

THE COLOSSAL COST OF SUBSIDIZING FAILURE: HOW THE DRUG WAR IMPACTS PUERTO RICO'S BUDGET

ARTICLE

JUAN NADAL FERRERÍA *

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Puerto Ricans are as attached to the status quo as they are discontented with it. **

INTRODUCTION

THE COMMONWEALTH OF PUERTO RICO HAS SPENT AROUND FIVE BILLION dollars during the past ten years in costs directly related to the Drug War.¹ In fact, for fiscal year 2011-2012 (FY 2012), the government will

* University of Puerto Rico School of Law, J.D. 2011; University of Pennsylvania, M.P.A. 2008; University of Puerto Rico, B.A. 2006. The author thanks both *Dean Emeritus* Antonio García-Padilla and *Professor Emeritus* David M. Helfeld: their guidance, suggestions, comments and words of encouragement have made this work a reality. Furthermore, the assistance of the editorial staff of the University of Puerto Rico's Law Review, particularly Tzeitel Andino, is acknowledged.

** The quote is the author's, paraphrasing longtime French Minister of Justice Alain Peyrefitte, in his authoritative work ALAIN PEYREFITTE, *LE MAL FRANÇAIS* (1976).

1 Both "War on Drugs" and "Drug War" are used indistinctively throughout this work.

likely spend anywhere from \$400 to \$600 million in those efforts.² To put this figure into perspective, this is between \$108 and \$162 dollars per Puerto Rican.

This article attempts to succinctly address the ongoing yearly strain caused to Puerto Rico's General Fund due to the perpetuation of patently failed drug policies. That is, it strives to quantify and analyze the effects of these policies on the Commonwealth's budget, discussing yearly expenses. As such, this work will showcase how the sheer weight of archaic narcotics policies bogs down the Commonwealth's ability to effectively spend, use and manage its limited resources.

Sadly, Puerto Ricans have become inured to a harsh reality: drug-infested schools, incarceration of addicts, and petty crime related to narcotics consumption.³ This sense of complacency has led to an ineffective and lackadaisical approach to dealing with these pivotal issues. The burden of sustaining the status quo is entirely unjustified for the Commonwealth's treasury, and limits the funds available for creating well-paid jobs, fostering social and economic development, reconstructing an ailing educational system and working to fix other financial quandaries such as the public pension system.

Puerto Rico, immersed in the United States political system, seems *contaminated* by the American approach to drugs. While the United States has historically criminalized drug use since the second half of the twentieth century, with the advent of the so-called Drug War in the 1970's and 1980's, punishment and general enforcement expenditures rose exponentially.⁴ Its alleged success, however, is widely criticized. Among critics, some believe that this effort is racially

² As appropriated by J. RES. 56, 5th Sess. (P.R. 2011), J. RES. 54, 5th Sess. (P.R. 2011) and PUERTO RICO ACT NO. 112, JULY 1, 2011, available at <http://www.oslpr.org/2009-2012/leyes/pdf/ley-112-01-Jul-2011.pdf>.

³ There is increased debate on this topic. Some observers challenge the notion that Puerto Rico is a full-fledged *narco-state* as countries such as Mexico and Colombia have been denominated in various stages. These are countries where politicians and drug-trafficking lords are closely intertwined, using drug money to foster investment and create jobs. Compare Eva Lloréns Vélez, *Experts: Puerto Rico far from being a 'narco-economy'*, CARIBBEAN BUSINESS, May 12, 2011, at 25, with Reinaldo Millán, *Expertos dicen que el País está a punto de convertirse en narcoestado*, PRIMERA HORA (Dec. 6, 2011), <http://www.primerahora.com/expertosdicenqueelpaisestaapuntodeconvertirse-en-narcoestado-589322.html> (narrating statements from other experts who do believe Puerto Rico may have already converted into a narco-state due to the *ample operations* of the drug cartels throughout the country), and Osman Pérez Méndez, *Vamos en esa ruta*, EL NUEVO DÍA (Dec. 12, 2011), <http://www.elnuevodia.com/vamosenesaruta-1141642.html> and Miguel Pereira: *"Puerto Rico es un narcoestado"*, PRIMERA HORA (Oct. 31, 2011), <http://www.primerahora.com/miguel-pereirapuertoricoesunnarcoestado-573493.html>.

⁴ See generally Margarita Mercado Echegaray, *Drug Prohibition in America: Federal Drug Policy and its Consequences*, 75 REV. JUR. UPR 1215 (2006). Well before the advent of the Drug War in the 1970's, the United States had quite permissive laws or simply had none at all in various periods of its history. For an abridged history of drug regulation and consumption in the United States, see Fish, *infra* note 133, at 25-35.

biased.⁵ Others argue that the Drug War has had a detrimental effect in the Caribbean Basin and Central America, particularly in countries such as Jamaica,⁶ Mexico,⁷ and of course, Puerto Rico, as will be discussed throughout this work.

There are, however, positive changes worth noting. Federal statutes prohibit a variety of drugs, yet several states have embraced new approaches.⁸ In recent years, an eclectic mix of citizens from all walks of life including scientists, doctors, judges,⁹ law enforcement officers¹⁰ and writers¹¹ have called for urgent reform to drug laws.

⁵ See generally Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the "War on Drugs" was a "War on Blacks"*, 6 J. GENDER RACE & JUST. 381 (2002) (denouncing the Drug War as "race war" which encumbers and hinders African-Americans socioeconomic progress).

⁶ *Another battle in an unwinnable war*, THE ECONOMIST, May 29, 2010, at 39 (describing the war-like environment in Jamaica amidst the capture of a major drug lord whose trade includes selling narcotics through the Jamaican diaspora in New York, London and Toronto). See also Marlyn J. Jones, *Jamaica's Marijuana Decriminalization Conundrum*, 18 CAN. J.L. & SOC'Y 91 (2003) (highlighting both, the tension between Jamaica's efforts to decriminalize marijuana and ensuing pressure from the United States against such a measure).

⁷ See Aimee Rawlins, *Mexico's Drug War*, COUNCIL ON FOREIGN RELATIONS, Dec. 13, 2011, available at <http://www.cfr.org/publication/13689/>. See also Seth Harp, *Globalization of the U.S. Black Market: Prohibition, the War on Drugs and the Case of Mexico*, 85 N.Y.U. L. REV. 1661 (2010).

⁸ Andrew Ferguson, *How Marijuana Got Mainstreamed*, TIME, Nov. 22, 2010, at 30-38. Under the federal statutes, marijuana is considered a Schedule I controlled substance, a status reserved for the drugs with the most serious potential for abuse and no medical benefit whatsoever. See Eric Blumenson & Eva Nilsen, *No Rational Basis: The Pragmatic Case for Marijuana Law Reform*, 17 VA. J. SOC. POL'Y & L. 43 (2009). Curiously, said classification equates marijuana with heroin and places it in a graver category than cocaine. See also Mercado, *supra* note 4, at 1228-1231.

Not surprisingly, the incongruence between conflicting state and federal law has created a variety of legal conundrums. Federal prohibition trumps state or local measures. See *Gonzales v. Raich*, 545 U.S. 1, 29 (2005) (upholding parts of the Controlled Substances Act that criminalized intrastate growth, possession and use of marijuana for medical purposes).

Even before the advent of medical marijuana, the fierce federal efforts to thwart drug consumption and trade created conflicts with the states. See Sandra Guerra, *The myth of Dual Sovereignty: Multijurisdictional Drug Law Enforcement and Double Jeopardy*, 73 N.C. L. REV. 1159 (1995).

Shortly after taking office, President Barack Obama's Administration directed United States attorneys to refrain from prosecuting individual users who are fully complying with state laws authorizing medical marijuana. In a memorandum, the Department of Justice discouraged "prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana" deeming said prosecutorial efforts as "unlikely to be an efficient use of limited federal resources." Memorandum from David W. Ogden, Deputy Attorney Gen., U.S. Dep't of Justice, to All U.S. Attorneys (Oct. 19, 2009), *Memorandum for Selected United State Attorneys on Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, available at <http://blogs.usdoj.gov/blog/archives/192>. But see Erik Eckholm, *Medical Marijuana Industry Is Unnerved by U.S. Crackdown*, N.Y. TIMES, Nov. 24, 2011, at A22 (signaling a reversal of the Obama Administration's policy, chronicling the Drug Enforcement Administration (DEA) intervention with marijuana dealers licensed under California law).

⁹ First Circuit Judge Juan R. Torruella has been one of the most enthusiastic supporters of drug decriminalization in the federal bench. See generally Juan R. Torruella, *One Judge's Attempt at a*

In 1996, California became the first state to legalize the growth and consumption of marijuana for medicinal purposes.¹² It is the state's biggest cash crop, with total sales of \$14 billion annually.¹³ Today, almost a third of the states allow the medicinal use of marijuana.¹⁴ According to recent polls, a solid majority of Americans support the legalization and taxation of marijuana.¹⁵ Activists are confident that the increased acceptance of 'medical' marijuana will lead to its full legalization, at least of such substance.¹⁶ Voices in Congress are starting to realize the need for such decriminalizing measures.¹⁷ The reality today is that a teenager has easier access to marijuana than to beer in the United States; yet the law technically prohibits said access to the drug.¹⁸

While specific states are making progress, Puerto Ricans however seem deeply habituated to the drug policy reality. Puerto Rico's particular relation with the United States makes it an ideal transit point for narcotics. The fact that

Rational Discussion of the So-Called "War on Drugs", 6 B. U. PUB. INT. L. J. 1 (1996); 14 YALE J. ON REG. 235 (1997); 66 REV. JUR. UPR 1 (1996). See also Juan R. Torruella, *Déjà vu: A Federal Judge Revisits The War on Drugs, or life in a balloon*, 20 B.U. PUB. INT. L.J. 167 (2011), available at <http://academiajurisprudenciapr.org/deja-vu-a-federal-judge-revisits-the-war-on-drugs-or-life-in-a-balloon-1/>. Other federal judges have made expressions rebuking the Drug War. For a brief list, see *Federal Judges Who Criticize the "War on Drugs"*, <http://www.ndsn.org/julaug08/courts5.html> (last visited Apr. 13, 2012).

¹⁰ Current and former law enforcement agents have organized as *Law Enforcement Against Prohibition* to lobby for drug policy reform. See LAW ENFORCEMENT AGAINST PROHIBITION, <http://www.leap.cc/> (last visited Apr. 13, 2012).

¹¹ See Nicholas D. Kristof, *End the War on Pot*, N.Y. TIMES, Oct. 27, 2010, at A33. See also Mario Vargas Llosa, *Avatares de la marihuana*, EL NUEVO DÍA, Nov. 21, 2010, at 6. An entire number of the University of Puerto Rico's Law Review was devoted to the failure of drug policies and to proposed reforms. See 75 REV. JUR. UPR No. 4, 1029-1509 (2006).

¹² *The law of the weed*, THE ECONOMIST, July 18, 2010, at 31.

¹³ Ferguson, *supra* note 8, at 32.

¹⁴ Devlin Houser, *Arizona Narrowly Approves Medical Marijuana*, N.Y. TIMES, (Nov. 15, 2010, 12:00 PM), <http://thecaucus.blogs.nytimes.com/2010/11/15/arizona-narrowly-approves-medical-marijuana/>. See also The Associated Press, *Arizona Becomes 15th State to Approve Medical Marijuana*, N.Y. TIMES, Nov. 14, 2010, at A14 (note that the District of Columbia is grouped as a state in this case).

¹⁵ *Happy toking*, THE ECONOMIST (Feb. 10, 2011), <http://www.economist.com/node/18118857>. The poll's percentages are available at <http://big.assets.huffingtonpost.com/2010208econToplines.pdf>.

¹⁶ Ferguson, *supra* note 8, at 32.

¹⁷ A marijuana decriminalization bill was filed by Rep. Barney Frank (D-MA) on June 2011 and had twelve co-sponsoring representatives as of Aug. 12, 2011. See Ending Federal Marijuana Prohibition Act of 2011, H.R. 2306, 112th Cong. (1st Sess. 2011). This has not been the only effort in Congress towards a new drug policy. In fact, Puerto Rico's Resident Commissioner Pedro Pierluisi filed H.R. 2567, which would expand the Federal First Offender Act to those over 21 years old. This would mean that a first offender would be treated medically and not punitively, within certain parameters. See Federal First Offender Improvement Act of 2011, H.R. 2567, 112th Cong. (1st Sess. 2011). See also Frances Rosario, *Cambio federal al adicto*, EL NUEVO DÍA, July 19, 2011, at 8.

¹⁸ KNOWLEDGE NETWORKS QEV ANALYTICS, LTD., THE NAT'L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., NATIONAL SURVEY OF AMERICAN ATTITUDES ON SUBSTANCE ABUSE XIV: TEENS AND PARENTS 13 (2009).

the Island is part of the United States customs area is particularly appealing, allowing drug runners to satisfy the insatiable appetite of consumers in its largest market.¹⁹ Once a shipment enters Puerto Rico, controls are vastly relaxed, and many in the trade rely on traditional commercial airlines and public and private postal services for transportation. This has resulted in increased violence in Puerto Rico. For example, Puerto Rico has a homicide rate of roughly 23 killings per every 100,000 inhabitants.²⁰ In the Americas, various Central American countries as well as Brazil and Colombia are the only ones who surpass this rate; they are all overburdened by the spread of “narcoviolence.”²¹ Quite notably, El Salvador and Guatemala both have a higher murder rate today than during their respective civil wars in the 1980’s.²²

The Drug War in Puerto Rico has resulted in a budget full of skewed priorities and expensive programs, most of them with no sunset clause whatsoever, that year after year shower money without any positive result (and therefore, return) to the taxpayer. On the contrary, the harmful effects are patent. This debate about the complete overhaul of the approach to drug policy is, in Puerto Rico and elsewhere in Latin America, vastly overdue.²³

Clearly, if the individual rights,²⁴ medical, ethical and social policy²⁵ arguments have not been enough to convince Puerto Ricans that a radical change in drug policy is urgently needed, this Article will serve to strengthen the argument for reform by contrasting the failure of drug policies and the wasteful burden that policies have on Puerto Rico’s budget. Fiscal conservatives must realize the

¹⁹ Recently, drug trafficking has spiked up in the Caribbean region, as the former porous border between Mexico and the United States is now heavily guarded. See Gretchen Sierra-Zorita, *Drug violence at America’s other southern border*, Op-Ed., WASH. POST (Nov. 24, 2011), http://www.washingtonpost.com/opinions/drug-violence-at-americas-other-southern-border/2011/11/23/gIQAw6uhtN_story.html. See also Curt Anderson, *US official: Drug traffic may return to Caribbean*, THE HUFFINGTON POST, Nov. 8, 2011, <http://www.huffingtonpost.com/huff-wires/20111108/us-drugs-central-america/> (quoting a top State Department official who admits the Caribbean today is the “most logical” route for drug smuggling into the United States).

²⁰ José A. Delgado, *Sitiada Centroamérica por la “narcoviolencia”*, EL NUEVO DÍA, Apr. 8, 2011, at 47.

²¹ *Id.* Dealing with crime and drugs costs Central American countries roughly 8% of their gross domestic product. See *The tormented isthmus*, THE ECONOMIST, Apr. 16, 2011, at 25-28.

²² *The rot spreads*, THE ECONOMIST, Jan. 22, 2011, at 45.

²³ *Let them chew coca*, THE ECONOMIST, Jan. 22, 2011, at 18.

²⁴ Experts have consistently pointed at the diminishing rights of individuals as one of the biggest consequences of the “War on Drugs.” As Judge Torruella states: “[l]aw enforcement activities, government policies, drug-related legislation and court decisions have all subtly, and sometimes not so subtly, coalesced to diminish and undermine the philosophy and text of the Bill of Rights.” Juan R. Torruella, *Déjà vu: A Federal Judge Revisits The “War on Drugs”, or life in a balloon*, 20 B.U. PUB. INT. L.J. 167, 187-88 (2011).

²⁵ This work does not pretend to quantify the social costs triggered by maintaining the current approach to drugs. Such an effort would require a much deeper study that is best left to experts on said intangible impact.

nefarious effects of playing politics with drugs, resulting in woefully inefficient government services, rampant insecurity and impunity, and ultimately, higher taxes.²⁶

I. THE FAILED STATUS QUO: DRUG POLICY IN PUERTO RICO

Puerto Rico has struggled to curb drug consumption and trafficking for the past few decades. A plethora of ineffective policies have resulted in the War on Drug's undeniable defeat. As in other jurisdictions, drug policy in Puerto Rico has been implemented in the hope of achieving certain *outcomes*: less crime, better health and general well being.²⁷ However, *success* within the War on Drugs mantra has been measured by reports on *processes* instead of *outcomes*: that is the total number of arrests, quantity of seized substances, or amount of bail posted.²⁸

The newest novelty in this tragicomedy of failed strategies to curb drug use is Governor Luis Fortuño's (2009-) Administration *Golpe al usuario* program.²⁹ This program is predicated on attacking the demand side of the drug equation by arresting drug users who are buying banned substances in *puntos* or drug-selling outlets.³⁰ That is, instead of going after drug kingpins and disrupting those who amply benefit from these sales, the government has chosen to arrest, incarcerate and prosecute individuals who may be addicted to those narcotics. The sheer criminalization of sick consumers who are addicted to powerful drugs is perhaps the most ironic example of the patent failure of today's approach to drugs. The government, since 1993, has actively engaged in constant *operativos* or mass incursions, typically into poor *barrios* or decaying public housing projects.

Most of the crimes committed in Puerto Rico are a direct consequence of the Drug War. It is commonly believed that the drug-related crime rate is between

²⁶ The fiscal argument can and should be particularly targeted to "conservatives" in mind, as many of them have tax reform and public spending as part of their core electoral issues. This paper pretends to briefly chronicle how the Commonwealth of Puerto Rico is mispending millions of dollars yearly, diverting resources from other critical policy areas such as health and education. These diversions result in hindered economic growth as the Island fails to adapt to world economic trends and needs. There seems to be progress among US conservatives in this topic. *See e.g., Right and proper*, THE ECONOMIST, May 28, 2011, at 24 (describing how an increasing number of Republican politicians are adopting sentencing and prison reform as core issues, centered on budgetary concerns due to skyrocketing costs). *See also* RIGHT ON CRIME, <http://www.rightoncrime.com> (last visited Apr. 13, 2012) (a conservative initiative devoted to pushing for reforms on fiscal grounds).

²⁷ *See* GLOBAL COMMISSION ON DRUG POLICY REPORT 5 (2011), *available at* <http://www.globalcommissionondrugs.org/Report>.

²⁸ *Id.*

²⁹ *De Golpe al Punto a Golpe al Usuario*, EL VOCERO (Feb. 24, 2011), <http://www.vocero.com/noticias-es/de-golpe-al-punto-a-golpe-al-usuario>.

³⁰ *Id.* *See also* Miguel Rivera Puig, *Masivo golpe al punto*, EL VOCERO, Feb. 25, 2010, at 10.

65-75% of total crimes.³¹ The current climate of sheer insecurity drives Puerto Ricans to carry legal and illegal firearms, which plausibly leads to increased garden-variety street disputes being settled with bullets, causing continued bloodbaths on the Island's streets. Furthermore, the Drug War engenders dysfunctional families by putting addicted parents in jail instead of providing them with medical treatment. Such a practice ultimately leads to years of children abandonment, which may be left at the mercy of irresponsible or impudent family members or become wardens of a highly-bureaucratic and ineffective state welfare system. These "children of the War" are very likely to engage in criminal conduct. Thus, it is plausible that the crimes that are an indirect consequence of the Drug War, together with those directly related to it probably constitute 80-85% of all crime reported in Puerto Rico.³²

During the 1980's, drug-caused crimes and social maladies increased sharply, arguably becoming Puerto Rico's main problem.³³ Even then, such issues were being countered with the traditional weapons: enactment of more severe laws, increasing the capacity of correctional facilities and tough law enforcement tactics.³⁴ Rehabilitation and prevention efforts languished.³⁵ By the end of the 1980's, illegal drug use was a key factor behind violent and serious crimes.³⁶ Corruption flourished due to the need for setting up and covering money-laundering operations: by 1991, even a prominent Puerto Rico Police Department ("P.R.P.D.") colonel had been indicted for drug trafficking.³⁷

In the 1990's, Governor Pedro Rosselló (1993-2001) implemented the military-style enforcement of drug laws – a strong-armed policy aptly dubbed *Mano*

³¹ At least in terms of homicides, it seems that at least 75% of them are drug-related. However, the inaccuracies of Puerto Rican crime statistics can be bewildering. For example, 894 homicides were reported during calendar year 2009, yet only 336 of those had an identified cause. The remaining 558 homicides were reported under "unknown" cause. Drug-related homicides were reported at 258, that is 76.7% of those with a reported cause. TENDENCIASPR.COM, COMPENDIO DE ESTADÍSTICAS: VIOLENCIA EN PUERTO RICO 2009, available at <http://www.tendenciaspr.com/violencia/CompendioViolencia2009.pdf?attredirects=0&d=1>. In 2008, 80% of homicides were related to the drug trade. *Récord de asesinatos en Puerto Rico*, Jan. 2, 2009, available at <http://archivo.univision.com/content/content.jhtml?cid=1793792>. Even by the late 1980's, 95% of homicides, 80% of robberies, 75% of car thefts and 70% of larcenies were caused by the drug trade. See Dora Nevares Muñiz, *Comentario a la Ponencia del Honorable Edgar Saavedra Rojas*, 60 REV. JUR. UPR 1114 (1991) (citation omitted).

³² The reality is that there is always some sort of petty crime and crimes resulting from aggressive behavior or passionate motives, even in a drug-free utopia, so not *all* spending is directly related to drug policies.

³³ EUGENIO FERNÁNDEZ MÉNDEZ, *HISTORIA ILUSTRADA DE UN PUEBLO* 492-493 (9th ed. 1991).

³⁴ *Id.*

³⁵ *Id.*

³⁶ FRANCISCO A. SCARANO, *CINCO SIGLOS DE HISTORIA* 828 (1993), citing DORA NEVARES MUÑIZ, MARVIN E. WOLFGANG & PAUL F. TRACY, *DELINQUENCY IN PUERTO RICO: THE 1970 BIRTH CONTROL STUDY* (1990).

³⁷ *Id.* at 827-828.

Dura.³⁸ In 1994, the Office of National Drug Control Policy designated Puerto Rico as a High-Intensity Drug Trafficking Area (H.I.D.T.A.).³⁹ Federal law enforcement agencies markedly increased interdiction efforts in Puerto Rico and its vicinity.⁴⁰ At that time, approximately one-third of the cocaine distributed in the United States transited through Puerto Rico on its way north.⁴¹ The Drug War was at its zenith: drug-fueled violence triggered increased repression.

While technically *Mano Dura* became a casualty with the administration of Governor Sila M. Calderón (2001-2005), the punitive approach was left unchanged during her tenure.⁴² Her successor was Governor Aníbal Acevedo Vilá (2005-2009), whose proposal to tackle crime was titled “Castigo Seguro”.⁴³ During his term, advances were made in crime reduction,⁴⁴ but no significant changes to drug laws were brought forth. Acevedo Vilá’s 2008 election platform was extensive in terms of pushing for alternative treatments for drug users.⁴⁵ It also admitted the failure of the punitive approach.⁴⁶ However, Acevedo Vilá was defeated in 2008, and succeeded by Governor Fortuño.

Fortuño’s platform in 2008 stressed a change from the traditional *legalist* approach to policing towards an emphasis in crime prevention and increased surveillance.⁴⁷ The platform did not push for any substantial change in drug

³⁸ Taína Rosa, *With the highest murder rate in the U.S., Puerto Rico needs immediate solutions*, CARIBBEAN BUSINESS, Jan. 20, 2005, at 1, 16-21. On the *Mano Dura* policy, see generally DORA NEVARES MUÑOZ, *EL CRIMEN EN PUERTO RICO: TAPANDO EL CIELO CON LA MANO* (2nd. ed. 2008). Recently appointed Police Superintendent Emilio Díaz Colón was one of the key figures during the *Mano Dura* effort, serving as Adjutant General of the Puerto Rico National Guard when guardsmen were called upon as reinforcement while law enforcement agencies *invaded* public housing projects in the first half of the 1990’s. See Carmen Milagros Díaz, *Confirmación planchá*, *El Vocero*, July 10, 2011, at 10.

³⁹ Francisco Javier Cimadevilla, Proviana Colón Díaz, & Evelyn Guadalupe-Fajardo, *Puerto Rico mourns*, CARIBBEAN BUSINESS, Oct. 9, 2003, at 18-27.

⁴⁰ Ivonne García, *Funding the Drug War in Puerto Rico*, CARIBBEAN BUSINESS, Aug. 3, 2000, at 36, 38-41 (citing the exponential increase in DEA and FBI agents in Puerto Rico at the end of the 1990’s). Interdiction efforts have been intensified in response to the recent spike in trafficking in the Island’s eastern region and outlying areas (Vieques and Culebra). See Limarys Suárez Torres, *Nuevo equipo para atacar el tráfico de drogas y armas*, EL NUEVO DÍA, June 10, 2011, at 30.

⁴¹ *Id.*

⁴² Taína Rosa, *With the highest murder rate in the U.S., Puerto Rico needs immediate solutions*, CARIBBEAN BUSINESS, Jan. 20, 2005, at 1, 16. It is important to note that Calderón Administration officials constantly questioned the veracity and accuracy of crime statistics collected by the Rosselló Administration. *Id.* The inaccuracies in police statistics are discussed elsewhere in this work.

⁴³ PARTIDO POPULAR DEMOCRÁTICO, *UN PROYECTO DE PAÍS 77* (2008), available at <http://www.slideshare.net/bibliotecaap/programa-de-gobierno-ppd2008-2009-2012>.

⁴⁴ *Id.*

⁴⁵ *Id.* at 77-80.

⁴⁶ *Id.* at 79.

⁴⁷ PARTIDO NUEVO PROGRESISTA, *PROGRAMA DE CAMBIO Y RECUPERACIÓN ECONÓMICA 97* (2008), available at <http://www.npclawyers.com/dynamicdata/fileupload/Plan%20de%20Gobierno%202009-2012.pdf>.

laws, or any innovative approach to deal with the issue. It proposed “increased communication between concerned agencies” and expanding Drug Courts.⁴⁸ The document does seem to nod towards a *medicalist approach* (“*enfoque salubrista*”) to the drug issue, acknowledging that drug abuse is a medical issue and must be treated as such.⁴⁹ However, this proposal largely has been unfulfilled, aside from token efforts pushing buprenorphine and methadone treatments.⁵⁰ Even worse, the Administration is now pushing for a new, admittedly “more punitive” Penal Code;⁵¹ an initiative that has met widespread opposition.⁵²

All of these strategies have been a continuing burden on Puerto Rico’s Treasury for the past decades. Before delving into the strictly financial aspects of these failed policies, it is important to note that police statistics in Puerto Rico are highly unreliable and are constantly tinkered-with.⁵³ There are pending investigations on whether the P.R.P.D. has regularly altered and manipulated incident reports to avoid bloating statistics.⁵⁴ Therefore, all police statistics used herein are likely *underestimating* actual crime.

⁴⁸ *Id.* at 104. See also *Inauguran Corte de Droga Juvenil*, PRIMERA HORA, May 2, 2011, <http://www.primerahora.com/inaugurancortededrogajuvenil-50111.html>. For further discussion of the drug courts initiative in Puerto Rico, see José R. Pereyó Dueño, *Crimen y rehabilitación: La experiencia de las Cortes de Drogas*, 75 REV. JUR. UPR 1455 (2006). Drug courts have, of course, not been exempt from criticism. See e.g., Morris B. Hoffman, *The Drug Court Scandal*, 78 N.C. L. REV. 1437 (2000).

⁴⁹ PARTIDO NUEVO PROGRESISTA, *supra* note 47, at 141.

⁵⁰ Efforts to implement treatments have been notoriously slow. Ely Acevedo Denis, *Pisa y no arranca plan del Gobe para adictos*, NOTICEL (July 24, 2011), <http://www.noticel.com/noticia/107696/pisa-y-no-arranca-plan-del-gobe-para-adictos.html> (last visited Apr. 14, 2012).

⁵¹ Ricardo Cortés Chico, *Lluvia de dudas con el nuevo Código Penal*, EL NUEVO DÍA, Mar. 20, 2011, at 46-47.

⁵² Ricardo Cortés Chico, *No va a resolver en nada el crimen*, EL NUEVO DÍA, Mar. 20, 2011, at 48. See also Gloria Ruiz Kuilan, *Abogan por el modelo salubrista y no punitivo*, EL NUEVO DÍA, May 29, 2011, at 8 (describing the heated legislative debate during public hearings amidst backers of the Penal Code reform and the opposition).

⁵³ Ricardo Cortés Chico, *Amenazado por oficiales*, EL NUEVO DÍA, May 6, 2011, at 34 (relating how a PRPD officer was threatened and coerced for attempting to record ordinary crimes which would end up being reflected in the Police’s monthly tallies). See also, Mario Marazzi, Op-Ed., *La calidad de las estadísticas del crimen*, EL NUEVO DÍA, May 18, 2011, at 63.

⁵⁴ Ricardo Cortés Chico, *Justicia investiga la alteración de querellas*, EL NUEVO DÍA, May 9, 2011, at 12 (stating that the Commonwealth Attorney General’s Office was investigating reports of statistical manipulation; its report evidenced that at least 9 out of 13 police regions in the Island had condoned this practice). See also Ricardo Cortés Chico, *Mano dura al ‘manipulador’*, EL NUEVO DÍA, May 4, 2011, at 26-27. See also Ricardo Cortés Chico, *Creatividad con las estadísticas*, EL NUEVO DÍA, May 2, 2011, at 28-29.

II. THE COMMONWEALTH'S GENERAL FUND AND ITS DRUG POLICY SHACKLE BALL

The Commonwealth of Puerto Rico is a bureaucratic behemoth that spans over 125 agencies and public corporations.⁵⁵ These are funded, primarily, through a yearly joint resolution passed by the legislature, special state funds and federal disbursements. The first two sources come primarily from resources collected by the Treasury Department, the rest from federal funding. For purposes of the present work, funding derived from federal appropriations or other budgetary provisions will not be considered. As the purpose of this paper is to calculate the monetary impact of failed drug policies in the budget of the Commonwealth of Puerto Rico, the goal is identifying how the Puerto Rican taxpayer *subsidizes* an expensive effort to continue fighting a losing and highly destructive war. That is, attempting to thwart drug trafficking and consumption in the Island thorough failed and costly policies.⁵⁶

Every year the governor submits a budget proposal to the legislature, which is considered by both chambers.⁵⁷ Typically, the proposal is submitted around the months of March or April. As the fiscal year begins in July 1, the Legislative Assembly has roughly 8-14 weeks to consider the suggested allocations, holding public hearings and usually engaging in spirited debate towards the end of the legislative session, which ends June 30th.

This article will examine the last ten budgets of the Commonwealth of Puerto Rico: beginning with the FY 2003 budget and ending with the 2011 allocation. Alongside with those nine years of figures, the current budget (FY 2012), as approved by the Legislative Assembly, will be considered for purposes of the present analysis.⁵⁸ Puerto Rico's last three governors, Sila M. Calderón, Aníbal Acevedo-Vilá and Luis G. Fortuño, are responsible for these budgets.⁵⁹ While each governor has had different areas of policy focus, the reality is that none of

⁵⁵ PRESUPUESTO POR AGENCIA, OFICINA DE GERENCIA Y PRESUPUESTO, *available at* <http://www4.pr.gov/presupuestos/presupuesto2011-012/Pages/PRESUPUESTOPORAGENCIAS2011-2012.aspx>.

⁵⁶ While the federal treasury certainly derives funds from Puerto Rico by taxing commerce and some citizens (federal employees, for example, pay taxes to the United States government), the reality is that the majority of federal funding is derived from stateside taxpayers and very few is directly paid by the residents of Puerto Rico. Therefore, this work will concentrate on disbursements derived from local taxpayers without considering federal allocations. It is important, however, to note that there are very few instances where taxes collected by the federal government are remitted almost completely back to Puerto Rico by Congressional fiat. The best example is the so-called rum tax cover-over. These monies are received by the local Treasury Department and considered special state funds when appropriated by the legislature.

⁵⁷ PR CONST. art. 3, § 17.

⁵⁸ See *supra* note 2.

⁵⁹ Both Gov. Calderón and Gov. Acevedo-Vilá are affiliated to the Popular Democratic Party (PDP); while Gov. Fortuño is affiliated to the New Progressive Party (NPP).

them substantially decreased expenditures in Drug War related programmatic areas, that is, law enforcement, judiciary and corrections.⁶⁰

Note that a constant structural deficit has plagued the Commonwealth since the windfall years of the 1990's. Governments have struggled to balance the budget, relying on the use and abuse of credit lines provided by the Government Development Bank and in other temporary measures. The current Fortuño Administration has not been any different, using debt mechanisms to finance recurring expenses. This is, of course, a telling sign of the economic troubles that have sent Puerto Rico into a protracted recession, which in turn results in increased crime.⁶¹

Crime-related expenditures have traditionally been tied to disbursements to law-enforcement entities, judiciary agencies and bureaus managing correctional facilities. These are, according to Professor Jeffrey Miron, the fundamental local-government entities affected by drug enforcement policies.⁶² However, *it is very clear that these policies do affect the budget of the vast majority of other agencies, with a varying grade of effect.* For example, welfare-disbursing and health-services agencies bear the brunt of maintaining rehabilitation programs, and several other agencies must deal with the consequences of failed drug policies that plausibly lead to diminishing civil-servant productivity⁶³ and decaying neighborhoods, thus, negatively impacting limited fiscal resources, among other maladies.

A. Expenditures

As part of this analysis, fourteen Commonwealth agencies were identified as having direct links to the War on Drugs. These include the three traditional big spenders namely: the Police Department, the Correctional Administration and the Judicial Branch. These three agencies spent almost \$1.5 billion in FY 2011.

The Department of Justice, the Mental Health and Addiction Services Administration, Correctional Health Services and the Juvenile Institutions Administration are other relevant agencies with mid-sized appropriations. Other smaller agencies providing support include the Parole Board, the Forensic Sciences Institute and the Pretrial Services Office. The agencies grouped herein have ei-

⁶⁰ See *infra* Table I.

⁶¹ See Antonio R. Gómez, *Vinculados el alza en el crimen y la economía*, PRIMERA HORA (June 30, 2011), <http://www.primerahora.com/vinculadoselalzaenelcrimenylaeconomia-520907.html> (discussing the correlation between rising crime and economic woes).

⁶² See generally JEFFREY A. MIRON, *THE BUDGETARY IMPLICATIONS OF DRUG PROHIBITION* (2010). See also JEFFREY A. MIRON & KATHERINE WALDOCK, *THE CATO INST., THE MONETARY IMPACT OF ENDING DRUG PROHIBITION* (2010), available at <http://www.cato.org/publications/white-paper/budgetary-impact-ending-drug-prohibition>.

⁶³ Thousands of government employees undergo yearly drug tests, at a cost to the Commonwealth in terms of both lost productivity and the price of the actual test. The Forensic Sciences Institute primarily performs these.

ther spent or been allocated a grand total of \$19.8 billion dollars in the last ten fiscal years.⁶⁴ That is, roughly \$1.9 billion dollars yearly.⁶⁵

Table 1. Agencies with Drug War-Related Expenditures for the past ten budgets⁶⁶

Agency	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Police Department	633,000,000	653,613,000	831,749,000	837,239,000	841,977,000	876,791,000	879,734,000	745,700,000	735,225,000	762,397,000
Correctional Admin.	306,578,000	355,508,000	392,253,000	384,992,000	363,838,000	389,229,000	389,973,000	362,221,000	353,285,000	360,068,000
Judicial Branch	216,841,000	234,069,000	258,151,000	293,102,000	313,129,000	325,764,000	347,944,000	348,358,000	351,440,000	331,444,000
Dept. of Justice	113,579,000	124,412,000	148,125,000	160,888,000	162,862,000	172,318,000	149,207,000	137,466,000	134,869,000	125,705,000
Mental Health and Addiction Svcs. Admin. (AMMSCA)	95,605,000	88,378,000	116,882,000	117,631,000	136,438,000	148,149,000	114,596,000	119,737,000	96,086,000	93,039,000
Correctional Health Services	73,881,000	78,298,000	85,585,000	81,273,000	79,955,000	81,281,000	85,448,000	77,596,000	75,436,000	73,417,000
Juvenile Institutions Admin.	82,191,000	81,229,000	85,370,000	87,272,000	87,515,000	81,711,000	75,519,000	69,118,000	57,366,000	66,616,000
Forensic Sciences Institute	8,731,000	9,344,000	12,586,000	13,822,000	17,785,000	18,723,000	17,530,000	18,435,000	17,787,000	16,011,000
Pretrial Services Office	3,710,000	4,481,000	5,790,000	5,025,000	6,888,000	7,049,000	7,094,000	6,452,000	6,175,000	6,673,000
Corrections and Rehab., Dept. of	2,928,000	3,959,000	5,209,000	5,288,000	4,739,000	4,582,000	4,284,000	5,391,000	3,486,000	4,891,000
Training and Employment Enterprises Corporation	3,981,000	6,168,000	7,374,000	5,270,000	4,743,000	3,858,000	3,652,000	3,056,000	3,441,000	2,990,000
Criminal Justice College	Included in PRPD budget.		9,590,000	11,490,000	10,452,000	9,276,000	9,086,000	6,131,000	6,008,000	2,971,000
Parole Board	2,894,000	3,110,000	3,331,000	2,411,000	3,143,000	3,078,000	3,135,000	2,818,000	2,528,000	2,628,000
Drug Control Office	2,059,000	1,672,000	2,146,000							
Total Outlays	1,541,967,000	1,644,241,000	1,965,441,000	1,999,404,000	2,033,484,000	2,121,809,000	2,087,202,000	1,902,479,000	1,843,132,000	1,848,850,000

64 See *infra* Table 1.

65 *Id.*

66 The figures used herein are available at the Office of Management and Budget (OMB) of the Commonwealth of Puerto Rico's web site at <http://www2.pr.gov/presupuestos/presupuesto2011-2012/Pages/PRESUPUESTOSANTERIORES.aspx>. They only include resources provided by the yearly joint budget resolution and any other non-federal source of funding (such as special appropriations). They also exclude capital expenses. There may be minor discrepancies due to slightly varying numbers provided by the OMB. Figures for FY 2011 are estimated expenses calculated during the FY 2012 budget process. Figures for FY 2012 see *supra* note 2 and they include additional disbursements as appropriated by J. RES. 54, 16th Leg., 5th Sess. (P.R. 2011) and PUERTO RICO ACT NO. 112, JULY 1, 2011, available at <http://www.oslpr.org/2009-2012/leyes/pdf/ley-112-01-Jul-2011.pdf>. The judiciary's yearly appropriation is comprised of an amount up to 4% of General Fund revenues for the appropriate fiscal year. See P.R. LAWS ANN. tit. 23, § 104 (2008 & Supp. 2011). With this Act, the Legislative Assembly gave limited fiscal autonomy to the judicial branch. The Training and Employment Enterprises Corporation offers retraining services and sells manufactured works and services, thus deriving its own income. It does not receive an appropriation from the General Fund. They are included herein because they offer services to inmates. The Criminal Justice College item corresponds to the Police Academy budget, which began to be listed separately from the P.R.P.D. during FY 2005. In addition this item for FY 2012 includes an additional appropriation contained in PUERTO RICO ACT NO. 112, JULY 1, 2011, available at <http://www.oslpr.org/2009-2012/leyes/pdf/ley-112-01-Jul-2011.pdf>. Finally, for the Drug Control Office statistics see Carmen Albizu-García et al., *Reconsiderando la política de las drogas: Alternativas para Puerto Rico desde un modelo de salud pública*, 75 REV. JUR. UPR 1071, 1094-97 (2006) (describing the mission of the Drug Control Office and the contents of its strategic plan).

Together, these agencies constitute a *punitive model apparatus* that employs nearly 35,000 people.⁶⁷ Of course, not all of these work directly with the enforcement of drug policies. In fact, it would be an impracticable task to specifically identify what percentage of personnel is devoted directly or indirectly to enforcement.⁶⁸ But it is safe to say that several thousands owe their jobs to the fact that the Drug War has been intensified in the past two decades.

1. Law Enforcement

Law enforcement agencies are the most affected and burdened by the problems caused by the Drug War. In Puerto Rico, the Drug War has resulted in a bloated police force.⁶⁹ Not surprisingly, the P.R.P.D. leads the studied agencies

⁶⁷ The analysis excludes welfare-disbursing agencies under the Family Department fundamentally for two reasons: (1) the uphill task of determining a correlation of how many positions were established as a result of drug-war related policies and (2) these agencies such as the Administration for the Socio Economic Development of the Family (hereinafter "ADFAN") receive most of their funding from federal sources. Furthermore, the analysis also excluded agencies such as the Department of Natural Resources, because while it has its own enforcement division it is difficult to measure their participation in interdiction efforts, if any. Finally, the Department of Health and several of its supporting agencies were excluded because calculating the health costs of the War on Drugs are beyond the scope of this work. The exception is the Mental Health and Addiction Services Administration (hereinafter "AMSSCA"), which directly works with the issue of drug addiction, administering methadone, buprenorphine and other rehabilitation efforts.

Finally, this work excludes agencies such as the Department of Education, which hires officers to provide security for its schools. The FY 2012 recommended budget allocated \$39.5 million for school security. See OFICINA DE GERENCIA Y PRESUPUESTO, DEPARTAMENTO DE EDUCACIÓN, PRESUPUESTO RECOMENDADO 2012, available at http://www.pr.gov/presupuesto/aprobado_2012/educacion.htm. It also excludes the Department of Health, which is obviously affected and burdened by the hundreds of crime victims of the Drug War.

⁶⁸ Note that there are agencies included in the analysis that have complete divisions with no relation whatsoever to drug law enforcement, such as Property Registry employees under the Department of Justice and those judges assigned to civil cases in the judicial branch.

⁶⁹ Puerto Rico has one of the largest Police Departments (including both administrative personnel and sworn officers) per 100,000 inhabitants when compared to stateside jurisdictions. The vast majority of the P.R.P.D. employees are sworn officers. As of July 2011, the Island had 18,896 police department employees, roughly 510 for every 100,000 inhabitants. OFICINA DE GERENCIA Y PRESUPUESTO, POLICÍA DE PUERTO RICO, PRESUPUESTO RECOMENDADO 2012, available at http://www.pr.gov/presupuesto/aprobado_2012/policiaPR.htm.

This ratio is only surpassed by the District of Columbia and two states: Louisiana, a high-crime jurisdiction, and Wyoming, a low population state. BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, DEP'T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES 2008, 15 (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/csleao8.pdf>. However, Puerto Rico's numbers do not include other sworn law enforcement officers such as members of municipal police forces or security officers from the Department of Natural Resources, so Puerto Rico's rate would be slightly higher if these were included. Only the District of Columbia would surpass the Island.

Note that the Municipal Police Departments, which several townships in the Island have created to help curb crime in their jurisdictions, are excluded from this analysis, because municipal funds

with a FY 2012 budget of \$762 million, down from a peak of \$879 million in FY 2009. The decrease is explained by the layoffs and budget cuts triggered by a variety of fiscal-emergency measures taken at the beginning of the Fortuño Administration.⁷⁰ Today, there are at least 1,500 less employees at the Department than in 2009.⁷¹

The P.R.P.D. has suffered from a variety of maladies in the past few years, including having seven Superintendents in the past decade and has struggled to bring down crime in the past four years as the economic recession has been accompanied by a spike in crime. However, the main issue with the Department is that it seems to lack the people's trust. In fact, citizens are increasingly resorting to arming themselves to confront criminal threats.⁷² Even with personnel changes at the helm, no big policy changes are expected. Moreover, Police Superintendent Emilio Díaz Colón has rejected the legalization of controlled substances such as marijuana advocated by First Circuit Judge Juan R. Torruella and others.⁷³

In addition to these issues, the P.R.P.D. is burdened by a corrupt and unreliable system for gathering statistics, as discussed earlier in this work. Drug arrest statistics are scarce.⁷⁴ In early 2011, nearly ten percent of all arrests were drug-

and federal programs such as Community Oriented Policing Services (C.O.P.S.) typically fund them. See Melissa Correa Velázquez, *Abogan por COPS*, EL VOCERO, July 13, 2011, at 11.

⁷⁰ The most notorious of said measures was the approval of Act No. 7 in 2009, which paved the way for thousands of layoffs in a variety of agencies.

⁷¹ There were 20,441 employees in FY 2009 and the FY 2012 projection calculates 18,896 employees. Cf. OFICINA DE GERENCIA Y PRESUPUESTO, POLICÍA DE PUERTO RICO, PRESUPUESTO RECOMENDADO 2009, available at http://www.presupuesto.gobierno.pr/PresupuestosAnteriores/af2008_2009/Tomo_II/policiaPR.htm, and OFICINA DE GERENCIA Y PRESUPUESTO, POLICÍA DE PUERTO RICO, PRESUPUESTO RECOMENDADO 2012, available at http://www.pr.gov/presupuesto/aprobado_2012/policiaPR.htm.

⁷² See e.g., Jackeline del Toro Cordero, *De estilista a super heroína*, EL VOCERO, May 13, 2011, at 4 (describing how a hair stylist in the city of Caguas shot a robber).

⁷³ Yennifer Álvarez Jaimes, *En búsqueda de soluciones*, EL VOCERO, Aug. 8, 2011, at 8. See also, *supra* note 9. Not surprisingly, other top law enforcement officers have rejected both the medical use of drugs and legalization as viable alternatives to drug-induced violence. See Rosita Marrero, *Luis Fraticelli rechaza medicación de la droga*, PRIMERA HORA (July 8, 2011), <http://www.primerahora.com/luisfraticellirechazamedicaciondeladropa-524315.html> (citing Luis Fraticelli, former FBI Special-Agent-in-Charge of the San Juan office, rejecting medical marijuana as a first step to confront drug-triggered violence in Puerto Rico).

⁷⁴ The P.R.P.D. does not publish drug arrest statistics on its website and it is typically not listed in various statistical databases compiled by the FBI and other federal agencies. Occasionally, the only statistics available are those released by the P.R.P.D. to the press. Efforts to personally obtain statistics were in vain.

related.⁷⁵ There were 506 drug-related arrests out of the 5,918 reported, but the actual number is most likely higher.⁷⁶

Another of the agencies examined, originally included in the budget as part of the P.R.P.D., is the Criminal Justice College or Police Academy. A recent United States Department of Justice report has denounced training (both pre-service and in service) at the College as lacking.⁷⁷ Furthermore, this institution has been under fire for its accelerated programs that attempt to churn out policemen in a few weeks.⁷⁸ Note that the academy has seen dramatic budget cuts in the past few years, as illustrated in TABLE I.

2. Corrections

Correctional spending follows law enforcement in total expenditure. While the P.R.P.D. arguably serves all 3.7 million Puerto Ricans, the correctional system spends roughly *half* as much as the P.R.P.D. but only provides direct services to a few thousand. Each inmate costs the Puerto Rico treasury an alarming \$40,000 yearly.⁷⁹ This is, of course, more or less the cost of tuition at an Ivy League university; yet the government continues to prefer maintaining failed drug policies by resisting reform.⁸⁰ Costs for correctional services have skyrocketed both in Puerto Rico and in the United States.⁸¹

In 2005, a quarter of all inmates were incarcerated due to drug law violations.⁸² Three years later, then Corrections Chief Miguel Pereira, stated that 30% of all inmates were incarcerated due to drug-related crimes.⁸³ Puerto Rico's jails are full of young, poorly educated and economically disadvantaged men.⁸⁴ Not

⁷⁵ Raúl Camilo Torres, *Ponen la bala en el crimen*, EL VOCERO (Mar. 22, 2011), available at <http://www.vocero.com/noticias-es/ponen-la-bala-en-el-crimen>.

⁷⁶ See *supra* notes 53-54. Available statistics are not very helpful, out of a total of 5,918 arrests, 3,533 or 60% were filed under *other*.

⁷⁷ Investigation of the Puerto Rico Police Department, United States Department of Justice 64-66 (2011).

⁷⁸ *Id.* at 61-62. See also Maritza Díaz Alcaide, *Recortan clases a cadetes*, PRIMERA HORA, June 23, 2011, at 2-3.

⁷⁹ S. REP. ON S.B. 258 (2nd), 16th Leg., 3rd Sess., at 7 (P.R. 2010).

⁸⁰ Note that the calculations for imprisonment do not account for the related welfare costs as families struggle to cope economically with the stark reality of an incarcerated parent.

⁸¹ See generally THE PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS (2011). See also *They all come home*, THE ECONOMIST, Apr. 3, 2011, at 34.

⁸² OFICINA DE GERENCIA Y PRESUPUESTO, POLICÍA DE PUERTO RICO 2005, available at http://www.presupuesto.gobierno.pr/PresupuestosAnteriores/af2005/Tomo_II/correccion.htm.

⁸³ José Fernández Colón, *PPD incluirá medicación de drogas en su plataforma*, ASSOCIATED PRESS, Feb. 6, 2008, available at <http://www.noticiasonline.com/D.asp?id=7459>.

⁸⁴ Liza Mónica Ayuso Quiñones, *La guerra contra las drogas, guerra contra el pobre: Aspectos socioeconómicos de la política pública*, 75 REV. JUR. UPR 1411, 1427 (2006).

surprisingly, they are highly drug-dependent.⁸⁵ Treating inmates is highly costly, particularly due to the variety of diseases that burden them, which encompasses drug addictions but also include attention-deficit syndrome (A.D.D.), among other conditions.⁸⁶ The penal institutions themselves have been the object of independent inquiries that have exposed the precarious living conditions inside them, as well as denounced their highly inadequate health facilities.⁸⁷

The cost of incarceration is absurdly high when compared to medical treatment with buprenorphine and methadone, for example. In fact, experts state that the annual cost of these treatments per user is roughly \$6,000, that is, \$34,000 less than what an incarcerated individual costs the correctional system.⁸⁸

In order to reform the system, Puerto Rico must look stateside and elsewhere for new strategies. Several states are modifying penalties for drug crimes, making more offenders eligible for alternatives to prison.⁸⁹ This is key to curbing correctional spending in the United States, which has surpassed \$50 billion yearly, as the prison population grew 705% in the years between 1973 and 2009.⁹⁰ Texas, for example, has mandated probation instead of prison for first-time drug offenders caught with less than a gram of the substance since 2003.⁹¹ After the change, both its crime rate and its incarceration rate went down.⁹²

In order to continue reducing the inmate population, the Island must innovate by reforming drug laws. Prison overcrowding has led to costly litigation against the Commonwealth.⁹³ In fact, Puerto Rico has spent over a quarter-billion dollars over the past few decades as a result of these claims. Yet while there has been an increase in crime, the correctional population has been re-

⁸⁵ *Id.* at 1423-25. The situation in the United States prisons mirrors that of Puerto Rico. See Steven B. Duke, *Mass Imprisonment, Crime Rates, and the Drug War: A Penological and Humanitarian Disgrace*, 9 CONN. PUB. INT. L.J. 17, 34-35 (2009).

⁸⁶ A recent study found that roughly 24% of female inmates suffered from A.D.D., while 15% of men inmates suffered from it. Marga Parés Arroyo, *Abunda el déficit de atención en la población penal*, EL NUEVO DÍA, May 23, 2011, at 14.

⁸⁷ See e.g., AMERICAN CIVIL LIBERTIES UNION OF PUERTO RICO, INVESTIGACIÓN SOBRE LAS MUERTES DE CONFINADOS EN LA INSTITUCIÓN CORRECCIONAL GUERRERO (2010), http://www.aclu-pr.org/ES/Noticias/Publicaciones/report_informe_guerrero.pdf (denouncing the deaths of over 20 inmates recorded since 2003-2007 at the Guerrero Institution in Aguadilla, who allegedly died due to mistreatment or non-treatment of drug-withdrawal symptoms).

⁸⁸ See *supra* note 79.

⁸⁹ STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS, *supra* note 81, at 25, citing VERA INSTITUTE OF JUSTICE, THE CONTINUING FISCAL CRISIS IN CORRECTIONS: SETTING A NEW COURSE (2010).

⁹⁰ *Id.* at 5.

⁹¹ *Right and proper*, *supra* note 26.

⁹² *Id.*

⁹³ Milly Méndez, *Pleito Morales Feliciano se acerca al fin*, EL VOCERO, Apr. 14, 2011, at 9.

duced by almost 20% since 2006.⁹⁴ Some experts speculate that arrests are being made but that prosecutorial efforts are sorely lacking.⁹⁵ Therefore, many crimes go unpunished due to a deficient system.

The correctional system is not limited to the Corrections Administration, which runs prisons throughout the Island and will be spending roughly \$360 million in FY 2012. It includes support agencies such as Correctional Health Services, which is allocated \$73 million for FY 2012 and the Juvenile Institutions Administration (AIJ), which runs prisons and custody houses for minors and it has been allocated \$66 million for FY 2012. The Pretrial Services Office is another independent agency that offers special assistance particularly helping defendants post bail. Its current budget stands at \$6.6 million. The entire correctional system is overseen by a Corrections and Rehabilitation Secretary, whose budget is roughly \$5 million.⁹⁶ The Parole Board, with a comparatively tiny appropriation of \$2.6 million, is also under the Corrections and Rehabilitation Department. Finally, the Training and Employment Enterprises Corporation provides an outlet for inmates to merchandise certain products such as woodwork, and receives the vast majority of its budget from its own profits (and limited federal funding).⁹⁷

3. Prosecution and the Judiciary

After law enforcement and corrections, the judicial system is the next big Drug War spender. Of course, it would be preposterous to believe that the entire judicial system's expenses are predicated on dealing with the constant flow of drug-related cases before them. The Puerto Rican judicial system tends to a variety of issues including the government investigations (by way of the Special Investigations Bureau or NIE), civil litigation, and non-drug related criminal cases. As one of the Commonwealth's three separate branches, the Judiciary's budget is today the product of a formula, with little variation from year to year.⁹⁸ In 2012, the approved budget amounted to \$331.4 million.

Alarming, even with hundreds of millions of dollars pouring into the Justice Department, a high number of reported crimes do not result in convic-

⁹⁴ Eugenio Hopgood Dávila, *Más crímenes, menos presos*, EL NUEVO DÍA, Apr. 20, 2011, at 34.

⁹⁵ *Id.*

⁹⁶ There is a pending reorganization plan in the Legislative Assembly that would consolidate the Corrections Administration, the Juvenile Institutions Administration and the Pretrial Services Office in order to generate savings. See REORG. PLAN 8, 16th Leg., 4th Sess., (P.R. 2010), <http://www.oslpr.org/files/docs/%7BAD68F681-FB46-43Do-8CoF-D41658D75F2F%7D.doc>.

⁹⁷ See *supra* note 66.

⁹⁸ See *id.*

tions.⁹⁹ The Department's approved budget for FY 2012 is \$125.7 million. The Forensic Sciences Institute (\$16 million in FY 2012) is grouped with the Justice Department, as it provides valuable ancillary services in the course of prosecution.

4. Mental Health/Rehabilitation Services

Among all of these government agencies, one is of particular importance to this analysis: the Mental Health and Addiction Services Administration (AMMSCA). This is one of the agencies that is sorely underfunded and bears the brunt of erred drug policies, as it deals with chronically addicted citizens with a limited budget. For FY 2012, it has been assigned \$93 million, a paltry sum compared to what is spent by the Police Department, Corrections, the Justice Department or the judiciary. There is pending legislation that would establish drug treatment centers in every penitentiary institution in the Island, which would be jointly operated by the Corrections Administration and AMMSCA.¹⁰⁰ A major problem faced by the type of programs AMMSCA offers is that they are "prevented from being fully effective by having to operate within the paradigm and principles of interdiction policies."¹⁰¹

5. Other Agencies

Finally, the Drug Control Office is included in Table I even though it was dismantled early in Gov. Acevedo Vilá's Administration due to budget cuts.¹⁰² This office was established early in Gov. Calderón's tenure in order to steer drug policy away from the traditional law enforcement agencies.¹⁰³

6. Cost Analysis

Separating the absolute costs discussed above to identify the specific percentage of those funds that are directly spent in Drug War-related efforts is no easy task. There is no generally accepted formula, although Professor Jeffrey Miron's method provides some guidance to estimate the state and local *savings* in criminal justice resources. First, he estimates the percentage of state and local arrests for drug violations and multiplies this percentage by the state and local

⁹⁹ Yennifer Álvarez Jaimes, *Pase misin en lucha anti crimen*, EL VOCERO, Aug. 12, 2011 at 4 (stating that according to the judiciary, 26,348 felonies were duly charged, yet Police statistics reflect over 37,000 felonies reported).

¹⁰⁰ S. BILL 258, 16th Leg. 1st Sess., (P.R. 2009).

¹⁰¹ David M. Helfeld, *Narcotics, Puerto Rico, Public Policy: In Search of Truth and Wisdom*, 75 REV. JUR. UPR 1029, 1056 (2006).

¹⁰² See Albizu-García, *supra* note 66.

¹⁰³ PUERTO RICO ACT NO. 3, MAR. 13, 2001, (*repealed by* PUERTO RICO ACT NO. 53, AUG. 18, 2005, P.R. LAWS ANN. tit. 3, §§ 2401-2411 (2008 & Supp. 2011)).

budget for police.¹⁰⁴ Second, he estimates the percentage of state and local felony convictions for drug violations and multiplies this percentage by the state and local budget for prosecutors and judges.¹⁰⁵ Third, he estimates the percentage of state and local incarcerations for drug violations and multiplies this percentage by the state and local budget for prisons.¹⁰⁶ Finally, these components are added to estimate the overall reduction in state and local government expenditure.¹⁰⁷

Again, at this stage, it must be kept in mind that for purposes of this work the first calculation is that of *savings*, not *costs*. However, Miron's analysis appears to have flaws if it were to be applied to *cost* calculations rather than *savings*. It concentrates in actual drug offenses, related arrests and subsequent convictions, and the corresponding incarcerations for those convictions. This thesis, if used for cost calculations, fails to consider the overwhelming impact that illegal drugs have on crime. For example, a previously convicted drug dealer, now addicted to heroine, commits murder during a robbery and is convicted again to twenty five years in prison flies *under the radar* if considered under Miron's strict perspective. This crime is quite plausibly committed in direct relation to failed drug policies, as the addict was likely denied comprehensive rehabilitation opportunities and would have not been in jail for the first time if the purchase of drugs were not prohibited. Therefore, for costs purposes, the Miron model seems to *underestimate* the deleterious chain of events related to the punitive approach to drug consumption and sale. Miron himself realizes the drawbacks and challenges facing the method, as it is a very difficult task to account for all variables involved, therefore "substantial uncertainty" remains.¹⁰⁸

For purposes of our analysis, agencies with Drug War-related expenses were segregated from the total budget. Their budgets were then examined, subtracting federal funds in order to generate a figure that best reflects what the Puerto Rican taxpayer is paying to subsidize drug policies (see TABLE I). It is important to note that the narratives accompanying the budget proposals are not comprehensive enough and do not provide sufficiently accurate enough figures in order to do an agency-by-agency segregation of drug policy costs from the rest of the expenditures.

Preliminarily, it must be kept in mind that not all crimes cost the same to police and prosecute, nor is there a single category of incarcerated citizens, as they are segregated by risk of flight and other characteristics. This is important because while an armed robbery will trigger a commensurate law enforcement

¹⁰⁴ JEFFREY A. MIRON, THE EFFECT OF MARIJUANA DECRIMINALIZATION ON THE BUDGETS OF MASSACHUSETTS GOVERNMENTS, WITH A DISCUSSION OF DECRIMINALIZATION'S EFFECT ON MARIJUANA USE 4 (2002), http://www.changetheclimate.org/bu-study/mass_budget.pdf.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 16.

response, subsequent prosecution and probable incarceration, the burden (cost) to the Commonwealth's coffers is certainly less than a double murder committed by a drug-linked *sicario* (hitman). Therefore, if it holds true that the majority of homicides (and violent crime in general) are closely linked to the drug trade, then a *disproportionately* high percentage of resources of Puerto Rico's agencies are being devoured by the direct effects of the Drug War.

Another caveat is that there are plausibly many arrests in which the suspect was detained in possession of a drug while committing a more serious crime such as a murder, shooting or kidnapping. Police may then choose to submit evidence to only prosecute the larger offense. It is therefore likely that these *drug* offenses are undercounted.

Again, for purposes of this work, only state appropriations are considered. While Miron includes *local* expenses for enforcement, prosecutorial, judicial and correctional services, the reality is that while in the United States local governments exercise a leading role in these endeavors, Puerto Rico's local governments, its *municipios*, have neither prosecutorial or judicial systems nor correctional facilities. While they do have enforcement powers, the role of the *policías municipales* (municipal or county police) is comparatively minor as opposed to their stateside counterparts. In the United States, state police troopers have typically limited jurisdiction, while county, municipal and city law enforcement agencies execute the majority of law enforcement efforts. Therefore, in replicating Miron's analysis in the Puerto Rico context, we exclude municipal spending.

Note that the effort to replicate Miron's three-pronged analysis with Puerto Rico's statistics was very uphill due to the highly deficient statistics collection system that is currently in place, plus the authorities' refusal to publish reliable figures.

First, since the P.R.P.D. did not release the number of *adult* drug arrests for drug violations in FY 2010, an estimate of 9.5% was used. This figure was obtained by averaging available data: the proportion of minors that committed drug-related *faltas* (infractions) in the Island in 2010, which was 6.5%,¹⁰⁹ with the proportion of drug arrests for the entire United States adult population for the same year, which was 12.4%.¹¹⁰ The total police budget, including the Criminal Justice College for that fiscal year was \$751,831,000. Therefore, under the Miron analysis, the potential savings for police is \$71,423,945.

Second, we estimated the percentage of convictions for drug violations and multiplied this percentage by the state budget for prosecutors and judges. The Judiciary reported 3,898 convictions due to violations of the Controlled Sub-

¹⁰⁹ POLICÍA DE PUERTO RICO, INFORME MENORES INTERVENIDOS POR REGIÓN POLICÍACA, AÑO 2010. The Police reported 608 out of 9,215 juvenile infractions were drug-related.

¹¹⁰ Federal Bureau of Investigation, *Crime in the United States 2010, Estimated Number of Arrests*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl29.xls/> (last visited April 15, 2012).

stances Act in FY 2010, out of 30,111 total convictions.¹¹¹ Therefore 12.9% of felony convictions were drug related. The budget for prosecutors and judges for FY 2010 was \$504,259,000.¹¹² Finally, the percentage of convictions due to drug violations (12.9%) was multiplied by the total budget for this area. Therefore, for Miron analysis purposes, the cost of the Drug War in terms of the judiciary and prosecutorial services was \$65,049,411 for FY 2010.

The third prong, consists of obtaining the percentage of incarcerations for drug violations and multiplying this percentage by the state budget for prisons. For FY 2010, the correctional budget amounted to \$526,652,000.¹¹³ Again, there is no specific data released and available in current years. Therefore, we used 24.32%, the last officially released data from 2007.¹¹⁴ When multiplying 24.32% of incarcerations for drug violations with the correctional budget, we find that the plausible savings is \$128,081,766.

Finally, Miron sums these components to estimate the overall reduction in state government expenditures that could be derived from radically modifying drug laws. As such, the grand total of potential drug war savings for FY 2010 under the present analysis is \$264,555,122; that is 2.8% of the Commonwealth budget without accounting for federal expenses.¹¹⁵

Table 2. Plausible Cost Savings from Drug Legalization (FY 2010)¹¹⁶

111 RAMA JUDICIAL DE PUERTO RICO, ANEJO ESTADÍSTICO, TRIBUNAL DE PRIMERA INSTANCIA, SALA SUPERIOR, CASOS CRIMINALES 139, 142 (2010).

112 This figure includes the Judicial Branch, the Department of Justice, and the Forensic Sciences Institute.

113 This figure was obtained by adding the budgets of the Correctional Administration, the Department of Corrections and Rehabilitation, the Parole Board, the Training and Employment Enterprises Corporation, the Juvenile Institutions Administration, Correctional Health Services, and the Pre Trial Services Office.

114 DEPARTAMENTO DE CORRECCIÓN Y REHABILITACIÓN, PERFIL DE LA POBLACIÓN CORRECCIONAL TOTAL SENTENCIADA AL 30 DE JUNIO DE 2007, 7 (2007).

115 The Commonwealth's General Fund expenditures for FY 2012 amount to \$9,260,000,000. Oficina de Gerencia y Presupuesto, *Presupuesto Consolidado del Fondo General por Concepto de Gasto y Origen de Recursos, Años Fiscales 2009 al 2012*, available at <http://www2.pr.gov/presupuestos/presupuesto2011-2012/Tablas%20EstadisticasAprobado/2%20Presupuesto%20Consolidado%20del%20Fondo%20General%20por%20Concepto%20de%20Gasto%20y%20Origen%20de%20Recursos%20AF%202009%20al%202012.pdf>.

116 The Mental, Health and Addiction Services Administration is not included under the Miron analysis, as it does not offer enforcement, judiciary, prosecutorial or correctional services.

Percentage of Arrests for Drug Violations	Percentage of Convictions for Drug Violations	Percentage of Incarcerations for Drug Violations
9.5 %	12.9%	24.32%
Total P.R.P.D. Budget	Total Judiciary/DOJ Budget	Total Correctional Budget
\$751,831,000	\$504,259,000 ^q	\$526,652,000
Total Attributed to War on Drugs	Total Attributed to War on Drugs	Total Attributed to War on Drugs
\$71,423,945	\$65,049,411	\$128,081,766
Grand Total: \$264,555,122		

Again, this is a ballpark figure on potential *savings*, not costs. Therefore, Puerto Rico is likely spending *at least* twice that, likely between 5% and 7% of its total local budget in fighting the War on Drugs. Again, our thesis assumes that drug-fueled violent crime triggers a disproportionate and irrational use of agencies' resources. We must warn, of course, that legalization (and obviously decriminalization) of currently banned narcotics does not mean savings equal to the amount expended in policing, prosecuting, judging and punishing those involved in its use, sale and transportation. This is why the potential savings are not equal to estimated costs.

B. Revenues

While having, as proven above, a detrimental effect in yearly government disbursements, the Drug War also has a negative impact in lost revenues that would be derived if a comprehensive, well-thought program is established in order to tax currently illegal drugs. That is, prohibition means both (1) excess expenditures due to the skyrocketing costs of fighting the Drug War and (2) lost revenues due to lacking the legal authority to tax the sale of legalized drugs. The reality is that, Drug War or not, these substances are and will continue to be available, as is the case of alcohol and tobacco products, whether the government taxes them or not. The solution, as has been stated before, is to replace the current emotional-moralist approach to drug policy with an economic one based on reason and hard facts.¹¹⁷

¹¹⁷ See Arthur L. Berney, *Cocaine Prohibition: Drug-Induced Madness in the Western Hemisphere*, 15 B.C. THIRD WORLD L.J. 19, 51 (1995) (citations omitted). It also states that:

To this day, there is a strong strain of moralism in anti-drug attitudes, and our leaders constantly mine this vein by referring to the evil and immoral nature of drug dependence and use. So long as a large proportion of the population believes that drug use is sinful, a form of debauchery, detrimental to the work ethic, wasteful, and generally deleterious, there will be built-in resistance to any reform of the prohibition laws.

Id. (citation omitted)

For example, from the revenue standpoint, the Commonwealth's taxing power can be harnessed in order to impose a reasonable burden on the production and sale of a soft drug such as marijuana, for example. This drug is most likely to create the least disturbance, as studies have shown that most adults who want to try marijuana have done so already¹¹⁸ and that part of the allure of marijuana is the risk associated with its illegality.¹¹⁹

Studies indicate that California, with a population of 37 million, could plausibly derive \$1.4 billion in taxes if marijuana is taxed at \$50 per ounce.¹²⁰ A simple, non-scientific calculation would reveal that since Puerto Rico's population (3.7 million) is one-tenth of California's, the Island could get \$140 million yearly in added tax revenues. Of course, that calculation assumes the rate of per capita marijuana consumption in Puerto Rico is the same as in California. But it is clear that the revenue windfall could be sizable, particularly in the context of the current economic environment. That figure only considers marijuana legalization.¹²¹ The numbers would be much higher if the sale of other substances were to be allowed.

As previously analyzed, after drug law reform the main benefit for the Commonwealth will not lie in the revenue side but on the expenditures column of its yearly budget. It is likely that, for the first few years of undertaking a comprehensive drug liberalization policy, a good amount of these funds derived from directly taxing formerly illegal drugs will have to be spent in orientation efforts and on therapeutic programs that are currently underfunded. However, it seems plausible that as the years pass consumption will stabilize and taxation will generate a solid revenue stream, never an easy feat for state governments.¹²²

III. LESSONS AND REFLECTIONS: TOWARDS A COHERENT DRUG POLICY

Having reviewed the costs of sustaining current policy, it is important to consider alternative approaches to the status quo. Other jurisdictions have had experience with varying degrees of liberalization of drug laws, be it medication or depenalization. Countries such as Argentina, Belgium and Portugal have recently liberalized marijuana laws.¹²³ In California, Proposition 19, which would

¹¹⁸ Michael Vitiello, *Legalizing Marijuana: California's Pot of Gold?*, 2009 WIS. L. REV. 1349, 1377 (2009). This article provides a pertinent discussion on the benefits and problems of a potential full legalization of marijuana in California.

¹¹⁹ *Id.* at 1385 (citation omitted).

¹²⁰ RAND, *How Might Marijuana Legalization in California Affect Public Budgets and Marijuana Consumption?*, http://www.rand.org/pubs/research_briefs/RB9543/index1.html.

¹²¹ *Id.*

¹²² Taxation of formerly illegal substances will likely mirror that currently imposed to tobacco and alcohol. These *sin taxes* constitute a very important source of revenue for state governments across the United States.

¹²³ *The law of the weed*, *supra* note 12.

have allowed adults to grow own and consume cannabis for personal pleasure, was rejected by voters in November 2010.¹²⁴ However, the state's lenient medical marijuana laws do remain in force. Marijuana liberalization in certain states has even served as a palliative amidst the current economic crisis. For example, unemployed former auto-industry workers in the state of Michigan are increasingly training themselves to become the state's marijuana suppliers.¹²⁵

Even Mexico, which is probably the country most affected by the Drug War due to its proximity to the United States, is taking steps towards fostering an enlightened discussion of legalization.¹²⁶ Mexican politicians realize that maintaining the status quo is unsustainable both in light of current violence in its northern states and due to the fact that medical marijuana is becoming more easily available across the border.¹²⁷ Former President Vicente Fox summarized the legalization debate in his blog, stating that legalization "does not mean that drugs are good . . . rather we have to see it as a strategy to strike and break the economic structure that allows mafias to generate huge profits in their business, which in turn serve to corrupt and to increase their power."¹²⁸

There are several examples of jurisdictions that have shed the traditional punitive approach towards drug users and drug-related crimes. Many of these have experienced increased success in medically treating users and depenalizing or reducing punitive measures for small quantities of possession, thus enabling law enforcement entities to concentrate on big traffickers rather than users. Steps, small or pronounced, but steps nonetheless are being taken around the world to replace the punitive model. Puerto Rico has been left far behind.

Portugal is a very good example of a leader in progressive drug policy: it decriminalized the use and possession of heroin, cocaine, marijuana and other illicit drugs in 2001.¹²⁹ Five years later deaths from drug overdoses dropped considerably as well as new HIV cases caused by using dirty needles for injections plunged to a third of the 2001 total. Under the program, penalties for dealers and traffickers of drugs remain unchanged. Instead of being jailed, those found guilty of possessing small amounts of drugs are sent to a panel consisting of a psy-

¹²⁴ *Ballot initiatives: Change we can do without*, THE ECONOMIST, (Nov. 4, 2010), http://www.economist.com/node/17421453?story_id=17421453. See also *How Marijuana Got Mainstreamed*, *supra* note 8, at 32 (stating that the Governor of California had practically rendered Proposition 19 moot by signing a bill that reduced possession of up to an ounce of marijuana from a misdemeanor to a civil infraction).

¹²⁵ Steven Gray, *Higher learning: Marijuana Colleges*, TIME, June 21, 2010 at 45. In the state of Michigan, residents with ailments such as cancer, Crohn's disease and AIDS, are granted a special state-issued permit for medical marijuana. *Id.*

¹²⁶ *Thinking the unthinkable*, THE ECONOMIST, Aug. 14, 2010, at 28.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Maia Szalavitz, *Drugs in Portugal: Did Decriminalization Work?*, TIME (Apr. 26, 2009), <http://www.time.com/time/health/article/0,8599,1893946,00.html>.

chologist, social worker and legal adviser for appropriate treatment, instead of being jailed.¹³⁰ Today, after proportional adjustments, more Americans have used cocaine than Portuguese have used marijuana.¹³¹ Moreover, critics were proved wrong: Lisbon did not become a drug mecca, and drug use did not significantly increase after decriminalization.¹³² A predicted drug use increase is one of the arguments of those opposed to drug law reform and has been proven false in Portugal.¹³³

The Portugal case study should serve as an example for Puerto Rico. As illustrated throughout this work, the Drug War has been an ineffective and rather expensive endeavor with highly destructive results. To change the status quo, the Commonwealth must engage in a *deprofitization* crusade in order to disrupt the current market's incentive, particularly for hard drugs such as heroin, which are the ones that generate the most violence. For this to succeed, all discussion of drug policies should be fact and evidence-based. Puerto Rico must minimize and phase out false rhetoric such as *Just say no* or *Dile no a las drogas* that have proven to be ineffective. A Puerto Rico *sin drogas* (without drugs) is nothing but a utopian thought unrelated to the real world. Therefore, ineffective public campaigns or *prevention* programs should have sunset clauses to phase them out unless the legislature is satisfied with their positive results.

Furthermore, the government should move to amend current regulations prohibiting the distribution of drug paraphernalia as a way to reinforce existing syringe-exchange programs in order to reduce intravenous users' exposure to disease. A serious study should also be conducted on the possibility of establish-

130 *Id.*

131 *Id.*

132 *Id.* See also Drug Policy: *Supply and demand*, THE ECONOMIST, June 2, 2011, at 70-71.

133 Incidentally, another myth that has been dismantled is the age-old adage of marijuana as a gateway drug. Psychology professor Jefferson Fish denounces the fallacy of the marijuana-as-a-gateway-to-harder-drugs theory:

[W]hat proportion of those who have tried marijuana go on to use heroin? More than 72,000,000 Americans have used marijuana at least once and 2,400,000 have used heroin at least once. Thus, it is easy to see that--even if every single person who tries heroin has used marijuana first-- the odds are 69.6 [i.e., $72.0 - 2.4 = 69.6$] to 2.4--that is, 97%--against someone who has used marijuana even trying heroin one time. The probabilities are different for cocaine, since many more people have tried it. However, if we are concerned with drug abuse (rather than use), a relevant statistic is that, "for every one hundred people who have used marijuana, only one is a current regular user of cocaine."

Jefferson M. Fish, *Rethinking our Drug Policy*, 28 FORDHAM URB. L.J. 9, 17 (2000) (citations omitted). See also DRUG POLICY RESEARCH CTR., RAND, RESEARCH BRIEF: USING MARIJUANA MAY NOT RAISE THE RISK OF USING HARDER DRUGS (2002), available at http://www.rand.org/pubs/research_briefs/RB6010/index1.html (establishing that "the harms of marijuana use can no longer be viewed as necessarily including an expansion of hard-drug use and its associated harms").

ing a heroin prescription pilot program with a reduction of street demand as its goal.¹³⁴

Moreover, the Commonwealth should refocus law enforcement priorities so that the target shifts to identifying big drug traffickers instead of lower echelon traffickers, as well as minimizing incarcerations for mere drug possession. A reform of laws should be undertaken so that punitive measures, particularly jail time, are reserved for violent actors rather than addicted, sick drug users.¹³⁵

Budgetary resources should gradually be shifted from Corrections and the P.R.P.D. towards AMMSCA for the treatment of addicts.¹³⁶ The possible medicalization of marijuana could generate revenues that can then be directed towards treatment of hard drugs. However, it must be kept in mind that taxation of formerly prohibited substances is certainly challenging. Even under a *medical* scheme the tax rate should be carefully studied in order to ensure that the resulting prices, while generating solid revenue for the government, do not reach high levels where the black market can undercut it and thus render the effort ineffective.¹³⁷

Liberalization of drug laws will generate considerable savings and appreciable revenues. The resources freed up by the demise of the punitive approach can be redirected to programs in dire need of cash injections, such as those dealing with child abuse and domestic violence.¹³⁸ The government can also redistribute resources towards fostering value-added economic activities and entrepreneurial efforts, backing institutions such as the Science Technology and Research Trust. One may argue that the illegal drug trade drives the economy and that there are many merchants that operate legally but that sell goods or services to individuals flush with drug money. That, however, is only partially true. How can there be true economic development when a country of 3.7 million citizens sees several hundreds killed on the streets every year due to an unnecessary war? Is there a price tag for the sheer safety of citizens? Do we understand how this underworld fuels corruption at all levels? Decriminalization, leading to a safer environment through the *deprofitization* of the drug trade will enable businesses to invest less in security devices and personnel and more in creating stable jobs.

134 See Fish, *supra* note 133, at 15.

135 *Id.* at 16.

136 *Id.* at 9.

137 Douglas Husak, *Predicting the Future: A Bad Reason To Criminalize Drug Use*, 2009 UTAH L. REV. 105, 107 (2009).

138 Mildred Rivera Marrero, *Con menos recursos los servicios del Gobierno*, EL NUEVO DÍA, Feb. 20, 2011, at 6 (describing the budgetary needs of government programs after Act No. 7 layoffs in 2009).

CONCLUSION

Puerto Rico must begin a spirited struggle to overcome the erred policies that renders the current Drug War effort a costly battle that is lost every year before a single penny is spent. The War on Drugs is a failure that only serves vested interests that do not pursue the true wellbeing of the population.¹³⁹ It is a vicious policy which is badly straining the Commonwealth's budget, forcing it to spend hundreds of millions in law-enforcement and other related programs while diverting valuable scarce resources from education, health services and economic development. The current punitive approach to drugs has turned the Commonwealth apparatus into an ineffective and expensive endeavor that does little to coherently tackle Puerto Rico's true challenges. Continued policing wreaks havoc on a volatile distribution system that results in increased violence.

Reality must be faced: the Drug War's Battle of Puerto Rico is lost. Admitting defeat is the first step towards realizing that reforming drug laws presents a plethora of challenges, yet several opportunities towards reconstructing the Island's social fiber. While drug legalization used to be considered anathema, an increasing number of academics and particularly drug enforcement officials and members of the judiciary have correctly realized that the punitive approach is moribund and that drug policy needs a fresh start in order to adapt to changing realities. Harm minimization, particularly the legalization of marijuana as a cautious first step, should replace the current defeated approach.¹⁴⁰

Puerto Rico must avoid the collapse of its society and economy due to security concerns, as is happening in Central America. Instead of remaining an idle observer to the colossal problem that hinders the development of the entire Caribbean Basin and Central America, the Island should undertake this bold reform effort as a way of both strengthening its own society and taking the lead in this issue in support of its neighbors. The dark reality is that "as long as drugs that people want to consume are prohibited, and therefore provided by criminals, driving the trade out of one bloodstained area will only push it into some other godforsaken place."¹⁴¹ We are our worst enemy in this fight.¹⁴²

We have spent far too many resources in this losing fight: a ten-figure sum in the past decade. While the ideas discussed herein will not, by themselves,

¹³⁹ Berney, *supra* note 117, at 57-58. These powerful groups that would arguably not benefit from liberalization include, inter alia, lawyers, correctional officers unions, bankers and real estate brokers.

¹⁴⁰ Torruella, *supra* note 24, at 92-93. Harm minimization also includes efforts such as needle-exchange programs for intravenous users of narcotics. In Puerto Rico, NGOs such as Iniciativa Comunitaria have pioneered such initiatives. See Milly Méndez, *Punto de Cambio*, EL VOCERO, Aug. 14, 2011, at 6. See also Mercado, *supra* note 4, at 1275-76 (explaining the concept of harm minimization).

¹⁴¹ Central America's woes: *The drug war hits Central America*, THE ECONOMIST, Apr. 14, 2011, at 11, <http://www.economist.com/node/18560287>.

¹⁴² See Torruella, *supra* note 24, at 47.

engender a legal *Shangri-La* where funding is perfectly allotted; they are, however, a first step towards dismantling a failed effort and beginning anew with a fresh perspective that best distributes resources towards Puerto Rico's real needs. Doing nothing is not an option: we must begin to act rationally for our own good.