Mapping the Elephant: Illegal Drugs in South Carolina

(SUMMARY VERSION)

A study by the League of Women Voters Of the Charleston (S.C.) Area

August 2010

This study is on-line at

www.lwvcharleston.org
# Mapping the Elephant: Illegal Drugs in South Carolina

## SUMMARY VERSION

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Introduction and key findings

To try to understand the personal dimensions of drug use, you could start with what you know about alcohol. Most of us have used alcohol and enjoy it in moderation today. But many people have a family member who has become addicted to alcohol. Alcoholism’s damage to society measured in broken families, unemployment, homelessness, illness, and lost human potential cannot be understated. And yet the potential damage associated with illegal drug use, either casual or addictive, is far worse because of its added criminal status.

Like alcoholism, drug addiction causes great physical and mental suffering to the person afflicted, and pain to loved ones. But unlike with alcohol, even using or selling a small amount of drugs for occasional recreation risks enormous consequences if the user is caught and arrested. To start, in South Carolina every drug offender’s driver’s license is revoked for 6 months, even if no vehicle was involved in the arrest. Every offender must pay at least a “drug surcharge” of $150 to support state drug courts. After more than one arrest, a judge has the option of sentencing the offender to a jail term and a significant monetary fine, with potential threats to job security and parental custody.

It can be far worse for someone arrested multiple times for using drugs, or selling or manufacturing them. This person risks years in prison and huge fines; the possible confiscation of vehicle, home and possessions; a family disrupted by the loss of parent and provider, with children dispersed to relatives or foster care, or even to permanent adoption by strangers; and upon release from prison, many obstacles to rebuilding a normal life.

Why we did this study

The purpose of the study was to educate the League of Women Voters of the Charleston Area (LWVCA) about the facts pertaining to drug issues in South Carolina. After holding a public program featuring knowledgeable advocates for and against current government policies, members of the LWVCA researched the issues and wrote the study report. Then the membership discussed the findings in another meeting, and reached consensus on positions about illegal drugs in our state. Future advocacy and legislative lobbying by the LWVCA depends on this process of arriving at positions based on an accurate understanding of the issues.

Some key findings

- Because of the illegality of drugs and possible criminal consequences, drug users typically keep their involvement secret. The number of people using drugs in South Carolina is certainly higher than statistics show, and nobody knows how high.
- Drug use in South Carolina is so pervasive that every year more than 1,000 drug tests of state prison inmates are positive. The true rate of drug use in prison must be even higher, since not all inmates are tested.

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1 There is a resolution proposed in the South Carolina General Assembly to request during its 2010-2011 session that the state be released from this federal mandate. The federal government also requires that the governor agree to the request. Should the governor not agree, the state could opt out of the 6-month revocation, but it would lose federal transportation funds. S 1343, South Carolina Legislature. Retrieved on Aug. 5, 2010 from www.scstatehouse.gov/sess118_2009-2010/prever/1343_20100506.htm
2 There is no mandatory minimum sentence for first offense possession of a small amount of any drug except ephedrine, and judges may allow probation or parole for second and third offenses that do have mandatory minimum sentences. See the “Omnibus Crime Reduction and Sentencing Reform Act of 2010.” Retrieved on Aug. 5, 2010 from www.scstatehouse.gov/cgi-bin/web_bh10.exe
3 See the positions adopted at the end of this report.
• South Carolina probably has the harshest law in the nation regarding pregnant women who use illegal drugs.

• Finding and prosecuting drug offenders is rewarded beyond just upholding the law, by a system that allows state agencies to financially benefit from the personal assets that drug offenders forfeit upon arrest or conviction.

• Most South Carolina jails are non-compliant with a state law that requires them to compile and report their jail statistics to a central state agency.

• Over a decade of research shows that drug courts work better at stopping drug use than jail, prison, probation, or treatment alone. However, South Carolina drug courts struggle annually for uncertain funding, state funding favors some courts over others, and the Aiken Juvenile Drug Court has been forced to close for lack of funds.

• In 2008 - 2009, the South Carolina Prescription Monitoring Program tracked over 18 million medical prescriptions of South Carolina residents in order to catch prescription drug abusers.

• South Carolina has ranked near the bottom in spending required to effectively prevent many teens from using the gateway drug—tobacco—and does not publicize statistics showing that tobacco is a gateway drug for many.

Limitations of the report
Statistics in our report are from the latest year for which they were available at the time of research, which was done in late 2009 and early 2010. The original report was released in March, 2010, and this revision was made in August, 2010 to include changes made by the South Carolina General Assembly in its 2010-2011 session.

This report summarizes the lengthy complete report available upon request (and at www.lwvcharleston.org) from the League of Women Voters of the Charleston Area. In the interest of brevity, this summary does not show source footnotes, although the full report is heavily footnoted.

The missing voice in this report
A key voice is not included in this report: that of the many people who occasionally use or used drugs, mainly marijuana, for recreational use, without becoming addicted, arrested, or suffering any other negative result. Information about these people is scant because what they do is illegal. U.S. Presidents Obama and Clinton used drugs in this way. It would not be farfetched to believe that even some readers of this report will relate to this situation.

Acknowledgements
The researchers and writer of this study received generous assistance from many state agencies and individuals in South Carolina, as we questioned them about issues of their expertise by phone and email. We thank them for contributing to our understanding of illegal drugs in South Carolina. Many thanks, too, to volunteer researchers Tim Bubenik, Sharon Fratepietro, Priscilla Quirk, Katy Simison and Michele Turner.

International and national drug laws
The United States has signed several international treaties to cooperate with other nations in opposing illegal drugs. However, despite nearly 100 years of treaties and penalties, millions of people in every country persist in using illegal drugs.

Most countries, such as France and the United States, impose a spectrum of sanctions ranging from probation to life imprisonment for drug offenses. A few countries employ the death penalty for drug offenses. Many western European countries and Mexico do not prosecute the possession of small amounts of drugs for personal use. This is called decriminalization, rather than legalization, since drugs are still illegal, though not penalized. Large-scale drug production and trafficking may carry severe penalties.

While many countries produce illegal drugs, Colombia and Mexico are major sources of drugs used in the United States. The drug-related violence in Mexico has escalated to extraordinary levels over the past two years, and has spilled over into U.S. border-states, though that is nowhere close to the degree of violence in Mexico.

Drug laws in the United States date back to 1860, when Pennsylvania enacted an anti-morphine law. The Harrison Narcotics Act of 1914, forbidding physicians to prescribe narcotics to addicts, was zealously enforced by the U.S. Treasury Dept. In 1921 the 18th Amendment to the U.S. Constitution created alcohol prohibition, after 39 states had done so and 14 had also prohibited cigarettes. It took only 12 years to repeal national alcohol prohibition in 1933, with its bootlegging violence and illegal alcohol production.

In 1969 President Nixon declared a War on Drugs, and in 1970 the Comprehensive Drug Abuse Prevention Act put all drugs under federal control. Congress created the Drug Enforcement Agency (DEA) in 1972. The Congressional Omnibus Drug Act of 1988 placed even heavier penalties on drug offenses, many of which remain today.

The United States now leads the world in the number of people incarcerated in federal and state prisons (over 2 million in 2008). With just 5% of the world’s population, the U.S. has about 25% of the world’s prisoners. About 25% of those have been convicted of drug offenses. The United States incarcerates more people for drug offenses than any other country.

Nationally, in 2008 an estimated 1,702,537 arrests were for drug abuse violations, the single largest category of arrests. Half of those arrests were for marijuana, mostly for possession.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total arrests</th>
<th>Total drug arrests</th>
<th>Total marijuana arrests</th>
<th>Marijuana possession arrests</th>
<th>Marijuana trafficking/sale arrests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>14,005,615</td>
<td>1,702,537</td>
<td>847,863</td>
<td>754,224</td>
<td>98,640</td>
</tr>
</tbody>
</table>
What we know and don’t know about drugs in South Carolina

Once considered a “consumer state,” South Carolina is now considered a “source state” for illegal drugs. It is a transshipment corridor for all kinds of illicit drugs and drug proceeds. South Carolina is strategically located midway between Miami and New York City, where I-20, I-26, and I-77 intersect with I-95 and I-85. This location is ideal for transshipping contraband throughout the Eastern Seaboard. From Mexico and the southwest border states, traffickers travel through the state on I-20 and I-85 to supply northeastern states with cocaine, marijuana, methamphetamine, and heroin. Containerized cargo through the Port of Charleston is also a popular transshipment method for cocaine.

How many South Carolinians use illegal drugs is only an estimate. Since drug use is illegal and getting arrested undesirable, we really can only guess the number of people who use drugs. But here is what we do know:

- From 2005 – 2006, among South Carolinians 12 years of age and older, 7.3% of those surveyed said they had used illegal drugs in the previous month.

- In 2008 South Carolina law enforcement made 34,474 drug arrests (down 8.3% from 2007).

- Charleston County had the highest rate of drug arrests per 1,000 residents in 2006, followed by Chesterfield, Union, Florence, Darlington, and Marlboro Counties.

- Drug offenses are most visible at a local level. For example, in 2008, North Charleston, the state’s third largest city, made 14,951 arrests, of which 2,072 were for drug offenses (over half of them for marijuana).

- In 2009, 4,729 South Carolinians were in state prisons for drug offenses (19% of the total prison population, and more than for any other offense). Other South Carolinians are currently serving time for drug offenses in the state’s four federal prisons and 49 jails, and still more await trial for drug offenses in jails or their communities.

- The above are just the men, women and youth specifically charged with drug offenses. Other jail and prison inmates were using drugs while committing other crimes, particularly thefts to pay for drugs.

- Worst of all, violent and often deadly drug-related crimes occur daily across the state, as drug dealers, many just teenagers, protect turf, rob rivals, or avenge drug deals gone wrong. The very illegality of drugs makes them so profitable to sell on the black market that the death or incarceration of any drug dealer simply creates a job opportunity for another person to break into the lucrative business.

- Illegal drugs comprise the largest category of offenses among South Carolinians on probation and parole.

- Each year the South Carolina Dept. of Alcohol and Other Drug Abuse Services (DAODAS) through its county network serves about 50,000 people with drug problems and alcohol (about 30% for alcohol alone). Others seek private treatment.
WHY SOUTH CAROLINIANS GOT ARRESTED FOR DRUGS IN 1996 – 2006

<table>
<thead>
<tr>
<th>Reason</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal use</td>
<td>76.8%</td>
</tr>
<tr>
<td>Distributing or selling drugs</td>
<td>19.3%</td>
</tr>
</tbody>
</table>

WHO GOT ARRESTED FOR DRUG OFFENSES IN SOUTH CAROLINA 1996 – 2006

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median age</td>
<td>25</td>
</tr>
<tr>
<td>Male</td>
<td>83.8%</td>
</tr>
<tr>
<td>Female</td>
<td>16.2%</td>
</tr>
<tr>
<td>White</td>
<td>53.1%</td>
</tr>
<tr>
<td>Black</td>
<td>46.6%</td>
</tr>
</tbody>
</table>

WHAT DRUGS WERE INVOLVED IN SOUTH CAROLINA ARRESTS 1996 – 2006

<table>
<thead>
<tr>
<th>Drug</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marijuana</td>
<td>64.3%</td>
</tr>
<tr>
<td>Crack cocaine</td>
<td>23.1%</td>
</tr>
<tr>
<td>Powder cocaine</td>
<td>6.2%</td>
</tr>
<tr>
<td>Opiates (heroin, etc.)</td>
<td>1.8%</td>
</tr>
<tr>
<td>Meth and amphetamines</td>
<td>1.8%</td>
</tr>
</tbody>
</table>
Drug use in South Carolina prisons
Given the large number of inmates who go to prison for drug offenses, and how many are addicted, the attempted use of drugs in all state and federal prisons is not surprising. Between 2005 and 2009, South Carolina Dept. of Corrections statistics show that 12,152 inmate drug tests were positive, declining steadily up to the present time. In 2009 there were 1,409 positive drug tests of prison inmates.

Drugs are illegally smuggled inside by throwing them over prison fences, stuffed inside footballs, duffel bags and taped packages. Sometimes they are smuggled in by prison staff, who, when caught are charged with the appropriate criminal charges and terminated.

The South Carolina Dept. of Corrections (SCDOC) has a zero tolerance policy for drug use or possession by inmates. Inmates are tested for drugs, subject to sanctions if found, and those who test positive are referred to the SCDOC’s substance abuse treatment program for possible placement in the program.

As might be expected, illegal drugs comprise the largest category of offenses among South Carolinians on probation and parole. Post-prison-release drug testing of inmates convicted of drug offenses continues for probationers and parolees through the Dept. of Probation, Parole and Pardon Services.

What it costs to incarcerate South Carolina drug offenders
In 2009 there were 24,883 inmates in South Carolina prisons, and each prisoner cost the state $14,545, one of the lowest costs in the nation. In 2007, the state spent $0.49 on corrections for every dollar the state spent on higher education.

South Carolina drug laws
South Carolina’s drug laws mirror federal laws to a great extent. However, states do have some leeway to adjust those laws, though sometimes under protest by the federal government. (A good example of this is the current legalization of marijuana for medical purposes in 14 other states and the District of Columbia, though not South Carolina.)

South Carolina’s strict drug laws include penalties ranging from misdemeanor fines and the threat of jail or prison for first time drug users, up to felony trafficking offenses that imprison men, women and young adults for decades. Anyone charged with any drug offense must immediately surrender his or her driver’s license for 6 months, regardless of where the drug offense occurred, and even if it had nothing to do with driving. Similarly, anyone convicted of any drug offense must pay a “drug surcharge” of $150 to support the state’s drug courts, on top of any other fine imposed by the court.

Throughout the country, as well as in South Carolina, penalties for using and selling crack cocaine have been much greater than those for powder cocaine. (Crack is the street name given to the form of cocaine that has been processed to make a rock crystal that can be heated and smoked.) Crack is cheaper than powder cocaine and more likely to be used by economically disadvantaged African-Americans. The sentencing disparity between crack and powder cocaine has contributed to the imprisonment of African Americans at six times the rate of whites, and led to the United States’ position as the world’s leader in incarceration.
In 2010 the crack/powder penalties were changed at both federal and South Carolina levels. **In South Carolina, all penalties for the two drugs are equal.** Under federal law, it now takes 18 times as much powder cocaine as crack to trigger the same mandatory minimum sentence for a drug offense (it used to be 100 to 1).

**Typical drug arrest scenarios**

For a simple possession of marijuana, first offense (one ounce or less), the police arrest the offender and the case is handled in magistrate’s or municipal court. The misdemeanor offense carries a penalty of 0 – 30 days or $100 - $200, plus a $150 drug surcharge (to support the state’s drug courts), and suspension of the offender’s driver’s license for 6 months. If the judge grants the offender a conditional discharge, various conditions may be set by the court, such as drug treatment, drug education, or community service. If the conditions are successfully completed without further offense, the charges are dismissed.

For all other simple drug possession charges, the case goes to a local solicitor, who has absolute discretion on how to charge. The solicitor negotiates with the offender to reach what the solicitor considers a fair disposition in the case.

If the offender does not have a significant criminal history, the offender may be diverted from the court system. The solicitor may offer the offender the opportunity to participate in the Pre-trial Intervention program (PTI) run by the Solicitor’s Office. The PTI program provides counseling, treatment if indicated, an obligation for the offender to do public service, etc. When the program is completed the charges are dismissed with no court or criminal record involved, and the offender does not lose his driver’s license at any point in the process. However, the offender must pay a $150 drug surcharge.

If the offender has a more significant criminal history, the case is prosecuted by the solicitor in state court. Depending on the facts of each case and the, the judge may sentence the offender to probation or prison. If the offender successfully completes the conditions of probation, without any further arrests, no prison time is served.

Many offenders charged with drug possession have significant addiction problems and are sent to drug court. If these individuals respond positively to intensive drug treatment, their charges are dismissed.

If the offender has a pattern of low-level drug arrests, the judge may sentence the offender to a more severe prison sentence, but may suspend the sentence and commit the offender to drug court for a set period of time. If the offender violates the drug court terms, he goes to prison. If the offender completes drug court successfully, he does not go to prison.

The solicitor might recommend that the judge sentence a young defendant as a Youthful Offender. The Youthful Offender Act (YOA) applies to people between the ages of 17 and 25 who are not also charged with a violent crime, and it provides alternatives to adult sentencing. Youthful offenders are housed in a special section of the S.C. Dept. of Corrections, separate from adults, with the goal of rehabilitation, not just punishment. A Youthful Offender typically receives a sentence not to exceed 6 years at a YOA facility—the defendant would serve 10 months of the sentence and then be released on parole for 1 year, and if there is no violation the sentence is over after that year. Shock incarceration (boot camp) is also an alternative for those who qualify. The law provides for the expungement of
a conviction as a Youthful Offender after 5 years have passed, if he or she has had no subsequent convictions.

The disposition of charges of Distribution, and Possession with Intent to Distribute, are also largely based on the amount of drugs involved and the prior drug convictions of the offender. The sentencing ranges for these offenses can include years of prison and large fines. Drug traffickers are considered part of the drug problem and are not offered PTI or probation or drug court. They can get sentenced up to 30 years in prison.

When any drug offender is arrested, on the very first day the police typically ask the offender to inform on other people involved in drug offenses, especially someone higher up the drug distribution chain. Naming someone more minor usually does not result in a lower charge or a dismissal.

Asset forfeiture—A significant source of income for state agencies
Assets are things of value that either belong to a drug offender or appear to belong to him (like a leased car), and which the law considers to have been acquired through profits gained by drug or alcohol offenses. Assets can include a wide variety of items: pocket money, bank accounts, cars, boats, securities, land, homes, businesses and much more. The law allows the assets of drug offenders to be confiscated by law enforcement and solicitors.

Typically, the drug offender is eager to hand over assets to the police as a way to improve his situation when arrested. The offender is given a copy of a police form stating he or she has agreed to relinquish the assets. If the offender does not agree to do this, the solicitor or designee can initiate a court procedure to try to get control of the assets, and the offender must prove the assets were not tied to illegal drug activity.

If a defendant is arrested with a specific amount of drugs in his car, the car may be seized, even if it is the family car that an innocent spouse needs to drive their children to school and herself to work. If a house in which one spouse manufactures or sells drugs is confiscated, the other innocent spouse must go to court to prove her right to keep the house, and so on.

The law specifies the minimum amount of drugs that can trigger an asset seizure. While that minimum must be at least one pound or more of marijuana or hashish, the minimum amount of other controlled substances is extremely small. One gram of cocaine or heroin is about the amount found in a restaurant sugar packet, and one gram equals about 15 grains. An asset can be seized for more than four grains of opium, more than two grains of heroin, more than four grains of morphine, more than ten grains of cocaine, more than fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, more than ten grains of crack, or more than one gram of ice or crank (meth).

The law also requires that all assets seized must be documented, and that the assets must be sold for cash, for the most part. The money derived must go to the following:

- 75% percent to the law enforcement agency or agencies involved in the arrest, to use only for drug enforcement activities
- 20% to the prosecuting agency (solicitor) for matters relating to the prosecution of drug offenses and litigation of drug-related matters
• 5% to the state treasurer for the state’s general fund.

Based on this formula, in the last fiscal year (July 1, 2008 – June 30, 2009) the South Carolina Treasurer’s Office received $167,743. This means the total value of all forfeited assets gained by state law enforcement agencies for that year was $3,354,860.

The item for Asset Forfeiture in the 2007 Charleston County Sheriff’s Dept. budget gives an example of the use of asset seizure money by that law enforcement agency. That year the department gained $396,145 from the proceeds of seized assets. Offsetting expenditures include aviation related items; K9 (dog) expenses; electricity, gas and telephone charges; maintenance of buildings and grounds; fleet fuel; the “police confidential fund” and more.

In contrast, for 2009 just $55,231 was expected, with significantly fewer offsetting expenses due to the smaller amount, and the intention of adhering closely to the law that restricts how those funds may be spent. Asset forfeiture funds must not be used to supplant operating funds in current or future budgets. All expenditures from these accounts must be documented. No state agency audits the amounts of forfeiture money gained or spent in South Carolina. The court records are considered sufficient.

Drug courts in South Carolina

There is no central drug court agency in South Carolina. There are special drug courts for adults and juveniles, and a few for families where the S.C. Dept. of Social Services (DSS) has found children at risk because of adult drug use.

Drug courts in South Carolina are limited in the numbers of participants due to various factors. These include the number of offenders eligible for the program and uncertain funding. For example, in the Charleston County Adult Drug Court, in 2008 just 68 were enrolled.

Not every South Carolina county has a drug court, though most do and some are planned. The Aiken Juvenile Drug Court, with an average of 15 participants per year, closed in July 2010 for lack of funds.

Over a decade of drug court research shows that drug courts work better than jail or prison, better than probation, and better than treatment alone. Studies have found that drug courts reduce crime, save money, increase compliance, and restore families.

How South Carolina drug courts are funded

Drug courts in South Carolina have drawn upon six major sources to provide the means of their operations: federal, state, and county funds; participation fees; donations, and other sources. Perhaps the most useful activity of many drug court administrators has been to lobby county and state officials.

During the start-up phase, drug courts are heavily dependent upon temporary grant funding. As this funding comes to an end, drug courts engage in a frantic search for resources that can sustain their operations. The result for most is a mishmash of budgeting arrangement that requires ingenuity, opportunism, and luck to build and maintain programs.
Most drug courts require the participants to pay for participation in the program. The typical participation fee is $25 per week and a one-time application fee (usually around $100). However, this is not enough to fund the program.

**A change in 2010 in drug court funding**
The General Assembly has funded all the state drug courts to some extent, but not all equally. Some courts have gotten funds from two pots of money, others from only one. Every year drug court funds have come from three state sources:

1. A surcharge fee of $100 collected on monetary penalties for misdemeanor and felony drug offenses in state courts. The total surcharge amount has been shared among the 16 Judicial Circuits on a per capita basis for drug courts. In 2009 the total amount was $1,604,731. The amount has varied from year to year based on the amount of fees collected.

   However, with passage of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, the surcharge fee on every drug conviction was increased to $150. This is expected to annually provide an additional $800,000 to $1,000,000 for the state’s Judicial Circuits for drug courts. The new law also created the Sentencing Reform Oversight Committee, whose responsibilities include monitoring the costs and expenses of drug courts in the state.

2. An assessment of $25 is made for motions in courts of common pleas and in family courts. A portion of the total assessment collected has gone solely to the 3rd, 4th, and 11th Judicial Circuits. In 2009 the amount for each was $150,000.

3. Money from the state appropriations fund goes solely and directly to Richland ($56,406), Kershaw ($52,965), and Saluda Counties ($38,000), and the 12th Judicial Circuit ($150,000). These amounts are subject to the General Appropriations Act each year.

The reason the judicial circuits, counties and drug courts are not funded equally is because over the years various legislators, working for their individual constituents, managed to get these formulas inserted into South Carolina laws authorizing the funding.

**Pregnant women who use drugs**

No aspect of illegal drug use is more controversial than drug use during pregnancy. The National Advocates for Pregnant Women says South Carolina stands alone in using child neglect and homicide statutes to punish women who are pregnant and engage in a behavior that might endanger a viable fetus.

Some states have laws requiring medical personnel to report these births to child welfare agencies, but our state goes further. From 2006 – 2009 solicitors charged 40 new mothers with either unlawful neglect of a child (a felony carrying a maximum sentence of ten years), or homicide by child abuse, (a felony with a maximum sentence of life and minimum sentence of ten years). Whether or not this is justifiable depends on whether one believes addicted pregnant women have a health problem or a criminal disregard for the health and welfare of their babies.
South Carolina’s law may be justified because exposure to drugs in the womb can lead to many health problems, including birth defects, low birth weight, premature birth, small head circumference, and sudden infant death syndrome. A newborn exposed to drugs in the womb may suffer from neonatal abstinence syndrome. The symptoms of neonatal abstinence syndrome depend on the type of drug the mother used, how much of the drug she was taking and for how long, and whether the baby was born full-term or early. Treatment helps relieve symptoms of withdrawal. Neonatal abstinence syndrome can last from 1 week to 6 months.

South Carolina’s law may not be justified because studies have shown that up to 70% of initial checks of the baby’s exposure to drugs may be wrong. Also, in 2004 thirty leading medical doctors, scientists and psychological researchers released a public letter calling on the media to stop the use of such terms as “crack baby” and “crack addicted baby” and similarly stigmatizing terms, such as “ice babies” and “meth babies.” This broad group of researchers agreed that these terms lack scientific validity and should not be used.

The American Medical Association believes that pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician’s knowledge of substance abuse or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment.

Smoking during pregnancy is associated with several adverse outcomes for fetuses, including increased risk for stillbirth, infant mortality, Sudden Infant Death Syndrome, preterm birth, and respiratory problems. Drinking alcohol during pregnancy can cause a wide range of physical and mental birth defects. Women arrested for drug use often smoke tobacco, use alcohol, come from impoverished circumstances, and may not have had prenatal care. There are many reasons why a baby may die at birth, even if the baby tests positive for illegal drugs.

**Prescription drug misuse**

Addiction to prescription painkillers has become a largely unrecognized epidemic, experts say. In fact, prescription drugs cause most of the more than 26,000 fatal overdoses nationally each year. Teenage prescription drug misuse is significant, and prescription drug misuse by the military has markedly increased (25% of soldiers and 20% of Marines).

In South Carolina, the Drug Enforcement Agency (DEA) says that diversion of OxyContin®, hydrocodone products (such as Vicodin®), and pseudoephedrine continues to be a problem. The primary methods of diversion are the illegal sale and distribution by health care professionals and workers, and “doctor shopping” (going to a number of doctors to obtain prescriptions for a controlled pharmaceutical). Other methods of illegally acquiring prescription drugs include traditional drug dealing, theft from pharmacies or homes, illicitly acquiring prescription drugs via the Internet, and from friends or relatives.

**The South Carolina Prescription Monitoring Program**

To respond to prescription drug abuse, in 2006 the South Carolina General Assembly passed a law creating the statewide Prescription Monitoring Program (PMP) to be run by the S.C. Dept. of Health and Environmental Control (DHEC). The law’s intent is to improve the state’s ability to identify and stop the diversion of prescription drugs in an efficient and cost
effective manner, without impeding the appropriate medical use of licit controlled substances.

The South Carolina PMP law mandates tracking all drugs classified in government Schedules II, III and IV by dispensers (mainly pharmacies, but also some physicians and veterinarians) and by prescribers (physicians and veterinarians). Any dispenser of these drugs must file a monthly report to the PMP or pay a fine up to $2,000 and go to prison. The dispenser’s report includes specific information about the prescription, the prescriber and the patient.

This information must be kept confidential from all except certain people. They include law enforcement officers and prosecutors involved in a bona fide, specific, drug related investigation involving a designated person; pharmacists; prescribers; DHEC personnel, regarding Medicaid recipients; and a few others. A patient may request information about his or her own record. Anyone who illegally discloses PMP records commits a felony punishable by a fine up to $10,000 and ten years in prison.

In January 2008 the PMP at DHEC began receiving prescription reports. At the end of 2009 it had monitored over 18 million prescriptions. (South Carolina’s estimated population in 2009 was 4,479,800.)

DHEC’s own drug control enforcement is done through its Bureau of Drug Control (BDC). The BDC uses South Carolina licensed pharmacists who are also commissioned as state law enforcement officers with the power to arrest drug offenders. Typically, they request information from the PMP about specific individuals after having been informed about possible abuses by pharmacies and doctors.

The BDC typically conducts 750 to 850 annual site inspections of pharmacies, hospitals and practitioners. Inspectors make sure that registrants are properly maintaining records and storing controlled substances securely. The BDC receives 750 to 1,000 complaints each year involving diversion of controlled substances from legal outlets. The complaints come from other federal, state and local agencies, health care professionals, and concerned citizens. About 450-500 of the complaints typically result in the arrest and prosecution of individuals in state or federal court. Approximately 25% of those prosecuted are health care professionals.

Should any law enforcement agency have suspicions about someone it is investigating for drug offenses, the agency can request a report about someone from the PMP and use that information to supplement other existing evidence. In 2008 and 2009 law enforcement (including the BDC and other agencies) made about 60,000 inquiries about potential drug offenders. Prescribers made about 40,000 inquiries, and pharmacists around 25,000.

**Substance abuse treatment in South Carolina**

Drug-induced changes in brain function can have many behavioral consequences, including an inability to exert control over the impulse to use drugs despite potentially devastating consequences—*the defining characteristic of addiction*. Drug addiction is a complex illness. Many people do not realize that addiction is a brain disease. Some individuals are more vulnerable than others to becoming addicted, depending on genetic makeup, age of
exposure to drugs, other environmental influences, and the interplay of all these factors.

The South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS) is the state cabinet-level agency for alcohol and other drug abuse programming. Although services are coordinated at the state level, the department in turn subcontracts with 33 county alcohol and drug abuse authorities to provide direct services to citizens in all 46 counties of the state. Other private treatment facilities are also available throughout the state. Each year, about 50,000 South Carolinians receive direct intervention and/or treatment services through the county authorities.

Nationally, in 2007 the criminal justice system was the largest single source of referrals to the substance abuse treatment system—approximately 670,000 of the 1.8 million admissions. The majority of these referrals were from parole and probation offices. The people referred were almost twice as likely to be employed either full or part-time as other admissions. Drug courts also require treatment for participants.

The Substance Abuse and Mental Health Administration says that in 2006 – 2007 South Carolina was one of the top ten states with highest unmet treatment needs, though a DAODAS spokesman told us that now the state is about in line with others. Substance abuse services are individualized in South Carolina. Average lengths of stay vary by level of care and severity of illness. For intensive outpatient program services, the ‘best practice’ level of care for most individuals in 2009 was a stay lasting 61.26 days.

As recipients of federal and state funds, DAODAS providers of substance abuse services cannot deny services based on an inability to pay for services. A financial assessment is completed on all individuals indicating economic hardship, and people are not turned away because of a lack of money.

Private health insurance plans vary in coverage of substance abuse and mental health services. However, the recent federal act addressing parity for substance abuse and mental health services, called the Paul Wellstone Act, goes a long way in achieving parity for those plans that do cover such services. The act does not require that substance abuse or mental health services be included, but it does bar employers and group health plans from providing less coverage for these services than they do for physical ailments if provided in the health care plan. Insurers cannot set higher co-payments and deductibles, or stricter limits on treatment for substance abuse and mental health services. The act covers employers with 50 or more employees. In South Carolina, most businesses have fewer than 50 employees and thus the reach of the federal law may be limited in our state.

Drug addiction treatment has been shown to reduce associated health and social costs by far more than the cost of the treatment itself. Treatment is also much less expensive than its alternatives, such as incarcerating addicted persons. A RAND Corporation study estimated that treatment is 15 times more effective at reducing drug-related crime than incarceration. Studies show that treatment can cut drug abuse in half, reduce criminal activity up to 80%, and reduce arrests up to 64%. Several states have expanded drug treatment options as alternatives to prison for drug offenses.

Substance abuse treatment is limited in South Carolina jails to just a few. While the S.C. Dept. of Corrections has had a program since 1994, it, too, is limited, mainly for lack of adequate funds.
Has the War on Drugs worked?

After spending more than a trillion tax dollars to fight the 40-year-old War on Drugs, and after making more than 39 million arrests for nonviolent drug offenses, these are the results:

Percent of the U.S. population addicted to drugs:

- 1914 – 1.3%
- 1970 – 1.3%
- 2004 – 1.3%

<table>
<thead>
<tr>
<th>Drug</th>
<th>Price per gram 1981</th>
<th>Purity</th>
<th>Price per gram 2007</th>
<th>Purity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Powder cocaine</td>
<td>$613.10</td>
<td>40%</td>
<td>212.82</td>
<td>64%</td>
</tr>
<tr>
<td>Crack cocaine</td>
<td>$345.00 (1986)</td>
<td>85%</td>
<td>167.15</td>
<td>75%</td>
</tr>
<tr>
<td>Methamphetamine</td>
<td>433.40</td>
<td>45%</td>
<td>185.81</td>
<td>61%</td>
</tr>
<tr>
<td>Heroin</td>
<td>$1,887.61</td>
<td>11%</td>
<td>$364.01</td>
<td>36%</td>
</tr>
<tr>
<td>Marijuana</td>
<td>$7.81 (1986)</td>
<td>3.44%</td>
<td>$10.41</td>
<td>7.18% Fed 1.92% State or local</td>
</tr>
</tbody>
</table>
Some alternatives to current policies

**Legalize and regulate all drugs:** Allow only adults to buy drugs at state-licensed facilities, at prices so low that no one would be able to sell drugs more cheaply on the black market. Taxing drug sales also is an option. Provide sterile and disposable needles, educational materials about the dangers of using drugs, and contact information for services that help addicts stop using drugs. Hold anyone using drugs strictly responsible for any offense committed while using drugs, with serious penalties for allowing drugs to fall into the hands of children. Proponents say this will eliminate (1) black-market drug dealers and their associated violent crime (2) property crimes to get money to buy drugs, and (3) the use of drug sales to finance the activities of international terrorist and revolutionary groups.

A Zogby America Poll in 2007 asked 1,028 likely voters, “If hard drugs such as heroin or cocaine were legalized would you be likely to use them?” The response: 99% said “No,” and only 0.6% said, “Yes.”

**Decriminalize small amounts of all drugs (or at least marijuana) for personal use:** Decriminalization means “to reduce or abolish criminal penalties.” Proponents say the major benefits of this are to avoid the arrest, prosecution, and court disposition of thousands of people each year, with the related financial costs. It would also free the criminal justice system to focus on more important public safety matters. Several states have done this. For example, Massachusetts recently decriminalized possession of small amounts of marijuana, and less than an ounce of marijuana is now punishable by a civil fine of $100, with no criminal history. Possession of a small amount of any drug for personal use is not a crime in Spain, Portugal, Italy, the Czech Republic, the Baltic states and Mexico.

(The case against legalization and decriminalization⁴
- We have made significant progress in fighting drug use and drug trafficking in America. Now is not the time to abandon our efforts.
- A balanced approach of prevention, enforcement, and treatment is the key in the fight against drugs.
- Illegal drugs are illegal because they are harmful.
- Legalization of drugs will lead to increased use and increased levels of addiction.
- Crime, violence, and drug use go hand-in-hand.
- Alcohol has caused significant health, social, and crime problems in this country, and legalized drugs would only make the situation worse.)

**Make arrests for drug possession the lowest police priority:** While municipalities cannot change a state drug law, they can direct local law enforcement where to concentrate its efforts. The following municipalities in the United States have ordered their police and sheriffs to make arrests for drug possession (often just marijuana) their lowest law enforcement priority: Fayetteville and Eureka Springs, AK; Hawaii County; Denver, CO; Haily, ID; Missoula County, MT; Santa Barbara, Santa Monica and Santa Cruz, CA; and Seattle, WA. Proponents say this frees law enforcement to pursue more serious criminals.

**Legalize medical marijuana:** Fourteen states and the District of Columbia now allow residents to use marijuana when prescribed by a physician: AR, CA, CO, HI, ME, MI, MT, NV,

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NJ, NM, OR, RI, VT, WA and DC. Another 15 states are considering it. Proponents say marijuana alleviates chronic pain; helps manage movement disorders and muscle spasticity (especially for multiple sclerosis patients); acts as an anti-nausea agent (for those, say, undergoing chemotherapy); and is an appetite stimulant for those with wasting diseases like AIDS and cancer.

(The case against medical marijuana

The Drug Enforcement Administration (DEA) says that medical marijuana already exists. It is called Marinol. The active ingredient of Marinol is synthetic THC, which has been found to relieve the nausea and vomiting associated with chemotherapy for cancer patients and to assist with loss of appetite with AIDS patients. Smoked marijuana, says the DEA, contains more than 400 different chemicals, including most of the hazardous chemicals found in tobacco smoke. There is four times the level of tar in a marijuana cigarette, for example, than in a tobacco cigarette.)

Reform sentencing practices: A few states have enacted mandatory drug treatment statutes requiring offenders convicted of low level drug crimes to receive treatment sentences instead of jail. Among them are New York, Kansas, Hawaii, Arizona, and California. Each state places conditions on participation, and projects millions of dollars saved in jail and prison costs. A number of states have passed laws relaxing or repealing mandatory minimum laws. Such laws have led to extremely long prison terms for many drug offenses that now keep non-violent people locked up for years.

Use harm reduction: In December 2009, Congress repealed a 21-year-old ban on federal financing for programs that supply clean needles to drug addicts. South Carolina does not allow this. Proponents, often based in churches in high-poverty districts, say that making clean needles available to addicts slows the rate of infection from blood-born diseases without increasing drug use. They say it helps prevent the spread of H.I.V. (the virus that causes AIDS), hepatitis and tuberculosis, and it gives needle providers an opportunity to try to convince drug users to go into treatment.

Focus on preventing the gateway drug—tobacco: Research has shown that if kids don’t smoke tobacco, abuse alcohol or use other drugs till they are 21, their risks of ever doing so are profoundly diminished. Tobacco is the most common gateway drug to the others: teens who are current smokers are more than 5 times likelier to drink, 13 times likelier to use marijuana, and almost 7 times likelier to use other illegal drugs like cocaine and heroin, than nonsmokers. Statistics from the Campaign for Tobacco Free Kids show even higher correlations between kids who smoke tobacco and kids who use drugs.

We could find no evidence that South Carolina anti-smoking campaigns have publicized the gateway effect of tobacco on many kids who go on to use harder drugs. South Carolina has ranked among the worst states in the nation in smoking prevention efforts, according to the American Lung Association and the Campaign for Tobacco Free Kids.

The U.S. Centers for Disease Control and Prevention (CDC) recommends that South Carolina spend $62.2 million a year to have an effective, comprehensive tobacco prevention program. In 2010 South Carolina will spend $3.2 million for tobacco prevention and
cessation, including both state (with a line item from the General Fund) and federal funds. This is just 5.2% of the CDC’s recommendation and ranks South Carolina 44th among the states in the funding of tobacco prevention programs. South Carolina’s spending on tobacco prevention in 2010 amounts to 2.8% of the estimated $113 million in tobacco-generated revenue the state collects each year from tobacco settlement payments and tobacco taxes.

However, There Was Some Good News in 2010

In 2010, the South Carolina General Assembly passed a law raising the cigarette tax fifty cents per pack, up to a tax total of $.57. This makes the state 42nd in the nation in tobacco tax rank (the state average tax is $1.45 per pack).\(^5\) In particular, the cigarette tax law annually allocates $5 million from the tax revenue to the newly created Smoking Prevention and Cessation Trust Fund, under the direction of the South Carolina Dept. of Health and Environmental Control (DHEC), for a statewide smoking prevention and cessation program. These funds may not be appropriated or used for any other purpose.

No tobacco settlement funds have been dedicated to tobacco prevention since 2003, even though the South Carolina Youth Smoking Act (a law) says that DHEC’s smoking prevention efforts should be funded by tobacco settlement money.\(^6\)


Positions on Illegal Drugs

Adopted by the League of Women Voters of the Charleston Area

May, 2010

Illegal drug use should be considered a public health issue, and drug addiction should be addressed by substance abuse treatment programs instead of incarceration.

1. We support the following preventive measures:
   - Educational programs aimed at keeping children from using drugs;
   - Public education programs about tobacco's role as a gateway drug to illegal drug use;
   - Mandatory substance abuse education in all SC schools, public and private;
   - Educational programs about illegal drugs directed to adults;
   - Sterile needle and syringe programs for illegal drug users to prevent blood-borne diseases.

2. Official drug laws and policies should include:
   - Drug treatment programs as an alternative to incarceration;
   - Legal possession of medical marijuana, when prescribed by a physician;
   - Reliable and equitable state funding for all county drug courts.

3. Drug-addicted pregnant women should be given priority placement in drug abuse treatment programs. The LWVCA does not support criminal charges for the mother in cases where the newborn tests positive for drugs.

4. Adults who possess marijuana for personal use, adults who sell marijuana to other adults for personal use, and adults who possess illegal drugs other than marijuana for personal use, should at most be charged with a civil offense (which may include a fine), rather than a criminal offense (which may result in incarceration).

5. Programs for substance abuse treatment should be funded by all levels of the government, the private sector, and the drug user, with a sliding scale based on the ability to pay.

6. Any public fund savings resulting from the use of alternatives to incarceration should be used to support substance abuse treatment programs.

For more information contact:

League of Women Voters of the Charleston Area

http://www.lwvcharleston.org