



The Brookings Institution

***The Killing Drugs* podcast**

“Rethinking domestic law enforcement in the fentanyl crisis”

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Episode Summary:

In this episode, host Vanda Felbab-Brown talks with RAND researchers Beau Kilmer and Roland Neil about U.S. domestic law enforcement responses to the fentanyl crisis. Kilmer and Neil highlight a decline in drug arrests, particularly for cannabis, in the United States, but note a surge in fentanyl-related seizures. Kilmer and Neil discuss various alternatives to incarceration for specific drug-related crimes, including police-led deflection programs, and they cast skepticism on new punitive approaches, such as drug-induced homicide laws.

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FELBAB-BROWN: I am Vanda Felbab-Brown, a senior fellow at the Brookings Institution. And this is *The Killing Drugs*. With more than 100,000 Americans dying of drug overdoses each year, the fentanyl crisis in North America, already the most lethal drug epidemic ever in human history, remains one of the most significant and critical challenges we face as a nation. In this podcast and its related project, I am collaborating with leading experts on this devastating public health and national security crisis to find policies that can save lives in the United States and around the world.

On today's episode, I am exploring domestic law enforcement approaches to the fentanyl crisis. My guests are Doctor Beau Kilmer, the co-director of the Rand Drug Policy Research Center, as well as a senior policy researcher at RAND and a professor of policy analysis at the Pardee RAND Graduate School. And Doctor Roland Neil, a social scientist at the RAND Corporation. The project paper is titled "Criminal legal intervention in the age of the overdose crisis: Some noteworthy trends and policy changes."

Beau, thank you so much for joining me.

KILMER: Thank you so much for having us, Vanda.

FELBAB-BROWN: And, Roland, terrific to have you here as well. Thank you.

NEIL: Good to be here, thanks.

FELBAB-BROWN: So, the U.S. response to drugs is frequently criticized as extremely heavy on arrests of people who use drugs—a core element of the much decried "war on drugs." How many people in the United States, Beau, are actually arrested for drug offenses these days? And how much has that changed?

[1:51]

KILMER: Yeah, so, it's a lot harder to figure that out than you would imagine. So, we know that from about 2010 to 2019, drug arrests accounted for the largest category of all arrests. So, it was roughly about 1.6 million a year nationally. And that accounted for anywhere between 12 to 16% of all arrests. So, this is a big part of policing in the United States.

However, there's reason to believe that that's actually an underestimate. Because when those data are actually submitted to the FBI, there's something called the hierarchy rule, meaning that if you get arrested for two different types of offenses, they only report the most serious one. So, if you got arrested for robbery as well as possession of methamphetamine, only the robbery is going to get reported. So, we believe that those numbers are underestimates.

And the other thing that makes it a bit confusing is at the national level, they take all these drug arrests and they put them into four categories. They've got those that are related to—they call it marijuana, by cannabis. Another one for opium and cocaine and their derivatives. Then there's a third category called "other dangerous drugs." Then there's a fourth category called synthetics.

And so, it raises some really interesting questions. We tend to think of these other non-narcotic dangerous drugs, we tend to think of that generally as methamphetamine. But it might be the case that some places might categorize that as synthetic. Or what if there was an arrest where there was both heroin and fentanyl? where would that get classified?

[3:21]

But we do know that kind of within these four different categories, obviously over time the number of cannabis arrests have gone down dramatically, because of legalization and kind of changes in approaches. We have seen that for that other dangerous drug category that between 2010 and 2019, there actually was an increase. And we believe that's largely attributable to meth.

What's interesting, though, is if we look at the categories that we think fentanyl could possibly get classified into—either opium slash cocaine or that synthetic category—you know, there really wasn't much of a change. While you had overdose deaths related to fentanyl spiking, you didn't really see much of a change there.

And that was through 2019. And I stop there because obviously, with COVID in 2020, that kind of affects your trends.

But beginning in 2021, the FBI then changed how they collected and reported data on drug arrests. So, what that means is for 2021, '22, and 2023, there's going to be some issues there, some missing data. But I do think that these changes overall are going to make it easier for us to assess what's been happening with specific drug trends. And fortunately, I had Roland, I was able to work with him and he kind of dug into this new data system. So, he'll have some better insights on this for the more recent years.

FELBAB-BROWN: Roland, I am interested to hear that. But let me just reiterate something you said, Beau. One point six million people, at least until 2019, arrested yearly for drug possession or for drug offenses, of which drug possession would be one. That's a very large number.

KILMER: Yeah. And I should be very clear. That was 1.6 million, roughly, arrests. So, you know, some people do get arrested multiple times. But as I said, I really think that's an underestimate because of that hierarchy rule.

FELBAB-BROWN: So, Roland, what has changed?

[5:05]

NEIL: It's hard to say nationally what's changed because of this change in the data recording system that's been used. So, what we did for our paper is we looked at the 17 states which have been reporting to NIBRS, which is the National Incident-Based Reporting System, which is the new system. Some started using it before 2021. So, we looked at the states that had the vast majority of their population being covered by this reporting system going back to 2017. So, we looked at from 2017 to 2022 and what happened to arrest for drug offenses for these 17 states. And for both drug

possession and for drug sales arrest, they fell by about a third over the course of this period.

The decline in overall numbers is, again, overwhelmingly driven by the decline in cannabis arrest. But it was actually a pretty widespread decline, especially once you start looking at 2019 onwards. The decline existed for every category of drugs that we looked at. So, methamphetamine arrests were falling, opioids, cocaine. And again, similar to what we saw with the with the analysis from earlier years there was no spike in opioids during this time period, which coincided with the spike in overdose deaths due to fentanyl.

And one thing which I will say, right? is those 17 states are not necessarily nationally representative. We don't know what the number would have been for the other 50 states. Just as one example, two of these states, Oregon and Washington, had periods during this phase in which they had decriminalized the possession of drugs. And so, we don't know if those numbers hold generally. But that's what we do know about the states that we have good data on in recent years.

FELBAB-BROWN: And we'll talk more about decriminalization in the northwest on the show and also have an entire episode and paper dedicated to that show with Professor Keith Humphreys.

Beau, let me come back to you just on this basic data and what we know, despite the data challenges. What can you tell us about trends in crimes related to drug use or drug possession? So, property crimes, how frequent are they? Many people would certainly praise the fact that arrests for drug offenses have declined. What about other crimes associated with that?

[7:20]

KILMER: Yeah, no, that's an important point. When we think about the role of policing in drugs, those drug-specific offenses for possession and sales, that's only one component of this. And obviously there are some individuals who, you know, when they're using drugs or when they're selling drugs, they are engaging in other types of crime.

But I want to make it very clear, just because someone uses drugs or sell drugs, that doesn't mean they're committing other crimes. Especially with respect to those who are kind of heavy users of opioids as well as methamphetamine, there's some pretty strong research suggesting that there is a positive association with engaging in other crimes, especially property crimes, as a way of trying to get income, in order to be able to purchase more substances.

And it's really hard to figure out the exact numbers. And so, I did some work a couple of years ago. It was focused on 2019. And our best estimates were for 2019 in the United States there probably were anywhere between 200,000 to 300,000 arrests that were specific to opioids. So, possession or sales, and that would include prescription opioids as well as heroin as well as fentanyl. But our best assessment was that if you were to look at the total number of property crimes committed by those with the opioid use disorder, it was going to be a lot larger than that. Multiple times. And so, that's an important component when we're thinking about the overall

consequences here in terms of the burden on police. It's not just the drug-specific offenses. It's these other ones as well.

FELBAB-BROWN: And it's also very important for designing policy as well. So, you don't correct bad policies in a way that exacerbates other problems. So, Roland, another very important criticism of the U.S. domestic counter-narcotics policies for many years has been that they disproportionately target, arrest, and incarcerate Black people and other people of color. What is the situation with incarceration like today with respect to racial justice, racial equity?

[9:14]

NEIL: Yeah, so, starting off first with just overall patterns in the use of incarceration for drug offending. If we're looking at states, which are the largest, they hold most inmates in state prisons, numbers have fallen from around a quarter of a million in 2010 down to about 175,000 in 2019. And with the COVID pandemic they fell further by further few tens of thousands, though it's not entirely clear what those numbers are currently.

And one thing which is interesting about this decline is it's not only the size of it, right? from a quarter million down to less than 175,000. But it's that this decline was overwhelmingly driven by a reduction in incarceration of African Americans. During that time period, incarceration levels for white inmates in prison for drug offenses fell by about 8%, as opposed to 54% for African Americans. And the decline for Hispanic individuals fell in between those two. So, there's been not only a large decrease in the use of state prisons for drug offenses. But that's been one that has benefited in the sense African Americans and Hispanics, disproportionately.

That being said, compared to the size of the population in the U.S., the rates are still disproportionately high for these racial and ethnic groups.

And one further caveat with that, which is that focusing on state prisons ignores federal prisons. And for most aspects of the U.S. criminal justice system, federal prisons play a very, very small role because they don't account for many of the prisoners. When you're talking about drug offenses, that's actually not true. They're a pretty sizable population. But we weren't able to do this same sort of analysis looking at the racial distribution of federal prisoners, nor for jails.

But overall, to simplify, it looks like the use of all of these forms of incarceration for drugs has been reducing over the past decade, have been declining. And where we can tell it looks like that has been disproportionately good news for people of color.

FELBAB-BROWN: Who have for a long time disproportionately suffered from too skewed enforcement toward them. So, Beau, Roland talked about incarceration, you've talked about incarceration as one component of law enforcement responses to domestic retail market as well as use. What about alternatives to incarceration? What are policy approaches there, and what are the trends and the picture with them today?

[11:37]

KILMER: So, I want to make it clear, I mean, while incarceration is a really important part of this story, if we look at most people who get convicted of a drug possession offense, most of them are either sentenced to probation or a fine. So, most of them aren't sentenced to prison.

Now, that said, this is something that Roland raised, it might be the case that after you get arrested, you might spend a couple of days in jail, and then you'll have your court case and then you'll be sentenced to probation. And so, this is where it would be really useful to get better data on the time that people spend in jail and for what reasons. That's something and so not only for those that are sentenced, but also those that are held there kind of pretrial.

But the bigger picture is, look, most of most of the action here is with respect to probation. And probation in general is, you know, is run at the county level, you know, throughout the United States. And so, there's a tremendous amount of variation in terms of how probation departments work, what types of supervision they have, the types of conditions. You know, some places might say as part of your probation you may actually have to go to drug treatment or attend self-help meetings.

Another component to this is drug testing. It's very common for people, especially those that have been convicted on drug offenses, to be subject to drug testing. And for those individuals who end up missing a scheduled drug test or testing positive for drugs, they can then be violated. And sometimes those violations can lead to having probation revoked, and then the person ends up in prison. So, even though they weren't sentenced to prison, they could end up there.

And we also see this when we talk about probation, that's kind of an alternative in general to incarceration. We also see this for parole. So, parole tends to be—that's the supervision in a lot of states, that happens after you're incarcerated. Same thing with respect to those testing positive and or missing tests.

And that's one of the big things, as we were trying to crunch all the numbers for this chapter, trying to get a sense of how many people are actually being sentenced to prison because of a positive or missed drug test on probation or parole? And that was that's very hard to figure out.

FELBAB-BROWN: Have you been able to get any sense of that?

KILMER: No. I think we found some data maybe for Denver for a couple of years. But this is something systematically we need to be collecting. Because if we begin thinking about doing the policy analysis for various types of alternatives potentially to prohibition, this is the type of information you need. So, we were able to talk about general trends there, but this was really a big glaring hole in terms of how we understand what's happening with substance use and incarceration.

FELBAB-BROWN: Roland, what effects has the fentanyl epidemic in the U.S. had on police efforts toward domestic drug markets and on laws related to incarceration for drug use and drug dealing?

[14:21]

NEIL: Yeah, so, this is surprisingly difficult to answer as well. And one reason is that we looked at a lot of different trends when we were doing our research, and they're pretty rarely separated out specifically by fentanyl. So, for a lot of data that you'll have on drug offending in the criminal legal system, it's just going to be for drug offenses overall. Or if it's broken apart, it might be broken apart, say, by grouping all opioids together. And we know that we've had a changing situation with the opioid epidemic over the past decade or so where heroin and other forms of opioids have been getting sort of replaced by fentanyl. And so, it's somewhat hard to say.

But what we can say is a few things. So, one is that the amount in terms of weight of seizures of fentanyl has been going up massively. Like, in Customs and Border Patrol data it was not recorded in 2016. In 2017 they started recording it and there was essentially none. And since then, it's just been going up massively every single year until at least 2023, which is the most recent data that we had available.

Now, it's hard to go from seizures to knowing what that means in terms of law enforcement, because it could just be a function of there's more fentanyl being trafficked across borders. And also, it could reflect the fact that increasingly pills are being trafficked and pills tend to weigh more for a given amount of pure drugs. And so, when we just look at those trends, we can't really say what's that mean about how law enforcement is changing. But that's one thing which we do know, which is that they are seizing more weight of fentanyl. And it's a lot more than it was just a few years ago.

[15:49]

Another trend which we can say is that the DEA is unlike other agencies that we have data on in which we can see specifically the Drug Enforcement Agency. They specifically record fentanyl arrest. And in that data, we can see that back about a decade ago, they didn't really make any fentanyl arrests at all. And it's been growing strongly every year since then, although it still remains a pretty small part of their overall arrest activities.

But the last thing which I'll say about the trends is often the absence of notable spikes. So, even when we're looking at drug offenses overall and how they translate into incarceration or to arrest, it is really interesting that during this time in which fentanyl overdoses have spiked and these seizures, there has not been a corresponding increase in what we would have thought of as many of the conventional ways that the criminal legal system responds to drug offending.

And in terms of how laws have changed, we sort of came across three things which we can talk about more if you like that we focused on. One set of things is called "Good Samaritan" laws. Another are called "drug induced homicide" laws. And the last was experiences in the decriminalization of drugs as was seen in Oregon's case. So, those are the sort of changes we've seen to laws.

FELBAB-BROWN: Yeah. Absolutely, Roland. So, it sounds like there is a break with the fentanyl epidemic in traditional responses in the U.S. Less heavy-handed law

enforcement is the only response. And new aspects of law enforcement coming up, such as the Good Samaritan laws. Tell us about those, please.

[17:18]

NEIL: So, what those are these are laws that offer some legal protection from being prosecuted if you alert first responders, you call first responders, in response to an overdose for medical purposes. So, if you or someone else is overdosing and you call first responder, it will offer some immunity. Now, there's variety in these laws. Some of them only apply to the specific person who is having the overdose. Others it's bystanders. For some of them, it's only for the specific drug that the person is overdosing on. For others, it's other offenses that might be associated with that incident. For others, it's vulnerability from checking their warrants and arresting them on those. And so, there's a lot of variety in these laws.

But what's interesting about them is that they're a very new and very widespread innovation. So, the first one started in 2007 in New Mexico. And as of May 2024, which is the last time that I checked, it's now the case that all states have Good Samaritan laws with the exception of Wyoming. So, these have gone from zero to almost every single state over a pretty short period of time.

And the evidence on their effectiveness so far is mixed. One study found that places with Good Samaritan laws tended to have 15% fewer overdose deaths, whereas there's some other studies that found no effects. So, there isn't much research on these in terms of the effectiveness. But it seems like they could be beneficial. There's no evidence to suggest that they're harmful. In that sense it seems like they are a good idea.

And another thing which I'd like to point out about these is that there's often knowledge gaps. So, there's some research which points out that in places with Good Samaritan laws, both people who use drugs and police officers often don't know about them or are not willing to play along. And so, even if you have these laws on the books, there's this question about successful implementation, because if they're going to work, the people who are relevant to this need to know about it and need to need to follow these laws. And so, that's sort of an interesting area that should be explored more is figuring out which forms of these Good Samaritan laws are most effective and trying to think through what can be done so that they are implemented in an effective way.

FELBAB-BROWN: Absolutely. So, the design of policies matters a great deal but so does their implementation. And the two interact in effectiveness. But it sounds like there is at least no harm being done by the Good Samaritan laws and potentially benefits. Beau, Roland mentioned another policy innovation, and those are drug-induced homicide laws. Please explain to us what they are and what kind of effects have they had?

[19:50]

KILMER: So, the incarceration sentences for supplying drugs, I mean, even at the retail level, they can be pretty severe. And some states have passed what we would call drug-induced homicide laws, meaning that if you supply, either you sell or you

give drugs to someone and they overdose and die, then it can lead to potentially a sentence enhancement or another charge. It can lead to even more time behind bars.

And while there were some places that had some of these drug-induced homicide laws before we started dealing with illegally manufactured fentanyl, you've seen more states kind of adopt them and even in the states where you had them, they're being used more often.

And I want to make it clear this isn't just red, conservative states. You're seeing this in blue states as well. There were discussions about this in San Francisco. So, this isn't just a red state issue.

So, while you see more places implementing or kind of passing these laws, we've got to be really careful here. Because from a theoretical perspective, they make very little sense. Because what we know about the idea of deterring individuals, we know that deterrence is it's you're much more likely to deter someone based on kind of the certainty in the swiftness of the sanction, not the severity. What these drug-induced homicide laws do is they ramp up the severity, and they also add in a bunch of uncertainty. Whether or not if someone had naloxone there. So, from a theoretical perspective, it just doesn't make much sense.

And also empirically, there's absolutely no evidence to suggest that they provide any benefit. I will say there was one study that was published that suggested that they were beneficial, and that study ended up being so flawed it had to be retracted.

And the third reason why I'm really skeptical of these laws is that you can imagine that they could create disincentives for people to call the police if there is an overdose. So, from a theoretical perspective it makes very little sense. There's no empirical evidence. If anything, it seems like it can make things worse.

FELBAB-BROWN: And yet they are popular with politicians as a response.

KILMER: Yeah. No, and I understand that too. I, I mean imagine you're a politician and you're talking to a family member of someone who overdosed, and they want you to take some kind of action—please do it. Well, ratcheting up sentences in a lot of places it's an easy thing to do and makes it look like you've done something. But we need to be careful about equating that with are they actually making a difference, a positive difference.

FELBAB-BROWN: And in this case, it seems it's not just neutral but could potentially be making things worse.

So, Roland, the opposite side it's not to be ratcheting up sentences, but to be thinking about other nonpunitive approaches. What is the effectiveness, what do we know about the effectiveness, of drug deflection programs? And also, please explain to our listeners what those are.

[22:34]

NEIL: So, what we focused on in our report was specifically on police-led deflection programs. So, what these are, are situations where a police department, instead of

putting somebody through the track towards conventional criminal legal processing, offers people an out. Now, there's a lot of varieties of this and sometimes they go by different names. So, you could have situations where you tell someone if you do not take up some sort of, say, treatment program, then we will charge you after a person has been arrested. Or you could have it be the case that people self-refer, they bring themselves into these police run programs. Those tend to more often be called deflection. And when there's a threat of noncompliance, those tend to be called police-led diversion. But overall, these are pretty similar. And they represent a departure from more conventional ways of responding to drug use.

These are different from other forms of diversion programs like drug courts, which is a pretty well-known example. Those started in the late 1980s and are quite widespread now. Whereas police led diversion and deflection programs really only originated in 2011. And most of the predominant models now really started up between 2011 and 2015. And since then, they've spread quite quickly. So, we, we've managed to come across two sources that counted the number of different programs a few years ago. And one counted over 600 and the other was over 850. And those are likely both undercounts for how many of those programs are in existence now. And so, these police-led deflection programs are pretty new and they're pretty widespread.

And I want to just give you one concrete example to as how these would tend to work. Probably the best-known model is LEAD, Law Enforcement Assisted Diversion, which started in Seattle in 2011. And in that case, after someone is arrested but before they're booked, people who are arrested on certain offenses, instead of being booked, they can be put in touch with a case manager who will then help that person meet their basic needs and their other goals, like substance use treatment. There's some other details, but that's the core idea of what these programs are.

FELBAB-BROWN: Since you spoke about Seattle, Beau, I wonder whether you want to weigh in or come in with some insights as to the changes in Oregon, in Washington, the decriminalization that took place there related to law enforcement. Again, we have a whole episode and paper by Doctor Keith Humphreys dedicated to that. But I welcome your thoughts on that as well.

KILMER: Roland, actually, we've been working together on another project actually analyzing the arrest data there. So, Roland, I don't know if you want to say a little bit about that. I mean, it hasn't been peer reviewed yet. But we are seeing some interesting trends.

[25:12]

NEIL: Yeah, so, I guess I'll just give a little background briefly, which is that in 2021, in February 2021, Oregon became the first state to decriminalize the possession of most forms of drugs. And that is now being reversed and recriminalization is happening. And so, there's this question about what did this decriminalization do? And there's been a lot of talk about whether it was responsible for the spike in overdose deaths that happened in Oregon. And there's been a lot of accounts tying those two things together. It's worth noting in that respect that right when this M-110,

this decriminalization went into effect, was also when fentanyl was hitting Oregon's drug market, which you would have expected overdose to spike then anyways.

But focusing a bit more on the criminal legal consequences, the one thing which we can confidently say so far is that it led to a dramatic drop in drug possession arrests, and not really a noticeable change in other arrest patterns. And the work that Beau and I are currently doing looks at the racial aspect of this. How have disparities changed? And it's interesting because it looks like basically it effectively removed racial disparities in drug possession, because there were still some drug possession laws that could be enforced. And so, there's still some ways that you would expect to see disparities. But the law effectively removed racial disparities in drug arrest.

But there's a lot that's unknown about M-110. I haven't really seen anything doing a good job so far looking at what it did to crime patterns. And I think it's really interesting, right? because before this, in the U.S. context, it was only a theory as to what would happen if we decriminalized drugs. We could look to other countries, but different contexts. Now we have, like, a real case where that was done. And people are looking at it, but there's still a lot of questions that we could answer with that that we don't know the answers to yet.

FELBAB-BROWN: And what's happened with decriminalization there, Beau, I'll turn to you in just a second. Also of course it depends on the design of the decriminalization. And just like there is not one way to do law enforcement, there is not one way to do decriminalization. Beau, your thoughts if you wanted to add anything to the law enforcement aspects of the changes in Washington or Oregon?

[27:22]

KILMER: Well, I just I want to reiterate something that Roland said. These changes that happened in Oregon and Washington were happening at a time when fentanyl was hitting the West Coast very hard. It took a while for this to happen. And so, I think when we look at all of this literature, we need to keep that in mind. And also, when we start looking at some of the policy evaluations, we're going to have to pay close attention to how the researchers account for fentanyl in the supply. And that's difficult to do, but I think some researchers are focusing on that. And so, I think we'll get some better insights from some of those studies.

But that's important to keep in mind. And I think if you're thinking about decriminalization in general, as Roland alluded to, look, a lot of other countries have decriminalized. There's a lot of evidence out there on this in terms of decriminalizing possession. And so, I think it's important to look at this in totality and remember the context of when these changes are happening.

FELBAB-BROWN: So, policy design matters, policy implementation matters and the context matters. Structural, institutional, cultural. All of which of course feeds into how important data is and how challenging is to get data in this context. So, one aspect of law enforcement and data that we haven't talked about, Beau, are drug prices. How good are we at tracking drug prices and why should it matter?

[28:38]

KILMER: We used to be good at it. So, this is important because if you're trying to evaluate some of these supply reduction efforts, if there really is a reduction in supply, we should see that reflected in the price. And it's not just the retail price. Right? A dime bag will always be \$10. But what's inside that bag can change depending on law enforcement and decisions of the suppliers. So, from a research perspective, we actually care about what's called the purity adjusted price, where we account for the purity of the fentanyl or the methamphetamine or the other substance that's kind of in that particular package.

And it used to be the case that the DEA has a database where they have information on all of their seizures, all their undercover buys with the prices. And it's a wealth of information. And they used to make those data more available to researchers. I mean, you couldn't just download it, there's a lot of things you had to do. But, you know, 25 years ago my colleagues at RAND were able to take those administrative data and create a price series for purity adjusted prices for cocaine, and heroin, as well as for methamphetamine.

What's been difficult, though, and this has been multiple administrations, is it has been much harder to get those data from the DEA. And so, here we are in the middle of the worst drug overdose crisis in our country's history, and we have limited data about what's happening. Obviously, there are other ways you can get price information, but that was always the best source.

But fortunately, a couple of years ago there was that bipartisan, bicameral, multi-agency Commission on Combating Synthetic Opioid Trafficking. And fortunately, at RAND, we actually were tasked with doing the research for this. So, for a little bit of a time, I actually was able to get access to some of those data and crunch the numbers. And sure enough, we found that at the wholesale level in the United States, the purity adjusted price for fentanyl dropped by about 50% between 2016 and 2021.

Fentanyl was already cheap beforehand. You were already getting more bang for your buck. And so, that's really important information to have, as I said, not only for kind of evaluating various programs, but also begins to understand the economics of these markets and how much money is actually going to drug trafficking organizations. So, that's something I would like to see, making those data more available to researchers. I think it could really help us improve potentially some of the policy responses in our understanding of these markets.

FELBAB-BROWN: Well, absolutely. And just staying with that theme, Beau, in conclusion of the show before I come to Roland, what are some of the other key recommendations you would propose specifically for U.S domestic law enforcement vis-a-vis fentanyl or drug markets more broadly?

[31:16]

KILMER: Yeah, so, sticking with data, obviously making sure we have better information about purity adjusted prices is critical, not just for fentanyl but also when we start thinking about what drugs we're going to be dealing with in 5 to 10 years.

And as we've alluded to earlier, better information on jail admissions with respect to drugs, even if it's pretrial, being able to get that information, I think is really important, it's something that's largely missing right now. And also, the role of drugs in kind of the revocations for probation and parole. For data, those are all things that I think it's possible to improve upon. But we need to make it a priority.

I'd say my other recommendation is based on theory and evidence, there's little justification for adopting these drug-induced homicide laws. In fact, the sentences for selling drugs or sharing drugs are already pretty lengthy without these sentence enhancements. And they're just—

FELBAB-BROWN: —how ... what what is the average? Can we say a range?

KILMER: It's going to depend on the quantities seized and whether or not you're a big kingpin. But, I mean, it could be years. And then these drug-induced homicide laws can add even more time. And like I said, there's little reason to believe that they're going to make any positive difference. And there's also reasons to be concerned.

[32:25]

So, as I said earlier, politicians like to use that. It's an easy thing to do to ratchet up those penalties, but realize that later on when you decide, oh, that wasn't the right thing to do, it's a lot harder to reduce those penalties and bring them back. So, you got to be really careful about that.

And, I guess the other thing I would say is, in those localities that are swamped with fentanyl, where the prices are already very low and if they're putting a lot of effort into reducing supply with the hope that they're going to increase the purity adjusted price and have some long term effect on consumption, I think it might be useful to step back and think about whether or not they should reallocate some of those resources. There's a lot that drug law enforcement can do. I mean, we talked about some of the diversion or deflection programs. It's entirely possible to reduce some of these open-air drug markets. That doesn't necessarily mean you're going to reduce supply or you're going to reduce consumption, but you can give the communities their neighborhoods back. And that's a real harm that doesn't necessarily get quantified as much as it should.

And also, we know that there's a lot happening with respect to money, you know, money laundering, corruption. And so, I think there's a lot more that can be done in that space.

And so, look, we're in a new world now with these synthetics. So, I think it would be appropriate to step back and think about are we allocating our law enforcement resources in the best possible way?

FELBAB-BROWN: So, one issue is allocating resources between law enforcement, treatment, harm reduction, prevention—many of the issues that we talked on in various episodes of the show. But the other issue is where within law enforcement do we allocate the resources—also something that we were exploring with Professor

Jon Caulkins on the episode and in his paper. Roland, would you like to add anything to the recommendations?

[34:08]

NEIL: Yeah, so, picking up on something which I was talking about before, which is the police-led deflection program. So, one thing which you probably noticed is that many of the overall trends we were talking about for things like arrest and incarceration, they've gone downwards over the past 10 to 15 years or so. But at the same time, business as usual is still business as usual when it comes to criminal legal enforcement against drugs. So, it remains the case that drug arrests are one of the main forms of arrest that police make. And so, even though there's been declines in various forms of enforcement, that's still the norm.

And I think that given the scale and severity of the fentanyl crisis that the U.S. is currently facing, now is a great time to innovate. And so, I would basically encourage agencies to continue trying out new police-led diversion deflection programs, try and instead of just arresting somebody again, again and again, just try and do what you can to get them support.

That said, the evidence base behind these programs, because they're relatively new, is thinner than I think we'd like. Beau and I didn't come across any randomized controlled trials. Many of the studies on these things don't even have control groups at all. And so, as places continue to implement these and as they continue to spread, it would be really helpful if we got a sense for which ones worked best and in which ways. So, I think that's a really key area.

[35:25]

Another thing which I had mentioned before is that there are still lessons to be learned from Oregon's experiment in decrim. It's one of these topics that's really easy to immediately come to the conclusion that you have all the answers, just because it's something that people have really strong feelings about. And what I encourage people is just to like, take a break if you feel that way. Take a step back and ask yourself, you know, what really can we learn from looking at this data? Because I think there's still a lot to be learned there in terms of implementation, in terms of how it impacted various things we care about.

And the last thing which I would mention, which we haven't mentioned at all before, is equipping police officers with naloxone and then training them to use it effectively. So, naloxone is a medication which is used to reverse opioid overdoses. And when used properly, it's highly effective. It's not a silver bullet miracle cure to the fentanyl epidemic, but it is one of the best tools available at our disposal. And it's pretty widespread among U.S. police officers now. There's one survey of over 2,000 agencies, and over 80% of those said that they had naloxone. And there's also a lot of research to show that if you give it to your officers and if you train them how to use it, they can use it effectively to reverse overdoses and prevent death. So, that's a really great tool that I think should be encouraged.

There are some challenges with it. Officers sometimes have misplaced fears about this idea that touching fentanyl can kill you, which isn't true in any reasonable

quantities. Right? It's not a real risk. Among other more legitimate fears that they have in responding to these sorts of incidents. And you also, you have issues of officers who get fatigued from responding to overdoses again and again. And also, you have agencies that might have the naloxone but not distribute it to the officers who need to be using it. So, there are challenges in actually getting it effectively implemented. But I think if the officers who come across opioid overdoses could be equipped with and trained with naloxone, then that would be a very, very good step.

FELBAB-BROWN: Certainly sounds like an excellent recommendation. And your thrust, Roland and Beau, that we need to learn and learn dispassionately, objectively is a core part of the mission of the fentanyl project and of *The Killing Drugs* podcast.

[music]

So, enormous thanks to you for joining us today on the show and for your terrific paper.

KILMER: Thanks for the opportunity.

NEIL: Thanks so much.

FELBAB-BROWN: *The Killing Drugs* is a production of the Brookings Podcast Network. Many thanks to all my guests for sharing their time and expertise on this podcast and in this project.

Also, thanks to the team at Brookings who makes this podcast possible, including Kuwilileni Hauwanga, supervising producer; Fred Dews, producer; Gastón Reboledo, audio engineer; Daniel Morales, video editor; and Diana Paz Garcia, senior research assistant in the Strobe Talbott Center for Security, Strategy, and Technology; Natalie Britton, director of operations for the Talbott Center; and the promotions teams in the Office of Communications and the Foreign Policy program at Brookings. Katie Merris designed the compelling logo.

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I am Vanda Felbab-Brown. Thank you for listening.