

**IN SUPPORT OF THE UN DRUG CONVENTIONS:
THE ARGUMENTS AGAINST
ILLICIT DRUG LEGALIZATION AND HARM REDUCTION**

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TABLE OF CONTENTS

	Page number
Preface.....	1
Background and the Near Future.....	2
The Functions of the International Narcotics Control Board (INCB).....	3
Types of Drug Legalization.....	4
The INCB Statement on Drug Legalization.....	4
Legalization Will Increase Drug Use and Drug Addiction.....	6
We Cannot Legalize Marijuana Because Its Use Has Destructive Health And Social Consequences.....	7
Legalization of Drugs Will Cause an Increase in Drug Problems.....	9
We Should Keep Strong Penalties for Drug Use Because Penalties Provide Deterrence.....	10
We Must Protect the Victims of Drug Users.....	10
Types of Drug Related Crime.....	11
Purchase-related Crime.....	11
Drug-induced Crime.....	13
Drugged Driving.....	14
Black Market Crime.....	16
Who's Really in Prison for Marijuana?.....	17
Plea Bargains Distort the Picture.....	17
How Much Marijuana Did the Average Offender Possess to Get a Prison Sentence?.....	18
Conclusion to Legalization and Crime.....	18
The Economics of Drug Legalization.....	19
Characteristics of Substance Abusing Employees.....	23
Legalization Will Open Drug Sales to Mass Marketing and Even Bigger Profits from Drug Sales.....	25
The Tax Issue.....	25
Alcohol and Tobacco and Drug Legalization.....	26
Alcohol Prohibition.....	27
Individual Rights and the Legalization of Drugs.....	29
The Tough Practical Questions Regarding Legalization.....	30
Now Is Not the Time to Change the Conventions. Demand and Supply Reduction and Drug Control Are Working.....	31
New Approaches to Demand Reduction and Drug Control Are Within the Conventions.....	33
Drug Courts Are Effective Tools to Reduce Drug Use and Addiction.....	33
The Old Harm Reduction Model Does Not Work.....	34
The International Experience with Legalization and Non-Abstinence Based Harm Reduction... ..	35
Alaska USA.....	35
The Netherlands.....	35
The United Kingdom.....	36
Sweden.....	38
Belgium.....	38
Canada.....	38
Switzerland.....	39

Spain.....39
European Cities Against Drugs Oppose Legalization/Harm Reduction.....39
The Successful Swedish Model.....41
The New View of Harm Reduction - a More Inclusive and Realistic Concept.....41
Heroin as “Medicine”..... 42
Does the “Medical” Use of Smoked Marijuana Violate the UN Conventions?.....42
Heroin Maintenance.....43
Injection Rooms.....44
Needle Exchange Programmes.....45
Industrial Hemp.....47
Ecstasy Tablet Testing.....48
Including Drug Users as Equal Partners in Making Policy.....49
Human Rights Issues.....49
About the Author.....49

PREFACE

This paper was written to examine several drug legalization and non-abstinence based harm reduction arguments as they pertain to the UN international drug control Conventions. The Conventions are the Single Convention on Narcotic Drugs, 1961; the Convention on Psychotropic Substances of 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (hereinafter “the Conventions”).

The UN system of drug control includes the Office of Drugs and Crime, the International Narcotics Control Board, and the Commission on Narcotic Drugs. The work of these bodies are positive and essential in international drug demand and supply reduction.

There was a need for a thorough review of international drug prevention policies in order to determine the effectiveness of the Conventions and if they needed to be strengthened instead of weakened. As a result of this review it is clear that the Conventions, and the positions of the International Narcotics Control Board INCB interpreting the Conventions, are proper and necessary.

The United Nations Office on Drugs and Crime (UNODC)

UNODC is a global leader in the fight against illicit drugs and international crime. Established in 1997, UNODC operates in all regions of the world through an extensive network of field offices. UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism. The three pillars of the UNODC work programme are:

1. Field-based technical cooperation projects to enhance the capacity of Member States to counteract illicit drugs, crime and terrorism;
2. Research and analytical work to increase knowledge and understanding of drugs and crime issues and expand the evidence-base for policy and operational decisions; and
3. Normative work to assist States in the ratification and implementation of the international treaties, the development of domestic legislation on drugs, crime and terrorism, and the provision of secretariat and substantive services to the treaty-based and governing bodies. [EN1]

The Commission on Narcotic Drugs (CND)

The UN Economic and Social Council established the Commission on Narcotic Drugs in 1946 as the central policy-making body of the United Nations in drug related matters. The Commission enables Member States to analyze the global drug situation, provide follow-up to the twentieth special session of the General Assembly on the world drug problem, and to take measures at the global level within its scope of action. It also monitors the implementation of the Conventions and is empowered to consider all matters pertaining to the aim of the conventions, including the scheduling of substances to be brought under international control. [EN2]

The International Narcotic Control Board (INCB)

This paper will focus on the positions of International Narcotic Control Board because they have a very special position among these bodies. They interpret the Conventions and act in a quasi-judicial capacity in enforcing the Conventions. Their interpretations govern how the UN approaches enforcement of the Conventions.

Approach of this paper

First, this paper will provide the arguments in favor of legalization and non-abstinence based harm reduction and then the INCB position in opposition and then a factual response in support of the INCB position. This paper will argue that we should not go down the road of legalization/harm reduction but instead keep on the right track of a restrictive drug control policy.

In September 2008, the World Forum Against Drugs (WFAD) was held in Stockholm. The slogan of WFAD was "One hundred years of drug prevention - how do we move forward?" The first edition of this paper was distributed to each participant. This paper was requested by a group of NGOs that arranged the World Forum Against Drugs. The WFAD came out with a position statement against drug legalization (attached).

We hope this paper will be helpful in understanding the international drug control system and will provide arguments the readers can use in their own countries in the debate about drug policy.

BACKGROUND AND THE NEAR FUTURE

In 2009, there will be a high level meeting of the UN Commission on Narcotic Drugs (CND) as a follow-up to the United Nations General Assembly Special Session (UNGASS) on drugs held in New York in 1998. The 2009 CND meeting will evaluate what has happened during the last ten years regarding the UN international drug control Conventions. The INCB will also be dealing with these issues.

Prior to the CND meeting there will be a strong effort by some non-governmental organizations (NGOs) to weaken the Conventions and the INCB. They will argue that the Conventions need to be changed or "reinterpreted" in order to pave the way for legalization of drugs and their version of "harm reduction." The legalizers' version is non-abstinence based "harm reduction" that accepts drug use and seeks to minimize the harmful effects of drug use yet allows drug users to continue to use drugs. They claim that not all illicit drug use is harmful and that people should be able to use drugs. They think that treatment should not always be aimed at helping drug users to become drug free. They claim that the Conventions need to be "modernized" and that the Conventions are "out of touch with reality." However, it is the legalizers' version of harm reduction that is out of touch with reality. True harm reduction is preventing drug use and helping drug users into treatment aimed at helping them to be drug free.

The legalizers will also continue their attacks on the INCB who they see as an obstacle to their plans because the INCB opposes drug legalization and non-abstinence based harm reduction.

The legalization advocates will argue for:

1. legalizing drugs (lowering or ending penalties for drug possession and use - particularly marijuana);
2. so called “medical” marijuana;
3. non-abstinence based harm reduction programmes such as: needle exchange, “safe” injection sites, heroin distribution to addicts, and testing of ecstasy tablets (to make sure they are “safe” before use);
4. industrial hemp;
5. including drug users as equal partners in making policy;
6. greater “human rights” protection for drug users.

References

The English words are sometimes spelled here as they are spelled in the UK and not the US. For example, the word programme will be used instead of program. Offence will be used instead of offense, etc.

[EN1] <http://www.unodc.org/unodc/en/about-unodc/index.html>

[EN2] <http://www.unodc.org/unodc/en/commissions/CND/index.html>

THE FUNCTIONS OF THE INTERNATIONAL NARCOTICS CONTROL BOARD (INCB)

The INCB is the independent and quasi-judicial monitoring body for the implementation of the Conventions. It was established in 1968 in accordance with the Single Convention on Narcotic Drugs of 1961. It had predecessors under the former drug control treaties of the League of Nations. The INCB are the guardians of the Conventions and they are being attacked because of it.

The functions of INCB are laid down in the Conventions. [FN1] The INCB interprets the Conventions and acts in a quasi-judicial capacity to enforce the Conventions. Their interpretation of the Conventions govern how the UN approaches enforcement of the Conventions and how the member states act within the Conventions. The INCB is responsible for reviewing whether measures taken in a country are in line with the Conventions. The Board has, over a period of many years, expressed its views on the compatibility of such measures with the Conventions. This paper will discuss how they have interpreted the Conventions and if their interpretations are correct.

References

[FN1] INCB Mandates and Functions, for all eleven functions see: <http://www.incb.org>

TYPES OF DRUG LEGALIZATION

The term “legalization” can have any one of the following meanings:

1. **Total Legalization** - All illicit drugs such as heroin, cocaine, methamphetamine and marijuana would be legal and treated as commercial products. No government regulation would be required to oversee production, marketing, or distribution.
2. **Regulated Legalization** - The production and distribution of drugs would be government regulated with limits on amounts that can be purchased and the age of purchasers. There will no criminal or civil sanction for possessing, manufacturing, or distributing drugs unless these actions violated the regulatory system. Drug sales can be taxed.
3. **Decriminalization** - Decriminalization eliminates criminal sanctions for drug use and provides civil sanctions for possession of drugs.

THE INCB STATEMENT ON DRUG LEGALIZATION

The INCB issued a position on legalization of drugs that first states the argument of the legalizers and then provides a response. The INCB position was obtained from their annual reports on their website - <http://www.incb.org>. Each paragraph in the annual report is numbered. The year of the annual report is at the end of each of the below quotes from the INCB.

The view of the INCB on the question of legalization of the non-medical use of drugs was expressed in their Report from 1992.

16. Turning to the main arguments put forward by those in favor of legalization, examination of just three of those arguments will serve to illustrate some of the concerns of the Board. Advocates of legalization suggest that:

(a) legalization is justified, since law enforcement has failed to control illicit supply or to reduce illicit demand. This argument, however, ignores the fact that legal sanctions have helped to deter or delay potential abusers, thereby limiting the growth of the illicit market;

(b) given current levels of access to illicit drugs, legalization would only have a minimum adverse impact on current drug abuse levels and would thus generate few additional health, safety or behavioral problems. This argument, however, ignores the potential expansion of demand by individuals and society, particularly among young people, which could follow the removal of legal barriers, the freeing of entrepreneurial initiative and the lowering of market prices. It also ignores the possibility that there may be a substantial increase in economic and social costs, particularly to health-care systems (given the global experience with alcohol and tobacco abuse). This may include a sharp increase in costs resulting from accident-related injuries and other health-related problems;

(c) Legalization would remove evils created by drug laws, such as corruption, violence and drug-related crime, which are worse than the drugs themselves. This argument assumes that drug-related black markets and corruption would significantly decline, but surely no community would accept making available, without any restriction, all drugs of abuse to all existing and potential abusers (including children) at sufficiently low prices. Even if one assumes that crime to support personal drug abuse may decline, crime committed under the influence of drugs, as well as chronic violence in the family and in the community, may increase. The assumption that organized criminal activity and related violence would significantly decrease may underestimate the capacity of organized crime to adjust to changing conditions without significant loss of economic, political or social power.

19. It appears that the basic aim of the advocates of legalization is to allow the recreational use of narcotic drugs and/or psychotropic substances. It must be noted that such a step would create a legal demand for those drugs and, consequently, the current restrictions in respect of supply (cultivation, production, manufacture, trade and distribution) would need to be abolished or fundamentally changed. History offers a good example of the consequences of such a change. The result would be similar to the situation of China in the nineteenth century, when, after the Opium War, the country was forced to accept the free availability of opium. Following that action, the number of opium addicts in the country increased drastically to an estimated 20 million.

20. The availability of narcotic drugs and psychotropic substances is limited not only by the provisions of the international drug control treaties but by national pharmaceutical laws and regulations. The majority of narcotic drugs and psychotropic substances are pharmaceuticals that are currently subject to twofold regulations: restrictions designed to prevent drug abuse; and prescribing and dispensing limitations designed to prevent health injuries and to promote compliance with good clinical practice. Without removing public health regulations, it would be impossible to ensure the availability of opiates, stimulants (cocaine or amphetamines), barbiturates, benzodiazepines etc. for recreational purposes.

21. It can be assumed that advocates of the legalization of some narcotic drugs and/or psychotropic substances do not intend to ruin the pharmaceutical regulatory system, but the maintenance of this system with the simultaneous legalization of, say, heroin or cocaine, would create an absurd situation: restrictions would apply to less addictive or non-addictive pharmaceuticals, but not to members of the same pharmacological categories having greater abuse potential and dependence producing properties.

22. Most of the debates on legalization of the non-medical (i.e. recreational) use of drugs are at present centered on cannabis. Since the adoption of the 1961 Convention, very potent new products like cannabis oil or hashish oil (e.g. cannabis concentrate) have appeared on the illicit markets and new technologies have been applied to increase the THC content of cultivated cannabis plants. In this context, the Board would like to draw the attention of industrialized countries to the fact that in 1961 they initiated the introduction of the international control of cannabis at a period when serious cannabis abuse problems did not exist in their countries. Countries in which cannabis consumption was traditional implemented the provisions of the 1961 Convention. If cannabis were to be legalized, the responsibility of industrialized countries would be enormous: they would be obliged to justify, at the same time, their 1961 decision to prohibit cannabis and their new decision to add cannabis to other legalized substances like alcohol and tobacco.

23. The arguments put forward by advocates of legalization, although well-intended, can appear to be logical and simple when they are not; they do not withstand critical evaluation and they tend to run contrary to general experience. The proposals in favor of legalization have tended to present possible legalization benefits against the costs of maintaining existing legal controls, without adequately addressing themselves to either the benefits of those controls or the social and economic costs of removing them. As the Board sees

it, legalization advocates have not yet presented a sufficiently comprehensive, coherent or viable alternative to the present system of international drug abuse control. The Board firmly believes that permitting the recreational use of drugs would have a substantial and irreversible adverse impact on public health, social well-being and the international drug control system. INCB Report 1992

Marijuana

The legalization argument is primarily driven by those who want to legalize marijuana. The INCB notes that:

22. Most of the debates on legalization of the non-medical (i.e. recreational) use of drugs are at present centered on cannabis. INCB Report 1992

LEGALIZATION WILL INCREASE DRUG USE AND DRUG ADDICTION

The advocates of drug legalization claim that legalizing drugs would decrease addiction rates in two ways (1) People (particularly young people) use drugs because they are illegal and the users get a thrill from breaking a social taboo. Legalization will remove this incentive. (2) If drugs were legalized, civil society could spend the money that we presently spend on the criminal justice system on treatment of addicts and that would reduce addiction. [FN1]

These arguments do not work when we consider that drugs such as cocaine, heroin, and marijuana are dangerous and highly addictive. The scholarly opinion and historical evidence are clear that if these drugs are legalized, then the rates of drug use and addiction will climb. This will lead to misery, death, social disorder and massive spending. [FN2]

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WE CANNOT LEGALIZE MARIJUANA BECAUSE ITS USE HAS DESTRUCTIVE HEALTH AND SOCIAL CONSEQUENCES.

Most of the arguments in favor of drug legalization focus on marijuana. However, marijuana is far more powerful today than it was years ago and it serves as an entry point for the use of other illegal drugs. This is known as the "gateway effect." Despite arguments from the drug culture to the contrary, marijuana is addictive. This addiction has been well described in the scientific literature and it consists of both a physical dependence (tolerance and subsequent withdrawal) and a psychological habituation. [FN1]

According to a US report released in June of 2008, the levels of THC - the psychoactive ingredient in marijuana - have reached the highest ever amounts since scientific analysis of the drug began in the late 1970s. The average amount of THC has now reached average levels of 9.6 percent (the highest level in one of the samples was 37.2 percent). This compares to the average of just under 4 percent reported in 1983. Additionally, higher potency marijuana may be contributing to a substantial increase in the number of American teenagers in treatment for marijuana dependence. According to the U.S. 2006 National Survey on Drug Use and Health (NSDUH), among Americans age 12 and older there are 14.8 million current (past-month; 6.0 percent) users of marijuana and 4.2 million Americans (1.7 percent) classified with dependency or abuse of marijuana. Additionally, the latest information from the U.S. Treatment Episode Data Set (TEDS, 2006), reports that 16.1% of drug treatment admissions were for marijuana as the primary drug of abuse. This compares to 6% in 1992. A similar trend is taking place in the Netherlands, where new data indicate that the number of people seeking assistance there for cannabis has risen, from 1,951 in 1994 to 6,544 in 2006 - a 235% increase. [FN2] In 2006, the average THC concentration in Dutch marijuana was 16% which is even higher than that in the US. [FN3]

Marijuana is an addictive drug. It poses significant health consequences to its users, including those who may be using it for "medical" purposes. In the U.S., marijuana is the number one drug that young people are in treatment for. [FN4] The use of marijuana in early adolescence is particularly dangerous. Adults who used marijuana early were five times more likely to become dependent on any drug and eight times more likely to use cocaine and fifteen times more likely to use heroin later in life." [FN5]

The damage to health caused by marijuana

Drug legalization advocates claim that marijuana is less dangerous than drugs like cocaine, heroin, and methamphetamine. Some European countries have lowered the classification of marijuana based on the false perception that it is less harmful. However, studies over the last few years give us a lot of new information about marijuana. They show that marijuana is not harmless but that it is toxic and addictive. Recent studies show the following destructive effects of marijuana use: [FN6]

- birth defects
- the worsening of pain
- respiratory system damage
- links to cancer

AIDS - marijuana opens the door to Kaposi's sarcoma
brain damage
strokes
immune system damage
mental illness
violence
infertility
hepatitis

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LEGALIZATION OF DRUGS WILL CAUSE AN INCREASE IN DRUG PROBLEMS

Illicit drugs are addictive and dangerous. The legalizers may admit this but respond by saying that if we legalized them we would have less of a problem. They claim that making illegal drugs legal would not cause more drugs to be consumed nor would cause addiction to increase. They claim that many people use drugs moderately and that many would choose not to use drugs, just as many now abstain from alcohol and tobacco.

The lesson from history is that periods of lax controls are accompanied by increased drug abuse and that there is less drug abuse during periods of strong drug control. In the 1880s many drugs, including opiates and cocaine, were legal and were seen as benign medicine not requiring a physician's oversight. Addiction was rampant with 400,000 opium addicts in the US which is twice as many per capita as there are today. By the turn of the century about one in 200 Americans was either an opium or cocaine addict. In response, the Federal Pure Food and Drug Act of 1906 was passed that required manufacturers of patent medicines to disclose the contents of the

medicines they sold. As a result Americans learned which of their medicines had heavy doses of cocaine and opiates and they could avoid them. The first broad anti-drug law in the US was the 1914 Harrison Act that contributed to a significant decline in narcotic addiction in the United States. The addiction rate in the US eventually fell to its lowest level in World War II when many addicts were forced to give up their drug habits due to a shortage of the drugs. The years after the war were relatively drug free. By the 1950s, the US Federal Bureau of Narcotics estimated the total number of addicts was only between 50,000 to 60,000. This is far lower than today. [FN1]

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WE SHOULD KEEP STRONG PENALTIES FOR DRUG USE BECAUSE PENALTIES PROVIDE DETERRENCE.

The proponents of legalization claim that law enforcement is not winning the war on drugs. However, law enforcement serves many purposes in the anti-drug effort.

1. It exacts a high price from those who would profit from the misery and addiction of others, e.g., loss of freedom and seizure of their ill-gotten gains.
2. It keeps potential drug users from using drugs by virtue of the fear of arrest and the embarrassment of being caught.
3. It helps drug users/addicts into treatment through the use of laws and drug courts that offer treatment as an alternative to incarceration. [FN1]
4. Legal sanctions have helped to deter or delay potential abusers, thereby limiting the growth of the illicit market;

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WE MUST PROTECT THE VICTIMS OF DRUG USERS

Drug users may commit murder, or child or spouse or elder abuse, or rape, property damage, assault and other violent crimes under the influence of drugs. The criminal justice system protects the victims of drug users and can be used to get the drug users into treatment. The victims include:

Children of drug users - Many children have drug using parents and are abused or neglected by those parents. Drug use is not a victimless crime.

Parents - The parents who have addicted children or who have lost children to drugs need our support. We can help them to take legal action against those who gave the drugs to their children.

Grandparents - Many parents are addicted to drugs and as a result their children are being raised by their children's grandparents. In addition, many grandparents have addicted grandchildren.

Victims of domestic violence - Spouse abuse and abuse of relatives are caused by drug abuse.

Students - Students are often victimized by violent drug users in their schools. In addition, the ability of the school to provide an orderly learning environment is impaired by drug users.

Drugged driving victims - Many people are injured or killed by drugged drivers.

Crime victims - People who have been assaulted and/or been robbed by drug users or otherwise harmed by them deserve protection.

Patients victimized by so called "medical" marijuana - Ill people who choose to use marijuana instead of legitimate medicines may become sicker due to marijuana use.

Elder abuse - Many elders are abused by drug users.

Sexual victims - Drug use leads to sexual promiscuity and spread of AIDS and other blood borne infections. These victims need support and protection.

TYPES OF DRUG RELATED CRIME

For the purposes of this paper, the crime caused by people to pay for their addiction is referred to as "purchase-related" crime. The crime committed by people while under the influence of drugs is "drug-induced" crime and the crime caused by organized criminals to supply drugs is "black market crime."

PURCHASE - RELATED CRIME

The Legalizers claim that as legalized drugs become less expensive, addicts will no longer need to commit crimes in order to pay for their addiction. The problem with this claim is that some addictive drugs are already inexpensive. Marijuana, the most abused and addictive drug for young people, is very inexpensive. Some drugs can be manufactured in home laboratories. In addition, if drugs were sold legally and have to comply with government regulations and pay the costs of taxes placed upon the legalized drug there is a question whether it is possible to reduce the current price of some drugs. [FN1]

However, if legal drug suppliers could undersell the black market by offering drugs at a lower price the rates of addiction would rise. Even supporters of drug legalization admit that “low prices would encourage use.” [FN2] A good example of this is cocaine. Once cocaine began being marketed in the high potency and low cost form of “crack,” addiction rates increased. [FN3] If addiction rates increase - so will purchase-related crime. Higher levels of drug use cause increased crime, especially property crime to pay for the drugs. [FN4]

Legalizing drugs would not reduce purchase-related crime, but may actually increase it for two reasons: (1) if we decrease the price of an addictive drug, addicts will merely buy more of it and need more money to buy drugs. (2) there will be more addicts stealing to meet living expenses such as food, rent, etc. [FN5] Drug abusing offenders are the most active criminals. Dependency on drugs drives people to commit crimes to generate income. Drug users, many of whom are unable to hold jobs, commit robberies and other crimes not only to obtain drugs, but also to purchase food, shelter, clothing and other goods and services. Even if drugs were legalized, addicts will still need to pay the rent and may resort to crime to do so. [FN6]

A study in the UK of heroin abusers showed that 90 per cent financed part of their habit from crimes such as shoplifting and burglary. [FN7] Another study found that almost 50 per cent of the total cost of theft in 1993 in England and Wales was drug-related. [FN8] In the UK addicts spend about £16,500 a year each on their habits and most of the money is from the proceeds of crime. [FN9] In the UK those who use heroin and cocaine are responsible for 50% of all crimes. [FN10]

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[FN3] William Bennett, Mopping up after the legalizers: What the intellectual chorus fails to tell you, The Washington Times, December 15, 1989.

[FN4] Elliott Currie, Towards a Policy on Drugs, Dissent, Winter 1993.

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[FN6] Drug Legalization: Myths and Misconceptions, U.S. Department of Justice, Drug Enforcement Administration, Demand Reduction Section, 220 West Mercer St, Suite 104, Seattle, WA USA 98119, May 12, 1994

[FN7] C.S.J. Fazey, The evaluation of Liverpool drug dependency clinic, quoted in Richard Stevenson, Winning the War on Drugs: To Legalize Or Not (London, Institute of Economic Affairs, 1994), p. 30.

[FN8] Drugs: the need for action, Labour Party document quoted in Richard Stevenson, Winning the War on Drugs: To Legalize Or Not (London, Institute of Economic Affairs, 1994), p. 31.

[FN9] Home Affairs Third Report: The Government's Drug Policy: Is it Working?, Illegal Drugs, Drugs-related property crime, no.36

DRUG-INDUCED CRIME

The advocates of legalization claim that drug users only damage themselves and therefore they have the right to use drugs. Others claim that if drugs were legal, crime and violence would decrease because it is the illegal nature of drug trafficking that fuels crime and violence, instead of the violent and irrational behavior that drugs themselves induce. The flaw in this argument is that most violent drug related crime is committed because people are under the influence of drugs. The use of drugs changes behavior and causes criminal activity because people will do things they wouldn't do if they were rational and free of the drug's influence. [FN1]

Psychoactive drugs have a powerful impact on behavior. This influences people to commit crimes that have nothing to do with supporting the cost of their drug use. Some offenders suffer emotional and/or brain damage due to drug use, which contributes to mental illness or anti-social behavior. Cocaine-related paranoia is an example. If drug use increases with legalization, so will many forms of violent crime such as assaults, drugged driving, child abuse, and domestic violence. [FN2]

If legalization will cause an increase in drug use, an increase in drug use certainly will create more criminal behavior. There is a strong connection between drug use and criminal behavior. Drug use studies show that two-thirds of all male and female arrestees tested positive for at least one drug. Cocaine was found in about one-half of males and females, and marijuana was found in 25% of the men and 20% of the women. Opiates were found in 10% of the men and women. Twenty-five percent of the total sample tested positive for more than one illegal drug. [FN3]

A survey of prison inmates showed that inmates report high levels of drug use prior to the commission of the crime for which they were incarcerated. In the month prior to the crime, 43% were using illegal drugs on a daily or near daily basis, and 19% were using heroin, methadone, cocaine, PCP, or LSD on a daily or nearly daily basis. The study also showed that 35% of the inmates reported they were under the influence of drugs at the time they committed the crime. Marijuana or hashish were most frequently used at the time of the crime. [FN4]

Approximately 80% of the inmates in a 1986 survey had used drugs at some time in their lives. Only 13% of inmates seemed to fit the pattern of drug addicts who committed the crimes for gain. Of those sentenced for robbery, burglary, larceny, or a drug offence, one-half were daily drug users, and about 40% were under the influence of an illegal drug at the time they committed the crime. The greater an inmate's use of major drugs, the more prior convictions the inmate reported. Twenty-eight percent of the state inmates reported past drug problems with such drugs as heroin (14%), cocaine (10%), and marijuana or hashish (9%). [FN5]

A US study of crime victims showed that 30 per cent perceived their attackers to be under the influence of drugs or alcohol. [FN6]

