

Does your State consider the acquisition, use or possession of drugs for personal use a minor offence within the meaning of this term as set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (article 3, para. 4 (c)? If so, what percentage of people arrested for the acquisition, use or possession for personal use of drugs are diverted out of the criminal justice system, and what alternative measures, if any, are such people subjected to?

In the United States, most law enforcement is done at the state, county or local level. Federal statutes therefore don't apply to most drug cases. In general the purchase and possession of drugs are considered minor offenses, but there are some states that have draconian penalties. With at least one exception (South Dakota), use itself is not criminalized.

Importantly, and unfortunately, it is a common practice to charge possession as possession with intent to distribute, which is a more serious charge. Often this is based on mere quantity of a drug, and not always a realistic quantity.

Has your State decriminalized the acquisition, use or possession of illegal drugs for personal use? If so, to what drugs does this apply and what are the amounts considered to be for personal use? What is the legislative or judicial basis for such decriminalization? If decriminalization has not taken place, what penalties apply to the acquisition, use or possession of illegal drugs for personal use?

Some US states have decriminalized possession of marijuana, meaning in most cases that it is subject to a fine but a criminal punishment. We don't yet have decriminalization for other drugs, but there are some ballot initiative campaigns hoping to enact that in November. Oregon has an initiative to decriminalize drugs, and Washington DC to decriminalize psychedelic plants. They are facing signature-gathering challenges due to the pandemic, but are still hoping to qualify.

What types of circumstances have led to unlawful and arbitrary arrest of people in your State for drug-related offences? What structures/institutions are in place so that people who are arrested for a drug-related offence can make a complaint about unlawful and arbitrary arrest and detention, or the threat thereof?¹

At my organization we published a weekly "This Week's Corrupt Cops Stories," and some of the examples cited in your footnote come up from time to time. I have not seen examples of accessing health records, and extorting money doesn't seem to get reported very often though it may occur. We have reported cases of demanding sex to not be arrested.

Arrests of minorities for drugs is heavily disproportionate, at a higher level than for other crimes. The reasons are complex, and not all of them plainly relate to explicit racism. One cause is that police spend more time in high crime areas, but over the past several decades have tended more to making arrests for any crime they find. If one spends more time in a given neighborhood and will always arrest when one can, one will arrest more of the types of people who live in that neighborhood than others.

¹ Examples of arbitrary arrest and detention could include threatening arrest and detention if the person who uses drugs or is a minor dealer does not give money to law enforcement, or in the case of women give money and/or sex; accessing a person's health records as a means of determining if a person uses drugs; targeting arrests areas at or near drug treatment centres for people who use drugs; disproportionately targeting minorities, women or poor people for possible drug-related offences; excessive use of force during drug enforcement operations.

We have a problem of overuse of militarized police procedures, such as SWAT raids, no-knock or quick-knock warrants, dynamic entry, etc. These sometimes go badly wrong, as in one of the cases being highlighted right now in the Black Lives Matter protests, the killing of Breonna Taylor. I have seen professionals and academics in this area say that 90% of SWAT raids being done are unnecessary.

Have there been cases of torture or other cruel, inhuman or degrading treatment or punishment for persons arrested and detained on drug-related offences, with the objective, for example, to elicit a confession or to learn information about other alleged criminal actors or networks? Have there been cases where opioid substitution therapy has been withheld from drug dependent detainees in order to elicit a confession, or obtain information concerning other alleged criminal or networks? What procedures exist to prevent torture and other forms of ill treatment of people detained for drug-related offences, and to bring to justice those responsible when it does occur? What monitoring measures are in place to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place? What avenues do detainees have for making a formal complaint to an independent authority if such practices occur?

We have seen cases of people arrested for drug offenses being coerced into acting as informants, sometimes ending up killed as a result.

Does your State operate compulsory drug treatment centres? If so, what is the legislative basis for such deprivation of liberty? What procedures exist to ensure procedural guarantees are respected prior to confinement in such centres, including whether the detainee has the right to be represented by legal counsel and the right to appeal the decision on compulsory treatment. Is there a medical evaluation of the person's drug dependency prior to confinement? Is treatment in such centres individualized (as opposed to en masse treatment), evidence-based and in conformity with generally accepted medical practices for drug treatment as articulated by World Health Organization (WHO). Is a person detained in such a facility for a specific amount of time, or indefinitely until treatment has been determined to be successful? Can a person, or by way of his or her legal representative, or a family member, file a petition either with an administrative or criminal court for a hearing on his or her release while detained?

We don't specifically have compulsory drug treatment centers, but in some cases treatment is mandated and it works out that way. I'm not sure if people are forced to stay in programs longer than needed, but it's possible it happens. We tend to have the opposite problem in our treatment system, e.g. it not being funded for the length of time needed.

Do private drug treatment centres exist in your State? What steps does your State take to ensure that treatment in such facilities is voluntary and not a result of coercion? How is the informed consent for treatment obtained? How regularly do independent inspections of private drug treatment facilities take place to ensure that practices that constitute torture or other cruel, inhuman or degrading treatment or punishment do not occur? Do inspections of such facilities include a determination whether treatment is individualized (as opposed to treatment en masse), evidence-based and in conformity with generally accepted medical practices for drug treatment as elaborated by WHO? What guarantees exist that a person who has either voluntarily sought treatment or who has been coercively confined in a private drug treatment centre can freely leave if he or she so wishes? Can such persons make a complaint to inspectors who monitor such facilities or a competent authority if a person who is seeking to leave a private drug treatment centre is prevented from doing so? Are there any criminal or other penalties for failure to complete the treatment?

We have some problems in this area, and I don't have the sense that there is good oversight or that there are strong standards in place, but it's possible things have evolved since I've focused on this. An abusive drug treatment program in Florida preyed on scared parents and effectively imprisoned their kids, with bad results including some suicides. The founders, Mel and Betty Sembler, were major political donors, and there was not a will to act on complaints.

Do drug courts which seek to use treatment as an alternative to imprisonment exist in your State? Please describe their operations, including applicable procedural guarantees for the accused. Does the accused have to plead guilty to the drug-related offence prior to being diverted into treatment? Are only accused persons who are drug dependent on opioids diverted for treatment, or are people who use other drugs that do not cause drug dependence diverted? Can treatment exist for a period that is longer than the period of imprisonment provided for in the offence for which the accused has been charged? Does the accused still have to serve a period of imprisonment if the treatment is not successful? What constitutes successful treatment and does the person in treatment have the right to a hearing before an independent authority and to be represented by legal counsel and present expert medical testimony on the evolution of his or her treatment?

We have lots of drug courts. Their operations vary from court to court. There is a problem of not allowing OST in many courts, though there has been some improvement due to an Obama-era policy of requiring courts to accept it as a condition of federal funding. There is a great deal of ignorance to be found in the system.

Does your State have specialized criminal courts for people accused of drug-related offences that do not have as their focus diversion for drug treatment, but rather operate as specialized criminal courts and normally sentence those charged to prison after conviction? What differences exist between specialized criminal drug courts and regular criminal courts? What is the legislative justification for having specialized criminal courts for drug-related offences? Please describe how such specialized courts conform to the procedural guarantees for detention and fair trial under international norms.

I don't believe we have these.

Does your State use military courts to try people for drug-related offences? Please describe how such military courts conform to the procedural guarantees for detention and fair trial under international norms. Are military personnel involved in law enforcement operations against individuals or groups suspected of drug-related crimes? If so, are these regular military forces or the military police? Have they received training in human rights standards for law enforcement and the use of force? How is coordination undertaken with civilian law enforcement?

It's possible that military courts might try military personnel for drugs in some cases. Otherwise no, we don't.

Does your State provide for the involuntary detention of pregnant women who use drugs in circumstances where such drug use has been deemed to constitute a danger to the foetus, and where voluntary attempts by health professional to work with the pregnant woman have failed? Please describe the legislative basis and applicable procedural guarantees in case of such an involuntary detention.

Some states have laws of this type, and there have been prosecutions. It's more common that a child might be taken away.

Does your State provide drug treatment to people in custodial or pre-trial detention, or who have been imprisoned following a conviction? Do these drug treatment services include harm reduction services? Please describe what types of drug treatment and harm reduction services are available to detainees and imprisoned people. Please also indicate if such services are available to those in administrative detention such as undocumented migrants or those subject to a deportation order. If no such services are available, does this result in forced confessions or people not being able to participate in their defence?

Some facilities provide drug treatment in the jails and prisons. In general they don't have harm reduction services. A facility having drug treatment does not guarantee that the use called for is always made of it. A friend who used to do criminal defense in the attorney pool for the DC jail system told me of a client he had who clearly needed drug treatment, which the jail offered, but no one in the system had bothered to connect him with the treatment program.

Are juveniles (those under the age of 18) subject to arrest, detention and imprisonment for drug-related crimes? For crimes relating to the acquisition, use or possession for personal use of drugs? If so, are they detained or imprisoned in facilities for children in conflict with the law who are under 18, or are they detained or imprisoned in facilities for adults? Can such juveniles be subjected to compulsory drug treatment or treatment with the consent of their families/legal guardians?

They can be. Usually it would be in a juvenile facility.

Are there any new or emerging trends in drug-related detention and drug policies that could be addressed by this study?

There is slow but real progress advancing programs like Law Enforcement Assisted Diversion (LEAD), which has a harm reduction and community coalition model. Another program that we are less keen on, but which seems well-intentioned and has its arguments, is the HOPE program pioneered in Hawaii; HOPE makes use of drug testing and short jail stays, as part of a framework to reduce the use of prison and longer periods of incarceration.