

**FACTSHEET: PUNITIVE RESPONSE TO DRUG USE**

Other nations protect public safety without imprisoning as large a percentage of their population, handle law-breaking behavior in ways less reliant on incarceration, and have different approaches to addressing complex social issues. This factsheet, derived from the longer report, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, considers the criminal justice policies of five nations, Australia, Canada, Finland, Germany and England and Wales, alongside those of the U.S.

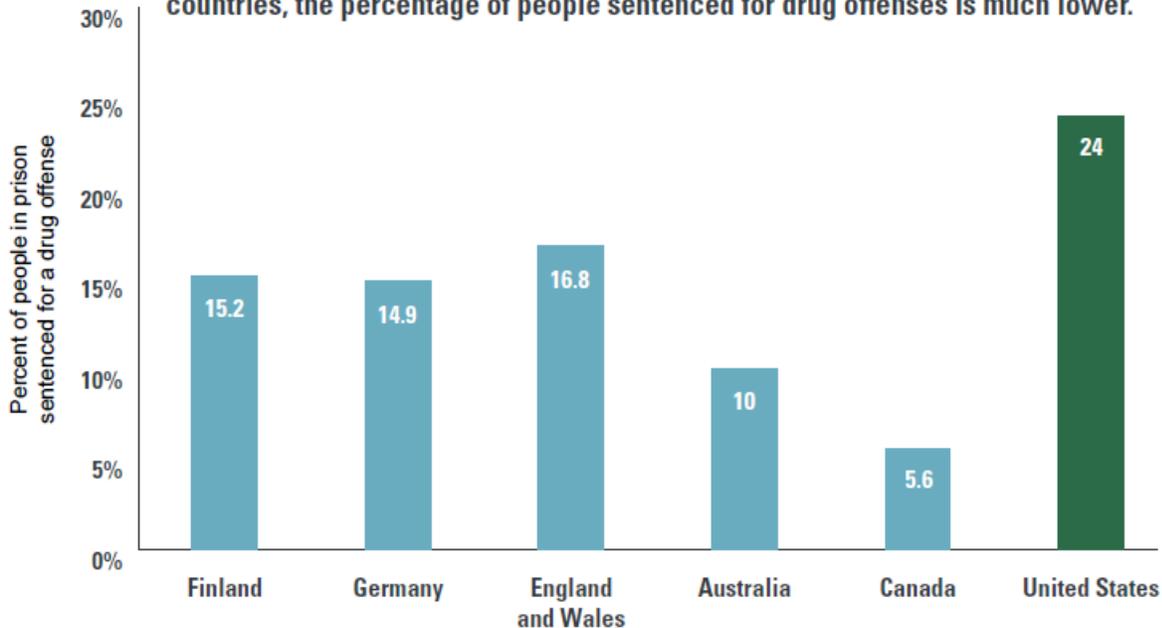


A country's or locality's response to certain behaviors can play a large part in its incarceration rate. The growth in the U.S. prison population has been fueled, in part, by the increase in incarceration for drug offenses. Between 1980 and 2006, the number of people incarcerated for drug offenses in state and federal prisons increased 1,412 percent from 23,900 to 361,276.<sup>1</sup> In 2006, 24 percent of the people in state and

federal prisons were there because their most serious offense was a drug offense.<sup>2</sup>

This is in contrast to other countries where people convicted of drug offenses make up a smaller percentage of the prison population. This difference has less to do with the percentage of people who use drugs in these countries and more to do with their philosophy on drug use, specifically whether they take a public health or criminal justice position.

**In the United States, people sentenced to more than a year for drug offenses accounted for nearly one-quarter of the prison population in 2008. In other countries, the percentage of people sentenced for drug offenses is much lower.**



Sources: United States: William Sabol, Heather West, and Matthew Cooper, *Prisoners in 2008* (Washington, DC: Bureau of Justice Statistics, 2009). <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf> Includes both people in both federal or state prisons, Finland, Germany, UK: Council of Europe, *Annual Penal Statistics – SPACE 1 – 2008* (Strasbourg, France: Council of Europe, 2010). [www.coe.int/t/dghl/standardsetting/prisons/SPACE/IPC-CP\(2010\)07\\_E%20SPACE%20Report%201.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/SPACE/IPC-CP(2010)07_E%20SPACE%20Report%201.pdf) Canada: Laura Landry and Maire Sinha, "Adult Correctional Services in Canada, 2005/2006," *Juristat* 28, no. 6 (June 2008). [www.statcan.gc.ca/pub/85-002-x/85-002-x2008006-eng.pdf](http://www.statcan.gc.ca/pub/85-002-x/85-002-x2008006-eng.pdf), Sentenced only, does not include remand. Australia: Australian Bureau of Statistics, *Prisoners in 2008, Australia* (Canberra, Australia, Australian Bureau of Statistics, 2008). [www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/4517.0Main%20Features22008?opendocument&tabname=Summary&prodno=4517.0&issue=2008&num=&view=](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/4517.0Main%20Features22008?opendocument&tabname=Summary&prodno=4517.0&issue=2008&num=&view=)

The percent of people in the U.S. that report drug use in the last year is not necessarily greater than the percent of people that report drug use in the last year in other countries.

	CANNABIS	OPIATES	COCAINE	AMPHETAMINES
United States	12.30%	0.58%	2.80%	1.60%
England and Wales	7.40%	0.98-1%	2.30%	1%
Canada	17%	0.21-0.42%	2.30%	1%,
Finland	3.60%	0.23%	0.50%	0.6
Germany	4.70%	0.14-0.29%	0.7	0.50%
Australia	10.60%	0.4	1.90%	2.70%

Sources: United Nations Office on Drugs and Crime, *World Drug Report 2009* (Vienna, Austria: United Nations Office on Drugs and Crime, 2009). [www.unodc.org/documents/wdr/WDR\\_2009/WDR2009\\_eng\\_web.pdf](http://www.unodc.org/documents/wdr/WDR_2009/WDR2009_eng_web.pdf)

Note: The age ranges change slightly per each drug and each country.

Countries such as Canada and Australia have a much lower percentage of their prison population taken up by people convicted of drug offenses than the U.S., but all countries used in this report have significantly lower drug imprisonment numbers and percentages.<sup>3</sup>

### Drug use is not necessarily higher in the U.S. than in comparison nations.

People in the United States do not necessarily use drugs more than people in other countries, and rates of imprisonment for drug offenses are not correlated with patterns of drug use. For example, Canadians self-report using cannabis at a higher rate than U.S. residents, and all other drugs at similar rates, yet the U.S. continues to lock-up a higher percentage of its residents in prison for drug offenses; only 6 percent of Canada's prison population is incarcerated for a drug offense compared to 24 percent in the U.S.

While it is worth comparing drug arrests and imprisonment across countries, an additional factor to consider is that some countries consider drug addiction a public health problem before they consider it a criminal justice problem. Comparing the number of drug arrests in the United States to those in Germany, for example, is not likely to be a fair comparison because the types of drugs and the quantities for which a person can be arrested are distinctly different. In

other words, that the United States considers drug use a criminal justice problem changes how it is observed and counted, and also has a unique impact on the prison population.

### Drug use is seen as a public health problem and not a criminal justice problem in comparison nations.

Drug policies in the United States, and increasingly in the United Kingdom, are shaped around the belief that drugs fuel crime and reducing drug use is accomplished by penalizing drug-related behaviors. On the other hand, drug policies in Germany, Finland and Canada are meant to reduce drug use through a public health modality that includes treatment and the encouragement of healthy lifestyles. Although these countries do continue to target traffickers and people that possess large amounts of drugs, people who use drugs and possess small quantities are likely to receive treatment over prison in recognition that drug abuse is a public health problem.

The attitudes and practices in drug policy vary across nations and range from a first response of treatment and prevention to enforcement and interdiction. Current U.S. approaches focus more on enforcement than treatment and, often, when there is treatment available, it is within the context of the criminal justice system. Indicative

of the lack of attention that the U.S. gives to treatment and prevention is a study released by The National Center on Addiction and Substance Abuse at Columbia University. The study found that substance abuse and addiction costs localities, states, and the federal government \$467.7 billion in 2005, but slightly less than 2 percent of those expenditures were on treatment and prevention. The remaining funds went toward managing the consequences of substance addiction, including homelessness, crime, domestic violence, and child abuse.<sup>4</sup>

- **Mandatory minimum sentences:** While other comparison countries have mandatory minimum sentences, they are usually focused on firearms and specific, violent offenses, especially sex offenses.<sup>5</sup> The United States and the United Kingdom have mandatory minimum sentences for drug offenses. In the case of the United Kingdom, the mandatory sentence is for trafficking, but in the United States a mandatory sentence can be for possession of illicit substances, as well. Some of the harshest mandatory sentences in the U.S. were implemented in the 1980s and involve possession offenses, many related to crack cocaine. In 2010, the United States passed historic federal legislation reducing the disparity in sentencing for cocaine versus crack from 100 to one to 18 to one, which is, perhaps indicative of a willingness to review the consequences of mandatory minimum sentences.<sup>6</sup>
- **Treatment systems:** The availability and affordability of treatment is a primary difference between the U.S. and other countries. Comparison countries have nationally supported or subsidized health care systems, which usually include some access to drug treatment or treatment of other physical or mental health problems that can catalyze drug use.<sup>7</sup> The United States has treatment facilities, but they are often only

available to people who can afford private insurance to pay for them out of pocket, or through the limited capacity of the criminal justice system, which maintains a punitive structure that impedes recovery.

- **Harm reduction:** Many nations use a harm reduction approach to certain aspects of drug addiction in their countries.<sup>8</sup> The Netherlands has, since the 1970s, relied on harm reduction as a primary response to drug use. This approach focuses on the minimization of risks and hazards of drug use by emphasizing health care, prevention, and regulation of individual use, while directing enforcement measures largely against organized crime (i.e. trafficking). Dutch drug policy takes a market separation approach to enforcement (hard drugs vs. soft drugs) with criminal penalties focusing on hard drug violations.<sup>9</sup>

The Netherlands is a good example of a country using a harm reduction approach to drug use. In the 1980s, the Netherlands became one of the first nations to offer a needle exchange program to curbe the spread of Hepatitis and HIV/AIDS among its population. Additionally, under the market separation approach “coffee shops” were developed as a safe location for individuals to engage in the use of soft drugs (i.e. cannabis) without their behavior having criminal or legal repercussions.<sup>10</sup> Although the Netherlands has historically had more relaxed criminal enforcement policies compared to other European democracies, approximately 18.6 percent of its prison population is still incarcerated for a drug offense.<sup>11</sup>

- **Decriminalization:** Not all nations consider all drugs to be illegal. For example, in the Netherlands, cannabis is

legally permitted, but other drugs, like opiates, are not treated as leniently.<sup>12</sup> It is not necessarily a crime to consume or possess drugs in other countries, but it may still be considered a crime to deal or distribute them.

In 2001, Portugal decriminalized all drug use and possession – but not trafficking or distribution – based on research that decriminalization of drugs reduces drug use, which in turn, can decrease drug-related crime.<sup>13</sup> While drug possession is still illegal, the sanctions are not meted out through a criminal process. Instead, the person is summoned before a Commission of Dissuasion of Drug Addition, which is a panel made up of social workers and counselors that meets outside of court. The Commission assesses the person’s drug use habits and determines the appropriate response. Most often the person will receive a fine, treatment, or probation,<sup>14</sup> but could also be told to refrain from certain types of bars or concerts.<sup>15</sup>

According to a 2009 report by the Cato Institute, by removing the threat of imprisonment and re-allocating resources to treatment, Portugal has successfully decreased drug-related deaths, disease transmission, all drug use among youth aged 15-19 and lifetime cannabis use among people 15-64.<sup>16</sup> Between 2002 and 2008, the percent of Portugal’s prison population that was sentenced for a drug offense also went down 20.5 percentage points from 41.8 percent<sup>17</sup> to 21.3 percent.<sup>18</sup>

A second study released in 2010 found that any increases in reported drug use in Portugal were consistent with increases in neighboring countries, while there was reduced drug use among youth, increased admission to treatment, a reduced burden on the criminal justice system, reductions in deaths related to opiate use, reductions in deaths from infectious diseases, and increases in drug seizures.<sup>19</sup> Such results indicate that decriminalization will not have a widespread detrimental impact on public health or public safety.

### Policy Opportunities

**Eliminate mandatory minimum sentencing for drug offenses:** No other comparison nation has mandatory sentencing for possession of small amounts of illegal substances. Such broad sentencing structures are significant contributors to the number of people in prison in the U.S.

**Provide treatment first:** Treatment for drug addiction outside the justice system should be widely available and affordable for people who need it.

**Use a public health response to drug-related offenses:** In cases in which the offense is related to the personal use of drugs, treatment should be the first response rather than incarceration.

**Harm reduction:** Needle-exchange programs, for example, not only help prevent the spread of disease, but also give people a safe place to use drugs, thus reducing chances that they will become involved in other illegal activity.

## FOUR PILLARS: SWITZERLAND AND VANCOUVER, CANADA

Switzerland was the first country to adopt the four pillars approach to reducing substance misuse. In the 1980s, Switzerland became increasingly concerned about the use of drugs that are injected and the spread of HIV. While previous policy focused on abstinence, the desperation of the situation led researchers and policymakers to change their approach. Rather than focusing on eradication, they experimented with the concept of *managing* the drug problem. This shift in policy incorporated a shift in language as well—substituting the term “risk reduction” for the controversial “harm reduction.” The philosophy behind the term considers that drug users still have rights, including the right to life. Therefore, in practice, risk reduction means using controversial treatments such as prescription heroin.

With this change in attitude, Switzerland established the Four Pillars model of drug policy. The four pillars of Switzerland's drugs policy are:

- prevention
- treatment
- risk reduction
- enforcement

Legally, the Four Pillars Model was introduced at the community-based level by field workers in the 1980s. In 1994, the federal government cited the policy as the national strategy. In 2008, it was passed as federal law. The Swiss model has had positive results including reduced numbers of heroin users, cases of HIV, and deaths.

In response to concerns about overdoses, the spread of disease, inadequate treatment and the relationship between illegal behavior and drug addiction, the city of Vancouver, Canada adopted its own version of the four pillars approach in 2005. Vancouver took a cooperative approach that involves private businesses, government agencies, non-profit organizations, and advocacy groups. It is not only community-based, but customized to address the needs of specific communities. An evaluation of one aspect of the Four Pillars Policy, the Supported Employment Project, found that the project's work to secure temporary employment for people in recovery has been successful in preparing people for permanent employment. For example, only 25 percent of people in the program relapsed at the end of their term of employment.

Germany also has a Four Pillars policy, and similar harm reduction practices can be found in the UK and the Netherlands.

Sources: **The Swiss Four Pillars Policy: An Evolution From Local Experimentation to Federal Law**, [www.great-aria.ch/pdf/Infos/Beckley\\_Briefing\\_2009.pdf](http://www.great-aria.ch/pdf/Infos/Beckley_Briefing_2009.pdf)

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Country	Law	Intention of Law	Decriminalization	Treatment Measures	Punitive Measures
<b>Germany</b>	Germany's Action Plan on Drugs and Addiction and Narcotics Act of 1981 <sup>20</sup>	Prevent and treat addictions to illicit substances, as well as harm reduction and decreasing the supply of drugs		Possession of small amounts of narcotics, open access to treatment <sup>21</sup>	Possession of larger amounts of narcotics is a criminal offense (dealing, distributing, intent to sell).
<b>Finland</b>	Narcotics Act of 1993, National drug strategy of 1997	Combat demand for illicit drugs and focus on early intervention and drug addiction prevention <sup>22</sup>			Possession, distribution, and manufacture are criminal offenses. Conviction and sentence depends on the type and quantity of drug.
<b>Australia</b>	Drugs, Poisons, and Controlled Substances Act of 1981, National Drug Strategy: Australia's integrated framework 2004-2009 <sup>23</sup>	Prevent and reduce the harmful effects of substance use through national educational campaigns, treatment, and criminal penalties <sup>24</sup>	Decriminalization laws for cannabis exist in all eight Australian territories. Some territories have "cannabis cautioning schemes" that provide for civil penalties, while others mandate "prohibition with cautioning and diversion to treatment" plans. <sup>25</sup>	Access to drug courts vary by Australian Territory; however most courts provide a Drug Treatment Order which includes a suspended custodial sentence and a treatment program focused on addressing substance abuse. <sup>26</sup>	Penalties cover a broad range, but for possession of drugs not related to trafficking, one is subject to a maximum fine of \$3000 and/or one year of imprisonment, and the most severe penalty- for persons convicted of trafficking commercial quantities of drugs- is a maximum fine of \$500,000 and/or life imprisonment. <sup>27</sup>
<b>England and Wales</b>	Misuse of Drugs Act, made law in 1971, Drug Trafficking Act of 1994	Prevent the non-medical use of controlled substances through criminal penalties <sup>28</sup>		Often available and monitored through Dedicated Drug Courts for minor nonviolent offenses <sup>29</sup>	Possession, distribution, and manufacture are criminal offenses. Conviction and sentence depends on the type and quantity of drug. Prison sentences can reach life imprisonment for trafficking. Police often handle cases in their jurisdiction. <sup>30</sup>
<b>Canada</b>	Controlled Drugs and Substances Act (CDSA), made law in 1996, Bill C-15 (mandatory minimums)	Prevent use and sale of drugs through criminalization and penalties <sup>31</sup>	Cannabis is not fully decriminalized in any province; however cannabis for medical purposes can be bought and sold with legal permission. <sup>32</sup>	Available through Drug Treatment Courts—judicially mandated treatment programs that offer an alternative to jail time for nonviolent offenses. <sup>33</sup>	Mandatory minimum prison sentences for certain drug offences, and heightened maximum penalties. <sup>34</sup>
<b>United States</b>	State laws vary, but are generally referred to as the "War on Drugs" Mandatory minimum sentencing, school zone laws	Penalize drug use and drug-related behaviors through the criminal or juvenile justice systems	Cannabis is not fully decriminalized in any state, however some states allow cannabis to be bought and sold through authorized vendors for medical purposes. <sup>35</sup>	Often available after involvement in criminal or juvenile justice systems in prison, community-placement, or drug courts	Possession, distribution, and manufacture are criminal offenses. Conviction and sentence depends on the type and quantity of drug, includes mandatory minimums. Possession of even small amounts of drugs can lead to a prison sentence.

Justice Policy Institute is a national nonprofit organization that changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. To read the full report, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, please visit [www.justicepolicy.org](http://www.justicepolicy.org).

<sup>1</sup> Allan Beck and Darrell Gilliard, *Prisoners in 1994* (Washington, DC: Bureau of Justice Statistics, 1995). <http://bjs.ojp.usdoj.gov/content/pub/pdf/Pi94.pdf>. and William Sabol, Heather West, and Matthew Cooper, *Prisoners in 2008* (Washington, DC: Bureau of Justice Statistics, 2009). <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>

<sup>2</sup> Allan Beck and Darrell Gilliard, *Prisoners in 1994*, 1995.; William Sabol, and others, *Prisoners in 2008*, 2009.

<sup>3</sup> United States: William Sabol, Heather West, and Matthew Cooper, *Prisoners in 2008*, 2009. Includes both people in both federal or state prisons, Finland, Germany, UK: Council of Europe, *Annual Penal Statistics – SPACE I – 2008* (Strasbourg, France: Council of Europe, 2010). [www.coe.int/t/dghl/standardsetting/prisons/SPACEI/PC-CP\(2010\)07\\_E%20SPACE%20Report%20L.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/SPACEI/PC-CP(2010)07_E%20SPACE%20Report%20L.pdf) Canada: Laura Landry and Maire Sinha, “Adult Correctional Services in Canada, 2005/2006,” *Juristat* 28, no. 6 (June 2008). [www.statcan.gc.ca/pub/85-002-x/85-002-x2008006-eng.pdf](http://www.statcan.gc.ca/pub/85-002-x/85-002-x2008006-eng.pdf), Sentenced only, does not include remand. Australia: Australian Bureau of Statistics, *Prisoners in 2008*, Australia (Canberra, Australia, Australian Bureau of Statistics, 2008).

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<sup>6</sup> Drug Policy Alliance, “Press Release: Historic Legislation to Reduce Crack/Powder Cocaine Sentencing Disparity Heads to President Obama’s Desk,” July 28, 2010. [www.drugpolicy.org/news/pressroom/pressrelease/pr072810.cfm](http://www.drugpolicy.org/news/pressroom/pressrelease/pr072810.cfm)

<sup>7</sup> Karen Davis, Cathy Schoen, and Kristof Stremikis, *Mirror, Mirror on the Wall*

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<sup>8</sup> International Harm Reduction Association, *The Global State of Harm Reduction 2010: Key issues for broadening the response* (London, United Kingdom: International Harm Reduction Association, 2010). [www.ihra.net/files/2010/06/15/GSHR2010IntroductionWeb3.pdf](http://www.ihra.net/files/2010/06/15/GSHR2010IntroductionWeb3.pdf).

<sup>9</sup> Benjamin Dolin, *National Drug Policy: The Netherlands* (Ottawa, Canada: Library of Parliament, 2001).

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<sup>10</sup> Drug Policy Alliance, “The Netherlands,” [www.drugpolicy.org/global/drugpolicyby/westerneurop/thenetherlan/](http://www.drugpolicy.org/global/drugpolicyby/westerneurop/thenetherlan/), accessed June 2, 2010.

<sup>11</sup> Council of Europe, *Annual Penal Statistics – SPACE I – 2006* (Strasbourg, France: Council of Europe, 2009)

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