such as the Valpox test for the presence of cocaine, is performed in the field by the arresting officer. A petition for revocation is filed on the basis of the field analysis, but is confirmed by more extensive lab analyses. To date, presumptive testing in the field has yielded only one false positive.

The remainder of the preparation for court is clerical: the unit secretary combines the Deputy's file, the arrest report from the Inspector, and the petition to revoke probation. Five copies of the completed file are prepared and distributed as follows: the original is filed with the Criminal Court's clerk; one copy is left on file at the District Attorney's office; one is earmarked for the defendant (including the petition only); one is retained for the defense attorney; and one is sent to the probation department. Again, it is reasonable to assume that even greater efficiency could be achieved if this information could be made available electronically to most of the criminal justice agencies involved (such as the court, the Public Defender, and the Probation Department).

All of these steps are accomplished before the 11:00 AM revocation calendar. The department in charge of probation revocation hears petitions from the District Attorney twice daily, except on Fridays, and is presided over by one judge. In general, initial appearances are heard at the first sitting (11:00 AM), and hearings (the defendant's third appearance before the court) are held in the afternoon. However, defendants who are set for hearings in the afternoon are, as a matter of practice, given a final opportunity to accept the District Attorney's settlement offer at the morning session. (The second opportunity for defendants to settle is provided at an informal meeting of the court to set the time of the hearing, which usually occurs in the second week after arrest.) The opportunity for the defendant to accept the District Attorney's offer at the morning court session is designed to allow enough time to cancel the witnesses called for the afternoon hearing, who are usually police officers. This is considered a courtesy to the police officers and is also a cost savings, since the officers are not only removed from their duties but also paid overtime when called to testify.

The defendant's time in court at first appearance is short. Under most circumstances, the Deputy is prepared to make

an offer of either jail or prison time (depending on the severity of the original offense).⁸ The Public Defender is present, and briefly discusses the prosecution's offer with the probationer and informs the probationer of his right to a hearing and to consult an attorney. If the probationer is willing to accept the District Attorney's offer, he is usually sentenced immediately. In practice, the entire process may take less than 5 minutes of court time.

Key Elements of the Probation Revocation Program

Offices that are interested in setting up a probation revocation program on the basis of the Oakland model would need the following:

- the ability (manual or computerized) for law enforcement or the Probation Department to ascertain *promptly* whether a defendant is on felony probation;
- a method of *making an arrest* on the probation violation before the defendant is out of custody;
- agreement among the participating agencies to support the goals of the program, in particular, *cooperation between the District Attorney's office and the Probation Department*;
- *a separate docket* dedicated to hearing probation revocations initiated by the District Attorney arising from drug violations; and
- *a judge or judges who support the aims of the program*, and who are alert to the potential for abuse that exists in such a system.

All participants agreed that the support of the judiciary, and a separate drug-related probation revocation docket, are also essential to the success of the program.

Obstacles to Implementation

Legal issues: Concerns about due process. On first examination, some legal scholars and analysts of the criminal justice system are uncomfortable with the probation revocation process as it has evolved in Oakland.⁹ Rosann Greenspan, one of the evaluators of the Targeted Urban Crime Narcotics Task Force and a longtime observer of the probation revocation program, has expressed frustration over the infrequency of evidentiary hearings and the summary nature of the sentencing process:

For a number of reasons, almost no evidentiary hearings proceed. In sixteen months, I observed only one evidentiary hearing. Several hearings were scheduled, but once the individual saw that the D.A. had brought a witness, he most often changed his mind and waived the hearing. Given the low burden of proof, and admissibility of hearsay evidence, it is generally admitted that almost any evidence will lead to a violation. Generally the probationer's only hope is that the prosecution's witness will not appear.¹⁰

Greenspan's criticisms, however cogent, are not intended to suggest that any legal impropriety exists in the procedures used.¹¹ In fact, the procedures used are supported by ample case law, both at the State level and, in some cases, by Federal precedent.¹² It is undeniable that the lower evidentiary standards and swiftness of the process create an aura of informality to the proceedings. Unfortunately, there can be no more reassuring answer to those who object to the evidentiary rules and search and seizure standards set out by the State of California than that probationers do in fact, by their own consent, possess fewer rights than defendants entering a court for the first time.

A second procedural concern about the process in Oakland arises from the brevity of the consultation with the Public Defender when the client accepts the prosecution's offer at the first appearance. There are some possible solutions to this concern. It seems clear that a greater opportunity for consultation with defense counsel would improve the intangible sense of fair procedure surrounding the revocations. In particular, a slight lengthening of the revocation process to accommodate greater participation by the Public Defender and the Probation Department would be likely to ease concerns about safeguarding the due process rights of the probationers without significantly eroding the efficiency of the program. (For example, the process might be extended by the District Attorney by withholding offers until the probationer's second appearance before the court.)

Potential for abuse. The probation revocation program is vulnerable to abuse at a number of levels. In the first instance, the decision to revoke probation—and thus to incarcerate—is frequently based on the written report of one police officer. Since the arresting officer is rarely called to testify, both the Deputy in charge and the judge need to be particularly mindful of any inconsistencies in the report and alert to the issue of police harassment. Second, there is the issue of unintentional abuse of the program due to understaffing or lack of cooperation in one or more agencies.

If, for example, the Public Defender or the Probation Department is unable to provide adequate protection and support for the probationers, the program may easily become prosecution driven, and the due process rights of the probationers may be compromised.

Finally, at a systemic level, some commentators are concerned that probation and parole revocation are becoming too easy a tool for understaffed prosecutors, and that the volume of cases generated from these proceedings are flooding the corrections system. This danger dictates that participants in such programs must be alert to the implications of the program for other criminal justice agencies in their area. Furthermore, revocation must be used selectively. The Deputy District Attorney in charge of both drug-related and nondrug probation revocations in Alameda County advocated a more discriminating use of probation revocation as a prosecutorial tool. He observed that revocation seemed to be a more appropriate prosecutorial approach to victimless drug offenses than to the disposition of violent crimes, due to his reluctance to nullify charges that involve victims.

Similarly, the judge in charge of the probation revocation docket seemed well aware of the demands and limitations of the local and State corrections systems and was attempting, in his sentencing, to balance the aims of the program with the needs of the whole system. The District Attorney of Alameda County, John Meehan, emphasized that probation revocation should not be viewed as a panacea to understaffing in the prosecutor's office, but rather as one effective component of a more comprehensive drug-crime reduction strategy.

Organizational issues. The Oakland probation revocation model is premised on the ability of prosecutors in California to file probation revocations directly, without the assistance of a probation officer. In Alameda County, the Senior Deputy District Attorney who authored the program, Kenneth Kingsbury, was a former probation officer and therefore already had an excellent understanding of procedures involved in probation revocation and contacts within the Probation Department that could speed implementation of the program. Nonetheless, this structure should not create an impediment to the development of similar programs in States where prosecutors are not empowered to initiate probation revocations. Discussions with Alameda County prosecutors suggest that close cooperation between the Probation Department and the prosecutor in charge of revocations could achieve many of the same benefits and efficiencies.

Benefits of the Probation Revocation Program

Prosecutor-initiated probation revocation can, if thoughtfully organized and administered, provide a means for the understaffed urban prosecutor to

- speed the reincarceration of felons in violation of their terms of probation;
- minimize or eliminate court time and trial preparation in relation to new charges against probationers (with certain exceptions—see below);
- reduce the number of crimes committed by defendants awaiting trial;
- reduce the Probation Department's work load by employing simplified revocation petitions; and
- respond to the community's perception that suspects are back on the streets selling drugs within hours of their arrest, and thus increase the perceived effectiveness of street-level law enforcement.

For the prosecutor whose office already has direct access to local criminal justice data systems and good interagency communication links, the job of setting up and maintaining a probation revocation program for drug offenses would be greatly simplified. But however the program is organized, prosecutor-initiated probation revocation for drug offenses offers a means of managing high volumes of street-level drug cases while ensuring that—for the arrestee—drug involvement is equated with a swift and serious response from the criminal justice system.

The King County Special Deputy Program: A Case Study in Seattle, Washington

The multiplicity of drug prosecution programs in place in Seattle (see chapter 3) requires ample staffing. An important component of the King County Prosecuting Attorney's approach is to seek innovative means of increasing his office's prosecutorial resources so that the quality of prosecutions can remain high despite the demands of a large drug caseload. One way in which the Prosecuting Attorney adds to his staffing resources is through a well-established program that prepares private-sector attorneys to prosecute selected drug crimes on a pro bono basis. The key elements of this program are detailed below.

Background

In the second half of the 1980's, there was a more than fivefold increase in the number of drug prosecutions in King County: in 1986, 450 drug cases were filed by the Prosecuting Attorney's office; by 1989, that number had risen to 2,504. At the same time, the number of locally funded deputies dedicated to prosecuting those cases rose only modestly, from 7 to 16. Today, the drug unit numbers close to 20, but only 12 of those deputies are full-time trial attorneys. (The rest are assigned to filing cases, training, working with the police, calendaring, or administration.) Since it is the policy of the King County Prosecuting Attorney not to engage in routine plea bargaining, the percentage of cases that come to trial in Seattle is among the highest in the nation. In 1992, 13 percent of all King County drug arrests went to trial.¹³ The use of Private Sector Associates—graduates of the Special Deputy Program—has enabled the King County prosecutor to augment his prosecutorial resources to keep pace with the influx of cases while maintaining a high trial rate for drug prosecutions. Although this is only the second year of the program's operation, the head of the Special Drug Unit's Trial Division, Jon Love, reports that the private attorneys do well after they learn the basics of court procedure and that they provide a valuable contribution to the unit.

The idea for the program grew out of one private firm's interest in providing attorneys for pro bono prosecutions. In the past, lawyers from private firms had occasionally assisted with other types of prosecutions, such as cases involving drunk drivers. A number of informal contacts already existed between the prosecutor's office and local private firms as a result of former deputy prosecutors leaving the public sector and entering private practice. The active interest and participation of these former deputy prosecutors has proved to be a crucial link in the success of the Special Deputy Program.

Training Private-Sector Attorneys To Be Prosecutors

The Special Deputy Program is designed to address the interests and needs of both the drug unit and the private firms that participate. The benefits for private firms are several. First, associates in the program are given 20 hours of intensive trial training, including both lectures and a moot-court-style workshop to prepare them for the courtroom. In addition to training, associates are virtually guaranteed the opportunity to acquire trial experience because the drug unit carefully screens to ensure that Private Sector

Associates receive cases that are most likely to go to trial. This training and courtroom experience makes the program a very attractive resource for private firms whose new associates commonly have little or no trial experience. As a result, the roster of private firms interested in the program is continually growing; this year, the number of participating attorneys was expanded by 20 percent. In most firms, associates try one or two public-sector cases per year, but one firm now places an associate with the drug unit full-time for 3 months.

Within each firm, a former deputy prosecutor acts as a liaison between the Prosecuting Attorney's office and the private attorneys who are participating in the program that year. In general, the attorney who acts as liaison is credited by his or her firm with a certain number of pro bono hours for assistance to the other attorneys in the program. During the course of a year, a typical Private Sector Associate would be likely to try one or two drug cases, although some may try as many as three or four. For this work, the private attorney would be allotted approximately 100 pro bono hours by his or her firm. The in-house liaison commonly fields day-to-day inquiries about trial preparation from these associates and coordinates and tracks the pro bono drug cases being handled by the firm. This administrative function of the former prosecutor is particularly valuable to the drug unit because it reduces the burden of program administration, which could otherwise outweigh the value of the private-sector assistance received.

The trial attorneys in the drug unit find the program to be helpful in two ways. First, it acts as a safety valve to relieve the pressure of unexpected fluctuations in caseload. Second, cases that have evidentiary weaknesses, and thus would require extensive trial preparation, may be referred to a private sector prosecutor who is able—and motivated—to devote a greater amount of time to the case. The primary cost of the Special Deputy Program lies in the work hours needed to prepare and conduct the intensive training session on drug-crime prosecution. This 3-day seminar is given twice yearly by the drug unit administrator in charge of the trial division. The seminar consists of lectures and a mock trial, which is preceded by detailed discussions of jury selection, the preparation of opening statements, direct examination, and closing arguments.¹⁴ While it may not be economical to devote this degree of training to private-sector attorneys who are likely to spend only 1 or 2 years in the pro bono program, the Prosecuting Attorney makes double use of the seminar by requiring it as part of the training of all new members of the Drug Unit, especially those deputies who have had no felony trial experience.

Ethical Considerations

There have been no serious concerns about the involvement of private-sector attorneys in the prosecution of drug crimes in Seattle; however, the Massachusetts Bar Association Committee on Professional Ethics was recently called on to evaluate possible conflicts of interest arising from similar programs there.¹⁵ The first part of the committee's opinion dealt with a proposed program that was to be structured very similarly to the Private Sector Associates program in Seattle. Private attorneys were to be appointed to handle criminal appeals while still employed at their respective firms. The potential conflict lay in the fact that the private firms participating in the program would also be engaged in criminal defense work within the same county district courts. Thus, a volunteer might be involved with criminal defenses and prosecutions at the same time. In this instance, the committee was of the opinion that one lawyer was prohibited from participating simultaneously in both prosecutions and defenses in district court in the same county.

The second program considered by the ethics committee proposed to place private attorneys as full-time prosecutors in the District Attorney's office for periods of 6 to 8 months. The question here was whether "non-participating members of the lawyer's firm would be vicariously disqualified from handling criminal defense work in the county while any employee of the firm is participating in the program."¹⁶ In this case, the committee found that safeguards could be instituted to avoid vicarious disqualification. Specifically, they advocated screening government employees and former government employees from situations that might result in vicarious disqualification, as well as screening attorneys working on public appellate work from the firm's private criminal defense work. The committee also recommended that in such cases informed consent be obtained from public prosecutors and defendants and that disclosure be made in court. Finally, the committee observed that a firm would be barred from representing a defendant who was being prosecuted by a volunteer from that same firm.

Various State bars may take slightly different views on these issues, but it is important for prosecutors who are considering incorporating private-sector attorneys into their staff to be aware of the potential for conflict. The Massachusetts Bar Association Committee on Professional Ethics concluded its opinion with the warning that in the use of private-sector prosecutors, "[d]istrict attorneys, private firms, and this committee are all operating in relatively unchartered [sic] waters, and great care should be taken to monitor the operation of volunteer programs like these."¹⁷

Endnotes

1. See appendix A, table 2.
2. "A.B. 248 was approved by the Governor and chaptered by the Secretary of State on July 30, 1985 (Chapter 423, 1985) . . . [I]t provided support in the amount of four million dollars over a two year period for the operation of the Targeted Urban Crime Narcotics Task Force in Alameda County." Rosann Greenspan, Richard A. Berk, Malcolm M. Feeley, and Jerome H. Skolnick, *Courts, Probation and Street Drug Crime: The Center for the Study of Law and Society's Final Report on the Targeted Urban Crime Narcotics Task Force (A.B. 248-1985) to The Office of Criminal Justice Planning, State of California* (Berkeley: University of California, April 1988), executive summary and conclusions, p. 1.
3. Project Objectives 1, 2, and 5. *Ibid.*, pp. 1-2.
4. District Attorneys in Los Angeles County and San Diego County have also used slightly modified versions of the Oakland probation revocation model.
5. See Marcia Chaiken and Jan Chaiken, *Redefining the Career Criminal: Priority Prosecution of High-rate Dangerous Offenders* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1990), for a discussion of ways to identify serious offenders for priority prosecution programs, such as probation revocation.
6. See Rosann Greenspan, "The Transformation of Criminal Due Process in the Administrative State: The Targeted Urban Crime Narcotics Task Force" (Berkeley: University of California, 1991), p. 146 (unpublished doctoral dissertation).
7. This section draws extensively on interviews with the author of the program and the deputy in charge of its daily operation as well as two written sources: an internal memorandum of the Alameda District Attorney's Office entitled "Probation Revocation Petitions: Procedure/Guidelines and Problems"; and Rosann Greenspan, "The Transformation of Criminal Due Process in the Administrative State: The Targeted Urban Crime Narcotics Task Force" (chapter 4).
8. "As a general rule, the starting point on simple possessions violations is six (6) to eight (8) months, depending on how much contraband was involved, the age of the probation, etc. On 'possession for sale' or 'sale' violations the general rule is State Prison. This is particularly

- true where the defendant is on probation for a drug offense and thus would be ineligible for probation if the new matter were charged and proven." Memorandum, Alameda District Attorney's Office, "Probation Revocation Petitions: Guidelines and Problems," p. 3.
9. See Greenspan, "The Transformation of Criminal Due Process in the Administrative State: The Targeted Urban Crime Narcotics Task Force."
 10. *Ibid.*, p. 146.
 11. Dr. Greenspan's objections center on the trend toward the legal institutionalization and legitimization of administrative limits on the due process rights of defendants rather than on the technical legality of a particular process.
 12. The leading case concerning evidentiary standards in probation revocation cases is *People v. Rodriguez* (1990) 51 Cal. App. 3d 437. Other recent cases of note include *People v. Harris* (1990) 226 Cal. App. 3d 141 at 145 (factors that may be considered when probation is being reinstated); and *In re Marcellas L.* (1991) 229 Cal. App. 3d 134 and *P.V. Viers* (1991) 1 Cal. App. 4th 990 (regarding searches and seizures). A useful summary of relevant cases to early 1988 may be found in *People v. Harrison* 199 Cal.App.3d 803; 245 Cal.Rptr. 204 [Feb. 1988]. The following is a listing of other key California and Federal cases concerning the rights of probationers grouped by subject. Right to Counsel: *People v. Vickers* (1972) 8 Cal.3d 451, 461-462. Notice: *Morrissey v. Brewer* (1972) 408 U.S. 471; *Gagnon v. Scarpelli* (1973) 411 U.S. 778; *Black v. Ramano* (1985) 471 U.S. 606; *People v. Vickers* (1972) 8 Cal.3d 451, 458; *People v. Felix* (1986) 178 Cal.App.3d 1168, 1172; *People v. Mosley* 198 Cal.App.3d 1167, 1174-1175. Timing: *People v. Vickers* (1972) 8 Cal.3d 451, 456 (relying on *Morrissey v. Brewer*); *People v. Coleman* (1975) 13 Cal.3d 867, 889; *People v. Jasper* (1983) 33 Cal.3d 931; *People v. Preyer* (1985) 164 Cal.App.3d 568; *People v. Weaver* (1985) 39 Cal.3d 802, 659-660. Testimony/Evidence: *Morrissey v. Brewer* (1972) 408 U.S. 471; *Gagnon v. Scarpelli* (1973) 411 U.S. 778; *People v. Vickers* (1972) 8 Cal.3d 451, 454-455; *People v. Winson* (1981) 29 Cal.3d 711, 719; *People v. Maki* (1985) 39 Cal.3d 707, 715; *Egerstaffer v. Isreal* (1984) 726 F.2d 1231, 1235; *U.S. v. Penn* (1983) 721 F.2d 762. Suppression of Evidence: *People v. Hayco* (1970) 7 Cal.App.3d 604, 610; *In re Martinez* (1970) 1 Cal.3d 641; *U.S. v. Winsett* (9th Cir. 1975) 518 Fed.2d 51, 55; *In re Lance W.* (1985) 37 Cal.3d 873; *People v. Howard* (1984) 162 Cal.App.3d 8. Procedure: *Morrissey v. Brewer* (1972) 408 U.S. 471, 488; *People v. Vickers* (1972) 8 Cal.3d 451; *People v. Hawkins* (1975) 44 Cal.App.3d 958. Burden of Proof: *People v. Maki* (1985) 39 Cal.3d 707. Sentence After Revocation: *People v. Colley* (1980) 113 Cal. App.3d 870; *People v. Angus* (1980) 114 Cal.App.3d 973, 989; *People v. Chagolla* (1981) 151 Cal.App.3d 1045.
 13. Information obtained from the King County Prosecuting Attorney's office.
 14. A complete sample of training materials (including seminar materials, most court documents, and discussion points) are available from the National Criminal Justice Reference Service, 1 (800) 851-3420. Request the companion materials to this document, *Prosecutorial Response to Heavy Drug Caseloads*.
 15. See Massachusetts Bar Association Committee on Professional Ethics, Opinion 91-2, 6/7/91, reprinted in *ABA/BNA Lawyer's Manual on Professional Conduct*, Vol. 7, No. 14 (August 14, 1991).
 16. *Ibid.*, p. 235.
 17. *Ibid.*

Chapter 5

Conclusion

The deluge of drug prosecutions that began in most jurisdictions in the second half of the 1980's has forced prosecutors to reexamine not only their case processing methods but also the traditional role of the prosecutor within the criminal justice system and the community.¹ Of the 22 prosecutor's offices contacted for this study, all but one had reorganized their staffs to focus special attention and expertise on drug cases. Some prosecutors sought ways to tailor traditional case processing approaches to better suit drug cases; others began to exercise their power as policymakers and community leaders, going beyond the traditional scope of the prosecutor, to implement a comprehensive attack on the drug problem in their area.

The major finding of this study is that those prosecutors who have adopted the broadest definition of their mission—seeking not only to excel as jurists, but also to strike at the roots of the drug problem in their community—report the greatest degree of control over their drug caseloads. In practical terms, these are the jurisdictions that have participated in multiagency and community efforts to address the drug problem at all levels, ranging from drug education and the deterrence of users to the aggressive prosecution of high-level drug sellers. For the purposes of this report, this prosecution strategy has been called “comprehensive problem reduction.” In chapter 3, we have described four jurisdictions with an array of programs, but one, unifying managerial approach. Comprehensive problem reduction, as illustrated by these case studies, has three key elements: problem definition, formulating an appropriate response, and defendant targeting.

Problem Definition

A comprehensive problem-reduction strategy begins with the prosecutor's efforts to reach out to existing anti-drug abuse efforts—both those in the community and those of other criminal justice agencies. The goal of this initial stage

is to open lines of communication to all groups and agencies that have an interest in drug crime in order to understand the scope and character of the drug problem in the jurisdiction. Prosecutors may find that significant work already has been done on defining the drug problem in their area. (See appendix D for an example of how one community is isolating and tracking drug abuse indicators.) For example, sufficient information may be available to prosecutors by joining a local antidrug coalition. If no such group exists, founding a full-scale effort such as Portland's Regional Drug Initiative (RDI) is not essential. Some prosecutors successfully rely on information from ad hoc coalitions of criminal justice, social service, and community groups concerned with the drug problem; others schedule regular, private meetings with important actors (such as police and neighborhood groups) to discuss current concerns and trends in drug crime.

Because problem definition and policy evaluation is an ongoing process, most prosecutors who follow this strategy find it important to have a full-time community liaison within their office. The liaison's duties are frequently fluid and diverse, ranging from managing contacts with community groups, to coordinating the office's drug education efforts, to lobbying for law reform and drafting model legislation. A close relationship with the police is equally important to the prosecutor's ability to understand and assess the local drug problem. In addition to participation in task forces that include the police, some prosecutors have created special initiatives to increase police-prosecutor communication. For example, in Seattle, Case Development Deputies—deputy prosecutors who are assigned to work within a specific police department—aid police with investigations and forfeitures, and provide police with up-to-the-minute legal advice and training (see chapter 3). Perhaps more important, Case Development Deputies act as informal liaisons to law enforcement and are positioned to see the drug problem from a police perspective as well as from that of a prosecutor.

Formulating an Appropriate Response

Creating programs to respond to the particular needs of one's community may demand that prosecutors take a fresh look at the way their office handles cases, and, in particular, that they begin to view their role more broadly. A broad view of the prosecutorial role recognizes that heavy drug caseloads arise from inadequate deterrence of drug users and seeks to reduce future drug caseloads by supporting drug education or by encouraging diversionary programs that require treatment for drug users (such as the drug courts discussed in the Miami and Portland case studies). The broader prosecutorial view also sees prosecution as part of the criminal justice process, rather than as a discrete event. Thus, in formulating programs to deal with the drug caseload, prosecutors not only look for efficient dispositions but also consider the impact of a given prosecutorial approach on other criminal justice agencies (seeking to avoid programs that exacerbate problems such as court backlogs, or limited resources in corrections and probation). In short, prosecutors who view their roles broadly look for procedures that are not only efficient for their offices but also compatible with the needs of the criminal justice system as a whole.

Prosecutors interested in comprehensive problem reduction must attempt to build good working relationships with the full spectrum of criminal justice and social service agencies in their jurisdiction. As seen in chapters 3 and 4, some of the most successful approaches to managing large drug caseloads are ones that require the cooperation or participation of two or more agencies (e.g., the prosecutor, the courts, and the Probation Department to create a special drug docket for users or probationers; or the prosecutor, police, Federal agents, and U.S. Attorneys to pursue higher-level drug cases). The importance of these multiagency efforts is that they provide greater flexibility for the prosecutor to treat different defendants appropriately. For example, the prosecutor may wish to "crack down" on mid- and high-level drug sellers, while seeking treatment or other diversionary dispositions to deter first-time offenders or users.

In addition to the creation of multiagency antidrug programs, prosecutors may conclude that State or local legislative reform is needed to complement their efforts to fight drug abuse within the jurisdiction. Some prosecutors reported campaigns to streamline administrative law or court procedures that slowed the disposition of drug cases unnecessarily; one wrote model legislation to curb drug-related loitering (see chapter 3); and several prosecutors lobbied for increased or mandatory penalties for drug crimes. As dis-

cussed in chapter 3, another innovative use of legislative reform has been to draft or support legislation for a local sales tax to benefit criminal justice agencies or antidrug efforts.

Defendant Targeting

Once the prosecutor has outlined a comprehensive approach, intensive case screening is necessary to ensure that defendants are placed in appropriate programs. A wide variety of approaches to case screening are currently in use. In most drug units, after a case is received, additional case screening is performed by a deputy or deputies within the unit. In the Oakland probation revocation program, case screening begins with a Vice Officer, who alerts the District Attorney's office within hours of the arrest of any drug defendant who may be eligible for the special docket. In Seattle, case screeners are alert to cases that might be appropriate for prosecution by private-sector volunteers under the Special Deputy Program. In a number of jurisdictions where mandatory sentencing is in effect, prosecutors reported a special effort to screen for repeat offenders. Whatever the screening procedure, the success and accuracy of the method must be evaluated from time to time. For example, in Portland, eligibility criteria for the STOP program were initially drawn so narrowly that the special docket was not operating at full capacity. At the time of the site visit, a reevaluation of the criteria was under way, and it was expected that a wider range of defendants could be offered treatment under STOP.

Implementing a Comprehensive Problem-Reduction Strategy

Comprehensive problem reduction requires no specific set of programs. Instead, it requires the prosecutor to answer some difficult questions: What is the character of the drug problem in this community? Do the cases received by this office reflect those problems? What is an effective and appropriate response to the full spectrum of drug offenses received by this office? Ideally, a prosecutor's answer to the last question will be guided by a comprehensive drug-crime reduction plan. This plan may favor innovative or traditional prosecutorial methods, according to the philosophy of the elected prosecutor. A comprehensive problem-reduction strategy may be built around existing programs by identifying which types of cases are already being handled appropriately, and then instituting new programs only where gaps exist. To be successful, however, a comprehensive problem-

reduction strategy should incorporate cooperative efforts with a wide range of agencies and actors including, but not limited to, community groups, police, the courts, treatment professionals, Federal agents, and U.S. Attorneys. A comprehensive problem-reduction effort should also aim to correct institutional or legal obstacles that prevent the prosecutor, police, or other criminal justice agencies from combating the drug problem in appropriate ways. Thus, local or State-level law reform efforts may be the essential step toward implementing a comprehensive problem-reduction strategy in your area.

Endnote

1. An account of the evolution of prosecutors' thinking about their role and mission between 1986 and 1990 was developed by the Harvard University Executive Session for State and Local Prosecutors at the John F. Kennedy School of Government. See Ronald Goldstock, "The Prosecutor as Problem-Solver: Leading and Coordinating Anticrime Efforts," *Criminal Justice*, 7 (1992): 3-9, 48-49.

Appendix A

High Drug Arrest Areas

Table 2 organizes the top 50 metropolitan areas, in terms of cocaine arrests, into five geographic groups based on their proximity to the four major cocaine import cities (New York, Los Angeles, Miami, and Houston). The arrest data are from the FBI's Uniform Crime Reporting (UCR) program for 1989. Metropolitan area refers to the Census Bureau's designation of specific urban areas as Standard Metropolitan Statistical Areas (SMSAs). SMSAs consist of core cities of 50,000 population or more and surrounding suburban counties. The five geographic areas are defined as follows:

- *New York Area:* all SMSAs in New York, New Jersey and on the eastern seaboard from Boston to Norfolk.
- *Los Angeles Area:* all SMSAs in California and Portland, OR.

- *Miami Area:* all SMSAs in Florida and in States on the southeast seaboard.
- *Houston Area:* all SMSAs in Texas plus Phoenix and New Orleans.
- *Non-coastal Area:* all SMSAs in interior States excluding States on the southwest border.

Police arrest data reported to the UCR do not track heroin and cocaine offenses separately. Thus, the arrest counts in table 2 include arrests for heroin. Data from individual State and local police departments, however, indicate that by 1989 cocaine arrests far outnumbered those for heroin. In the State of Florida, for example, 1989 arrests for cocaine offenses numbered 54,155, while arrests for heroin numbered 179.

Table 2
Top 50 Cocaine Arrest Areas by Geographic Location,
Surrounding Major Drug Import Cities
(1989)

	<u>Cocaine Arrests</u>	<u>Population</u>	<u>Rate per 100,000 Population</u>
NEW YORK AREA SMSAs			
New York			
NYC	80,783	8,586,420	940.82
Nassau	6,831	2,644,912	258.27
Rochester	2,170	982,433	220.88
Sub Total	<u>89,784</u>	<u>12,213,765</u>	735.11

(continued)

Table 2 (continued)
Top 50 Cocaine Arrest Areas by Geographic Location,
Surrounding Major Drug Import Cities
(1989)

	<u>Cocaine Arrests</u>	<u>Population</u>	<u>Rate per 100,000 Population</u>
NEW YORK AREA SMSAs (cont'd)			
New Jersey			
Newark	12,417	1,889,840	657.04
Jersey City	8,045	543,246	1,480.91
Bergen	6,464	1,294,794	499.23
Middlesex	3,176	980,189	324.02
Monmouth	3,024	971,371	311.31
Trenton	4,613	331,639	1,390.97
Atlantic City	<u>1,940</u>	<u>309,796</u>	626.22
Sub Total	39,679	6,320,875	627.75
Northeast Seaboard South			
Philadelphia, PA	13,911	4,934,532	281.91
Baltimore, MD	13,793	2,378,992	579.78
Washington, DC	18,541	3,767,093	492.18
Norfolk, VA	3,070	1,399,252	219.40
Richmond, VA	<u>2,361</u>	<u>855,894</u>	275.85
Sub Total	51,676	13,335,763	387.50
Northeast Seaboard North			
Springfield, MA	2,423	533,762	453.95
Boston, MA	<u>7,968</u>	<u>2,868,381</u>	277.79
Sub Total	<u>10,391</u>	<u>3,402,143</u>	305.43
Total	191,530	35,272,546	543.00
LOS ANGELES AREA SMSAs			
Southern California			
Los Angeles	80,720	8,815,101	915.70
Anaheim	10,315	2,316,738	445.24
Oxnard	4,313	664,433	649.12
Riverside	11,891	2,337,883	508.62
Bakersfield	5,319	533,763	996.51
San Diego	<u>16,122</u>	<u>2,433,139</u>	662.60
Sub Total	128,680	17,101,057	752.47

(continued)

Table 2 (continued)
Top 50 Cocaine Arrest Areas by Geographic Location,
Surrounding Major Drug Import Cities
(1989)

	<u>Cocaine Arrests</u>	<u>Population</u>	<u>Rate per 100,000 Population</u>
LOS ANGELES AREA SMSAs (cont'd)			
Northern California			
San Francisco	12,498	1,632,084	765.77
Oakland	18,042	2,059,402	876.08
San Jose	10,635	1,469,902	723.52
Stockton	3,196	467,761	683.25
Sacramento	<u>5,400</u>	<u>1,421,863</u>	379.78
Sub Total	49,771	7,051,012	705.87
Central California			
Fresno	5,136	631,072	813.85
Northwest			
Portland, OR	<u>3,642</u>	<u>1,211,615</u>	300.59
Total	187,229	25,994,756	720.26
MIAMI AREA SMSAs			
Florida			
Miami	10,133	1,873,078	540.98
Ft. Lauderdale	7,989	1,242,448	643.00
Palm Beach	2,255	865,507	260.54
Tampa	6,880	1,696,397	405.57
Orlando	<u>2,726</u>	<u>653,982</u>	416.83
Sub Total	29,983	6,331,412	473.56
Southeast Seaboard North			
Atlanta, GA	11,153	2,777,665	401.52
Charlotte, NC	2,861	1,126,294	254.02
Greensboro, NC	<u>2,322</u>	<u>938,114</u>	247.02
Sub Total	<u>16,336</u>	<u>4,842,073</u>	337.38
Total	46,319	11,173,485	414.54

(continued)

Table 2 (continued)
Top 50 Cocaine Arrest Areas by Geographic Location,
Surrounding Major Drug Import Cities
(1989)

	<u>Cocaine Arrests</u>	<u>Population</u>	<u>Rate per 100,000 Population</u>
HOUSTON AREA SMSAs			
Texas			
Houston	6,702	3,276,259	204.56
San Antonio	2,818	1,335,208	211.05
Dallas	5,509	2,404,726	229.09
Ft. Worth	5,173	1,359,379	370.72
Sub Total	<u>20,202</u>	<u>8,411,572</u>	240.17
Southwest Border			
Phoenix, AZ	3,907	2,069,480	188.79
Gulf Coast			
New Orleans, LA	<u>5,285</u>	<u>1,299,252</u>	406.77
Total	29,394	11,780,304	249.52
NON-COASTAL SMSAs			
Interior Cities			
Cleveland	6,386	1,853,974	344.45
Chicago	5,724	6,200,170	92.32
Denver	2,620	1,640,296	159.73
Detroit	2,556	4,371,314	58.47
Oklahoma City	2,506	958,530	261.44
Dayton	<u>1,917</u>	<u>953,334</u>	201.08
Total	21,709	15,977,618	135.87

Note: Detroit and Chicago cocaine arrests represent partial reports. Florida figures are reported offenses which represent 80 percent of arrests.

Sources: Uniform Crime Report computerized database "Age, Sex and Race of Defendants Arrested" and the 1989 Annual Report of the Florida Department of Law Enforcement, *Crime in Florida* (Tallahassee, FL, 1989).

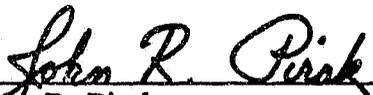
Appendix B

Sample Affidavit Defining PADT Areas

2. On a regular basis I have met with members of the Seattle Police Department who are very familiar with the areas listed. They have described the level of illegal drug trafficking associated with each area or have made arrests based on their direct observations of drug trafficking in the areas. The members of the Department consulted by me and my staff include members of the East Precinct Anti-Crime Team, the regular patrol units assigned to work in these areas, sector sergeants for the East Precinct as well as the Community Police Team for the East Precinct.

3. I am also aware that Narcotics Activity Reports (NAR complaints) made by residents who live or work in these areas lend support to the public concern that these areas are locations that need the special attention of the Police Department and the City Prosecutor and the Municipal Court in to order keep convicted drug traffickers from returning to areas where the level of drug trafficking has had a substantial negative impact on the local communities involved. NAR complaints and other in person complaints of narcotic activity have been verified by the direct observations of Seattle Police Department officers or arrests for illegal drug trafficking have been made as a result therefrom.

Attached to my affidavit and incorporated by this reference is a description of the area(s) inside of the East Precinct of the City of Seattle where drug trafficking is presently a serious problem as determined by me following my survey of the individuals and groups described above. These areas include the listed streets, the immediately adjoining sidewalks and alleys, and properties which abut the streets described in the attachment referred to by this reference.



John R. Pirak

Subscribed and sworn to before me this 28th day of February, 1998.

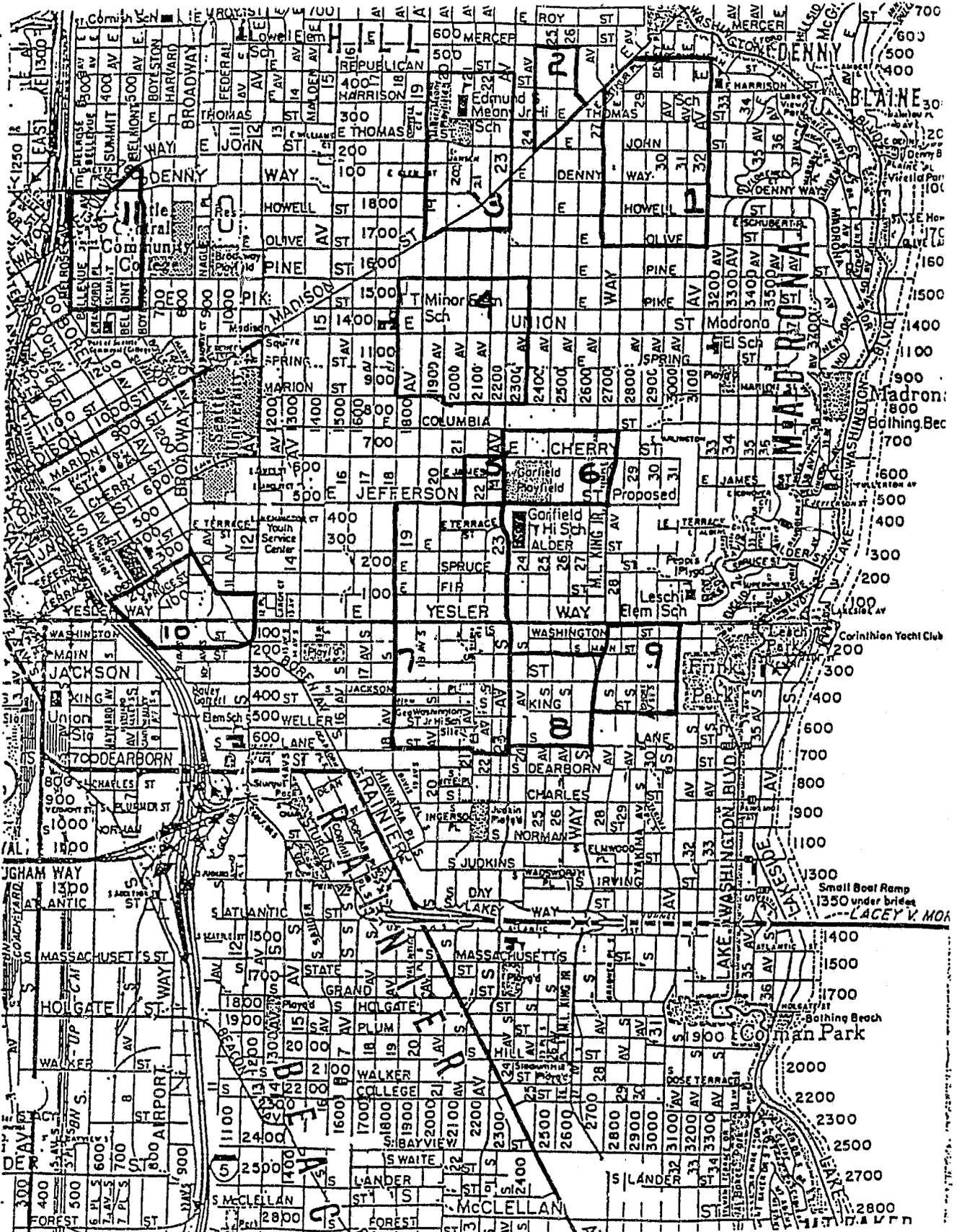


Notary Public in for the
State of Washington, residing
at Renton.

ATTACHMENT

The following eleven areas within the East Precinct are "drug trafficking areas" as described above. The areas described include the full width of streets, alleys, parks, and parking areas within the area described, using streets as boundaries:

1. East Madison Street to East Olive Street between 27th Avenue (East) and 32nd Avenue (East).
2. East Mercer Street to East Thomas Street, between 24th Avenue East and 26th Avenue East.
3. East Republican Street to East Olive Street, between 19th Avenue (East) and 23rd Avenue (East).
4. East Pine Street to East Marion Street, between 18th Avenue and 24th Avenue.
5. East Cherry Street to East Jefferson Street, between 21st Avenue and 23rd Avenue.
6. East Columbia Street to East Jefferson Street, between 23rd Avenue and Martin Luther King Jr. Way.
7. East Jefferson Street to South Lane Street, between 18th Avenue (South) and 23rd Avenue (South).
8. South Main Street to South Lane Street, between 23rd Avenue South and Martin Luther King Jr. Way South.
9. East Yesler Street to South King Street, between Martin Luther King Jr. Way (South) and 30th Avenue (South).
10. East Alder Street to South Washington Street, between 8th Avenue (South) and 12th Avenue (South).
11. East Denny Street to East Pike Street, between Interstate 5 and Belmont Avenue.



Appendix C

Seattle Ordinance Authorizing Off-Limits Orders

(Revised Code of Washington State 10.66)

CHAPTER 10.66

DRUG TRAFFICKERS—OFF-LIMITS ORDERS

Section

- 10.66.005. Findings.
- 10.66.010. Definitions.
- 10.66.020. When order may be issued.
- 10.66.030. Hearing—Summons.
- 10.66.040. Ex parte temporary order—Hearing—Notice.
- 10.66.050. Additional relief—PADT area.
- 10.66.060. Bond or security.
- 10.66.070. Appearance of party.
- 10.66.080. Notice of order to law enforcement agency.
- 10.66.090. Penalties.
- 10.66.100. Additional penalties.
- 10.66.110. Jurisdiction.
- 10.66.120. Venue.
- 10.66.130. Modification of order—Notice to law enforcement agency.
- 10.66.900. Severability—1989 c 271.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

10.66.005. Findings

The legislature finds that drug abuse is escalating at an alarming rate. New protections need to be established to address this drug crisis which is threatening every stratum of our society. Prohibiting known drug traffickers from frequenting areas for continuous drug activity is one means of addressing this pervasive problem. Enacted by Laws 1989, ch. 271, § 213, eff. May 7, 1989.

10.66.010. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Applicant" means any person who owns, occupies, or has a substantial interest in property, or who is a neighbor to property which is adversely affected by drug trafficking, including:

(a) A "family or household member" as defined by RCW 10.99.020(1), who has a possessory interest in a residence as an owner or tenant, at least as great as a known drug trafficker's interest;

(b) An owner or lessor;

(c) An owner, tenant, or resident who lives or works in a designated PADT area; or

10.66.010**CRIMINAL PROCEDURE**

(d) A city or prosecuting attorney for any jurisdiction in this state where drug trafficking is occurring.

(2) "Drug" or "drugs" means a controlled substance as defined in chapter 69.50 RCW or an "imitation controlled substance" as defined in RCW 69.52.020.

(3) "Known drug trafficker" means any person who has been convicted of a drug offense in this state, another state, or federal court who subsequently has been arrested for a drug offense in this state. For purposes of this definition, "drug offense" means a felony violation of chapter 69.50 or 69.52 RCW or equivalent law in another jurisdiction that involves the manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.

(4) "Off-limits orders" means an order issued by a superior or district court in the state of Washington that enjoins known drug traffickers from entering or remaining in a designated PADT area.

(5) "Protected against drug trafficking area" or "PADT area" means any specifically described area, public or private, contained in an off-limits order. The perimeters of a PADT area shall be defined using street names and numbers and shall include all real property contained therein, where drug sales, possession of drugs, pedestrian or vehicular traffic attendant to drug activity, or other activity associated with drug offenses confirms a pattern associated with drug trafficking. The area may include the full width of streets, alleys and sidewalks on the perimeter, common areas, planting strips, parks and parking areas within the area described using the streets as boundaries.

Enacted by Laws 1989, ch. 271, § 214, eff. May 7, 1989.

10.66.020. When order may be issued

A court may enter an off-limits order enjoining a known drug trafficker who has been associated with drug trafficking in an area that the court finds to be a PADT area, from entering or remaining in a designated PADT area for up to one year. This relief may be ordered pursuant to applications for injunctive relief or as part of a criminal proceeding as follows:

(1) In a civil action, including an action brought under this chapter;

(2) In a nuisance abatement action pursuant to chapter 7.43 RCW;

(3) In an eviction action to exclude known drug traffickers or tenants who were evicted for allowing drug trafficking to occur on the premises which were the subject of the eviction action;

DRUG TRAFFICKERS**10.66.050**

(4) As a condition of pretrial release of a known drug trafficker awaiting trial on drug charges. The order shall be in effect until the time of sentencing or dismissal of the criminal charges; or

(5) As a condition of sentencing of any known drug trafficker convicted of a drug offense. The order may include all periods of community placement or community supervision.

Enacted by Laws 1989, ch. 271, § 215, eff. May 7, 1989.

10.66.030. Hearing—Summons

Upon the filing of an application for an off-limits order under RCW 10.66.020(1), (2), or (3), the court shall set a hearing fourteen days from the filing of the application, or as soon thereafter as the hearing can be scheduled. If the respondent has not already been served with a summons, the application shall be served on the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date.

Enacted by Laws 1989, ch. 271, § 216, eff. May 7, 1989.

10.66.040. Ex parte temporary order—Hearing—Notice

Upon filing an application for an off-limits order under this chapter, an applicant may obtain an ex parte temporary off-limits order, with or without notice, only upon a showing that serious or irreparable harm will result to the applicant if the temporary off-limits order is not granted. An ex parte temporary off-limits order shall be effective for a fixed period not to exceed fourteen days, but the court may reissue the order upon a showing of good cause. A hearing on a one-year off-limits order, as provided in this chapter, shall be set for fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the temporary off-limits order along with a copy of the application and notice of the date set for the full hearing. At the hearing, if the court finds that respondent is a known drug trafficker who has engaged in drug trafficking in a particular area, and that the area is associated with a pattern of drug activities, the court shall issue a one-year off-limits order prohibiting the respondent from having any contact with the PADT area. At any time within three months before the expiration of the order, the applicant may apply for a renewal of the order by filing a new petition under this chapter.

Enacted by Laws 1989, ch. 271, § 217, eff. May 7, 1989.

10.66.050. Additional relief—PADT area

In granting a temporary off-limits order or a one-year off-limits order, the court shall have discretion to grant additional relief as

the court considers proper to achieve the purposes of this chapter. The PADT area defined in any off-limits order must be reasonably related to the area or areas impacted by the unlawful drug activity as described by the applicant in any civil action under RCW 10.66.020(1), (2), or (3). The court in its discretion may allow a respondent, who is the subject of any order issued under section 214 of this act¹ as part of a civil or criminal proceeding, to enter an off-limits area or areas for health or employment reasons, subject to conditions prescribed by the court. Upon request, a certified copy of the order shall be provided to the applicant by the clerk of the court.

Enacted by Laws 1989, ch. 271, § 218, eff. May 7, 1989.

¹ *Reviser's Note:* The reference to "section 214 of this act" appears to be erroneous as section 214 is a definition section. Section 215, codified as RCW 10.66.020, relates to the issuance of off-limits orders.

10.66.060. Bond or security

A temporary off-limits order or a one-year off-limits order may not issue under this chapter except upon the giving of a bond or security by the applicant. The court shall set the bond or security in the amount the court deems proper, but not less than one thousand dollars, for the payment of costs and damages that may be incurred by any party who is found to have been wrongfully restrained or enjoined. A bond or security shall not be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington.

Enacted by Laws 1989, ch. 271, § 219, eff. May 7, 1989.

10.66.070. Appearance of party

Nothing in this chapter shall preclude a party from appearing in person or by counsel.

Enacted by Laws 1989, ch. 271, § 220, eff. May 7, 1989.

10.66.080. Notice of order to law enforcement agency

A copy of an off-limits order granted under this chapter shall be forwarded by the court to the local law enforcement agency with jurisdiction over the PADT area specified in the order on or before the next judicial day following issuance of the order. Upon receipt of the order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system.

Enacted by Laws 1989, ch. 271, § 221, eff. May 7, 1989.

10.66.090. Penalties

(1) Any person who willfully disobeys an off-limits order issued under this chapter shall be guilty of a gross misdemeanor.

DRUG TRAFFICKERS

10.66.900

(2) Any person who willfully disobeys an off-limits order in violation of the terms of the order and who also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter, is guilty of a class C felony.

Enacted by Laws 1989, ch. 271, § 223, eff. May 7, 1989.

10.66.100. Additional penalties

Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under chapter 7.20 RCW.¹

Enacted by Laws 1989, ch. 271, § 222, eff. May 7, 1989.

¹ Reviser's Note: Chapter 7.20 RCW was repealed by 1989 c 373 § 28. For later enactment, see chapter 7.21 RCW.

10.66.110. Jurisdiction

The superior courts shall have jurisdiction of all civil actions and all felony criminal proceedings brought under this chapter. Courts of limited jurisdiction shall have jurisdiction of all misdemeanor and gross misdemeanor criminal actions brought under this chapter.

Enacted by Laws 1989, ch. 271, § 224, eff. May 7, 1989.

10.66.120. Venue

For the purposes of this chapter, an action may be brought in any county in which any element of the alleged drug trafficking activities occurred.

Enacted by Laws 1989, ch. 271, § 225, eff. May 7, 1989.

10.66.130. Modification of order—Notice to law enforcement agency

Upon application, notice to all parties, and a hearing, the court may modify the terms of an off-limits order. When an order is terminated, modified, or amended before its expiration date, the clerk of the court shall forward, on or before the next judicial day, a true copy of the amended order to the law enforcement agency specified in the order. Upon receipt of an order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system.

Enacted by Laws 1989, ch. 271, § 226, eff. May 7, 1989.

10.66.900. Severability—1989 c 271

See note following RCW 9.94A.310.

Appendix D

RDI Position Paper

REGIONAL DRUG INITIATIVE

Position Paper In Opposition To The Legalization of Drugs

Portland, Oregon
September, 1990

Executive Summary

The Regional Drug Initiative Task Force (RDI) opposes the legalization, the controlled legalization, and the decriminalization of illicit drugs.

The reasons RDI opposes any form of legalization are grouped into three areas: health, workplace, and

criminal justice. The use of drugs and the impact on health is one of grave concern, not only because of the deleterious effects of drugs, but also because of the long-term demands placed on health care systems and the associated financial cost. Worker safety and productivity issues dominate the list of concerns from employers. The business community has shown the positive effects of strong drug control programs in the workplace. It is essential to business that public policy supports its efforts to promote drug-free work environments. A policy of legalization runs counter to business efforts in this arena.

The impact of drug use in this country is readily apparent when looking at the criminal justice system. However, the responsibility for having a positive impact on this country's drug problem does not rest solely with the criminal justice system. To charge the criminal justice system with full responsibility for the problem is to ignore the medical and workplace impacts of drug use. Removing legal prohibitions and lowering drug costs would clearly create a broader and more frequent demand for drugs which would, in turn, result in a surge of drug-related medical and workplace incidents. The RDI Task Force has concluded that legalization of drugs would not only displace society's costs from the criminal justice arena to the health care system and the workplace, but would increase those costs extensively.

This is not to ignore the importance of and the need for expanding treatment capacity, improving treatment programs, and making treatment more available for those in need. A policy of legalization would be equivalent to exposing the population to a highly contagious and debilitating disease without providing an effective cure. Treatment can be effective, but relapse is not uncommon. While it is recognized that criminal sanctions by themselves do not cure drug abuse, they serve as both a precipitating factor for entry into treatment and as a coercive force in maintaining people in treatment.



The Regional Drug Initiative (RDI) is a private task force of concerned policy makers from business, education, government, health care, law enforcement, treatment providers and community groups. RDI is committed to establishing a drug-free community.

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Introduction

The issue of legalization of drugs has been raised in several arenas over the past few years. Because of these discussions and the frequent requests received by the Regional Drug Initiative for information on the topic, the RDI Task Force directed a review of information available in the preparation of a position paper on the legalization of drugs.

Position

The RDI Task Force opposes the legalization, the controlled legalization, and/or the decriminalization of illicit drugs. These three aspects of the "legalization" argument are frequently intermingled.

Definitions

For the purposes of this paper each of these terms is defined as follows:

Complete Legalization - Illicit drugs would be treated as a commercial product with little or no restriction on selling, advertising, or use. All legal sanctions and controls would be eliminated. No federal, state, or regulatory body would be required to oversee production, marketing, or distribution.

Controlled Legalization - Production and distribution of drugs would be regulated and controlled. Limits on amounts and age of purchaser would be required. There would be no criminal or civil sanction for possessing, manufacturing, or distributing drugs unless these activities occurred in violation of the regulatory system.

Decriminalization - Decriminalization restructures current criminal sanctions maintaining criminal penalties for manufacture and distribution but eliminating criminal sanctions for use. It recommends civil sanctions for possession of small amounts of drugs. (1)

Consequences

While it is difficult to project into the future with unerring accuracy, there are some logical conclusions that can be drawn when considering the possibility of a policy which would legalize drugs. For example, legalization would eliminate a set of crimes currently enforced by the criminal justice system -- an apparent consequence. Other consequences also require consideration.

Legalization would produce both greater availability of drugs throughout the general population and an increased access to drugs by the general population. With both availability and access increased, it is a logical consequence that use would increase. In The New Republic essay "Crackdown" authors James Q. Wilson and John J. DiIulio, Jr., on the issue of increased use, cite cocaine as just such an example. When cocaine was used in its powdered form, it was expensive and use was by the more affluent groups in society. When it became available as crack cocaine, it was significantly cheaper and consequently more widely used. In fact, with the advent of crack cocaine, use increased sharply. (2)

Just as price serves to regulate use, so too, do social norms and values. A public policy of legalization would remove the current legal taboos from drug use, taboos which currently serve to restrict use. The elimination of these legal sanctions would lead to increased use. The U.S. experience with Prohibition is an example of the consequences of removing a legal sanction. Though Prohibition, when in effect, did not eliminate alcohol consumption, it reduced alcohol consumption significantly. What followed after the repeal of Prohibition was an increase in alcohol consumption. (3) An even more telling and current example of increased drug use comes from Zurich, Switzerland. In an effort to curb AIDS the Zurich Public Health Department established a needle exchange program located in Platzspitz Park, known as "Needle Park" because the city has given it over to drug users. The exchange program dispensed 2,000 free syringes and needles a day in 1986 when the program began. It currently dispenses 8,000 a day. According to Dr. Albert Wettstein, Zurich's public health officer,

"This free and unlimited access has given us a spiraling number of users and although it has cut down on the percentage of AIDS victims, it has quadrupled the number of drug users in the past four years . . . Our burglary rate and the number of prostitutes has also increased, and that is a direct result of this drug usage." (4)

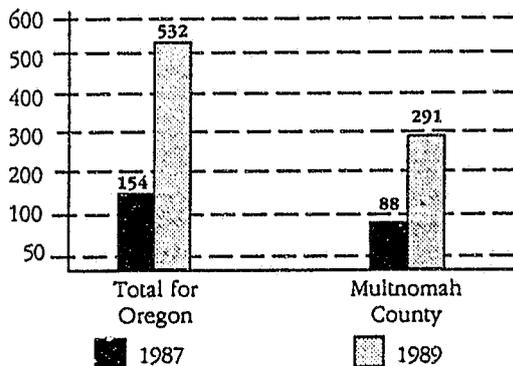
Health Issues

The use of drugs and the impact on health is one of grave concern, not only because of the deleterious effects of drugs, but also because of the long-term demands placed on health care systems and the associated financial costs. The health issues alone affect individuals prenatally, during infancy, childhood, and on through adulthood.

Drug-Affected Babies

The Office for Substance Abuse Prevention estimates that 375,000 newborns annually face the possibility of health damage due to their mother's drug abuse. (4) Oregon has seen a rise in annual births of drug-affected babies. In 1987 there were 154 reports

Drug-Affected Babies: Annual Births



SOURCE: Children's Services Division (6)

of drug-affected babies with 88 of them in Multnomah County. Contrast this with 1989 when there were 532 such births, almost 300 of them in Multnomah County. (5)

As doctors see more and more crack damaged infants, many of them premature, a clear picture of the drug's effects is emerging. A mother's crack use triggers spasms in the baby's blood vessels, restricting flow of oxygen and nutrients. Fetal growth, including head and brain size, may be impaired, strokes and seizures may occur and malformations of kidneys, genitals, intestines, and spinal cord may develop. (7,8) Larger cocaine doses can rupture the placenta, putting both mother and fetus in further danger. At birth these babies show tremors, irritability, and extreme lethargy. While some symptoms may disappear shortly after birth the underlying damage remains and exhibits itself in developmental delays, lack of motor control and extreme sensitivities to normal day-to-day stimuli. (9)

Impact on School Settings

Schools are beginning to address the problems of children who are exposed to drugs before birth, as well as those children who are raised in a drug-using environment. Many experience emotional as well as developmental problems. School officials are becoming

aware that drug-affected children as a group have a higher likelihood of lower intelligence, short attention spans, and hyperactivity. Drug-affected children also exhibit an inability to adjust to new surroundings easily and have difficulty in following directions. All these traits can lead to failure in school settings (10). Studies on adolescent drug use suggest that it can impede physical development, as well as learning abilities (11). These children present a challenge to our school systems if they are to become productive members of our communities and work forces in the future. In a comprehensive review of over 30 years of research Drs. J. David Hawkins and Richard Catalano have identified fifteen risk factors which predispose adolescents to drug abuse. Included in the list of risk factors are: 1) parental drug use/favorable attitudes toward use; 2) friends who use drugs; 3) favorable attitudes toward drugs; 4) laws and norms favorable toward use; and 5) availability of drugs. All of these risk factors will be increased with legalization and sanction by society of use of currently illegal drugs. (12)

Physical Effects

The physical effects of drug use on adults are well documented. Cocaine use causes a number of medical complications including acute myocardial infarction, cardiac arrhythmias, acute rupture of the ascending aorta, central nervous system complications, such as seizures and strokes, obstetrical complications, intestinal and other miscellaneous complications. (13) As a direct result of the drug-induced judgment impairment which leads to both unsafe sexual practices and shared needle use, increased numbers of AIDS cases are being seen. Dr. David Smith, Director of the Haight Ashbury Free Clinic in San Francisco, reports that his program is seeing an alarming rise in AIDS patients in both crack cocaine and "ice" users, neither of which is administered intravenously. The impact of increased drug use on the medical care system is profound.

Child Abuse

Tragic consequences of drug use by pregnant women is only one aspect of the impact of drug use in the health arena. Oregon, like other states, has experienced an increase in the number of incidents of physical abuse and threat of harm to children during 1989. The Children's Services Division ascribes these increases to the growing problems of substance abuse within families. Suspected drug and alcohol problems within families of child abuse victims has more than tripled in Oregon since 1983 and is the second most

Continued to 4

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commonly found stress indicator in families of child abuse victims. (14) This is consistent with the national trend. In 1988 an estimated 73% of all children beaten, tortured, and starved to death in the United States died at the hands of adults using drugs. (15)

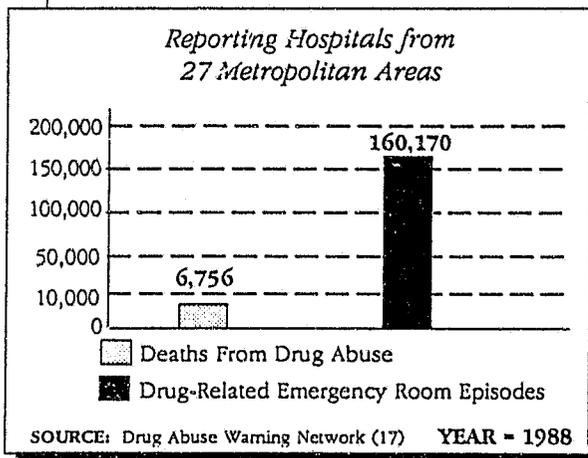
Boarder Babies

The "boarder-baby" phenomena alone is telling. The Child Welfare League of America, Inc., conducted a survey of hospitals throughout the United States. Fifty-four of 92 hospitals reported having 304 boarder babies; babies who had been medically cleared for discharge but had no home to which they could be released. These babies ranged in ages from newborn infants up through 2 years of age. Some of them had never left the hospital. (16)

Drug Abuse Warning Network

Annual data from the Drug Abuse Warning Network (DAWN) clearly illustrates the burden carried by both private and public hospitals due to drug-related hospital emergency room visits. Hospitals in the 27 metropolitan areas participating in DAWN reported 160,170 drug-related emergency room episodes and 6,756 deaths from drug abuse in 1988.

The result of any form of legalization would be an increase in drug use. (18) Increased use would result



in a larger number of births of drug-affected babies and an increase in the associated health problems of adolescents and adults further taxing the health care system. Legalization would aggravate already serious health

problems. A public policy supporting legalization fails to protect the general population from increased health problems, and fails to protect the most fragile and innocent of the victims of drug use, infants, and children.

Workplace Issues

According to a 1983 Research Triangle Institute report drug abuse cost this nation nearly \$60 billion, \$24 billion for drug related crime, and \$33 billion for lost productivity, injuries, and other damages. (19) There is ample evidence of damages caused by drugs in every business and industry. ABC's 1988 production, "Drugs: A Plague Upon the Land," cited several examples:

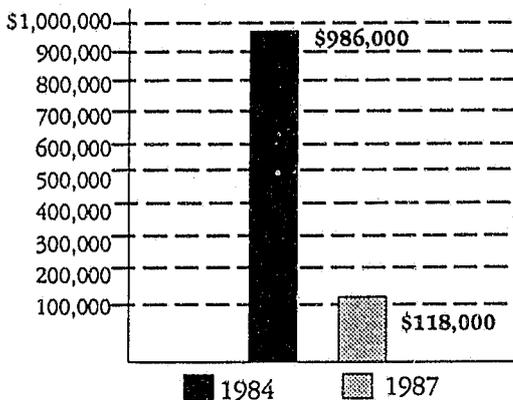
- In Durango, Colorado, a commuter airliner crashed leaving nine dead. The pilot tested positive for cocaine.
- Forty-eight train wrecks in the past decade were directly attributable to drug and alcohol abuse. In one incident, the fatal crash of two commuter trains in Mount Vernon, New York, all five railroad workers involved tested positive for illegal drug use including the engineer who was killed in the wreck.
- Sixteen people were killed and 170 injured on January 4, 1987, when a Conrail engine rear-ended a passenger train. The engineer ran several warning signals before merging into the path of the high speed Amtrack passenger train. He later tested positive for marijuana.
- A bus company found that 30% of the applicants for experienced driver positions tested positive for drug use.
- In a Whirlpool plant in Ohio an undercover investigation, instigated by workers concerned about safety on the job, resulted in 84 individuals arrested on felony drug charges.
- One medical treatment center estimates that between 10% and 20% of medical personnel are drug or alcohol abusers.
- One trucking company began drug testing at the request of their drivers. On the day of the test 50% of the drivers tested positive for drugs. (20)

Drug Policy Impacts

Oregon employers have become increasingly aware of national trends relating to employee drug use on the job. In the metropolitan Portland area, some businesses have pioneered efforts to address drugs in the workplace issues before they could become problematic. These businesses achieved positive results by

Worker's Compensation Costs

Hoffman Construction Company



SOURCE: Oregon Business Council

establishing drug policies and programs. Hoffman Construction experienced a 17% reduction in worker's compensation claims. In 1987, three years after adoption of a strong drug control program, Hoffman's workers' compensation losses dropped from \$986,000 to \$118,000. (21) Northwest Natural Gas Company experienced similar success with a 27% drop in days lost from accidents and a 14% reduction in illness absences following implementation of a drug and alcohol policy and a smoking policy as part of the employee health and wellness program. An Omark Industries Chainsaw Division has seen their drug test failure rate drop by 12% to 15% (22).

Business and industry have not taken a position favoring legalization of drugs. On the contrary, in Oregon there has been an aggressive effort by the Regional Drug Initiative and the Oregon Business Council (OBC) to inform and persuade all businesses to realize their responsibility and provide drug-free workplaces. Since February 1989, OBC companies providing an Employee Assistance Program or rehabilitation opportunities have increased from 87% to 100%.

It is essential to the business community that public policy supports its efforts to promote drug-free work environments. A policy of legalization would undermine the progress made by business and industry

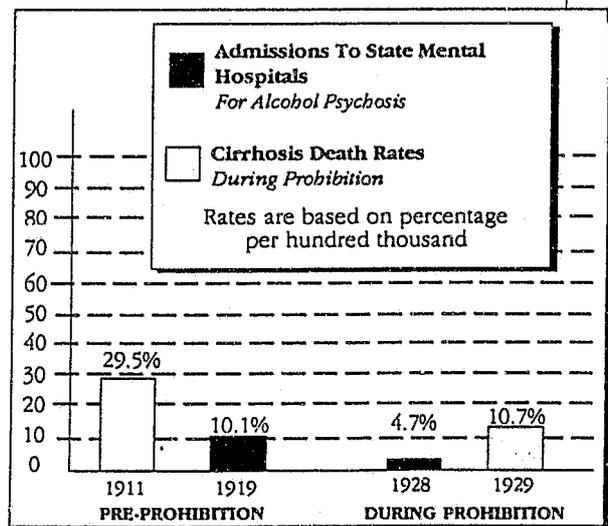
to provide safe work environments and to return drug abusing employees as productive members of the workforce. Drug-free workers and work sites are essential to the United States competing effectively in international business markets.

Crime and the Criminal Justice System

Perhaps the loudest argument favoring legalization of drugs is based on the highly visible impact of drug use on criminal justice systems across the country. Nowhere else has the impact been more concentrated or more easily counted. The public sector impact is far more open to public scrutiny than the impact on private care systems, the medical establishment, or business operations. The intellectualized examinations of the high cost of prosecuting drug crimes often put forth by proponents of legalization fail to take into account the high cost of not prosecuting drug crimes and ignores both the human factor and the insidious and addictive nature of drugs.

Prohibition

Legalization proponents appear to have adopted the position that the drug problem is not one of drug use, but of drug prohibition. (23) They further argue that prohibition has been and continues to be ineffective. However, the experience this country had with the Volstead Act of 1920 and the 18th Amendment, commonly known as Prohibition, actually supports the



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effectiveness of prohibition. The amendment prohibited the commercial manufacture and distribution of alcoholic beverages; it did not prohibit use or production for one's own consumption. During the period of Prohibition, alcohol consumption actually declined dramatically. The best estimates are that consumption of alcohol declined by 30% to 50% during the Prohibition years. Contrary to many popularly held opinions, the violent crime rate did not increase dramatically during prohibition, although organized crime may have become more visible. Prohibition did not end alcohol use; however, it succeeded in reducing by one-third the consumption of a drug that had wide historical and popular sanction. The real lesson of Prohibition is that government can affect the consumption of drugs through laws. (24)

Enforcement Costs and Impacts

The cost of enforcement of drug laws is not insignificant. For 1990 the total Federal budget authority for anti-drug programs is \$7.9 billion. If one is to measure the depth of commitment to the Drug War by the federal spending authority attached to it, the United States has yet to wage a war on drugs in the financial sense. For example, in the late 1960's the annual price tag for the Vietnam War was \$35 billion per year. (25) More federal money is put into public transportation subsidies than into drug enforcement. There are more police personnel committed to protecting the members of Congress than there are Federal drug agents. (26)

Other countries have had experiences with drug epidemics in the past. Those that have been most successful have applied strong enforcement in conjunction with public education and user rehabilitation. (27) Some examples include:

- Japan routed an amphetamine epidemic after World War II and a growing heroin problem in the late '50's and early '60's through aggressive law enforcement and the stigmatization and rehabilitation of users.
- Great Britain discovered that allowing doctors to prescribe heroin created a large black market and led to an increase in its drug problems. (29)
- Spain relaxed drug laws in 1983 and has experienced a recent spurt in cocaine and heroin addiction. A crackdown on drug pushers is now underway. (30)

- Amsterdam, frequently cited by pro-legalization elements as a city successfully coping with a drug problem, is rethinking its liberal drug policies as legalization has led to an increase in certain crimes. (31)

Liberalizing drug laws would result in an increase in drug use, drug addiction, and drug related criminal activity. Particularly with cocaine, Dr. Frank Gawin at Yale and Dr. Everett Ellinwood at Duke report the following:

"...a substantial percentage of all high dose binge users become uninhibited, impulsive, hypersexual, compulsive, irritable, and hyperactive. Their moods vacillate dramatically, leading at times to violence and homicide." (32)

The responsibility for having a positive impact on this country's drug problem does not rest solely with the criminal justice system. To charge the criminal justice system with full responsibility for the problem is to ignore the medical and workplace impacts of drug use. Just as business has demonstrated an increasing ability to manage the impact of drugs in the workplace by strong drug control policies so too can government. Tough drug enforcement, detection, and education programs in the military, for example, have brought about a 62% drop in drug use among U.S. Navy personnel. (33)

Drugs and Violent Crime

Many proponents of legalization hold the mistaken belief that drug users commit crimes solely to support expensive drug habits. They argue that a reduction in the cost of drugs would cause a decrease in the level of drug related crime. Unfortunately, the more likely outcome would be that cheaper legal drugs would increase the level of both violent person crimes and property crimes. In Philadelphia, for example, 50% of the child abuse fatalities involve parents who are heavy users of cocaine. (34) In actuality, cheaper legal cocaine would result in more children murdered as well as more babies born drug-affected. A recent Department of Justice report showed that more than 80% of criminals arrested for violent felonies were on drugs when they committed their crime. Rapes, assaults, and murders that are unrelated to a need for drug funds are included in these statistics. (35)

Black Market

Another element in the argument for legalization is an assumption that the black market in drugs is not only the major problem, but would disappear altogether with legalization. Unless the government was prepared to provide all drugs to anyone of any age at any time day or night—an unconscionable public position—a black market would continue to exist. According to Dr. Arnold M. Washton,

"...in short, any attempt to limit legal distribution would encourage a thriving black market for willing buyers who prefer to acquire their drug supplies without rules or hassles. For many of the same reasons, legalization of heroin has failed in Great Britain and Italy. It is unlikely that legalization of cocaine/crack would fare any better here in the U.S." (36)

Removing legal prohibitions and lowering drug costs clearly would create a broader and more frequent demand for drugs. Increased drug use would result in a surge in incidents of random violence and higher crime rates.

Conclusions

After careful review of the available materials both favoring and opposing the legalization of drugs, the RDI Task Force has concluded that legalization of drugs would not only displace society's costs from the criminal justice arena to the health care system and the workplace but would increase those costs extensively. Legalization of drugs would result in more, not less, use. Greater use of drugs would escalate drug-related damage to individuals and to communities and businesses. A policy of legalization would be equivalent to exposing the population to a highly contagious and debilitating disease without effective cures.

Treatment

This is not to ignore the importance of and the need for expanding treatment capacity, improving treatment, and making it more available to those in need. In his Commentary essay, "Against the Legalization of Drugs," James Q. Wilson states, "One thing that can often make it (treatment) more effective is compulsion." Douglas Anglin of UCLA in common with many

other researchers, has found that the longer one stays in a treatment program, the better the chances of a reduction in drug dependency. But he, again like most other researchers, has found that drop-out rates are high. He has also found, however, that patients who enter treatment under legal compulsion stay in the program longer than those not subject to such pressure. His research on the California Civil Commitment Program, for example, found that heroin users involved with its required drug testing program had over the long-term a lower rate of heroin use than similar addicts who were free of such constraints. If for many addicts compulsion is a useful component of treatment, it is not clear how compulsion could be achieved in a society in which purchasing, possessing, and using the drug were legal." (37) Treatment can be effective but relapse is not uncommon. While it is recognized that criminal sanctions by themselves do not cure drug abuse, they serve as both a precipitating factor for entry into treatment and as a coercive power in maintaining people in treatment. (38)

Footnotes

1. Citizens for a Drug Free Oregon, letter of April 17, 1990.
2. Wilson, James Q. and John J. DiTulio Jr., "Crackdown," The New Republic, July 10, 1989, p. 23.
3. Moore, Mark H., "Lessons of Prohibition Don't Support Drug Legalization," The Oregonian, October 31, 1989.
4. Dr. Arnold Rustin, "Swiss Program Keeps AIDS in Check, but Not Drug Use," The Oregonian, August 7, 1990.
5. "Drugs - Victimless Crimes?," The Oregonian, September 15, 1988.
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7. Ira Chasnoff et al., "Temporal Patterns of Cocaine Use in Pregnancy - Perinatal Outcome," JAMA, Vol. 261, No. 12, 1989, pp. 1741-1744.
8. "Medical Complications of Cocaine Abuse," Special Report, New England Journal of Medicine, Vol. 315, No. 23, 1986, pp. 1495-1499.
9. Dr. Jan Bays, "Drug Babies," Child Maltreatment Conference, January 20, 1990, San Diego, California.
10. Naomi Kaufman, "Schools Brace for Drug Babies," The Oregonian, June 4, 1990.

Continued to 8

7

Footnotes

11. Dr. Darryl Inaba and William E. Cohen, Uppers, Downers, All Arounders, Biomed Arts, Inc., and Cinemed, Inc., Ashland, Oregon, 1988.
12. "The Social Development Strategy," Social Development Research Group, University of Washington School of Social Work, 1989.
13. New England Journal of Medicine, op. cit., p. 1495-1499.
14. Child Abuse Report, op. cit., pp. 5-6.
15. Charles H. Turner, United States Attorney, Portland, Oregon, memorandum of October 26, 1989.
16. "Impact of Drugs on Boarder Babies Documented," Child Welfare League of America, Washington, D.C., July, 1989.
17. Data from the Drug Abuse Warning Network (DAWN) 1988. Alcohol, Drug Abuse and Mental Health Administration, U.S. Department of Health and Human Services, Public Health Service, Series 1, No. 8, 1989.
18. "Legalization Concerns," Citizens for a Drug Free Oregon, July, 1988.
19. "Drugs: A Plague Upon the Land," ABC-TV, April 10, 1988.
20. Drugs on the Worksite: The Employer's Concerns, Options, and Needs, Regional Drug Initiative, Portland, Oregon, March, 1989.
21. Fightback Against Drugs, Oregon Business Council, Portland, Oregon, 1989.
22. Drugs Don't Work, Regional Drug Initiative, Portland, Oregon, March, 1990.
23. Robert DuPont and Ronald Goldfarb, "We Have Not Yet Begun to Fight," The Columbian, February 7, 1990.
24. Mark H. Moore, op. cit.
25. Danny Coulson, Special Agent in Charge, Federal Bureau of Investigation, Portland, Oregon, February, 1990.
26. Robert E. Peterson, "Stop Legalization of Illegal Drugs," Drug Awareness Information Newsletter, Danvers, Massachusetts, July, 1988, p. 3.
27. Ibid.
28. Ibid.
29. Ibid.
30. Ibid.
31. Ibid.
32. James Q. Wilson, "Against the Legalization of Drugs," Commentary, February, 1990, page 23.
33. Robert E. Peterson, loc. cit.
34. Robert E. Peterson, op. cit., p. 5.
35. Ibid.
36. Arnold M. Washton, "Legalization Arguments Off-Base," undated.
37. James Q. Wilson, op. cit., p. 26.
38. "Dealing With Drug-Addicted Mothers," The Mainline, Vol.III, No.6, Center for Local Prosecution of Drug Offenses, American Prosecutors Research Institute, June, 1990, p.1.

Thank You

The Regional Drug Initiative would like to thank the following committee members who provided information for this report:

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Comprehensive Options for Drug Abusers
Danny Coulson
Federal Bureau of investigation
Roseanna Creighton
Citizens for a Drug Free Oregon
Jeff Kushner
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Harold Ogburn
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Emanuel Hospital and Health Center
Edna Robertson
Northeast Neighborhood Office
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U.S. Attorney

Reprinting of this document in whole or in part is permitted with the acknowledgment of the source. The Position Paper in Opposition to the Legalization of Drugs was developed by the Regional Drug Initiative and published in Portland, Oregon, in September, 1990.

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Appendix E

RDI Drug Impact Index for Portland, Oregon (1991)

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Reprinting of this Index in whole or in part is permitted with acknowledgement of the source. The Drug Impact Index was developed by the Regional Drug Initiative and the Western Regional Center for Drug Free Schools and Communities and first published in Portland, Oregon in June, 1990. This June 1991 version is the second edition.

INTRODUCTION

The purpose of the Drug Impact Index is to document and illustrate the extent of the local drug problem. It relies solely on data that already exist through established surveys or standard reporting systems. It is intended to be used by the public for a general assessment of the problem, not as a technical measurement or evaluation device.

No single measure can provide an adequate picture of the impact of drugs on a local community. However, a number of indicators can provide good representations of important aspects of the problem. Indicators were selected for this Index using four major criteria: first, that the indicator is reliable—that it can be measured consistently from year to year; second, that the indicator is valid—that it measures what it intends to measure; third, that it is practical to collect; and fourth, that it provides an accurate representation of a major aspect of the community drug problem.

The RDI Drug Impact Index is an effort to walk the fine line between the too simple and the too complex. It was not designed to provide precise quantitative measurement, but is intended to provide the reader with a sense of the severity and breadth of the local drug problem. It is also intended to reflect any important trends, such as major increases or decreases in illegal drug use. It is anticipated that additional indicators will be added to future versions of this Index.

This is the second edition of the Drug Impact Index, first published in 1990. A companion volume, *Developing a Community Profile: A Handbook for Using Pre-existing Data in Prevention Planning*, describes the process used to develop this Index and provides guidance for communities wishing to develop similar community assessment tools.

TECHNICAL NOTE:

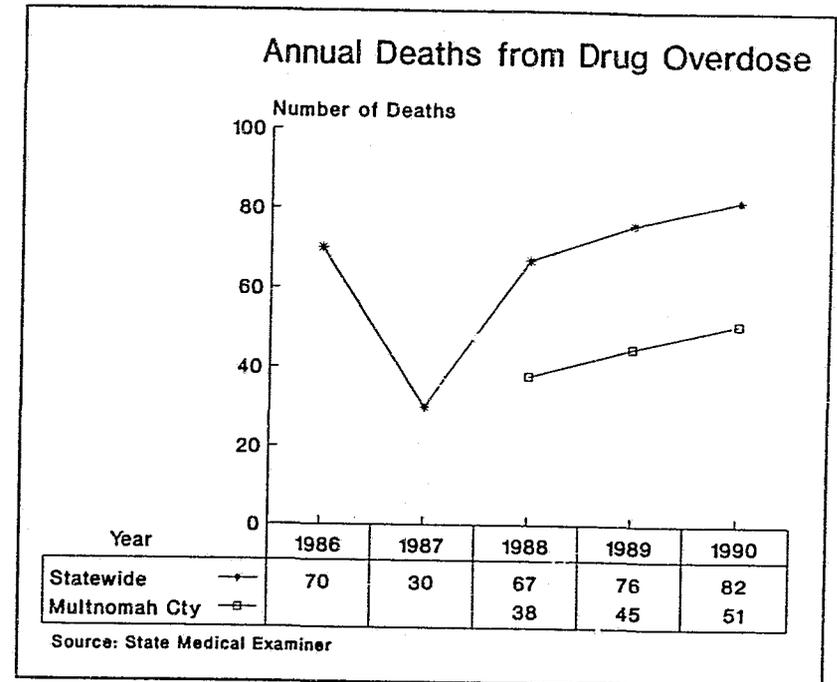
For purposes of this Index, "drugs" are considered to be those substances for which use is categorically illegal—either because all use is illegal (e.g. cocaine) or because of age restrictions (e.g. alcohol use by minors). Abuse of legal substances is not addressed.

INDICATOR #1

Annual number of deaths from drug overdoses as reported by the State Medical Examiner's Office.

TECHNICAL NOTE:

These data reflect the number of deaths resulting from use of heroin, cocaine, methamphetamines, or a combination of those drugs. They do not include deaths resulting from overdoses of prescription drugs.

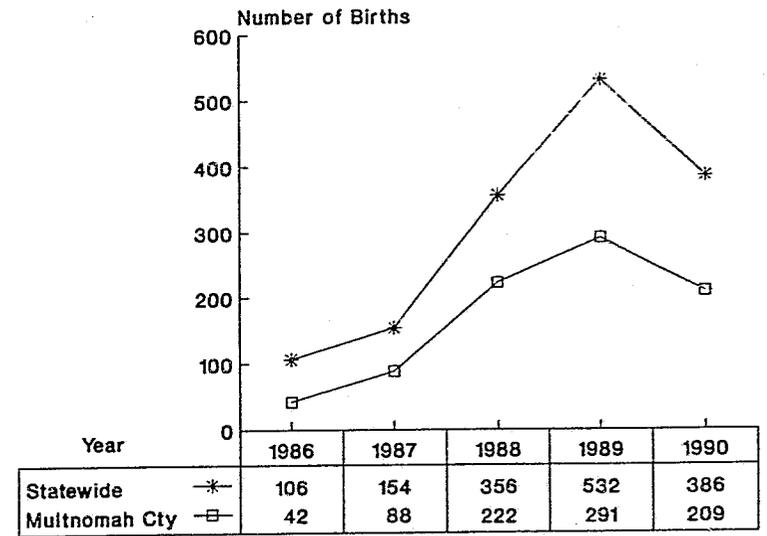
**REMARKS:**

Deaths due to drug overdoses continue to increase each year, both locally and throughout the state. Variations in drug overdose deaths may be due to the introduction of new drugs, for example Mexican tar heroin in 1986 and crack cocaine in 1988. In 1990, 59 of the 82 deaths statewide were from heroin overdoses.

INDICATOR #2

Annual number of births of drug-affected babies as reported to the State Children's Services Division.

Drug-Affected Babies: Annual Births



Source: Children's Services Division

TECHNICAL NOTE:

The numbers for all years are probably artificially depressed due to underreporting. Underreporting may result from the absence of consistent testing or reporting procedures.

REMARKS:

The number of births of drug-affected babies, which was increasing at an alarming rate, is showing the first signs of decrease during 1990. This may reflect the general tendency that drug use has peaked and is now in somewhat of a decline.

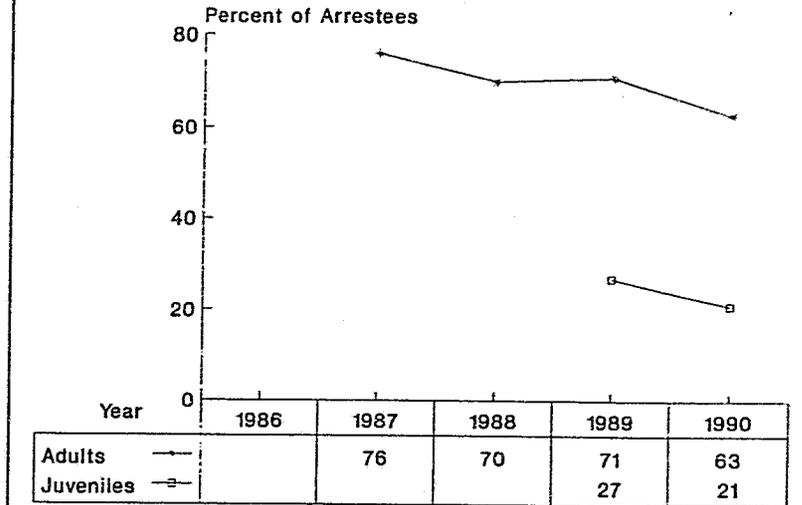
INDICATOR #3

Percent of arrestees testing positive for one or more illegal substances as reported by the Drug Use Forecasting (DUF) Project of the National Institute of Justice.

TECHNICAL NOTE:

These data are based on results of voluntarily obtained urine samples and anonymous interviews of male and female arrestees booked into the Multnomah County Detention Center for nondrug offenses. Data from 1987, the first year of the DUF Project, do not include female arrestees, though years 1988 and later do. Starting in 1989, juvenile detainees were tested under these same conditions. The figures used for this indicator reflect the percent of those testing positive for one or more illegal drugs. No statewide data are available. Multnomah County is one of several sites nationwide selected by the National Institute of Justice to participate in the DUF Project.

**Arrestees Testing Positive for Drugs
Multnomah County**



Source: Oregon TASC/DUF

REMARKS:

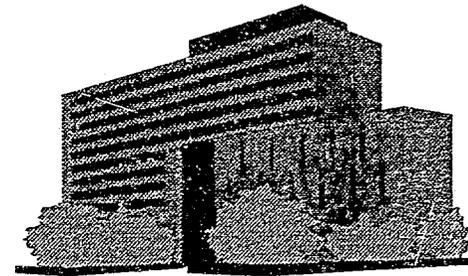
The high percentage of adult arrestees testing positive for one or more illegal drugs verifies the widely held belief in high rates of drug use by the criminal defendant population. For both groups, there is an encouraging decrease in 1990 levels compared to earlier years. Subsequent interviews of the juvenile detainees found 62% reporting tobacco use and, coincidentally, 62% reporting alcohol use in the 30 days prior to the interview. This supports the belief that tobacco and alcohol are the drugs of choice for juveniles.

INDICATOR #4

Annual number of hospital emergency room visits for drug or alcohol related causes.

**Hospital Emergency Room Visits
Alcohol or Drug-Related**

Number of Visits



Source: Oregon Emergency Data Network

TECHNICAL NOTE:

The Oregon State Board of Medical Examiners and Oregon Foundation for Medical Excellence are currently working to implement a program for collecting information on alcohol and drug related hospital emergency room visits. Research has shown this to be a critical indicator, and the Regional Drug Initiative is working to support the implementation effort.

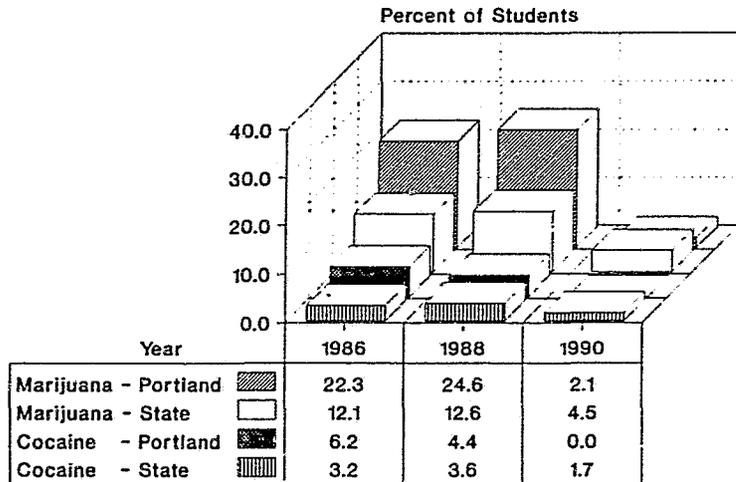
REMARKS:

Currently, no local or statewide data are available.

INDICATOR #5

Prevalence of drug use in the last 30 days among public school students in grades 8 and 11.

**Student Drug Use in Last 30 Days
Grade 8**

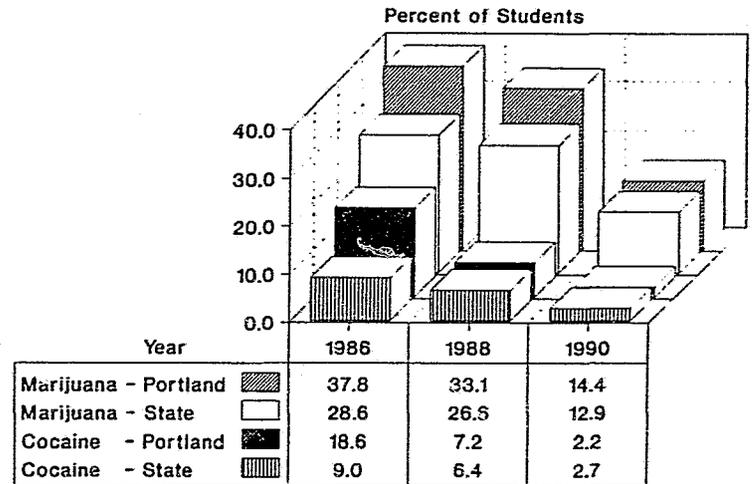


Source: "Drug Use by Oregon Public School Students"

TECHNICAL NOTE:

This is a self-reporting survey conducted throughout the state of Oregon in even-numbered years. The indicator is prevalence of use in the 30 days prior to the survey because it is thought to be one of the most consistently reliable data elements. It also corresponds to a data element in the national survey published by the National Institute on Drug Abuse. Marijuana and cocaine are the two most commonly used illicit drugs.

**Student Drug Use in Last 30 Days
Grade 11**



Source: "Drug Use by Oregon Public School Students"

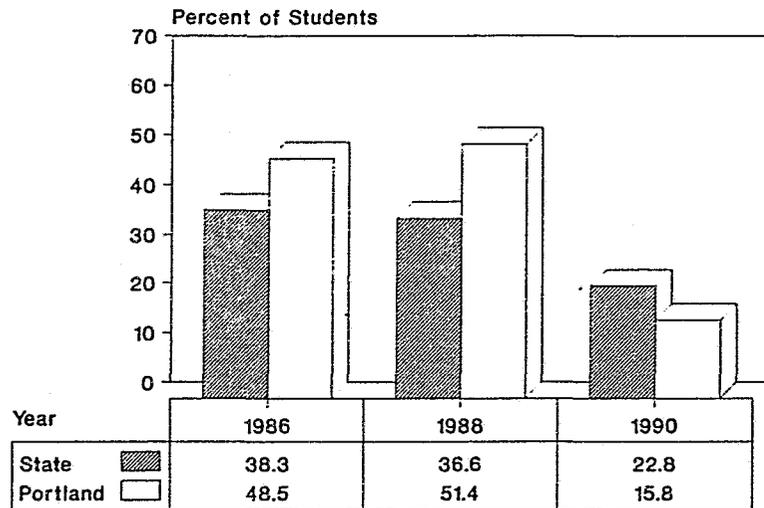
REMARKS:

Lower 1990 levels reflect a general pattern of reduced drug use noted both locally and statewide. The decreases observed are more extreme than would be expected and may be more fully understood after analyzing data from future years.

INDICATOR #6

Prevalence of alcohol use in the last 30 days among public school students in grades 8 and 11.

**Student Alcohol Use in Last 30 Days
Grade 8**

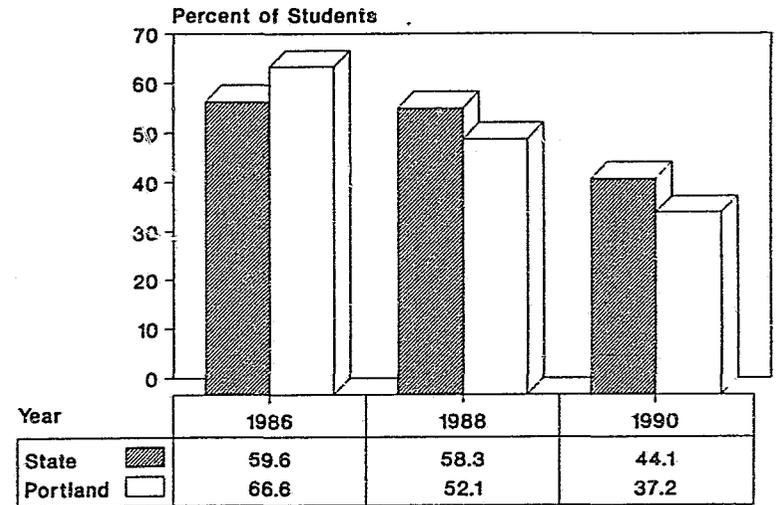


Source: "Drug Use by Oregon Public School Students"

TECHNICAL NOTE:

Because alcohol is an illegal drug for juveniles, its use is included as an indicator. Use in the last 30 days was selected for the same reasons mentioned for Indicator #5.

**Student Alcohol Use in Last 30 Days
Grade 11**



Source: "Drug Use by Oregon Public School Students"

REMARKS:

Lower 1990 levels reflect a general pattern of reduced drug use noted both locally and statewide. Portland's student use levels have dropped below state levels.

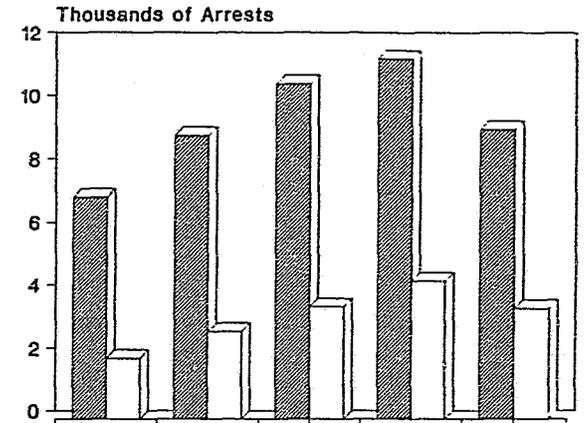
INDICATOR #7

Number of adult arrests for drug offenses from the Uniform Crime Report.

TECHNICAL NOTE:

This indicator is consistently collected on a local, state, and national level and is available for all states.

Adult Arrests for Drug Offenses



Year	1986	1987	1988	1989	1990
Statewide	7,073	9,001	10,646	11,443	9,195
Multnomah Cty	1,941	2,786	3,572	4,385	3,519

Source: Uniform Crime Reporting System

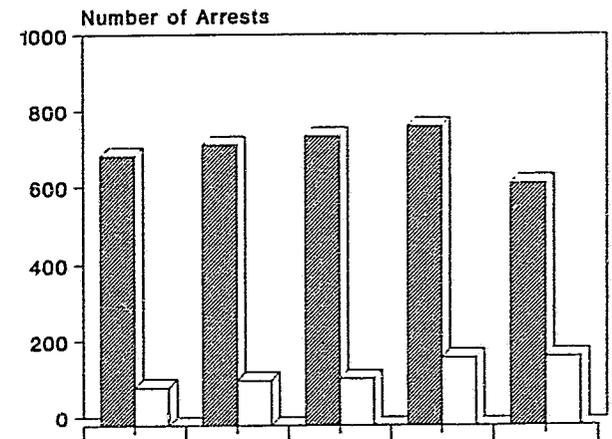
REMARKS:

Adult arrests for drug offenses at the local level follow the same pattern as those throughout the state. Lower rates are seen for the first time in 1990.

INDICATOR #8:

Number of juvenile arrests for drug offenses from the Uniform Crime Report.

Juvenile Arrests for Drug Offenses



Year	1986	1987	1988	1989	1990
Statewide	703	732	755	781	631
Multnomah Cty	100	118	123	178	181

Source: Uniform Crime Reporting System

TECHNICAL NOTE:

This indicator is consistently collected on a local, state, and national level and is available in all states. Juvenile arrests also reflect the amount of law enforcement resources devoted to juvenile crime and may vary widely from community to community.

REMARKS:

The substantial decrease in 1990 drug-related juvenile arrest rates throughout the state parallels the decline in many other indicators of drug use. Although local rates did not decrease in 1990, there was no substantial increase as in previous years.

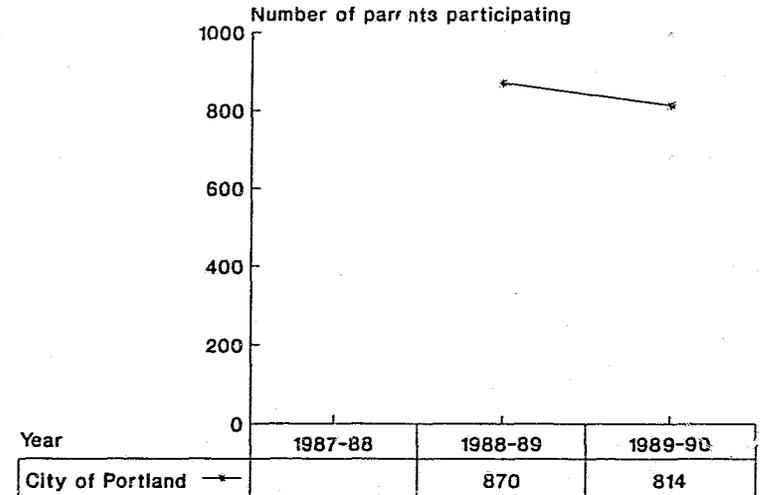
INDICATOR #9:

Number of parents trained in "Preparing for the Drug (Free) Years" in the Portland metropolitan area as reported by Portland Public Schools.

TECHNICAL NOTE:

In the 1988-1989 school year, in collaboration with the Oregon Office of Alcohol and Drug Abuse Programs, Portland Public Schools began a special prevention program for parents of children in 4th through 7th grades. This represents one indicator of parental involvement in drug prevention activities.

Number Participating in Parent Training "Preparing for the Drug (Free) Years"



Source: Portland Public Schools

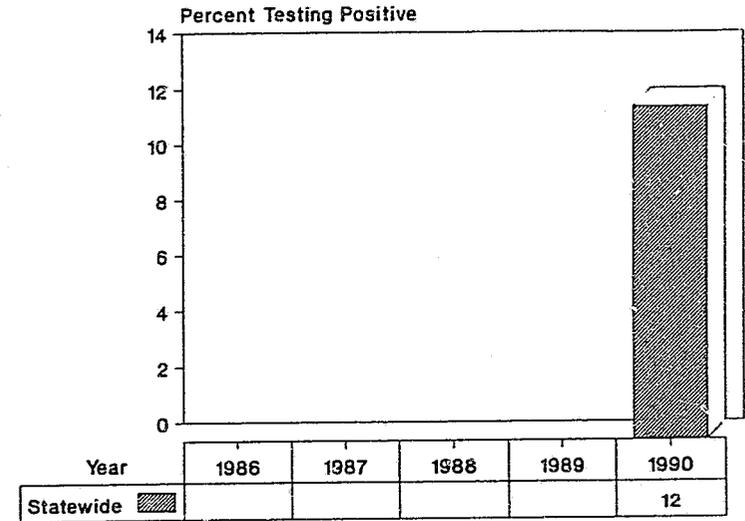
REMARKS:

In the first year of operation, 870 parents participated in "Preparing for the Drug (Free) Years." During the second year, 814 parents participated. The Regional Drug Initiative will be working to increase future participation in this training, which consists of five sessions which aim at increasing parental skills in supporting drug prevention in the home.

INDICATOR #10

Percent of positives in pre-employment drug tests as reported by Oregon Medical Laboratories.

Positives in Pre-Employment Drug Testing



Source: Oregon Medical Laboratories

TECHNICAL NOTE:

Percent of pre-employment tests reading positive was chosen as the most representative available measure of workforce drug use. Currently, this indicator is based on all Oregon pre-employment tests analyzed by Oregon Medical Laboratories (OML). OML was certified by the National Institute on Drug Abuse (NIDA) in January, 1991 and is currently the only Oregon laboratory so certified. It is anticipated that data from other laboratories will be included in future years, as they become NIDA certified.

REMARKS:

Percentages noted are similar to those occurring nationally. They are smaller than actual use levels (for example, random testing of employees) because drug users can choose to delay pre-employment tests until they feel they will test negative. This 1990 data point represents testing of approximately 24,000 job applicants.

REFERENCES

- Indicator #1 *Oregon Drug Related Death Totals 1986-1990 and Multnomah County Drug Related Death Totals 1988-1990*. Multnomah County Medical Examiner's Office, 301 N.E. Knott St., Portland, OR 97212.
- Indicator #2 *Number of Drug Affected Infants*, prepared by Tracey L. Krieger, Budget & Planning Section, DHR/Children's Services Division, March 8, 1991.
- Indicator #3 Data presented are averages of quarterly "Drug Use Forecasting" (DUF) data from TASC of Oregon, Inc., 1727 N.E. 13th, Room 202, Portland, OR 97212. Data for 1990 are based on "Data Collection Summary" tables.
- Indicator #4 No data are available at this time. An Oregon Emergency Data Network to provide these data is in the planning stages.
- Indicator #5 *Drug Use by Oregon Public School Students*, by Douglas M. Egan, Ph.D., Lewis and Clark College, for Office of Alcohol and Drug Abuse Programs, Department of Human Resources, 1178 Chemeketa St. NE, Salem, OR 97310.
- Indicator #6 See reference for Indicator #5.
- Indicator #7 *Report of Criminal Offenses and Arrests* (annual), Law Enforcement Data System, 155 Cottage St. NE, Salem, OR 97310.
- Indicator #8 See reference for Indicator #7.
- Indicator #9 *Portland Public Schools Alcohol and Drug Program Annual Report 1989-1990*. Portland Public Schools, Portland, Oregon.
- Indicator #10 Personal communication, Oregon Medical Laboratories, Eugene, Oregon.

For general information on assembling existing data from sources such as these, see *Developing a Community Profile: A Handbook for Using Pre-existing Data in Prevention Planning*, which can be ordered from either address on the back cover.

Additional copies of this *Drug Impact Index* document can also be ordered from either address on the back cover.

Appendix F

Sample Drug Diversion Program (STOP) Forms

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON,)
)
 Plaintiff,) Case No. C
)
 v.) D.A. No.
)
 _____,) ORDER
)
 Defendant.)

Defendants petition to enter pretrial drug treatment is:

1. _____ Denied

2. _____ Allowed, and based on the agreements

and waivers therein:

a) This case is transferred to the Circuit Court for all further proceedings on the Information of the District Attorney.

b) Defendant shall pay to the Multnomah County Circuit Court a stipulated compensatory fine for the benefit of the City of Portland Drug Treatment Trust Account in the amount off \$300.

The diversion fee of \$300 is payable at the rate of _____ per month or in full within _____ weeks/days.

_____ Payment schedule to be set at further proceedings.

c) Defendant shall report to the Portland Addiction and Acupuncture Center and begin the program of drug evaluation and treatment within 24 hours of the date of this order.

d) Defendant shall report for the next S.T.O.P. hearing on _____ at 9:00am in Courtroom _____ of the Multnomah County Courthouse.

DATED: _____

1 - ORDER

HARL H. HAAS, Circuit Court

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

NOTICE TO DEFENDANTS

The Circuit Court Pretrial Drug Treatment Program provides persons who have been charged with the offense of Possession of a Controlled Substance I, or II with an opportunity to attend treatment during pretrial release from confinement. Upon satisfactory completion of that treatment, the Court will dismiss the charges with prejudice. You may file a motion to set aside the record of arrest. This program is a privilege you may exercise only once. To take part in this program, you must do the following:

You must complete and sign the petition form given to you by the Court or by your attorney and file the petition with the Court. At the time of filing, you must pay a Drug Treatment Program fee of \$300; however, the Court may make provisions for payment of the fee on an installment basis.

You are eligible for this program if:

1. You are charged with either PCS I or PCS II and you were in possession of only a small amount of a drug consistent with personal use;
2. There is no evidence that you have been involved in significant and substantial drug dealing;
3. You have no other felony crimes or any Class A person misdemeanors pending or charged in the same charging instrument other than traffic offenses;
4. Your criminal history places you in grid blocks E or below on the Sentencing Guideline Chart but does not include any Class A person misdemeanors within the previous five years. However, the District Attorney's office may review the Class A misdemeanor to determine if it is of sufficient gravity to exclude you from the program;
5. You have no hold from another jurisdiction (you may petition the court if the hold is later resolved);
6. You have no gang affiliation;
7. You are not charged with a DUII in the same charging instrument;

Prior to your arraignment, the District Attorney will review the police reports and the criminal history provided by the police agency and will make a preliminary determination whether your case is one the state would be willing to dismiss if treatment is successfully completed. At your arraignment, the Court will be

notified by the District Attorney whether your case appears to be appropriate for dismissal if drug treatment is completed. A public defender will be appointed at the time of arraignment (if you are eligible for appointed counsel).

The Court will set your case over to the next court review date to allow you time to make a decision whether you wish to enter the Drug Treatment Program. At the time you return to Court for the Drug Treatment option hearing, a final decision on eligibility and participation will be made.

If you agree to participate in the Drug Treatment Program and you are eligible, you must sign the Drug Treatment Agreement. In this agreement, you agree to waive preliminary hearing and proceed on the District Attorney's information. You further agree to waive a speedy trial and a jury trial. You waive any double jeopardy claims upon this or related cases. You agree that should you be terminated from the treatment program or elect to withdraw from it, you stipulate to the police reports and lab reports and proceed to a court trial on a stipulated facts basis. If, within 14 days of the day you sign the treatment agreement, you wish to withdraw from the program, your case will be returned to the trial docket.

During the treatment program, you will be continued on release subject to satisfactory compliance of the drug treatment program agreement and any other conditions imposed by the Court. If you violate the terms of the release agreement, you may be returned to custody. During the pretrial treatment period, your case will be continued until successful completion of the treatment period or until termination of the agreement.

Entry into the Drug Treatment Program does not entitle you to dismissal of the present charge until you have completed the treatment indicated as necessary by the assessment, including compliance with all treatment requirements, paying all fees, and performing other conditions imposed to the satisfaction of the Court. If you successfully comply with all Drug Treatment Program requirements, the Court will dismiss the charge with prejudice.

If you decide that you do not wish to take part in the Drug Treatment Program and you prefer to go to trial or enter a plea of guilty, you must sign and file with the Court a waiver of your opportunity to participate in the program. The waiver will be kept in the Court's record to clearly show that you had an opportunity to participate in the Drug Treatment Program and freely and voluntarily chose not to do so. Your case will then proceed to trial (or plea) in the usual manner.

If you choose to enter the Drug Treatment Program and then later choose not to continue in the program, any fees which you have paid to the Court are not refundable.

Rev 9/17/91

MULTNOMAH COUNTY CIRCUIT COURT

DRUG TREATMENT PETITION, WAIVER AND AGREEMENT

Defendant/Petitioner Name _____
Last First Middle
Address _____
Street Apt # City State Zip
Mailing Address (if different) _____
Phone () _____ DOB _____ Case No. C _____

AGREEMENT AND WAIVER

If this petition is allowed by the Court, the petitioner agrees to give up the rights and to carry out the agreements listed below and explained in the "Notice to Defendants."

1. I hereby give up the right to a preliminary hearing, Grand Jury Indictment, and agree to proceed upon the District Attorney's information.
2. I hereby give up any former jeopardy rights in any subsequent action upon this charge or any other offenses based upon the same criminal episode.
3. I hereby give up my right to a speedy trial. I also give up my right to a jury trial.
4. I hereby agree that should the treatment program be terminated after 14 days from today either by the Court or me, I will proceed to a Court trial based solely upon the facts in the police report and laboratory reports, which I hereby stipulate to.
5. It is agreed by the Court that if the petitioner wishes to withdraw from the treatment program within 14 days of today, this Agreement will be voided and the case will be returned to the trial docket and will proceed based on the Information of the District Attorney.
6. I agree to satisfactorily complete a diagnostic evaluation for the development of my drug/alcohol treatment program as ordered by the Court.
7. I agree to complete the treatment program to the satisfaction of the Court.
8. I agree to not knowingly associate with any person possessing or using illegal drugs.
9. I agree to not work with any police agency on drug cases or on cases where I may come into contact with illegal drugs.

10. I agree to pay a program fee of \$300 on a payment plan set up by the Court. The program fee is payable to the Court as a stipulated compensatory fine.
11. I agree that any failure on the treatment program such as positive urinalysis tests, missing treatment or any failure to abide by the terms of this agreement may result in a Failure to Comply hearing which can result in modification of the treatment program, revocation of your pretrial release or termination from the program.
12. I agree that as a part of the treatment program the Court may also require me to seek and maintain employment and obtain employment counseling and a GED.
13. I agree the Court may require me to appear in Court once each month regardless of my compliance and success in the treatment program.
14. I agree the Court may terminate me from the treatment program upon commission of a new crime or other violation of the treatment program or failure to satisfy the conditions imposed by the Court.
15. The Court agrees that upon successful completion of the treatment program for a twelve (12) month period, the Court will dismiss the charge with prejudice and the District Attorney may not prosecute it in the future. You may then file a motion to set aside the record of arrest.
16. I further agree that the Court may extend the treatment program for an additional three (3) months to allow me to successfully complete my requirements.
17. I further agree to keep my attorney, the treatment provider and the Court advised of my current address at all times during the treatment program.

I have read the above statement of the rights I must give up and the agreements I must make, as well as the "Notice to Defendants." I understand what I have read and do hereby knowingly give up these rights and enter into these agreements with the Court.

_____ Petitioner's Signature	_____ Date
_____ Attorney for Defendant (Petitioner)	_____ Date
_____ Deputy District Attorney	_____ Date

Appendix G

Sample Petition to Revoke Probation

FOR COURT USE ONLY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
)	
v.)	Docket No.
)	Department No.
)	PFN No.
)	CEN No.
Defendant.)	
_____)	

PETITION TO REVOKE PROBATION

The undersigned petitioner, based on information and belief, respectfully represents the following:

That on or about _____, the defendant was placed on probation for a period of _____ months following his conviction of violation of Section _____. Conditions of probation included an order that the defendant obey all laws of the community and be of good conduct.

That defendant has violated the terms and conditions of his probation in that he committed a violation of Section _____ of the Health and Safety Code, on or about _____, in the County of Alameda, as set forth in Police Report No. _____, a copy of which has been attached hereto and incorporated by reference.

WHEREFORE, petitioner prays that probation be summarily revoked and a hearing set on this matter.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California, on _____.

Thomas Burke
Deputy District Attorney

ORDER

Good cause therefore appearing, it is hereby ordered that probation be revoked and a bench warrant issued. _____ bail.

Judge of the Superior Court

Appendix H

Criminal Justice Funding Act (1990)

LOCAL GOVERNMENTS—CRIMINAL JUSTICE—FISCAL ASSISTANCE

CHAPTER 1

S.B. No. 6913

AN ACT Relating to local government; amending RCW 82.14.050, 82.14.060, 43.84.090, 43.84.092, 63.29.190, 46.16.216, 46.20.270, 84.52.054, 17.28.100, 17.28.252, 35.58.090, 35.58.116, 35.61.210, 36.58.150, 36.50.040, 36.68.480, 36.69.146, 36.83.030, 56.04.050, 57.04.050, 67.38.130, 70.44.060, 70.94.091, 84.52.010, 84.52.043, 84.52.052, 84.52.053, 84.52.054, 84.69.020, 43.135.060, 82.44.110, 82.14.210, 42.17.310, and 81._____ (section 43, chapter 43, Laws of 1990); reenacting and amending RCW 36.68.520; adding a new section to chapter 82.44 RCW; adding new sections to chapter 82.14 RCW; adding a new section to chapter 63.29 RCW; adding a new section to chapter 84.52 RCW; repealing RCW 29.30.111, 36.68.525, 36.69.145, and 84.52.060; creating new sections; making appropriations; providing expiration dates; providing effective dates; providing a contingent effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

INDEX

Part I	Criminal Justice Funding
Part II	Local Sales Tax Distributions
Part III	Unclaimed Property
Part IV	Parking Violations
Part V	Six-Year Levies
Part VI	Initiative 62 Revisions
Part VII	Sales Tax Equalization for New Cities
Part VIII	Gas Tax Reconciliation
Part IX	Local Sales Tax
Part X	Task Force on City and County Finances
Part XI	Miscellaneous

NEW SECTION. Sec. 1. The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation of congested court systems, and relief of overcrowded jails.

In order to ensure public safety, it is necessary to provide fiscal assistance to help local governments to respond immediately to these criminal justice problems, while initiating a review of the criminal justice needs of cities and counties and the resources available to address those needs.

To provide for a more efficient and effective response to these problems, the legislature encourages cities and counties to coordinate strategies against crime and use multijurisdictional and innovative approaches in addressing criminal justice problems.

The legislature intends to provide fiscal assistance to counties and cities in the manner provided in this act until the report of the task force created under section 1001 of this act is available for consideration by the legislature.

PART I

CRIMINAL JUSTICE FUNDING

NEW SECTION. Sec. 101. A new section is added to chapter 82.44 RCW to read as follows:

1418

Additions in text are indicated by underlines; deletions by ~~strike-throughs~~.

On the last day of July, the state treasurer based upon information provided by the department of licensing shall make the following apportionment and distribution of motor vehicle excise taxes deposited in the general fund, except taxes collected under RCW 82.44.020(6), in addition to the distributions under RCW 82.44.150.

(1) A sum equal to 7.4729 percent thereof shall be allocable to the county criminal justice assistance account for distribution under section 102 of this act;

(2) A sum equal to 1.4946 percent thereof shall be allocable to the municipal criminal justice assistance account for distribution under section 104 of this act;

(3) A sum equal to 1.4946 percent shall be allocable to the municipal criminal justice account for distribution under section 105 of this act.

This section expires September 1, 1990.

NEW SECTION. Sec. 102. A new section is added to chapter 82.14 RCW to read as follows:

(1) The county criminal justice assistance account is created in the state treasury. The account shall consist of all motor vehicle excise tax receipts deposited into the account under chapter 82.44 RCW.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and sections 104 and 105 of this act:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

(iv) Distributions and eligibility for distributions in the 89-91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding.

(4) This section expires January 1, 1994.

NEW SECTION. Sec. 103. A new section is added to chapter 82.14 RCW to read as follows:

(1) The moneys appropriated for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150. Such moneys shall be distributed to the counties of the state ratably on the basis of population as last determined by the office of financial management.

(2) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding.

Additions in text are indicated by underlines; deletions by ~~strikethroughs~~.

1419

(3) This section expires July 1, 1991.

NEW SECTION. Sec. 104. A new section is added to chapter 82.14 RCW to read as follows:

(1) The municipal criminal justice assistance account is created in the state treasury. The account shall consist of all motor vehicle excise tax receipts deposited into the account under chapter 82.44 RCW.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the state-wide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(2) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the state-wide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice account for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150. The distributions shall be made as follows:

(a) Thirty percent of the moneys shall be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than two times the state-wide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a).

(b) The remainder of the moneys shall be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding.

(6) This section expires January 1, 1994.

NEW SECTION. Sec. 105. A new section is added to chapter 82.14 RCW to read as follows:

(1) The moneys deposited in the municipal criminal justice assistance account for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150. Such moneys shall be distributed to the cities of the state as follows:

(a) For fiscal year 1991, each city with a population of under ten thousand shall receive a distribution of three thousand two hundred fifty dollars. Any remaining moneys shall be distributed to all cities ratably on the basis of population as last determined by the office of financial management.

(b) For fiscal year 1992 and thereafter, each city with a population of under ten thousand shall receive a distribution of two thousand seven hundred fifty dollars. Any remaining moneys shall be distributed to all cities ratably on the basis of population as last determined by the office of financial management.

(2) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding.

(3) This section expires January 1, 1994.

NEW SECTION. Sec. 106. For the biennium ending June 30, 1991, the state treasurer shall transfer the following sums from the state general fund:

(1) Seven million five hundred thousand dollars to the county criminal justice assistance account; and

- (2) Ten million dollars to the municipal criminal justice assistance account.

PART II

LOCAL SALES TAX DISTRIBUTIONS

Sec. 201. Section 6, chapter 94, Laws of 1970 ex. sess. as last amended by section 81, chapter 57, Laws of 1985 and RCW 82.14.050 are each amended to read as follows:

The counties, ~~metropolitan municipal corporations and cities, and transportation authorities under RCW 82.14.045~~ shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any ~~portion~~ of any tax authorized by this chapter which is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, ~~metropolitan municipal corporations, and cities, and transportation authorities imposing a sales and use tax.~~ All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. All earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, and transportation authorities monthly.

Sec. 202. Section 7, chapter 94, Laws of 1970 ex. sess. as last amended by section 11, chapter 4, Laws of 1981 2nd ex. sess. and RCW 82.14.060 are each amended to read as follows:

~~Bi-monthly~~ Monthly the state treasurer shall make distribution from the local sales and use tax account to the counties, ~~metropolitan municipal corporations and cities, and transportation authorities~~ the amount of tax collected on behalf of each county, ~~metropolitan municipal corporation or city, or transportation authority,~~ less the deduction provided for in RCW 82.14.050. The state treasurer shall make the distribution under this section without appropriation.

In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein.

Sec. 203. Section 43.84.090, chapter 8, Laws of 1965 as last amended by section 5, chapter 106, Laws of 1990 and RCW 43.84.090 are each amended to read as follows:

Except as otherwise provided by RCW 43.250.030 and, 67.40.025, and 82.14.050, twenty percent of all income received from such investments shall be deposited in the state general fund.

Sec. 204. Section 51, chapter 57, Laws of 1985 as amended by section 12, chapter 419, Laws of 1989 and RCW 43.84.092 are each amended to read as follows:

Except as provided in RCW 43.84.090, all earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

~~On or before July 20 of each year~~ Except as provided in RCW 82.14.050, the state treasurer shall distribute all, on or before July 20 of each year, the earnings credited to the treasury income account as of June 30 to the funds for the fiscal year in which it was earned. Except as otherwise provided by statute, the state treasurer shall credit the various accounts and funds in the state treasury their proportionate share of earnings based upon each fund's average daily balance for the period: PROVIDED, That earnings on the balances of the forest reserve fund, the federal forest revolving fund, the liquor excise tax fund, the treasury income account, the suspense account, the undistributed receipts account, the state payroll revolving account, the agency vendor payment revolving fund, and the local leasehold excise tax account, ~~and the local sales and use tax account~~ shall be credited to the state treasurer's service fund: PROVIDED FURTHER, That earnings on the balances of the agency payroll revolving fund, the special fund salary and insurance contribution increase revolving fund and special fund semimonthly payroll revolving fund shall be credited to the state general fund.

NEW SECTION. Sec. 205. Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made.

Appendix I

Tax Campaign Public Relations Pamphlet

THE COST:

An increase of one-tenth of one percent in the sales tax.

- * A penny on a \$10 purchase.
- * A dime on a \$100 purchase

**** Cost to an average family is \$11 annually.***

- The September 18 ballot measure would raise a needed **\$20 million** annually to be used only for public safety purposes.

KING COUNTY
PROPOSITION NO. 2
KING COUNTY 0.1% SALES AND USE TAX
FOR CRIMINAL JUSTICE PURPOSES

Shall King County, exclusively for criminal justice purposes, be authorized to impose a sales and use tax with a rate equal to one-tenth of one percent (0.1%) of the selling price (in the case of a sales tax) or value of the article used (in case of a use tax), all as provided in King County Ordinance No. 9576?

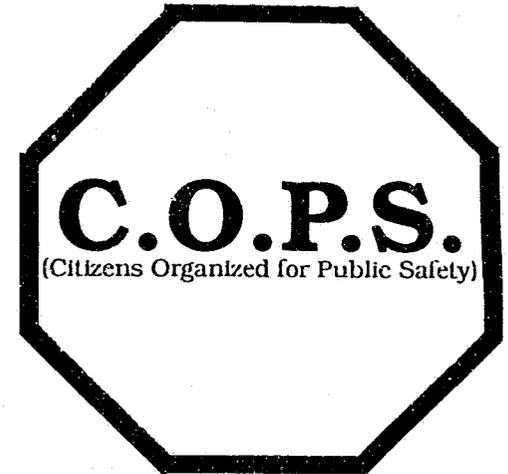
<u> X </u>	<u> </u>
YES	NO

“A bargain like this doesn’t happen often and county voters can’t afford to pass it up.”

- Seattle Times, Aug. 2, 1990

Citizens Organized for Public Safety
(C.O.P.S.)
P.O. Box 4417
Seattle, WA 98104-0417

SUPPORT



**Vote "Yes"
on Prop. 2**

**Stop Crime,
Before it
Stops Us.**

Paid by Citizens Organized for Public Safety
P.O. Box 4417, Seattle, WA 98104-0417

The increases in crime and violence have placed the criminal justice system in a serious financial crisis. We can choose to fund these needs or we can watch the system collapse from inadequate funding."

Norm Maleng
King County Prosecutor

THE FACTS:

Since 1984, in King County -

- Protection orders issued by judges for **victims of family violence** increased 21 fold.
- **Vehicle theft** in has increased 146%.
- **Felony drug filings** by the Prosecutor's Office increased 550%.
- **Sexual assault and child abuse special assault investigations** increased 151%.

THE EFFECTS:

Prosecutors are struggling under the increased caseloads which have been at overload levels for many months.

In June, King County Superior Court faced the threat of having to drop the charges in criminal cases because there weren't enough prosecutor's, judges and court rooms available to take the cases to trial.

Crime coalitions and citizens throughout the county have requested additional police presence in their neighborhoods to provide a deterrence to crime.

"When you call the police to ask them to drive by your daughter's house, and they tell you they don't have a car available that day, you know we've got a serious problem."

Ida Ballasiotes
Friends of Diane

Proposition 2.

"Crime-busting doesn't come cheap, but a sensible improvement in criminal justice for King County and it's cities can come dirt cheap with the imposition of a small increase in the sales tax."

- Seattle P.I., Aug. 3, 1990

If passed:

County revenues would be used to:

- Hire eight (8) more judges.
- Hire 22 deputy prosecutors.
- Hire 42 King County Police Officers.
- Hire six (6) special assault investigators.
- Create a county-wide program for family violence victims.
- Establish an information sharing network for police agencies.
- Establish a community police team for crime prevention.
- Increase courtroom security.

And, funding for many other critical public safety needs.

City revenues would be used to meet the critical public safety needs of that city.