

## chapter 6

# Drugs and the Criminal Justice System

If I pull someone over for a traffic offense and they are acting really nervous, I usually ask if I can search their vehicle. Even though they may have drugs in their vehicle, most people still consent to the search. If they refuse to consent, then I usually call for a drug dog. When it arrives, the dog smells around the outside of the vehicle. If the dog hits on drugs, we have probable cause to conduct a search of the entire vehicle. You would not believe all the places I have found drugs. People have hidden drugs in their tires and inside hidden compartments in their dashboard, and one guy even hid cocaine in a false leg that he was wearing.

—A sheriff's deputy from Gwinnett County, Georgia

**After you have completed this chapter, you should have an understanding of**

- Attempts to control the production and/or cultivation of illicit drugs in foreign countries
- The role of law enforcement in illicit drug interdiction
- Different types of street-level drug operations
- Asset forfeiture and the federal RICO statute
- Federal and state penalties for drug trafficking
- Mandatory minimum sentencing
- Drug courts for nonviolent drug offenders

**The criminal justice system** in the United States plays a major role in our society's response to drug abuse. Essentially, it attempts to reduce the availability of illicit drugs to the general public and penalize the producers, distributors, and users of illicit drugs. This chapter will examine the principal strategies devised to accomplish these goals, including programs aimed at crop eradication, the control of precursor chemicals, efforts at interdiction of illicit drugs at our borders, the use of undercover operations, the use of asset forfeiture, punishments for those possessing or trafficking in illicit drugs, and the establishment of drug courts.

Law enforcement has always been, and remains, the predominant method of waging the “war on drugs” at the federal, state, and local levels. Of the billions of dollars spent, most of the money is spent on drug-law enforcement (Figure 6.1). A key goal of drug-law enforcement is to control the supply of illicit drugs by interrupting the source, transit, distribution, and eventual purchase of drugs. Therefore, it is useful to examine drug-law enforcement in terms of four major activities: (1) source control, (2) interdiction, (3) street-level enforcement, and (4) the correctional system. Chapter 16 will concern itself with efforts toward reducing the demand for illicit as well as licit drugs through prevention and treatment.

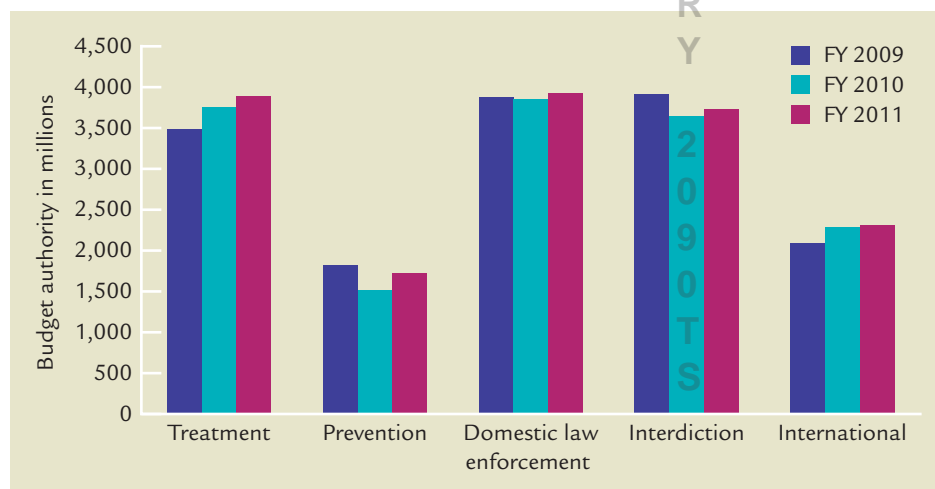
**source control:** Law enforcement actions that reduce or eliminate the cultivation and production of illicit drugs in foreign countries.

## Source Control

**Source control** requires activities aimed at limiting the cultivation and production of illicit drugs in foreign countries. These activities include crop eradication, control of precursor chemicals, and the U.S. certification process.

The source-control problem in the 1970s with respect to heroin was considerably easier than it is today. At that time, 80 percent of the heroin used in the United States originated from opium poppies grown in Turkey. The opium was shipped to southern French port cities, where it was converted to heroin and then later smuggled into the United States—the “French connection.” In an attempt to reduce the amount of heroin coming into the United States, the United States and France offered Turkey \$35 million to ban opium production and to help Turkish farmers develop new cash crops. Initially, this action did lead to a shortage of heroin on American streets in 1973. The success of the Turkish initiative led to the official adoption of a more comprehensive crop-eradication strategy as a means for reducing illicit drug supplies in the U.S.<sup>1</sup>

The nature of the illicit drug trade today, however, is quite different from what it was in the 1970s. In recent years, we have been challenged by the geographical diversity in the sources of cultivation and production of illicit drugs and the fact that the sources themselves can change so rapidly. The Drug Enforcement Administration (DEA) Heroin Signature Program, for example, is designed to provide indications of the geographic origins of heroin at the wholesale level. Heroin samples are drawn from port-of-entry seizures as well as seizures and purchases



**FIGURE 6.1**

U.S. federal drug control budget (in millions) for fiscal years 2008, 2009, and 2010

Source: Office of National Drug Control Policy (2009, May). National drug control strategy FY 2010 budget summary. Washington, DC: Office of National Drug Control Policy, p. 1.

submitted to DEA laboratories. Purity and, if possible, geographic sources of the heroin are evaluated. Exact purity levels are relatively easy to ascertain, but an exact determination of where the drugs have originated is much more difficult.

## Crop Eradication

**Crop eradication** programs have focused on the reduction of crop yields with respect to opium poppies, coca plants, and marijuana plants in their countries of origin. Eradication programs are driven by the premise that decreasing marijuana cultivation and opium and coca cultivation for the production of heroin and cocaine respectively makes these drugs more expensive, and potentially reduces the level of drug use (see Drugs . . . in Focus, Chapter 5). Crops are eradicated both manually and with herbicides. Herbicides (chemicals that kill plants) are either sprayed or dropped from the air as pellets that melt into the soil when it rains.



Coca plants are destroyed in a crop eradication program in Colombia. These efforts have been financed, in large part, by the U.S. Department of State through the Andean Counter-drug Initiative.

The counter-moves of source nations for illicit drugs illustrate the difficulty of reducing drug supplies by means of crop eradication. For example, from 1998 to 2002, intensive coca eradication programs in Colombia were implemented.<sup>2</sup> By 2006, these programs had succeeded in reducing Colombian coca cultivation in traditional growing areas, but growers simply moved out of these locations to clear the land and establish coca fields in more inaccessible areas, less known for large-scale cultivation. Growers have taken to adopting radical pruning (drastic cutting back the coca bush, often down to the ground, to protect the plants from aerial spraying) and vigorous replanting of sprayed coca. These procedures have promoted rapid regeneration or replacement of sprayed coca fields.<sup>3</sup> Clearly, eradication efforts have produced, at best, only short term, localized benefits.

Whether or not the adverse environmental impact of crop eradication programs outweighs the benefits in illicit drug control has been hotly debated. Proponents of crop eradication claim that coca production can be considered more harmful to the environment than crop eradication. Multiple harvests of coca on steep mountain slopes accelerate soil erosion, and improper use of dangerous chemical fertilizers causes water contamination. In addition, the processing of coca leaves into cocaine paste involves a series of toxic chemicals that causes further environmental pollution. On the other hand, it can be argued that the herbicide chemicals used in crop eradication have produced irreversible contamination of local water supplies, and the relocation of coca fields to previously uncultivated land has produced extensive deforestation that have reduced valuable rain forest resources.<sup>4</sup>

Unfortunately, in many impoverished regions of the world, crop eradication results in a disruption of an already-fragile local economy. The cultivation of marijuana, coca, or opium poppies for many poor families represents their only source of significant income. On occasion, tensions between peasant farmers and governmental agencies have risen to levels of confrontation. In 1996, for example, more than 50,000 peasants from several remote areas in southern Colombia converged on larger towns to protest the fumigation of their fields of coca and poppies. The demonstrators burned vehicles and tried to block local airstrips to disrupt the local economy. Two peasants were killed and several others

**crop eradication:** Programs in which opium poppies, coca plants, and marijuana plants are destroyed in their countries of origin, prior to transport overseas.



were injured. To put a halt to the revolt, the Colombian army resorted to blowing up the few roads leading to the main towns to obstruct the way of the demonstrators.<sup>5</sup>

To avoid a similar revolt, the Peruvian government in 2002 launched a financial plan, backed by the United States, to provide money for peasant farmers who voluntarily got rid of their coca crops. In this instance, no soldiers or police were assigned to take part in the eradication effort. Their absence was intended to avoid conflict between the government and the approximately 400,000 families that subsisted directly or indirectly through coca production. Families received \$150 in Peruvian currency for every hectare (2.47 acres) of destroyed coca. The Peruvian government also attempted to promote alternative crops for the farmers, such as corn, banana trees, and rubber. The peasants who received money, however, found it difficult to stop growing coca because the alternatives were far less lucrative.<sup>6</sup>

It is, therefore, questionable whether crop eradication can be a successful strategy for reducing illicit drug supplies in the world. While worldwide cocaine production declined by approximately eight percent between 2006 and in 2007, primarily as a result of coca eradication programs, empirical studies of both crop eradication and crop substitution programs have found that these programs have had little impact on the production of either cocaine or opium.<sup>7</sup> The available evidence has shown that, on a global level, there rarely has been more than a 10 percent decrease of any one type of illicit crop in any given year. Even when there is a reduction in the cultivation of a particular crop, such as coca or opium poppies, in one part of the world, there is typically an increase in the cultivation in another part of the world. Over the years, crop eradication programs in Peru and Bolivia, for example, have led to an increase in coca production in Colombia, and vice versa. This is often called the “push down, pop up phenomenon” or the “balloon effect.” Nonetheless, the U.S. government continues to endorse aerial spraying of coca and poppies as a strategy for disrupting the production of cocaine and heroin.<sup>8</sup>

**precursor chemicals:** Substances required for the production of illicit drugs. Examples are acetic anhydride and pseudoephedrine for the production of methamphetamine.

**certification:** The process by which the United States has the option of withholding foreign aid to a country if that country is judged to be noncompliant with U.S. counter-drug efforts, by virtue of its participation in major illicit drug production and/or trafficking.

## Monitoring Precursor Chemicals

The monitoring and control of **precursor chemicals** and other substances used in the manufacture of illicit drugs is also a significant method of attacking illicit drug production before the drugs themselves enter the market. With the exception of cannabis (the botanical plant from which marijuana is obtained, see Chapter 10), every illicit drug requires an alteration of the natural product by specific chemicals before it reaches its final consumable form. While these chemicals are produced by legitimate companies, their involvement in illicit drug trade is accomplished by being diverted by illegitimate chemical companies or by criminal organizations.

DEA agents regularly monitor and track large shipments of precursor chemicals entering the United States. In one program called “Operation Purple,” implemented to reduce the illicit manufacture of cocaine in South America, the DEA monitors and tracks shipments of potassium permanganate, the chemical oxidizer of choice for cocaine production.<sup>9</sup> The DEA also monitors shipments of acetic anhydride, the most commonly used chemical agent in heroin processing, and pseudoephedrine, the primary precursor chemical used in the production of methamphetamine. There is also an attempt to assist other countries in their monitoring and control of precursor chemicals, but many nations either lack the capacity to determine whether the import or export of precursor chemicals is related to illicit drug production or else fail to meet goals for precursor-chemical reduction due to internal political pressures. The problem is complicated by the fact that precursor chemicals are often transshipped through third-party countries in an attempt to disguise their purpose or destination.

## Certification

A third method by which the United States attempts to control the production of illicit drugs in foreign countries is through a certification process. Enacted by Congress in 1986, **certification** is a process in which the U.S. government evaluates the cooperation of foreign countries in counter-drug efforts. Each year, the president is required to compile a list of countries that have been determined to be major illicit producing and/or drug transit countries. Countries on this list are then divided into three categories: (1) those that are fully compliant with U.S. counter-drug efforts (“certified”), (2) those not compliant with U.S. efforts (“decertified”), and (3) those that are non-compliant but certified based on vital U.S. national interests. If a country is decertified, U.S. law requires that all

foreign aid be withheld until the president determines whether the country should be certified. In addition, U.S. representatives to multinational banks such as the World Bank and the International Monetary Fund are required to vote against any loans or grants to a decertified country.<sup>10</sup>

## Interdiction

With respect to the attempt of the United States to prevent drugs from being smuggled across our borders by denying drug smugglers the use of air, land, and maritime routes, a strategy known as **interdiction**, the challenges are enormous. Consider the difficulty of monitoring the entirety of an international border with Mexico and Canada stretching nearly 7,000 miles. Each year, according to the U.S. Customs and Border Protection Agency, 60 million people enter the United States on more than 675,000 commercial and private flights, while another six million arrive by sea and 370 million by land. More than 116 million land vehicles cross borders with Canada and Mexico. More than 90,000 merchant and passenger ships dock at U.S. ports, off-loading in excess of nine million shipping containers and 400 million tons of cargo. More than 150,000 pleasure boats and other vessels visit U.S. coastal towns on a regular basis. Any one of these planes, land vehicles, or marine vessels could carry contraband cargo.<sup>11</sup>

An additional challenge comes from the continual ingenuity of the drug smuggler in attempts to circumvent standard interdiction controls. Over the years, law-enforcement agents have witnessed shipments of cocaine fashioned into plastic statues of the Virgin Mary, packed in hollow plaster shells shaped and painted to resemble yams, implanted in a man's thigh, and hidden beneath a shipment of iced fish fillets. A shipment of boa constrictors from Colombia was once confiscated with their intestines stuffed with condoms full of cocaine.<sup>12</sup> In 1994, federal agents at Kennedy Airport in New York noticed an emaciated and ailing sheepdog on a flight from Bogota, Colombia. X-rays and surgery revealed that five pounds of cocaine in ten rubber balloons had been surgically implanted in the dog's abdomen. New York Police Department detectives later arrested a twenty-two-year-old man from New Jersey when he came to claim the animal. The dog survived the surgery to remove the condoms and was taken to the Canine Enforcement Training Center in Virginia, where its handlers named it appropriately enough, "Cokie."<sup>13</sup>

With tightened security after September 11, 2001, it has become difficult for drug traffickers to use air cargo as a method of smuggling drugs into the United States. In an



A police officer collects heroin capsules after displaying them during a news conference in Panama in 2004. A police operation uncovered some fifteen kilograms of heroin, one of the largest confiscations in Panama, from a group of five Colombians.

extreme tactical response, traffickers have resorted to using women from Colombia and other Andean nations as well as other regions of the Caribbean to act as drug "mules." The female mules sometimes swallow as many as fifty condoms filled with cocaine or heroin and then board a flight on a commercial airline. They are often given a topical anesthetic to deaden the throat before ingesting the condoms and then are told to use laxatives to help them "retrieve" the condoms after reaching their destination. Unfortunately, these condoms sometimes break and leak into the stomach, causing a drug overdose and death. Most of these "mules" are desperate for money and enter the business willingly. There are, however, an increasing number of women who are forced into the drug trade. The traffickers have been known to kidnap a woman's

**interdiction:** Efforts to prevent illicit drugs from being transported across the U.S. border.

**TABLE 6.1****Drug Seizures by the Drug Enforcement Administration, 2006–2009**

DRUG	2006	2007	2008	2009
Cocaine (in kilograms)	69,826	96,713	49,823	49,339
Heroin (in kilograms)	805	625	599	642
Marijuana (in kilograms)	322,438	356,472	660,969	666,120
Methamphetamine (in kilograms)	1,711	1,086	1,540	1,703
Hallucinogens (in dosage units)	4,606,277	5,636,305	9,199,693	2,954,251

*Note:* One kilogram equals 2.2 pounds. Drug amounts refer to amounts seized in DEA operations in a given year. They do not necessarily reflect the quantities on a year-to-year basis that are available on the illicit drug market.

*Source:* Drug Enforcement Administration (2010). The System to Retrieve Information on Drug Evidence (STRIDE) Program. Washington, DC: Drug Enforcement Administration, U.S. Department of Justice.

children or other family members and threaten to kill the hostages unless the woman successfully smuggles drugs into the United States.<sup>14</sup> Table 6.1 lists recent DEA drug seizures for cocaine, heroin, marijuana, methamphetamine, and hallucinogens.

Changes in airport security also have caused traffickers to scale back their smuggling of drugs through airports and redirect their drug shipments over the nation's highways. Most of this smuggling occurs at the U.S.–Mexican border, where drug traffickers use various types of vehicles to conceal their contraband, ranging from cars, commercial trucks, and tractor trailers to minivans. These vehicles are fitted with hidden compartments, known as “traps,” where the drugs are concealed. In some cases, complex sequences of dashboard buttons and switches are required to

provide access to concealed compartments in and/or under seats, in both the center and overhead consoles, or behind air-conditioning vents. In 2002, U.S. Customs agents discovered at the southwest border in Arizona more than fourteen pounds of marijuana in a hidden compartment located in the dash of a minivan. The packages of marijuana were wrapped in cotton and placed in a sealed rectangular mold made of a honey and wax mixture. The marijuana escaped detection by drug-detecting dogs.<sup>15</sup>

## Federal Agencies Involved in Interdiction

The primary federal agencies involved in drug interdiction include the DEA, the U.S. Customs and Border Protection Agency, the U.S. Coast Guard, and the U.S. military. Of these agencies, only the DEA has drug-law enforcement as its only responsibility. Employing more than 4,000 officers with the authority to make arrests and carry firearms, the DEA investigates major drug-law violators, enforces regulations governing the manufacture and dispensing of controlled substances, and performs various other functions to prevent and control drug trafficking. DEA agents also work overseas, where they engage in undercover operations in foreign countries, work in cooperation with foreign governments to apprehend major drug traffickers, help to train foreign law enforcement officials, and collect intelligence about general trends in drug trafficking, drug production



An X-ray view of a truck stopped at the Mexico-U.S. border with immigrants concealed in the cargo area.



(illicit farming operations and laboratories), and criminal organizations operating in the illicit drug trade.

The U.S. Customs and Border Protection Agency, operating under the Department of Homeland Security, is responsible for curtailing the flow of illicit drugs across America's borders. More than 17,000 border patrol officers screen incoming travelers, conveyances, and cargo at more than 300 ports of entry across the United States, often working with drug-detection dogs. The Customs and Border Protection Agency also employs a number of special agents who are responsible for conducting investigations into drug smuggling and money laundering schemes. The agency maintains several specialized branches as well. The Marine Branch, for example, is responsible for interdicting drugs in near-shore waters by stopping and searching incoming vessels that behave suspiciously, especially small boats with large engines commonly referred to as "go-fast boats." The Air Branch is responsible for interdicting suspicious aircraft, such as small low-flying aircraft operating at night. Once a suspicious aircraft has been detected, it is normally tracked and forced down by high-speed chase planes and then searched. Customs inspectors are not hampered by constitutional protections that typically limit the power of other law enforcement agencies; they can search a person, vehicle, or container at ports of entry or near to a U.S. shoreline without probable cause.

The U.S. Coast Guard is the lead federal agency for maritime drug interdiction and shares responsibility for air interdiction with the U.S. Customs and Border Protection Agency. The Coast Guard is a key player in combating the flow of illegal drugs to the United States by denying smugglers the use of maritime routes in the "transit zone," a six-million-square-mile area including the Caribbean, the Gulf of Mexico, and the Eastern Pacific. Coast Guard ships can stop and board any maritime vessel operating within a twelve-mile radius of U.S. shoreline. Like Customs inspectors, Coast Guard personnel do not have to establish probable cause before boarding and searching a vessel at sea.<sup>16</sup>

In recent years, Coast Guard agents have had to contend with drug traffickers using semi-immersible submarine-like boats as the means for transport. These semi-subs are either self-propelled vessels or towed by other vessels, and they are capable of carrying up to 12 metric tons of cargo. As a response to the Coast Guard's tactic of using snipers in helicopters to shoot out engines on drug traffickers' speedboats (see Chapter 5), these new vessels are especially designed with engines beneath water level. In 2008, a major Coast Guard interdiction operation succeeded in the capture of one of these semi-subs off the coast of Guatemala, and seized approximately seven metric tons of Colombian cocaine.<sup>17</sup>



Members of the U.S. Coast Guard law enforcement team gather in Miami around more than 5,000 pounds of cocaine seized from a Honduran fishing boat off the coast of Colombia. The drugs were discovered hidden in compartments within the fuel tank, and eight Colombians were arrested. The 110-foot boat was later towed to Miami and confiscated.



A Colombian soldier stands next to a number of 33-foot-long semi-submersible vessels captured off the coast of Colombia in 2007. Because they leave very small wakes, the crude subs are difficult to detect visually from the air or by radar.

# Drugs... in Focus

## A Forty-Year Chronology of Drug Interdiction

Since the late 1960s, when the “war on drugs” was officially declared, a number of significant events have occurred in the area of illicit drug seizures and interceptions in the United States. Here are some of the highlights:

- 1969: In September, Operational Intercept forces the essential closure of the U.S.–Mexico border. Customs Department personnel examine every vehicle crossing the border from Mexico in a three-minute inspection. The two-week operation brings economic havoc on both sides of the border. As a result, Mexico agrees to fight the marijuana trade more aggressively, but there is little long-term impact on the smuggling of marijuana into the United States.
- 1972: The French connection is severed. A joint U.S.–French initiative carries out successful busts of Marseilles-based heroin organization, controlled by Corsican and U.S. criminal groups.
- 1979: Carlos Lehder, a key member of the Medellín Cartel, initiates a new method of cocaine smuggling, when he purchases Norman’s Cay in the Bahamas as a refueling stopover for small planes transporting cocaine from Colombia to the United States. A Bahamian crackdown on Lehder’s operation in 1982 causes Lehder to flee the island, though operations continue for another year.
- 1984: DEA and Colombian police discover Transquilandia, a cocaine-processing laboratory controlled by the Medellín Cartel, located deep in the Colombian jungle. In a coordinated bust operation, fourteen laboratory complexes are destroyed, as well as seven airplanes and 13.8 metric tons of cocaine. Conservative estimates of the assets seized or destroyed are set at \$1.2 billion.
- 1984: DEA and Mexican officials raid a large marijuana cultivation and processing complex in the Chihuahua desert, in what is termed the “Bust of the Century.” Seven thousand workers are arrested, and 5,000 to 10,000 tons of high-grade marijuana worth \$2.5 billion are found and destroyed.
- 1998: Operation Casablanca leads to the indictment of three Mexican and four Venezuelan banks, as well as the arrest of 167 individuals in the largest money-laundering probe in U.S. history.
- 2002: Two commandants of the Autodefensas Unidas de Colombia (AUC) are arrested in an elaborate cocaine-for-arms deal. Paramilitary weapons worth \$25 million were to be purchased by the group. Colombian officials claim that the AUC is responsible for 804 assassinations, 203 kidnappings, and 75 massacres with 507 victims, as well as their involvement with cocaine trafficking and distribution.
- 2005: Operation Cali Exchange results in twenty-four indictments, eighteen arrests, and the seizure of more than \$7 million, more than 2,000 kilograms of cocaine, and more than 500 pounds of marijuana in a raid on a major drug-trafficking and money-laundering organization operating in the United States, as well as Panama, Colombia, the Dominican Republic, Brazil, and the Bahamas.
- 2007: DEA and Coast Guard seize approximately 19 metric tons of cocaine being smuggled aboard a Panamanian motorboat. The lost revenue to drug traffickers as a result of this raid is estimated to be approximately \$300 million.
- 2008: Major drug-trafficker Eduardo Arellano-Felix is apprehended in Tijuana, Mexico.
- 2009: Project Coronado results in the arrest of 303 individuals in 19 states, all involved in the La Familia cocaine and methamphetamine cartel with headquarters in the state of Michoacan, Mexico.

*Sources:* Frontline—Public Broadcasting Service (2000). Thirty years of America’s drug war: A chronology. In Huggins, Laura E. (Ed.), *Drug war deadlock: The policy battle continues*. Stanford, CA: Hoover Institute Press, Stanford University. Information courtesy of the Drug Enforcement Administration, U.S. Department of Justice, Washington, DC.

The U.S. military supports the drug interdiction efforts of many federal and state drug enforcement agencies by providing air and ground observation and reconnaissance, environmental assessments, intelligence analysts and linguists, and transportation and

engineering support. Military training teams also teach civilian law enforcement officers such skills as combat lifesaving, surveillance techniques, and advanced and tactical military operations that can be used in counter-drug operations. Military personnel can support counter-drug



efforts, but they cannot search or arrest drug traffickers. Law enforcement agencies and the military both benefit from this relationship. Police are able to use military resources, and service members are able to practice their military skills in real-world situations.

The U.S. military is also active in drug interdiction by working with foreign militaries and law enforcement agencies in many drug-producing countries. It provides intelligence, strategic planning, and training for anti-drug operations in several Latin American countries, such as Colombia, Mexico, Peru, and Bolivia. A key element of the military's anti-drug program in Latin America is its Tactical Analysis Teams (TATs), made up of a small number of U.S. Special Forces and military intelligence personnel. These teams gather intelligence and plan operations that are carried out by host nations and DEA agents.

Critics have claimed that there are a number of problems inherent in the use of TATs. First, TATs are aiding and training troops of foreign militaries that have documented records of human rights violations without insisting on fundamental reforms in those countries. A second problem with the use of TATs is that, in some cases, U.S. military personnel actually may be training future drug traffickers. In several Latin American countries, such as Bolivia, most of the American-trained army personnel are required to serve only one year in the military. Upon release from the service, some of these soldiers work for the drug traffickers, who pay substantial salaries, or become drug traffickers themselves, after having learned skills useful in avoiding drug interdiction by legitimate authorities.<sup>18</sup>

Technically speaking, the Posse Comitatus Act of 1878 forbids the military to be used as a law enforcement agency within the borders of the United States. The law was designed originally to bar federal troops from policing southern states after the Civil War and to protect Americans against abuses by their own military by dictating that federal troops could not enter private land or dwellings and could not detain or search civilians. In 1988, Congress expanded the National Guard's role in drug interdiction and allowed the guard to be actively involved in drug-law enforcement. In 2010, President Obama ordered up to 1,200 additional National Guard troops to be stationed in the Southwest, joining a few hundred Guard members previously assigned to help local law enforcement officials in reducing drug smuggling along the U.S.-Mexico border.

How does the National Guard circumvent the Posse Comitatus Act? The key to National Guard involvement in drug operations is the word "federal" in the language of the Posse Comitatus Act. Since 1912,

the National Guard has had a two-tier mission to serve both the state and federal governments. Guard units involved in anti-drug operations typically work for the state government under the supervision of a state governor. Therefore, while the soldiers' salary and other benefits are paid by the federal government, it is argued that they are not bound by the Posse Comitatus Act. Critics claim, however, that the National Guard is a federal agency and that when the guard is involved in drug-law enforcement operations, it is violating federal law.<sup>19</sup>

## Profiling and Drug-Law Enforcement

Over the years, drug-law enforcement agents have often developed "drug courier profiles" to help them identify potential drug smugglers. In *United States v. Sokolow* (1989), the U.S. Supreme Court ruled that drug courier profiles at airports could be used as a legitimate law-enforcement tool, the Fourth Amendment to the U.S. Constitution notwithstanding. In this case, Andrew Sokolow, a young African American male dressed in a black jumpsuit with gold jewelry, purchased two airline tickets with \$1,200 in cash. Sokolow flew from Honolulu to Miami, planning to return to Hawaii forty-eight hours later. He also was traveling under a false name, did not check any luggage, and appeared very nervous. Drug agents hit him at the Honolulu airport and used a drug-sniffing dog, which led them to 1,063 grams of cocaine in his carry-on luggage. Chief Justice William H. Rehnquist stated, "While a trip from Honolulu to Miami, standing alone, is not a cause for any sort of suspicion, here there was more: Surely few residents of Honolulu travel from that city for twenty hours to spend forty-eight hours in Miami during the month of July." In a seven-to-two decision, the Court ruled that the drug courier profile could provide a "reasonable basis" for officials to suspect that a person is transporting drugs (Drugs ... in Focus).

The most significant criticism of drug-courier profiling is that some law enforcement officers have created their own profiles based solely on race, ethnicity, or national origin rather than on the behavior of an individual, a practice that has become known as **racial profiling**. In the late 1990s, racial profiling became a major topic of controversy. National and local media reports often proclaimed that racial profiling was a significant social

**racial profiling:** A practice of arresting or detaining an individual for possible drug violations, based on race, ethnicity, or national origin rather than on the individual's behavior.

# Drugs... in Focus

## Drug Smuggler Profiles

### Profile for Commercial Airline Smuggling

1. Arriving from an identified source country
2. Traveling alone
3. Traveling by an unusual itinerary, such as a rapid turnaround time
4. Carrying little luggage or a large-quantity suitcase
5. Purchasing airline tickets with cash
6. Displaying unusual nervousness
7. Passenger tries to avoid questioning
8. Passenger makes contradictory statements during questioning

### Profile for Automobile Smuggling

1. Unusually wide tires
2. Rear of vehicle visibly weighted down
3. Welding marks along edges of vehicle
4. Accumulation of trash inside vehicle that suggests long stretches without stopping
5. Lack of vehicle registration
6. Spare tire in back seat
7. Driver displaying unusual nervousness
8. Signs of drug use
9. Conflicting or inconsistent stories concerning destination among the driver and passengers

### Profile for Maritime Smuggling

1. No fishing gear or nets visible on fishing vessel
2. Crew does not wave back to passing law-enforcement vessel or aircraft
3. Erratic course change when sighted by law-enforcement vessel or aircraft
4. Not sailing in usual shipping lanes or fishing grounds
5. Hatches padlocked and extra fuel drums on deck
6. Vessel does not use running lights at night

7. Vessel does not respond to radio contact or claims radio trouble
8. Vessel does not fly nationality flag

### Profile for Small Aircraft Smuggling

1. Aircraft landing or flying after dark
2. Propellers, undersurface, and lower sides of aircraft pitted or scratched with grass stains or dirt from landing on grass fields or dirt roads
3. Aircraft parked far from airport offices or in a remote part of the airfield
4. Van, truck, or motor home camper parked near aircraft
5. Factory-installed long-range fuel tanks
6. Aircraft windows covered by curtains, tape, or other material
7. Pilots or passengers reluctant to leave aircraft unattended when refueling or ground servicing
8. Pilots or passengers showing large amounts of cash when paying for fuel or parts
9. Pilots or passengers reluctant to discuss points of origin or point of destination
10. Removal of passenger seats inside the aircraft

### Profile for Postal Package Smuggling

1. Heavily taped packages
2. Packages that smell of masking agents such as coffee or perfume
3. False return addresses or zip codes
4. Packages originating from a source country
5. Packages sent from person to person
6. Packages with handwritten labels

Sources: Langan, Mark T. (1996). Profiling postal packages, *FBI Law Enforcement Bulletin*, 65 (2.3), pp. 17–21. Macdonald, John M., and Kennedy, Jerry (1983). *Criminal investigation of drug offenses: The narc's manual*. Springfield, IL: Charles C. Thomas. *United States v. Sokolow*, 490 U.S. 1 (1989).

problem, and national surveys confirmed that most Americans agreed. In a 1999 Gallup Poll, more than half the Americans polled believed that police actively engaged in the practice of racial profiling, and 81 percent said that they disapproved of the practice. When responses

to survey questions were broken down by race, 56 percent of whites and 77 percent of African Americans believed that racial profiling was a pervasive problem.<sup>20</sup>

One of the most common complaints about racial profiling was the claim that police were stopping vehicles

simply because the race of the driver did not appear to “match” the type of automobile he or she was driving. In a widely publicized case, Dr. Elmo Randolph, a forty-two-year-old African American dentist, was stopped more than fifty times over an eight-year span while driving a BMW car to his office near Newark. New Jersey state troopers, believing that Dr. Randolph was “driving the wrong car,” would pull Dr. Randolph over, check his license, and ask him if he had any drugs or weapons in his car. Randolph claims that he did not drive at excessive speeds and that he had never been issued a ticket.<sup>21</sup>

The experience of Dr. Randolph and other minority drivers in New Jersey led the New Jersey State Police in 1999 to conduct a study on the race and ethnicity of persons stopped by state troopers. They found that New Jersey state troopers had indeed engaged in racial profiling along the New Jersey Turnpike. Although individuals of color comprised 13.5 percent of the New Jersey Turnpike population, they represented 41 percent of those stopped on the turnpike and 77 percent of those searched. Studies in other U.S. states also have found that police regularly engage in racial profiling.<sup>22</sup>

Police officers who defend racial profiling often believe that African Americans, Latinos, Asians, and other minorities are more likely to carry drugs than their white counterparts. Several studies, however, suggest that African Americans and Latinos are no more likely than whites to be in the possession of illicit drugs. One study of motorists on an interstate highway in Maryland found that 28 percent of African American drivers and passengers who were searched were found with contraband, compared with 29 percent of white drivers.<sup>23</sup> In New York in 1988 and 1989, 13 percent of whites were arrested for possessing illicit drugs compared with 11 percent of African Americans and 11 percent of Latinos.<sup>24</sup> A study of drug interdiction at major U.S. airports found that African Americans (6 percent) and Latinos (3 percent) were *less* likely to possess illicit contraband than whites (7 percent). In 2003, under a Justice Department directive, racial and ethnic profiling was officially banned at all federal agencies with law-enforcement powers. The only exception applies to investigations involving terrorism and national security.<sup>25</sup>

## Street-Level Drug-Law Enforcement

As the third aspect of drug-law enforcement, street-level drug-law enforcement is the responsibility of federal agencies, state agencies, or local sheriffs’ and police

departments. Increasingly, these different agencies are joining forces and working together to form multijurisdictional drug task forces. Most of these task forces are coalitions of five or more local and state agencies that work closely with federal law enforcement agencies. Multijurisdictional task forces allow agencies at different levels of government to share funds, personnel, and intelligence and allow drug agents to track drug traffickers across many different jurisdictions. Nationwide, an estimated 21 percent of local police departments and 40 percent of sheriffs’ offices have had one or more officers assigned full time to a drug task force.<sup>26</sup> Four major drug-law enforcement operations currently used by police departments to apprehend drug offenders are (1) the reverse sting, (2) the controlled buy, (3) the undercover buy, and (4) the “knock and talk.”

The **reverse sting** is a drug-law enforcement operation in which undercover agents pose as drug dealers and sell a controlled substance or imitation version of a controlled substance to buyers. Community policing programs have made reverse stings popular because such operations can be used as a method of “cleaning up” a neighborhood. The reverse sting operation also makes money for law enforcement because asset forfeiture laws allow agencies to keep at least part of the proceeds made in these operations. The reverse sting has been criticized on the grounds that such operations attack only the demand side of the drug problem. Drug abusers are arrested, but the drug dealers or drug traffickers are not.

Undercover operations frequently involve the use of an informant. In the **controlled buy** operation, an undercover informant buys the drug under the supervision of the police. The informant may be a paid informant or a person who has been convinced by agents to “roll over” on other traffickers because they themselves have been charged with the possession or trafficking of an illicit drug. In the latter case, criminal charges against the informant may be either reduced or dropped for their participation in the operation. After agents have gained confidence in the informant, the informant is allowed to set up a controlled buy. Before the informant enters the dwelling in which the buy is to take place, he or she is usually searched to ensure that

**reverse sting:** A law-enforcement operation in which an undercover agent posing as a drug dealer sells a controlled substance, or an imitation of it, to a buyer.

**controlled buy:** A law-enforcement operation in which an undercover informant buys an illicit drug under the supervision of the police.



there are no drugs on his or her person before conducting the buy. After the buy has been made, the informant is again searched and asked to turn over the drugs bought in the transaction. To protect the identity of the informant, arrests are usually not made at the time of the buy. Warrants are obtained and later executed within ten days.

There are two types of **undercover buy** operations: (1) the buy-bust and (2) the buy-walk. During a buy-bust operation, an undercover agent makes a buy, and immediately thereafter, the seller is arrested for the drug sale. During a buy-walk, an undercover agent sets up a drug deal for a specified time and location. A cover team monitors the transaction via surveillance equipment, which is either hidden on the agent or in the room. After a “bust signal” is given by the undercover agent, a cover team rapidly moves in to make the arrest. Generally, the undercover agent is also “arrested” to protect his or her identity.

In a buy-walk operation, an undercover agent buys drugs but does not arrest the dealer at the time of the deal. The drug deal is used to obtain a warrant for the dealer that is served at a later time. The advantage of this operation is that it protects the identity of the undercover agent while at the same time ensuring his or her immediate safety during the time of the operation. Buy-walk operations are often used when a drug

**undercover buy:** A law-enforcement operation in which an undercover law-enforcement agent buys an illicit drug in order to arrest the drug seller. The two types are the buy-bust and the buy-walk.

**knock and talk:** A law-enforcement operation in which agents ask for permission to search a residence for illicit drugs after asking the suspect whether anyone in the residence has been engaged in drug production or dealing.

**consent search:** A procedure in which law-enforcement agents ask and receive permission from a suspect to inspect a residence or vehicle for illicit drugs.

**search warrant:** A court-ordered document providing law-enforcement agents the right to search a residence or vehicle for illicit drugs.

**asset forfeiture:** A process used in drug-law enforcement in which cash, automobiles, homes, and other property are seized if these items have been acquired or used as a result of criminal activity.

**RICO statute:** The Racketeer Influenced and Corrupt Organization (RICO) statute, pertaining to the prevention of criminal infiltration of legitimate businesses. It was enacted as a section of the Organized Crime Control Act of 1970.

deal takes place at the residence of a drug dealer and officer safety is a concern.

The **knock and talk** is an operation that is used when officials receive information that an individual is dealing drugs but do not have probable cause to seek a search warrant. In this case, agents arrive at a suspect’s residence, knock on the door, identify themselves as police officers, and ask permission to enter the residence. Once inside, agents ask the suspect if any one in the residence is producing or dealing drugs. After the suspect responds to the allegations, agents ask for permission to search the residence for illicit drugs.

The element of surprise obviously is an important factor in the success of the knock and talk. If there has been no prior warning, suspects do not expect law-enforcement officers to knock on their door and confront them with an allegation. To “confuse” suspects, agents often make misleading allegations. To find evidence against a marijuana dealer, agents may state that they believe the suspect is producing methamphetamine at his residence. Knowing that such charges are ridiculous, even though they are dealing in marijuana, suspects usually allow a **consent search**. Agents state that approximately 75 to 85 percent of drug dealers waive their constitutional right to privacy and consent to a search. When later asked why they consent to such a search, dealers often state, “I thought I would have been in worse trouble if I didn’t let you search” or “I didn’t know I had the right to refuse.” Once evidence of illicit drug trafficking is found, agents typically make an arrest or return with a **search warrant**.<sup>27</sup>

## Asset Forfeiture and the RICO Statute

**Asset forfeiture** refers to the seizure by the government of cash, cars, homes, and other property that the government claims are the result of criminal activity. Authorization for this strategy in law enforcement was created as part of the Organized Crime Control Act of 1970. A section of this legislation, known as the **Racketeer Influenced and Corrupt Organization (RICO) statute** (or simply, RICO), pertained to the prevention of criminal infiltration of legitimate businesses. It was a response to the practice of funneling (“laundering”) profits from criminal activity, whether drug-related or not, into financial dealings of an unrelated commercial enterprise. This had been for many years a popular strategy of criminal organizations to circumvent detection by law enforcement (Chapter 5).

## Quick Concept Check 6.1

### Understanding Drug-Law Enforcement Operations

Check your understanding of drug-law enforcement operations by matching the descriptions on the left with the types of operations on the right.

- |   |                                      |
|---|--------------------------------------|
| 1. An undercover informant makes a drug buy under the supervision of the police.  | a. the knock and talk                |
| 2. Undercover agents pose as drug dealers and sell a controlled substance or imitation controlled substance to buyers.                            | b. the undercover buy                |
| 3. A police officer, posing as a drug abuser, buys illicit drugs from a suspected drug dealer. The dealer is later arrested for drug trafficking. | c. the controlled buy                |
| 4. Agents arrive at a suspect's residence, identify themselves as police officers, and ask permission to enter the residence.                     | d. the reverse sting                 |
| 5. Colombian drug control officials spray herbicides on fields of coca.   | e. interdiction and asset forfeiture |
| 6. Drug smugglers are apprehended outside Miami and their "go-fast" boat is confiscated by authorities.   | f. crop eradication                  |

Answers: 1. c 2. d 3. b 4. a 5. f 6. e

The principle of asset forfeiture, known as the **relation-back doctrine**, is that "because the government's right to illicit proceeds relates back to the time they are generated, anything acquired through the expenditure of those proceeds also belongs to the government."<sup>28</sup> In 1978, asset forfeiture was authorized to be used in the federal prosecution of controlled-substance trafficking cases. Since then, many states have passed legislation authorizing their own asset forfeiture procedures when dealing with the violation of state drug laws.

TABLE 6.2

DEA asset seizures in 2009

TYPE OF ASSET	NUMBER OF SEIZURES	VALUE
Cash	10,027	\$768,310,882
Weapons	1,169	949,381
Real property	603	647,348,701
Vehicles	6,565	135,839,293
Vessels	141	9,883,134
Aircraft	33	20,111,143
Other	141	229,456,370
Total	18,679	1,811,898,904

Note: Total assets seized in 2005 and 2006 have values of \$496,000,000 and \$507,000,000, respectively.

Source: Information courtesy of the Drug Enforcement Administration, U.S. Department of Justice.

Forfeiture is particularly useful in drug-law enforcement because it reduces the financial incentive to reap the often enormous profits that are involved in drug trafficking and disrupts a drug-trafficking organization by seizing any vehicles, boats, planes, or property used to transport or produce illicit drugs. As shown in Table 6.2, the DEA made more than 18,000 domestic seizures of nondrug property, valued at approximately \$1.8 million in 2009 as a result of drug investigations. Currently, the U.S. Marshalls Service is assigned to the management and care of more than \$1.7 billion worth of property seized through the federal asset forfeiture program.<sup>29</sup>

There are two types of forfeitures: criminal (*in personam*) forfeitures and civil (*in rem*) forfeitures. The distinction between criminal and civil forfeitures is based upon whether the penalty pertains to a person or a thing. Criminal forfeitures are primarily against a specific person and result after a conviction for a crime to which the forfeited property is related. This can occur upon showing during the course of sentencing or plea-bargaining that the property is contraband (illegally obtained through the profit of a crime). Such criminal forfeitures are subject to all the constitutional and statutory procedural safeguards available under criminal law, and the forfeiture case and the criminal case are both tried together. Forfeiture must be included in the

**relation-back doctrine:** The principle behind the authority for asset forfeiture, in which the government asserts that it has the right to illicit proceeds relating back to the time they were generated.

indictment of the defendant, which means that the grand jury must find a basis for the forfeiture as well as punishment for the criminal offense itself.

Civil forfeitures, on the other hand, are *in rem* actions based upon the unlawful use of property, irrespective of its owner's culpability. Traditionally, civil forfeiture has operated on the premise that the property itself is the guilty party, and the fact that the forfeiture of the property affects an individual's property rights is not considered. With civil forfeiture, the offender does not need to be convicted or even charged with a crime because it is contended that the property "itself" is guilty. The property owner's guilt or innocence is therefore irrelevant, and civil forfeiture proceedings can be pursued independently or in lieu of a criminal trial.

Forfeitures have existed for thousands of years and are traceable to biblical and pre-Judeo-Christian times. Early English law recognized a kind of forfeiture known as "deodand," which required forfeiture of the instrument of a person's death. The principle was based on the legal fiction that the instrument causing death was deemed "guilty property" capable of doing further harm. For example, if a domesticated animal killed a person, it would be forfeited, usually to the King, whether or not its owner was responsible. The original purpose for creating this legal fiction was to satisfy the superstition that a dead person would not lie in tranquility unless the "evil property" was confiscated and viewed by the deceased's family as the object of their retribution. The King often used forfeiture to enhance royal revenues, and this corrupt practice led to the statutory abolishment of deodand in England in 1846.<sup>30</sup>

The Confiscation Act of 1862, passed during the Civil War, authorized the use of *in rem* civil procedures against southern rebels and their sympathizers who possessed property in the North. The law stated that the properties seized were to be used for supporting the Union cause in waging its war. The federal government at the time was responding to a Confederate law that confiscated the southern properties belonging to supporters of the Union. It was not until the late twentieth century, however, that civil forfeiture was "rediscovered" to address a pressing social concern: the war on drugs. The justification for extending forfeiture into the realm of illicit drug control was one of deterrence. Legislators believed that imprisonment of drug traffickers often was treated by criminal organizations as a mere cost of business, and therefore, forfeiture could be used to attempt to reduce their profits, in effect striking where it would really hurt.

The 1970 Comprehensive Drug Abuse Prevention and Control Act provided, in part, for the forfeiture of property used in connection with controlled substances.

In 1978, the law was expanded to include all profits from drug trafficking and all assets purchased with drug profits as items subject to forfeiture. The scope of the statute was further amended in 1984 to include all property that was used, or intended to be used, in a drug offense, and every drug offense, from simple possession to mass distribution, could trigger forfeiture. In recent years, civil asset forfeiture has become the weapon of choice in combating illicit drug trafficking and distribution in America. In the 1990s, a series of U.S. Supreme Court decisions established guidelines for its implementation. Law-enforcement officers argue that civil forfeiture allows them to combat drug crime by attacking the economic viability of drug-trafficking organizations while at the same time raising money for future law enforcement operations. Critics argue that forfeiture laws distort law-enforcement priorities. In many states, local, state, and federal agencies have pooled personnel and resources to form multiagency drug task forces. Many of these task forces finance themselves, at least in part, through asset forfeiture. By allowing such agencies to rely on asset forfeiture as a source of revenue, critics claim, the law enforcement priorities are shifted from efforts toward crime control to "funding raids" (see Portrait).

While it is claimed that forfeiture promotes the accomplishment of law-enforcement goals, it turns out that 80 percent of seizures are unaccompanied by any criminal prosecution.<sup>31</sup> This may stem from the fact that, for many law enforcement agencies, civil forfeiture creates a temptation to depart from legitimate law-enforcement goals in order to maximize funding. Some police departments now prefer to arrest drug buyers rather than drug sellers by employing a "reverse sting," the chief attraction being the confiscation of a buyer's cash rather than a seller's drugs.

Supporters of asset forfeiture claim that the lack of criminal prosecutions in such a large number of forfeiture cases is attributed to the need for police and prosecuting attorneys to offer a substantial bargaining chip in plea-bargaining negotiations. Defendants may be given the choice of not fighting the civil forfeiture procedure in exchange for avoiding criminal prosecution. This type of arrangement would benefit both the prosecutor and the prosecuted. The government would be able to "punish" defendants in legally weak cases that involve inadmissible or insufficient evidence, and the defendant would escape the monetary and social costs of a criminal conviction. Advocates of forfeiture also argue that forfeiture is an effective tool because it deters criminal activity, saves taxpayers' money by allowing law enforcement to self-fund many of their operations, and increases police officer morale.<sup>32</sup>



On October 2, 1992, a task force composed of Los Angeles County sheriff's deputies, DEA agents, and U.S. Park Service officers executed a search warrant on California millionaire Donald Scott's 250-acre estate. The search warrant was based on information from an informant that marijuana was being grown on Scott's land.

The task force arrived at Scott's house around 9:00 a.m. and broke down the door. Scott's wife claimed that the deputies pushed her from the kitchen into the living room, and then she screamed, "Don't shoot me. Don't kill me." The noise awakened Donald Scott from his sleep, and he came down the stairs holding a .38 caliber snub-nosed revolver over his head. When he pointed it in the direction of the deputies, they shot and killed him. When Scott's wife ran to the body, drug agents "hustled her out of the house." Recorded phone conversations also show that while Scott lay dead or dying in a pool of blood, police used his phone to make calls and answered a call from one of Scott's neighbors, telling the neighbor that Scott was "busy." A search of Scott's ranch did not find

one trace of marijuana or any other illicit drug.

The Ventura County District Attorney's Office concluded that the Sheriff's Department was motivated, at least in part, by a desire to seize and forfeit Scott's land for the government. Deputies and DEA agents knew that Scott's estate was an extremely valuable piece of real estate, and most of the proceeds from the sale of the property would go to the Sheriff's Department. In fact, sheriff's deputies had several documents on their desks that estimated the amount of money the department could get for the sale of Scott's land.

The investigation also showed that the search warrant that was used in the drug raid was not supported by probable cause. The District Attorney's office recommended that, in the future, when preparing search warrant affidavits, law-enforcement officers should not compromise their objectivity based upon forfeiture concerns. Regardless of whether a given search warrant may result in the forfeiture of valuable property, officers should ensure that there is adequate probable cause.

Not surprisingly, Scott's death generated several lawsuits. Scott's widow and four of his children filed a \$100 million wrongful death suit against the county and the federal government. After eight years, attorneys for Los Angeles County and the federal government finally agreed to award the family \$5 million in return for dropping the wrongful death lawsuit.

The Sheriff's Department still maintains that its deputies did nothing wrong and the sheriff himself sued Ventura County's District Attorney for slander and defamation. A state appeals court declared that the district attorney was within his First Amendment rights when he criticized the Sheriff's Department. The court ordered the sheriff to pay the district attorney \$50,000 in legal fees. The sheriff declared bankruptcy, and no payments were ever made.

*Sources:* Bradbury, Michael D. (1993). Report on the death of Donald Scott. Office of the District Attorney, Ventura, CA, March 30, 1993. Ciotti, Paul (2000). Ranch-coveting officials settle for killing owner, WorldNetDaily.com, January 23, 2000.

## Drugs and the Correctional System

Most inmates in U.S. prisons and jails are serving time for drug-law violations (Table 6.3). Drug offenders serving time in federal prisons have more than tripled from 16 percent of the total prisoner population in 1970 to 51 percent in 2009, an increase generated by an intensified effort to step up drug-law enforcement as well as the prosecution and punishment of drug offenders (see Chapter 2). In 2009, approximately 1.7 million arrests were made in this category, accounting for about one in eight of the total number. It is estimated that in 2009, a drug arrest was made every 19 seconds. More than 82 percent had been for drug possession.<sup>33</sup>

## Federal and State Penalties for Drug Trafficking

Current federal law under the Controlled Substance Act of 1970 and subsequently revised in 1986, 1988, and 2010 (Chapters 1 and 3) defines **drug trafficking** as the unauthorized manufacture, distribution by sale or gift, or possession with intent to distribute of any controlled substance. The severity of the penalties has varied according to the schedule of the controlled substance involved, with Schedule I violations being the most

**drug trafficking:** The unauthorized manufacture of any controlled substance, its distribution by sale or gift, or possession of such a substance with intent to distribute it.

**TABLE 6.3****Inmates serving time in federal prison by type of offense**

Drug offense	100,627	51.3%
Weapons, explosives, arson	29,740	15.2%
Immigration violation	22,327	11.4%
Robbery	8,631	4.4%
Extortion, fraud, bribery	9,997	5.1%
Burglary, larceny, property offense	6,868	3.5%
Homicide, aggravated assault, kidnapping	5,450	2.8%
Sex offense	8,430	4.3%
Banking and insurance, counterfeiting, embezzlement	840	0.4%
Violations related to courts and corrections	661	0.3%
Continuing criminal enterprise	532	0.3%
National security violation	94	<.01%
Miscellaneous	1,970	1.0%

Note: Percentages reflect the number of inmates arrested for a type of offense within the total federal inmate population of 211,014.

Source: Federal Bureau of Prisons (2010, July). *Quick facts about the Bureau of Prisons*. Washington, DC: Federal Bureau of Prisons, U.S. Department of Justice.

severely punished and Schedule V violations being the least (Table 6.4). As a result of the Anti-Drug-Abuse Acts of 1986 and 1988, a number of special circumstances also are considered in arriving at the penalty imposed:

- Penalties are doubled for first-offense trafficking of Schedule I or II controlled substances if death or bodily injury results from the use of such substances.
- Penalties for the sale of drugs by a person over twenty-one years of age to someone under the age of

**simple possession:** Having on one's person any illicit or nonprescribed controlled substance for one's own use.

**drug paraphernalia:** Products that are considered to be used to administer, prepare, package, or store illicit drugs.

**mandatory minimum sentencing:** A policy that requires a judge to impose a fixed minimal term in prison for individuals convicted of certain crimes, regardless of the individual's role in the crime or other mitigating circumstances.

eighteen are increased to up to double those imposed for sale to an adult.

- Penalties for the sale of drugs within 1,000 feet of an elementary or secondary school are increased to up to double those imposed when the sale is made elsewhere.
- Fines for companies or business associations are generally 2.5 times greater than for individuals. In either case, penalties include the forfeiture of cars, boats, or planes that have been used in the illegal conveyance of controlled substances.
- If a family is living in public housing, the entire family can be evicted if a family member is convicted of criminal activity, including drug trafficking, on or near the public-housing premises.

Federal penalties for **simple possession**, defined as having on one's person any illegal or nonprescribed controlled substance in *any* of the five schedules for one's own use, are much simpler. First-offense violators face a maximum of one-year imprisonment and a fine of between \$1,000 and \$5,000. Second-offense violators face a minimum of fifteen days up to a maximum of two years and a fine of up to \$10,000.<sup>34</sup>

Federal penalties set the standard for the punishment of drug offenses in the United States, but most drug-related offenses are prosecuted at the state rather than the federal level, and state regulations for simple possession and drug trafficking can vary widely. In cases of simple possession of small amounts of marijuana, some U.S. states might be more lenient (see Chapter 10), whereas in cases of heroin possession some states might be more stringent (see Chapter 7). Certain aspects of drug-taking behavior, such as the day-to-day regulation of alcohol sales and distribution, are regulated primarily by state and local municipalities, unless interstate commerce is involved. States and local municipalities have also taken on regulatory authority with regard to **drug paraphernalia**, products whose predominant use is to administer, prepare, package, or store illicit drugs. Nearly all U.S. states have statutes making it unlawful to sell these items to minors, unless they are accompanied by a parent or legal guardian. In addition, the importation, exportation, and advertising of drug paraphernalia are prohibited.<sup>35</sup>

## Mandatory Minimum Sentencing

For more than thirty years, mandatory minimum sentencing for drug offenders was a fact of life. Arguably, no other legislative policy had contributed more to the increase in the number of drug offenders in U.S. prisons than the policy of mandatory minimum sentencing. Essentially, **mandatory minimum sentencing** required

**TABLE 6.4**
**Federal Trafficking Penalties—Controlled Substances Other than Marijuana**

DRUG/SCHEDULE	QUANTITY	PENALTIES	QUANTITY	PENALTIES
Powder Cocaine (Schedule II)	500–4999 gms mixture*	<b>First Offense:</b> Not less than 5 yrs, and not more than 40 yrs. If death or serious injury, not less than 20 yrs. or more than life. Fine of not more than \$2 million if an individual, \$5 million if not an individual**	5 kgs or more mixture	<b>First Offense:</b> Not less than 10 yrs, and not more than life. If death or serious injury, not less than 20 yrs. or more than life. Fine of not more than \$4 million if an individual, \$10 million if not an individual.
Crack Cocaine (Schedule II)	28–279 gms mixture*		50 gms or more mixture	
Fentanyl (Schedule II)	40–399 gms mixture		400 gms or more mixture	
Fentanyl Analogue (Schedule I)	10–99 gms mixture		100 gms or more mixture	
Heroin (Schedule I)	100–999 gms mixture		1 kg or more mixture	
LSD (Schedule I)	1–9 gms mixture		10 gms or more mixture	<b>Second Offense</b> Not less than 20 yrs, and not more than life. If death or serious injury, life imprisonment. Fine of not more than \$8 million if an individual, \$20 Million if not an individual.
Methamphetamine (Schedule II)	5–49 gms pure or 50–499 gms mixture	<b>Second Offense:</b> Not less than 10 yrs, and not more than life. If death or serious injury, life imprisonment. Fine of not more than \$4 million if an individual, \$10 million if not an individual	50 gms or more pure or 500 gms or more mixture	
PCP (Schedule II)	10–19 gms pure or 100–999 gms mixture		100 gm or more pure or 1 kg or more mixture	<b>2 or More Prior Offenses:</b> Life imprisonment
PENALTIES				
Other Schedule I & II drugs (and any drug product containing Gamma Hydroxybutyric Acid)	Any amount	<b>First Offense:</b> Not more than 20 yrs. If death or serious injury, not less than 20 yrs, or more than life. Fine of \$1 million if an individual, \$5 million if not an individual. <b>Second Offense:</b> Not more than 30 yrs. If death or serious injury, not less than life. Fine of \$2 million if an individual, \$10 million if not an individual		
Flunitrazepam (Schedule IV)	1 gm or more			
Other Schedule III drugs	Any amount	<b>First Offense:</b> Not more than 5 yrs. Fine of not more than \$250,000 if an individual, \$1 million if not an individual.		
Flunitrazepam (Schedule IV)	30 to 999 mgs	<b>Second Offense:</b> Not more than 10 yrs. Fine of not more than \$500,000 if an individual, \$2 million if not an individual		
All other Schedule IV drugs	Any amount	<b>First Offense:</b> Not more than 3 yrs. Fine of not more than \$250,000 if an individual, \$1 million if not an individual.		
Flunitrazepam (Schedule)	Less than 30 mgs	<b>Second Offense:</b> Not more than 6 yrs. Fine of not more than \$500,000 if an individual, \$2 million if not an individual.		
All Schedule V drugs	Any amount	<b>First Offense:</b> Not more than 1 yr. Fine of not more than \$100,000 if an individual, \$250,000 if not an individual. <b>Second Offense:</b> Not more than 2 yrs. Fine of not more than \$200,000 if an individual, \$500,000 if not an individual.		

\*Under the Fair Sentencing Act of 2010, equivalent penalties for possessing quantities of powder cocaine or crack cocaine have been changed from a 100-to-1 ratio to a 18-to-1 ratio. In addition, the five-yr. mandatory sentence for simple possession of crack cocaine has been eliminated.

\*\*Five-year mandatory sentence for simple possession of crack cocaine has been eliminated.

Note: Trafficking penalties distinguish between Schedule I drugs excluding marijuana and marijuana itself (Tables 6.4 and 6.5).

Sources: Associated Press (2010, August 4). Obama signs new cocaine bill. Drug Enforcement Administration, U.S. Department of Justice.



**TABLE 6.5****Federal Trafficking Penalties—Marijuana**

DRUG	QUANTITY	1 <sup>ST</sup> OFFENSE	2 <sup>ND</sup> OFFENSE
Marijuana	1,000 kg or more mixture; or 1,000 or more plants	<ul style="list-style-type: none"> <li>• Not less than 10 yrs, not more than life</li> <li>• If death or serious injury, not less than 20 yrs, not more than life</li> <li>• Fine of not more than \$4 million if an individual, \$10 million if other than an individual</li> </ul>	<ul style="list-style-type: none"> <li>• Not less than 20 yrs, not more than life</li> <li>• If death or serious injury, mandatory life</li> <li>• Fine of not more than \$8 million if an individual, \$20 million if other than an individual</li> </ul>
Marijuana	100 kg to 999 kg mixture; or 100 to 999 plants	<ul style="list-style-type: none"> <li>• Not less than 5 yrs, not more than 40 yrs</li> <li>• If death or serious injury, not less than 20 yrs, not more than life</li> <li>• Fine of not more than \$2 million if an individual, \$5 million if other than an individual</li> </ul>	<ul style="list-style-type: none"> <li>• Not less than 10 yrs, not more than life</li> <li>• If death or serious injury, mandatory life</li> <li>• Fine of not more than \$4 million if an individual, \$10 million if other than an individual</li> </ul>
Marijuana	more than 10 kgs hashish; 50 to 99 kg mixture more than 1 kg of hashish oil; 50 to 99 plants	<ul style="list-style-type: none"> <li>• Not more than 20 yrs</li> <li>• If death or serious injury, not less than 20 yrs, not more than life</li> <li>• Fine of \$1 million if an individual, \$5 million if other than an individual</li> </ul>	<ul style="list-style-type: none"> <li>• Not more than 30 yrs</li> <li>• If death or serious injury, mandatory life</li> <li>• Fine of \$2 million if an individual, \$10 million if other than individual</li> </ul>
Marijuana	1 to 49 plants; less than 50 kg mixture	<ul style="list-style-type: none"> <li>• Not more than 5 yrs</li> <li>• Fine of not more than \$250,000, \$1 million if other than individual</li> </ul>	<ul style="list-style-type: none"> <li>• Not more than 10 yrs</li> <li>• Fine of \$500,000 if an individual, \$2 million if other than individual</li> </ul>
Hashish	10 kg or less		
Hashish Oil	1 kg or less		

a judge to impose a fixed minimal term in prison for individuals convicted of certain crimes, regardless of the individual's role in the crime or other mitigating circumstances. Guidelines for sentences were based on the type of drug, the weight of a drug, and the number of prior convictions, and offenders were required to serve their entire sentence (or in some states a minimum of 85 percent) without parole. Under federal law, for example, anyone convicted of selling 500 grams of powder cocaine received a minimum prison sentence of five years. A judge could issue a sentence shorter than the mandatory minimum only if the defendant provided "substantial assistance" or cooperation in the prosecution of another offender. This means that if the defendant had implicated someone else in a crime (rightly or wrongly), he or she could possibly escape a mandatory sentence. Even then, however, the prosecutor, not the judge, had the power to decide whether this "assistance" was valuable enough to warrant a reduction in sentence.

Proponents of mandatory sentencing have believed that the policy is an effective deterrent to drug use and drug trafficking because it enhances awareness of the

consequences of breaking the law and keeps drug offenders off the streets. Supporters of tough sentences for drug crimes have claimed that the "drug epidemic" has had a devastating effect on many communities, and the law is needed to protect these vulnerable communities by keeping drug offenders in prison. Mandatory sentences also have made the task of judges easier by allowing each offender to be sentenced equally under the law. Judges no longer have had to weigh conflicting evidence in the course of deciding how much time a convicted offender would spend in jail or prison. In addition, mandatory sentences have aided prosecutors and police because such lengthy sentences tended to persuade lower-level drug dealers to testify against upper-level ones (Drugs . . . in Focus).

Critics of mandatory sentencing, however, have maintained that such sentences are one of the principal reasons that the U.S. prison population has grown so rapidly since the 1980s. Mandatory minimum sentencing has, according to critics, filled our prisons with minor players, such as drug abusers, rather than major drug traffickers. They argue that as federal and state governments

# Drugs... in Focus

## Penalties for Crack versus Penalties for Cocaine in 2010: Correcting an Injustice

Under the 1986 Anti-Drug Abuse Act, the penalties for possession of crack (the smokable form of cocaine) were much more severe than those for possession of cocaine itself (the powder form). A mandatory minimum prison sentence of five years was imposed upon conviction of possessing more than 500 grams of powder forms of cocaine, whereas the possession of as little as 5 grams of crack can result in the same penalty. This became known as the 100-to-1 penalty ratio. In 1988, the federal penalty for possession of more than 5 grams of cocaine powder was set at a minimum of one-year imprisonment; the penalty for possessing an equivalent amount of crack was set at a minimum of five years.

This disparity, according to critics of this policy, had resulted in far more African Americans in prison for five years or more than white drug offenders. Why? Statistics showed that whites were more likely to snort or inject cocaine, whereas African Americans were more likely to smoke cocaine in its cheaper crack form. The differential effects of drug-law enforcement for the two forms of cocaine were reflected in a drug offense inmate population that was currently divided along racial lines. On the one hand, 90 percent of crack cocaine convictions involved African Americans; on the other, nearly two-thirds of powder cocaine abusers in the United States were white. Moreover, it was more common for offenses relating to the possession of powder cocaine to be prosecuted under state regulations, under which mandatory minimum sentences frequently did not apply.

In 2007, the United States Sentencing Commission, the agency that establishes guidelines for federal prison sentences, unanimously voted to lighten punishments retroactively for some crimes related to crack cocaine possession. As a result, the stark disparity that had existed for more than twenty years in penalties for powder cocaine and crack cocaine was narrowed, and more than 19,000 prisoners became eligible for early release. As many as 17,000 others incarcerated for a crack-related offense, however, could not benefit from the change. These prisoners had been given the absolute minimum term in the first place or were arrested with huge amounts of crack cocaine.

In 2010, the Fair Sentencing Act was signed into law, narrowing the gap between penalties involving crack cocaine and powder cocaine. Under the new regulations, the amount of crack cocaine subject to the five year minimum sentence was increased from 5 grams to 28. The former 100-to-1 rule now would be the 18-to-1 rule. In addition, the Sentencing Commission has been directed to review and amend its guidelines to increase penalties for persons convicted of using violence while trafficking in illicit drugs.

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continued to spend billions of dollars on prisons, they neglected other social needs, such as drug-abuse prevention and education. It has not been uncommon for several U.S. states to have faster-growing prison budgets than drug-abuse education budgets, a particularly disturbing trend given that spending more money on treatment, education, and other social programs actually could reduce the number of persons who abuse drugs (see Chapter 17).<sup>36</sup>

In the last several years, laws regarding mandatory sentencing have been modified or rescinded, largely through the lobbying of such organizations as the

Families Against Mandatory Minimums (FAMM), the U.S. Sentencing Commission, the American Psychological Association, the National Association of Criminal Defense Lawyers, and the American Bar Association. All have endorsed and promoted the end of mandatory sentencing. Since 1993, at least six U.S. states have repealed or reformed their mandatory sentencing laws. In Michigan, possession with intent to deliver more than 650 grams of heroin or cocaine once carried a mandatory life sentence with no chance of parole. This law now has been changed to twenty years to life, with the possibility of parole after fifteen years. In Mississippi,

sentencing laws passed in 1995 required drug offenders, even those convicted of simple possession of a controlled substance, to serve 85 percent of their sentence, no matter the circumstances of their incarceration; now the maximum sentence has been reduced to less than 25 percent. As of 2009, judges in New York who had previously had no discretion in sentencing now have leeway in deciding whether a drug offender should be sent to a substance-abuse treatment center instead of prison. Thousands of inmates convicted of nonviolent drug offenses in New York can now apply to have their sentences reduced or set aside. At the federal level, a major U.S. Supreme Court decision in 2007 ruled that federal district judges had broad discretion to impose what would be, in their judgment, reasonable sentences in criminal proceedings, even if federal guidelines were more stringent.<sup>37</sup>

Other U.S. states are beginning a policy shift from punishment in any form to the option of treatment for drug offenders. California state law now permits judges to impose a sentence of treatment rather than imprisonment for many first-time drug possession offenses. A drug conviction is then removed from the offender's record if he or she completes a treatment program. Arizona has established a similar program where individuals convicted of drug possession are placed on probation and assigned to drug treatment rather than prison.<sup>38</sup>

## Drug Courts

**Drug courts** are specialized courts designed to handle adult, nonviolent offenders with substance abuse problems, incorporating an intensely supervised drug treatment program as an alternative to standard sentencing. Several of the characteristics of drug courts include early identification and placement of eligible participants, drug treatment with clearly defined rules and goals, a nonadversarial approach, a monitoring of abstinence, judicial involvement and interaction with the participants, and a team approach in which judges, defense attorneys, prosecutors, probation officers, and treatment counselors coordinate their efforts. Those offenders who complete the program successfully may have their charges dropped or sentences revoked, whereas unsuccessful participants are returned to the regular court system and face possible imprisonment. Since the first drug

**drug courts:** Specialized court systems that handle adult, nonviolent offenders of drug laws, incorporating a supervised drug treatment program as an alternative to standard criminal sentencing.



The court system in the United States is greatly burdened with the large number of cases that involve drug-law violations. The establishment of drug courts is an effort to help ease this burden.

court began operation in Florida in 1989, more than 2,000 drug courts have come into operation across the United States.<sup>39</sup>

The first step in a drug court program begins with defense attorneys, probation officers, or prosecutors referring a potential candidate to the drug court itself. A probation officer then screens candidates for eligibility. Candidates must be judged (using a screening instrument) to be serious drug abusers, cannot be on parole, and cannot have a prior serious or violent felony conviction. When he or she agrees to enter the program, the candidate waives his or her right to a jury and agrees to enter a treatment program for a year, during which he or she is subject to random drug tests. Participants are supervised by a probation officer to ensure that they adhere to program rules.

Numerous studies have shown that drug court programs are successful. First of all, they decrease the rate of criminal recidivism (repeated arrests). In a sample of 17,000 drug-court graduates nationwide within one year of graduating from the program, only 16 percent had been rearrested and charged with a felony offense, which was approximately one-third the level observed in drug offenders not participating in a drug court. Second, they are cost effective. Approximately \$250 million in incarceration costs have been saved each year in New York State alone by diverting 18,000 nonviolent drug offenders into treatment. Third, drug courts increase the length of time an individual remains in treatment. The coercive power of the criminal justice system with respect to getting into treatment and staying in treatment is dramatic. Ordinarily, between 40 percent and 80 percent of drug abusers drop out of



treatment within ninety days, and between 80 percent and 90 percent drop out within twelve months. In sharp contrast, more than two-thirds of drug-court participants complete a treatment program lasting a year or more. The benefits of drug court programs have been demonstrated in nonurban as well as urban communities.<sup>40</sup>

Clearly, the drug-court movement represents a shift away from a criminal justice policy oriented toward punishing drug users to a policy that focuses on treatment and recovery. Several U.S. states have begun to develop driving-under-intoxication (DUI) courts, whereas other U.S. states are expanding the drug treatment programs within their correctional facilities.

According to experts in the field of drug-abuse treatment, the mandated treatment approach in drug-court programs is more likely to result in a successful outcome than in circumstances in which the decision to go into treatment is made on a voluntary basis. One

man in a Boston drug court expressed his feelings in this way:

*Drug court at first was just getting in the way of my using. But I think without drug court, I probably would never have went to Gaven House, got me a program, got me in line for getting sober. I didn't want to be here, but at the same time now that it's almost over, I'm kind of grateful for it, because I probably would not have stopped or even wanted to. You know? So I'm grateful for drug court.*<sup>41</sup>

Since the early 1990s, a number of special problem-solving court programs have been created to foster treatment for other psychosocial difficulties. Mental-health courts, for example, provide a means for mentally ill defendants who have committed nonviolent criminal offenses to receive psychiatric evaluation and treatment. Other programs address problems of domestic violence (Drugs . . . in Focus).<sup>42</sup>

## Drugs... in Focus

### A Simulated Debate: Should We Legalize Drugs?

The following discussion of viewpoints represents the opinions of people on both sides of the controversial issue of the legalization of drugs. Read them with an open mind. Don't think you have to come up with the final answer, nor should you necessarily agree with the argument you heard last. Many of the ideas in this discussion come from the sources listed.

#### Point

Legalization would get the problem under some degree of control. The "war on drugs" does nothing but increase the price of illicit drugs to what the market will bear, and it subsidizes the drug dealers and drug kingpins around the world. If we legalize drugs, we can take the profit out of the drug business because legalization would bring the price down dramatically. We could regulate drug sales, as we do now with nicotine and alcohol, by setting up centers that would be licensed to sell cocaine and heroin, as well as sterile syringes, while any drug sales to minors would remain a criminal offense. Regulations would also ensure that drugs maintained standards of purity; the health risks of drug contamination would be drastically reduced.

#### Counterpoint

Legalization is fundamentally immoral. How can we allow people to run to the nearest store and destroy their lives? Don't we as a society have a responsibility for the health and welfare of people in general? If the drugs (pure or impure) were available, the only effect would be to increase the number of drug abusers. When Britain allowed physicians to prescribe heroin to "registered" addicts, the number of heroin addicts rose five-fold (or more according to some informal estimates), and there were then cases of medical abuse as well as drug abuse. A few unscrupulous doctors were prescribing heroin in enormous amounts, and a new drug culture was created.

#### Point

How moral is the situation now? We have whole communities living at the mercy of drug dealers. Any increase in drug users would be more than compensated for by the gains of freedom from such people. Even if the sale of crack were kept illegal, conceding that this drug is highly dangerous to society, we would have an 80 percent reduction in the black market for drugs, a substantial gain for the welfare of society. We can't guarantee that our inner cities would no longer be places of hopelessness and despair, but at least we would not have the systemic violence associated with the drug world. Besides, with all the money saved

from programs set up to prevent people from getting hold of illicit drugs, we could increase the funding for drug treatment programs for all the drug abusers who want them and for research into ways of understanding the nature of drug dependence.

### Counterpoint

No doubt, many drug abusers seek out treatment and want to break their drug dependence. Perhaps there may be some individuals who seek treatment under legalization because there would no longer be a social stigma associated with drug abuse, but many drug abusers have little or no long-term commitment toward drug treatment. In the present situation, the illegality of their behavior allows us to compel them to seek and stay in treatment, as well as monitor their abstinence by periodic drug testing. How could we do this when the drug was legal? Besides, how would we approach the education of young people if drugs were legal? We could not tell them that cocaine would give them cancer or emphysema, as we warn them of the dangers of nicotine, only that it would prevent them from being a productive member of society and would have long-term effects on their brains. If the adults around them were allowed to use cocaine, what would be the message to the young? Simply wait until you're twenty-one?

### Point

We already have educational programs about alcohol abuse; the message for heroin and cocaine abuse would be similar. The loss of productivity due to any increased availability of drugs would not be as significant as the present loss of productivity we have with alcohol and cigarettes. With the tax revenues obtained from selling drugs legally, we could have money for more extensive anti-drug advertising. We could send a comprehensive message to our youth that there are alternatives to their lives that do not include psychoactive substances. In the meantime, we would be removing the "forbidden fruit" factor in drug-taking behavior. Drugs wouldn't be a big deal.

### Counterpoint

Arguing that people take drugs because drugs are forbidden or hard to get ignores their basic psychological allure. If you lowered the price of a very expensive sports car, would you have fewer people wanting to buy one? Of course not. People would want a fast car because they like fast cars, just as people will still want to get high on drugs. Legalizing present drugs would only encourage the development of more dangerous drugs in the future. Look at what happened with crack. Cocaine was bad enough, but when crack appeared on the scene, it made the situation far worse.

### Point

It can be argued that crack was marketed because standard cocaine powder was too expensive for people in the inner cities. If cocaine had been legally available, crack might not ever have been created because the market

would not have been there. Even with crack remaining illegal under a legalization plan, there is at least the possibility that the appeal of crack would decline. The trend has been lately that illegal drugs are getting stronger, while legal drugs (alcoholic beverages and cigarettes) are getting weaker as people become more health-conscious. Legalization might make presently illicit drugs weaker in strength, as public opinion turns against them. The main problem we face is that spending 60 percent of a multi-billion-dollar drug-law-enforcement program on the "supply" side of the question, and only 40 percent on reducing the demand for drugs is not working. If one source of drugs is controlled, another source takes its place. The link between drugs and crime is a direct result of the illegality of drugs. It's not the individuals with drug dependence that are destroying the country; it's the drug dealers. Right now, the criminals are in charge. We have to change that. Only legalization would take away their profits and refocus our law-enforcement efforts on other crimes that continue to undermine our society.

### Counterpoint

The frustration is understandable, but let's not jump into something merely because we're frustrated. We can allocate more funds for treatment without making drugs legal. We can increase funds for scientific research without making drugs legal. We need a more balanced program, not an entirely new one. Polls do not indicate general support for drug legalization. Between 60 percent and 80 percent of the U.S. public supports continued prohibition of drugs. Most citizens appear to recognize that legalization would make a bad situation worse, not better.

### Critical Thinking Questions for Further Debate

1. Is it valid in this debate to make a distinction between "hard drugs" such as heroin and cocaine and "soft drugs" such as marijuana and hallucinogens?
2. What is your prediction of what would happen if all our drug-abuse-prevention efforts were focused exclusively on the Harm Reduction approach?

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## Summary

- Of the billions of federal dollars spent annually on the “war on drugs,” the greatest proportion of the money is spent on drug-law enforcement.
- There are four general levels of present-day drug-law enforcement: (1) source control, (2) interdiction, (3) street-level enforcement, and (4) the correctional system.

### Source Control

- Source control involves actions focusing on reducing the cultivation and production of illicit drugs in foreign countries.
- Crop eradication programs involve the destruction of opium poppies, coca plants, and marijuana plants in their countries of origin. Crops are eradicated both manually and with herbicides. Critics point out that these programs have been responsible for causing environmental damage and disrupting the local economy of many rural regions in Latin America.
- Agents of the U.S. Drug Enforcement Administration (DEA) regularly monitor and track large shipments of precursor chemicals to prevent them from reaching the producers of illicit drugs.
- “Certification” is a process by which the U.S. government evaluates the cooperation of foreign countries in counter-drug efforts.

### Interdiction

- Interdiction efforts attempt to prevent drugs from being smuggled across the U.S. border by denying drug smugglers the use of air, land, and maritime routes. The primary agencies involved in drug interdiction include the DEA, the U.S. Customs and Border Protection Agency, the U.S. Coast Guard, and the United States military. The DEA is the only federal agency that has drug-law enforcement as its only responsibility.
- Over the years, drug-law enforcement agents have developed “drug-courier profiles” to help in the identification of potential drug smugglers. Police officers have been criticized for developing profiles based solely on race, a practice known as racial profiling.

### Street-Level Drug-Law Enforcement

- The reverse sting is a drug-law enforcement operation in which undercover agents pose as drug dealers

and sell a controlled substance or imitation version of a controlled substance to buyers.

- The controlled buy is an operation in which an undercover informant makes a drug buy under the supervision of the police.
- Undercover buy operations involve an undercover agent making a drug buy. The seller may be arrested immediately after the deal, or the drug deal may be used to obtain a search warrant to be served at a later time. The “knock and talk” occurs when agents arrive at a suspect’s residence and ask permission to conduct a consent search of the residence.
- Asset forfeiture is the process by which the government seizes cash, cars, homes, and other property that it claims have been involved in or associated with criminal activity.

### Asset Forfeiture and the RICO Statute

- Criminal forfeitures result after a conviction for a crime to which the forfeited property is related. Civil forfeitures are based upon the unlawful use of property, irrespective of its owner’s culpability. With civil forfeiture, the offender does not need to be convicted or even charged with a crime, since the contention is that the property “itself” is guilty.
- Authority for asset forfeiture in law enforcement was created as part of the Organized Crime Control Act of 1970. A section of this legislation, known as the Racketeer Influenced and Corrupt Organization (RICO) statute, pertained to the prevention of criminal infiltration of legitimate businesses.
- Critics argue that forfeiture laws distort law enforcement priorities from crime control to “funding raids.”

### Drugs and the Correctional System

- Inmates serving time for drug-law violations currently dominate prison populations in the United States. Federal guidelines for drug-law violations make the distinction between drug trafficking and simple possession of controlled substances.
- Mandatory minimum sentencing has required a judge to impose a fixed minimal length of imprisonment for individuals convicted of certain crimes, regardless of a person’s role in the crime or other

mitigating factors. In recent years, there has been a significant shift toward providing judges with a greater degree of discretion in their sentencing of drug offenders.

- Drug courts are specialized courts designed to handle adult, nonviolent offenders with substance abuse problems. They involve an intensely supervised drug treatment program as an alternative to standard sentencing.

## Key Terms

asset forfeiture, p. 126	drug paraphernalia, p. 130	precursor chemicals, p. 118	RICO statute, p. 126
certification, p. 118	drug trafficking, p. 129	racial profiling, p. 123	search warrant, p. 126
consent search, p. 126	interdiction, p. 119	relation-back doctrine, p. 127	simple possession, p. 130
controlled buy, p. 125	knock and talk, p. 126	reverse sting, p. 125	source control, p. 116
crop eradication, p. 117	mandatory minimum sentencing, p. 130		undercover buy, p. 126
drug courts, p. 134			

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