



# the Drug Policy Forum of hawai'i

August 2009

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## THE TIMES THEY ARE A CHANGIN' BY PAM LICHTY

In this report I want to take a look at the status of drug policy reforms at the state, national, and international level. Things are happening—that's for sure—but once again Hawai'i, which used to be in the forefront of social change, seems to be sadly lagging.

### National

Let's start with the good news. The nation's new drug czar, Gil Kerlikowske has been making promising comments (in the *Wall Street Journal*!) about how he will no longer use the term "war on drugs" and recognizes that drug misuse is a public health issue. (At the risk of being cynical, we're waiting to see the funding flow away from enforcement and towards treatment and prevention. But, hey, he's still new and so is his boss.)

His statements seem ironic given that he was most recently the police chief of Seattle. But the more I think about it, I realize that law enforcement officials can see more readily than most the utter futility of trying to solve the complex issues around substance misuse through enforcement approaches. There's also the fact that Seattle has long been in the forefront of reform efforts. There were the superb reports put out by the Washington State Bar Association in 2001 and 2005 ([www.dpfhi.org](http://www.dpfhi.org)) Many of their recommenda-

tions were enacted into law.

Then there was the Sensible Seattle Initiative passed in 2003 which made marijuana the lowest arrest priority. Chief Kerlikowske did not endorse any of these moves, but neither did he come out against them. And he was there to observe the positive effects of both.

I've long thought that drug law reforms would be driven by economics, and now that the U.S. is in such dire straits this is beginning to happen. Both California and Massachusetts are discussing taxing cannabis and even Gov. Schwarzenegger says, "I think it's not time for [legalization], but I think it's time for a debate." In Congress Tennessee Rep. Steve Cohen gave FBI Director Mueller a hard time at a Judiciary Committee Hearing about the costs and consequences of marijuana prohibition. And Senator Jim Webb is moving forward with his proposal for an independent commission to examine our criminal justice system including drug policy.

There has been a huge uptick in favorable media discussion of alternatives to prohibition—almost too many to count. A June 14th column by Nicholas Kristof in the *New York Times*, with the great title "Drugs Won the War," includes many of the media themes. It will all be familiar to our supporters: we incarcerate more people than any nation in the world; we have

"empowered criminals at home and terrorists abroad;" it's been an economic disaster. He doesn't even mention infringements of civil liberties, targeting of racial minorities, the spread of infectious diseases due to blocking needle exchange, and on and on.

On the medical cannabis front, the new U.S. Attorney General Eric Holder has stated that his Justice Department (including the DEA) will no longer target organizations and individuals unless they are violating both state and federal laws. He noted that the Feds don't have the resources to pursue medically related marijuana violations unless, he said, they were using state laws as a shield for illicit trafficking or such. And courts in California have ruled that state officials are not required to enforce federal laws on marijuana, but must respect state ones.

### International

Some of these trends may be inspired by comments by South American politicians who are seeing the drug war's disastrous effects in their own nations. A Latin American drug policy commission, headed by the former presidents of Brazil, Mexico, and Columbia, concluded that "the war on drugs is a failed war" and called for a new approach. They suggest that the U.S. government re-

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## CHANGING TIMES (CONT'D)

(Continued from page 1)

examine its anti-drug efforts and consider measures such as decriminalizing cannabis. (Interestingly the three men are all political conservatives.)

Meanwhile the current vice president of Columbia says, "the only way you can really solve the problem [is] if you legalize it totally. Anything...different than that...will not work." In a conference call the leaders of the commission, citing the growing prohibition-related violence in Mexico and elsewhere, suggested that Latin America adopt a more European approach, based on treating drug addiction as a health problem.

In the latest news from that continent, the Cato Institute has just published an in-depth study of the impact of Portugal's 2001 law decriminalizing all drugs—including heroin and cocaine ([www.dpfhi.org](http://www.dpfhi.org)). They are the only European Union member to have explicitly declared drugs decriminalized (meaning possession and personal use).

Not only has the change been popular in Portugal, the empirical data show it to be a resounding success. There has been no adverse effect on drug usage and drug related pathologies such as STDs and deaths have decreased dramatically. In part these changes are the result of enhanced availability of treatment programs, made possible by decriminalization. In contrast to the UK which topped most of the statistics for the periods covered by the report, by 2006 Portugal had some of the lowest drug use, HIV, overdose and other statistics in the entire EU. They reported no 'drug tourism' which some had predicted. Nations around the world are

taking note of these results.

Hawai`i

Last, and unfortunately least, we turn to our own state. Many of you probably read that on June 18th the state Board of Education voted 8-4 to pass new rules which allow random searches of student lockers "with or without cause" with the assistance of drug sniffing dogs. This was the unfortunate culmination of more than two years of wrangling about amending Chapter 19 which deals with issues of school discipline and other thorny issues. In the end, despite plenty of well-researched testimony about the downside of doing this (violation of privacy, possible legal action, erosion of trust between students and administrators, etc.), the Board decided to take the zero tolerance approach. Several DPFH Board members as well as our Executive Director Jeanne Ohta cited potential problems such as targeting of unpopular minorities or individuals, and the fact that these approaches are not prevention programs—despite what their proponents say.

Attorney General Mark Bennett, however, had assured the Board that that the new rules would withstand legal challenges—so after some back and forth about what day the vote would take place, proponents pushed it through in the absence of members who might have voted nay. Kudos go to Board member Kim Coco Iwamoto for her leadership in opposing the new regulations, and to her colleagues Garrett Toguchi, Carol Mon Lee, Lei Ahu Isa, and Karen Knudsen who joined her in the no vote.

At the state legislature, things were only marginally

better. Again many good bills were introduced including several that would have improved the problems with the medical marijuana program, prison reform bills including one that would have eliminated the wrong-headed three-strikes law, and once again there was a DPFH bill that would make possession of under an ounce of cannabis a civil violation (i.e. decriminalization.) The latter at least received a hearing this session, but did not progress. The medical marijuana bills did receive many hearings, but ultimately the only survivor was SB 1058, CD1 which calls for a task force to make recommendations on how to improve the program.

Although the bill was once again vetoed by Gov. Lingle, the Senate was this year joined by the House in voting to over-ride it. The make-up of the Task Force is better than in past bills with DPFH and two other advocacy groups explicitly named as well as two physicians, an ACLU representative, a caregiver and a patient in addition to the usual departmental representatives.

We had hoped that the governor would be following national movement on this topic, i.e. A.G. Holder's comments about taking a hand-off approach to medical marijuana states, and that she would either sign the bill or let it become law without her signature but instead she chose to cling to out-dated and misinformed federal policies to explain her veto.

In sum, the winds of change do seem to be at our backs at last and it's damn encouraging! This is the time to renew and strengthen our efforts to establish pragmatic, evidence-based approaches that work.

*"...the winds of change do seem to be at our backs at last and it's damn encouraging! This is the time to renew and strengthen our efforts to establish pragmatic, evidence-based approaches that work."*

## THE COSTS OF THE DRUG WAR AND INCARCERATION

BY RICHARD MILLER, PROF. OF LAW *EMERITUS*

*“...drug prohibition strains the judicial system with no apparent diminution in drug trade or drug use, fills prisons at great expense to the taxpayers,...”*

It's way past the time when our government should be facing up to and getting rid of the hideous costs of our failed drug war. Recently, at a meeting of the influential Kokua Council, Stuart Ho, President of AARP Hawaii, spoke about the 'Graying of Hawaii' and the potentially huge financial failure of caring for a rapidly aging population. Less than a week later a large gathering at U.H.'s law school heard of the huge failures of our justice system caused by the inability to finance legal services for ordinary people facing loss of vital human rights—ranging from custody of their children, health benefits, citizenship, freedom from spousal abuse, to child support, among others.

In the face of looming huge and unmet needs such as these we persist in feeding our tax dollars into the financing of failed drug war programs and a horribly expensive and inhuman prison system that serve no interests except those of the individuals and firms who profit from them.

What can, what must be done about this problem? I am happy to quote from a statement issued by the prestigious City Bar Association of New York: “*The Report argued*

*in detail, inter alia, that drug prohibition strains the judicial system with no apparent diminution in drug trade or drug use, fills prisons at great expense to the taxpayers, disproportionately punishes racial minorities, corrupts police and erodes constitutional rights, subsidizes organized crime, drafts poor children into the drug trade, causes violence by engendering competition over the lucrative illegal drug market, fails to decrease demand for drugs, facilitates the spread of disease and impairs the health of drug users, and diverts resources from prevention and treatment to law enforcement.”*

This year the same organization reissued a new and impressive document spelling out the continuing failures of the drug war, notwithstanding their earlier call, and called for a new dialogue. (The statement is available at [www.dpfi.org](http://www.dpfi.org).)

It is time we all began to pay attention to rational efforts, such as these, to deal with the problem of drug abuse. The idiocy of not doing so is illustrated by Governor Lingle's veto of SB1058. A major purpose of the bill is to examine and to remedy deficiencies in our current medical marijuana law, a law that

was passed by the Legislature for compassionate reasons. The reason Gov. Lingle gives for vetoing the legislation is: “*Both the medical cannabis task force and the salvia divinorum (a psychoactive herb) task force established under this measure will require significant financial resources and manpower from the Department of Public Safety, a department that must focus on running our correctional facilities and meeting its safety obligations.”*

Thus, the administration of the prisons, which themselves are laden with unnecessary expenses because of a misconceived drug war, creates the financial problems which, pursuant to the Governor's message, will prevent rational and possibly economically effective changes to our system of providing medical marijuana to citizens who require it. Drug law reform, as called for by the N.Y. City Bar Association, will likely free up resources for our prison system and other programs, including the looming aging and justice problems described earlier. We have to begin a widespread public discourse on reforming our drug laws, NOW!

### SAVE THE DATE: NOVEMBER 6, 2009 “HOMEGROWN HARM REDUCTION”

Harm Reduction Hawai`i is collaborating with a diverse group of service providers, community organizations, and concerned citizens to plan “Homegrown Harm Reduction,” to be held November 6, 2009 at the Honolulu Community College.

The planning committee is seeking conference cosponsors, planning committee members and potential speakers.

# MEDICAL MARIJUANA CERTIFICATES DELAYED

BY JEANNE OHTA

*"This situation is exactly why DPFH had proposed in previous years to provide patients with presumptive eligibility immediately upon the written recommendation of their physician."*

DPFH has learned that there is now a significant delay between the time patients' applications are sent to the Department of Public Safety's Narcotics Enforcement Division (NED) and when the certificates are processed and mailed to doctors. NED estimates that it now takes approximately 30 days to process the applications, however, some patients report longer delays.

When patients call asking for information on the status of their application, the department refuses to give any information to patients themselves, saying that information will only be given to doctors' offices.

NED has said that these delays are because of their inability to fill open positions due to the state's hiring freeze. Previously, there was a position dedicated to the medical marijuana program.

This situation is exactly why DPFH had proposed in previous years to provide patients with presumptive eligibility immediately upon the written recommendation of their physician. At that time, NED said that such a provision would be unnecessary because it was taking only a week to process applications. Now, seriously ill

patients are forced to wait four weeks or more.

According to Chapter 23-202 of the Department of Public Safety's Administrative Rules (adopted December 14, 2000), "Upon receipt of the written certification/registry identification forms and registration fees, the department shall issue a receipt, which shall serve as a temporary registration certificate. The temporary registration certificate shall be valid for no more than 60 day from the date of issuance or until the department issues or denies the registry identification certificate." NED has not been providing these receipts.

The rules also go on to say, "any registration pending more than sixty days after receipt of the completed written certification/registry identification forms shall be deemed granted."

"Qualifying patients and their primary caregivers may apply for renewal not earlier than sixty days prior to the expiration of their certificate."

We are concerned that although patients are expected to adhere to the letter of the law, state agencies are not.

While we sympathize with being short-staffed, we also

believe that the state administration cannot simply throw up their hands at the situation. They must find solutions, even temporary ones that would help end the backlog of applications.

NED collects approximately \$125,000 per year from these applications. It seems certainly reasonable to expect the state to want to process those applications and collect the fees as quickly as possible.

If, as the governor's veto message claimed, that the Department of Public Safety has more important matters to attend to, like running our prisons, then the medical marijuana program should be moved to a more appropriate department. DPFH has suggested for years that the program should be administered by the Department of Health.

In the mean time, if you experience a delay in your application, and you want to file a complaint, call the Office of the Ombudsman. This is the office charged with investigating complaints against state agencies. The number to call is: 587-0770.

The full text of the Administrative Rules are available on the DPFH Website [www.dpfhi.org](http://www.dpfhi.org).

## HAWAII METH PROJECT: HYPE OR HELP?

A very public campaign against teen usage of crystal methamphetamine has arrived in Hawai'i. The project originated in Montana.

Many people have asked us our opinion of the project. In general, DPFH believes that abstinence-based and fear-based programs are not effective in reducing the use of drugs by teens. Indeed, one of the most popular programs, DARE has been

proven to be ineffective in reducing the use of drugs.

The Hawai'i Meth Project is currently privately funded, but we expect that following the business model of the Montana program, it will seek public funding after two years.

Researchers have questioned the effectiveness of the Montana program. The basic theory behind the project's ad campaign is that teenagers use meth to be

socially accepted and they don't understand how dangerous it is. The goal is to scare them into thinking that meth use is dangerous and socially unacceptable. This change in attitude would lead to a reduction of meth use.

However, even before the appearance of the first ads, the project's own data showed that 98% of teenagers already

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# DANGER AND OPPORTUNITY

BY KAT BRADY

It is often told that the Chinese symbol for danger is also the symbol for opportunity. That could be very true with the current economic crisis looming over Hawai'i and the world. The economic crisis presents us with an extraordinary opportunity to clean out the dark corners of public policy and bring light to the areas that have long been hidden from the taxpaying public's view.

The media has been rife with stories about jurisdictions releasing thousands of incarcerated people, correctional institutions cutting back on meals (sometimes serving only two meals a day), and policymakers taking hard looks at the sentencing laws that have created an overburdened and ineffective correctional system.

It is obvious that the war on drugs declared by Nixon in 1971 has dramatically increased the U.S. correctional population to astronomical levels. The Pew Center on the States' Public Safety Performance Project: "One in 100 Behind Bars in America 2008" (February 2008) highlights the fact that there are seven million U.S. individuals either under correctional supervision (probation, parole,

incarceration in jails and prisons). The report states that the correctional population has tripled in 25 years.

The Pew Center on the States released another report on March 2009 entitled, "One in 31: The Long Reach of American Corrections." shows that:

- 1 in 32 adults was under some form of correctional control in 2008 (it was 1 in 90 adults in 1982);
- Corrections' share of the general fund expenditures in 2008 was 4.3%;
- For every dollar spent on corrections in Hawai'i in 2008, four cents went to probation and parole.

The increase in Hawai'i's prison population from 300 in 1970 to 6,014 in 2008 is a 1,905% leap. Why the dramatic increase? The failed war on drugs.

This monumental government failure has facilitated the entry of private prisons into the correctional mix—making the war on drugs a windfall for private prison profiteers, who are accountable to their shareholders first and foremost.

This monumental govern-

The rising population numbers of incarcerated individuals in Hawai'i tell the story of the failed war on drugs:

Year	Incarcerated Population*
1970	300
1980	926
1990	2,625
2000	5,127
2008	6,014

(Source: Population numbers from the Department of Public Safety's 2008 Annual Report, [www.hawaii.gov/psd](http://www.hawaii.gov/psd))

ment failure has also bankrupted states morally and economically and has the prison systems bursting at the seams with nonviolent drug lawbreakers, mostly incarcerated for drugs or drug-related crimes.

Links to reports mentioned in this newsletter are available on our website under "newsletter links" at [www.dpphi.org](http://www.dpphi.org):

- The Pew Center Reports
- Cato Institute's "Drug Decriminalization in Portugal"
- NYC Bar Association
- "Searches of Public School Students and their Lockers"

*"...making the war on drugs a windfall for private prison profiteers, who are accountable to their shareholders first and foremost."*

## METH PROJECT (CONT'D)

strongly disapproved of meth use and 97% thought using meth was risky. The project claims meth use has dropped since the ads appeared, but researchers point out that there were other factors affecting usage and that no direct link to the project can be made.

Running such an expensive ad campaign aimed at all teenagers when so many already disapprove of its use is a poor use of resources.

A GAO report found that another ad campaign, the National Youth Anti-Drug Media Campaign had not reduced drug use. In fact, some youth reported an increase in marijuana use after viewing the ads.

Science-based prevention programs which have been subject to high quality research trials do exist. It would be wiser to put our resources toward these proven programs. Unintended negative

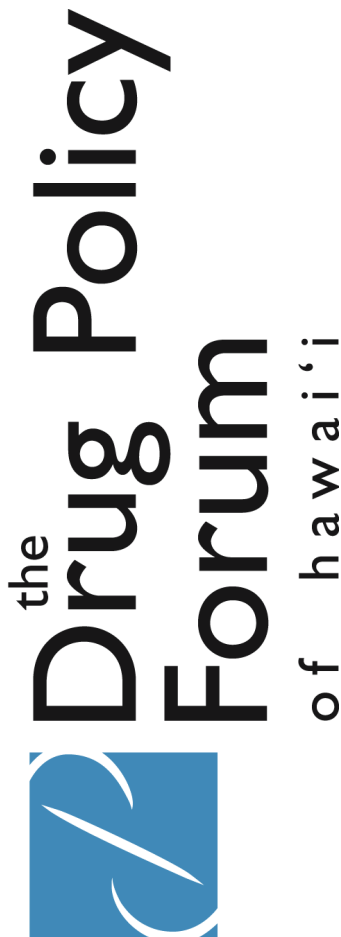
results would then be avoided.

For example, The *Honolulu Star Bulletin* reported in June that a randomized, scientific trial of the efficacy of "Positive Action," funded by the National Institute of Drug Abuse shows that students who took part in the program were about half as likely to try drugs, alcohol, weapons or sex as their peers in other schools. Twenty Hawaii elementary schools participated in the five-year experiment.

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The Drug Policy Forum of Hawai'i is a non-profit organization founded in 1993 to encourage the development of effective drug policies that minimize economic, social, and human costs, and to promote the consideration of pragmatic approaches to drug policy based on: scientific principles, effective outcomes, public health considerations, concern for human dignity enhanced well being of individuals and communities.



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