

A History of Harm Reduction and U.S. Law in Ten Minutes, One Theme and Three Eras

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Overarching Theme: *Criminalization never succeeds but always prevails*

Harm reduction efforts have always unfolded within, and been limited and often undermined, by the policy of criminalizing drugs:

Three Eras of Legal Action:

Legal Suspicion

Guarded Legal Tolerance

Chronic Legal Ambivalence

Era I: Suspicion (1984-2000ish)

- No law had anticipated the distribution of syringes and other equipment to drug users to prevent viral disease transmission
- Existing law in almost all states prohibited distribution and possession of “drug paraphernalia”, and in 11 states, limited sale of syringes for human use to prescription only
- Early harm reductionists faced the assumption that these laws “must” bar SSPs, though one state supreme court disagreed, and numerous activists were acquitted of criminal charges
- As some legislatures slowly began to clarify the law, and some cities drew on different legal interpretations, courageous harm reductionists operated programs “without claim to legality.”

TABLE 1—Legal Bases for Operating Syringe Exchange Programs

No Clear Legal Basis	Formal Legal Authorization under State Drug Law	Authorization under Local Interpretation of State Drug or Public Health Law
9 syringe exchange programs	Fairbanks, Alaska	Alameda Co, Calif (2)
	Bridgeport, Conn	Los Angeles, Calif
	Hartford, Conn	Marin Co, Calif
	New Haven, Conn	Salinas, Calif
	Storrs, Conn	San Francisco, Calif
	Willimantic, Conn	Santa Clara Co, Calif
	District of Columbia	West Hollywood, Calif
	Honolulu, Hawaii (3)	Boulder, Colo
	Baltimore, Md	Chicago, Ill
	Boston, Mass	Hennepin Co, Minn
	Cambridge, Mass	Cleveland, Ohio
	Buffalo, NY (2)	Philadelphia, Pa
	New York, NY (6)	
	Portland, Ore	
	Rhode Island	
	Seattle-King Co., Wash	
	Spokane, Wash	
	Tacoma, Wash	
	Yakima, Wash	

TABLE 2—Completed Prosecutions of Syringe Exchange Workers

Acquittals	Convictions
<i>Commonwealth v Parker</i> , Mass (1990)	<i>Commonwealth v Parker</i> , Mass (1990)
<i>People v Tranchina</i> , Calif (1991)	<i>Commonwealth v Leno</i> , Mass (1991)
<i>People v Bordowitz</i> , NY (1991)	
<i>People v Cezar</i> , NY (1991)	
<i>State v Sorge</i> , NJ (1991)	
<i>Commonwealth v Luger</i> , Mass (1991)	
<i>People v Halem</i> , Calif (1993)	
<i>People v Stuen-Parker</i> , Ill (1994)	
<i>People v Halem</i> , Calif (1995)	

Burris, S., Finucane, D., Gallagher, H., & Grace, J. (1996). The legal strategies used in operating syringe exchange programs in the United States. *American Journal of Public Health*, 86(8 Pt 1), 1161-1166.

Era II: Guarded legal tolerance (2001-2012ish)

- Legal clean-up efforts for SSPs proceeded with agonizing slowness across the states
- Congress steadily declined to provide funding even for clearly legal operations
- The rise in overdose mortality began to get public and policy maker attention, but in strange ways: especially towards the end of this period, naloxone access laws and to a lesser extent Good Samaritan legislation spread slowly among states, yet reform to SSP law continued to lag and SIFs are out of the question

Table 4. Legal Status of Syringe Exchange Programs in the United States, 2002

SEP Authorized by State Law (n = 13)	SEP Authorized by Local Government Based on its Interpretation of State Law (n = 3)	Free Distribution of Syringes Not Restricted by State Law (n = 5)	SEP(s) Operating Without Specific Claim to Legality in 1998 (n = 19)
CA, CT, DC, HI, ME, MA, MD, NH, NM, NY, RI, ^a VT, WA	IL, OH, PA	AK, LA, OR, RI, WI	AZ, CO, GA, IN, KS, MA, MI, MN, MT, NJ, NY, NC, OK, PA, PR, TN, TX, UT, WA

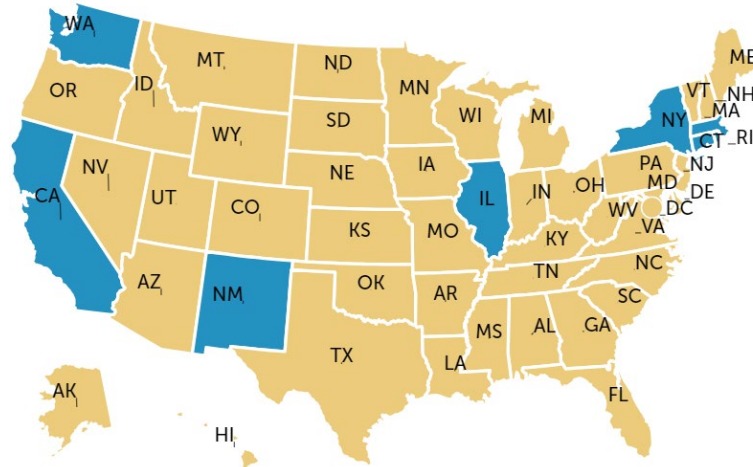
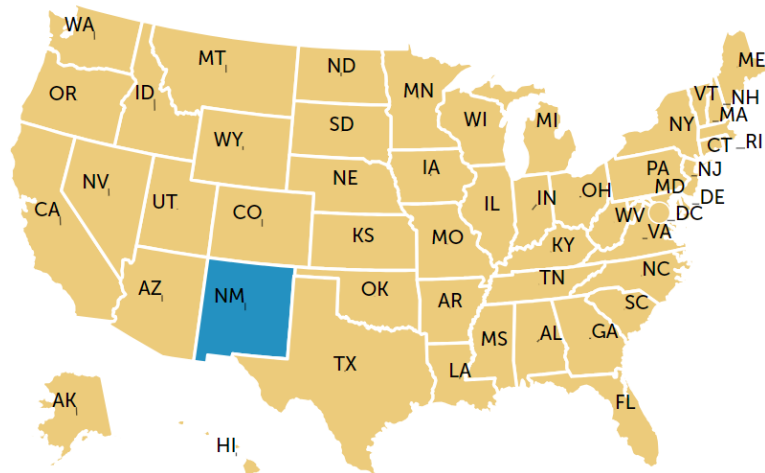
SEP = Syringe exchange program.

^aState law no longer restricts free distribution.

Source: Reference 31.

 Burris, S., Vernick, J. S., Ditzler, A., & Strathdee, S. (2002). The Legality of Selling or Giving Syringes to Injection Drug Users. *Journal of the American Pharmaceutical Association*, 42(6, Suppl. 2), S13-S18.

Naloxone Access Law: 2001-2012



 State has a naloxone access law

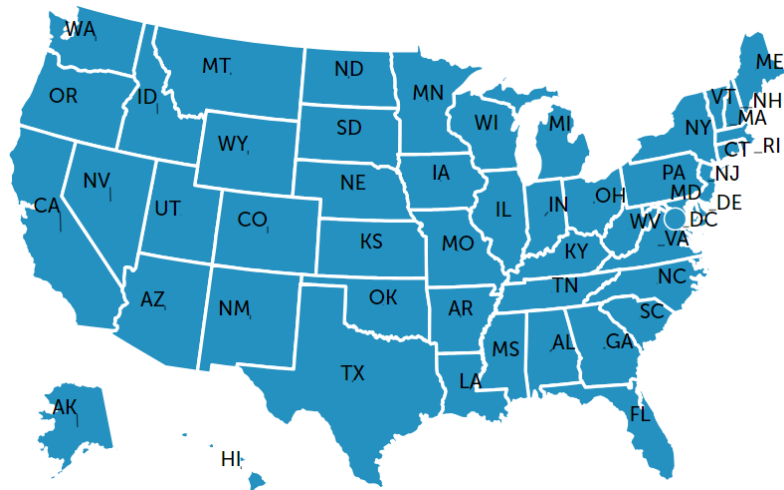
Era III: Legal Ambivalence (2013-)

- Every state had enacted a naloxone law by 2018; 44 had adopted a Good Samaritan law; yet 11 states still had significant legal barriers to SSPs and 25 states had drug-induced homicide laws in 2018
- While some arms of state and local government promoted naloxone and OD prevention, others vigorously applied DIH laws
- The federal government is a study of legal ambivalence

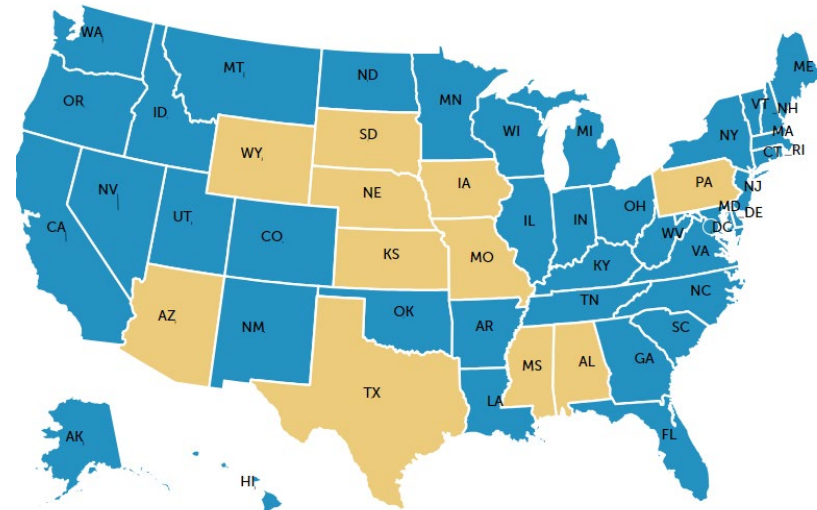
2023: And federal law ...

- The Consolidated Appropriations Act of 2018 § 520 still prohibit use of deferral \$ to buy syringes
- 21 U.S.C.A. § 856 still a barrier to overdose prevention sites
- 24 CFR §982.553 still limits public housing for drug users

2021



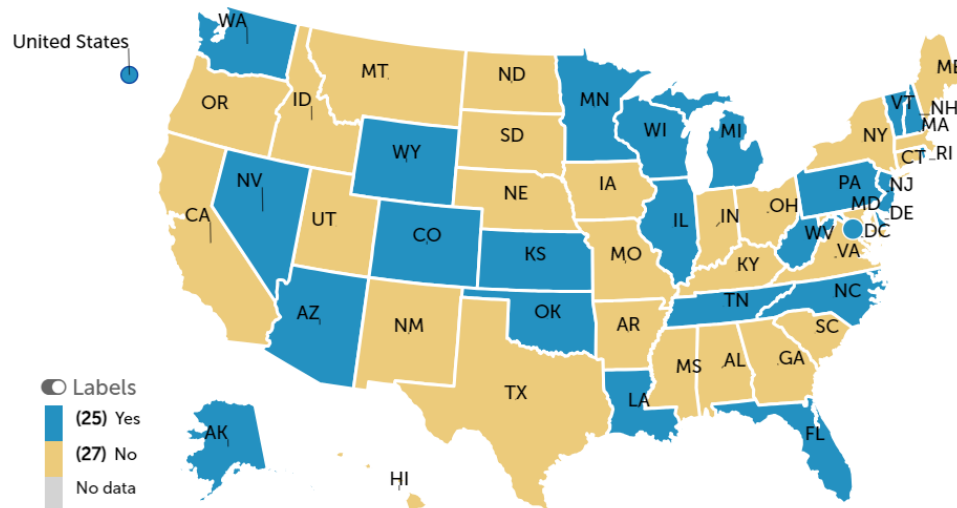
■ State has a naloxone access law



- State has removed legal barriers to SSP

Spread of a bad idea

1/1/19 Does the state have a specific drug induced homicide law?



More policy research would be good
but not all policy research is good.

Check for updates

Article

Longitudinal Study on Deterrent Effect of Drug-Induced Homicide Law

Journal of Drug Issues
2023, Vol. 52(2) 131–143
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Retraction

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Sage

At the request of Sage and the Journal Editor, the following article has been retracted:

Lee, Y., Choi, S. W., & Lee, J. (2022). Longitudinal Study on Deterrent Effect of Drug-Induced Homicide Law on Opioid-Related Mortality Across 92 Counties and the District of Columbia in the U.S. *Journal of Drug Issues*, 52(2), 131-143. <https://doi.org/10.1177/00220426211037614>

Following publication, the journal was alerted to concerns with the data analyses described in the research article that focussed on errors in the effective dates, the undisclosed restrictions of using the CDC WONDER dataset, as well as concerns around causal inference throughout the article.

Opioid Crisis

In recent years, drug misuse and overdose have been a growing public health concern and a substantial burden on the national economy in the United States (McClellan et al., 2018). Fatal drug addiction has increased by nearly six-fold over the last few decades and is now a leading cause of deaths in the U.S. (Davis, Johnston, & Pierce, 2015; Erfanian, Collins, & Grossman,

¹School of Public Affairs, Pennsylvania State University Harrisburg, Middletown, PA, USA

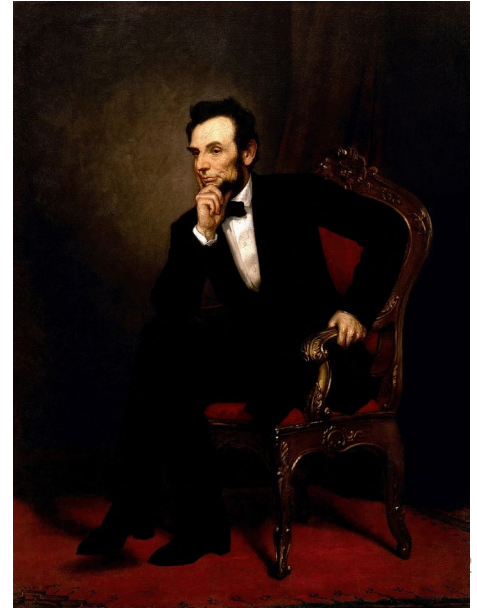
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(1) Criminalization and Harm Reduction are Not Mutually Supportive “Pillars” of Policy

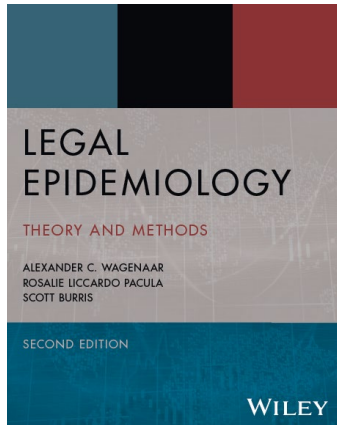
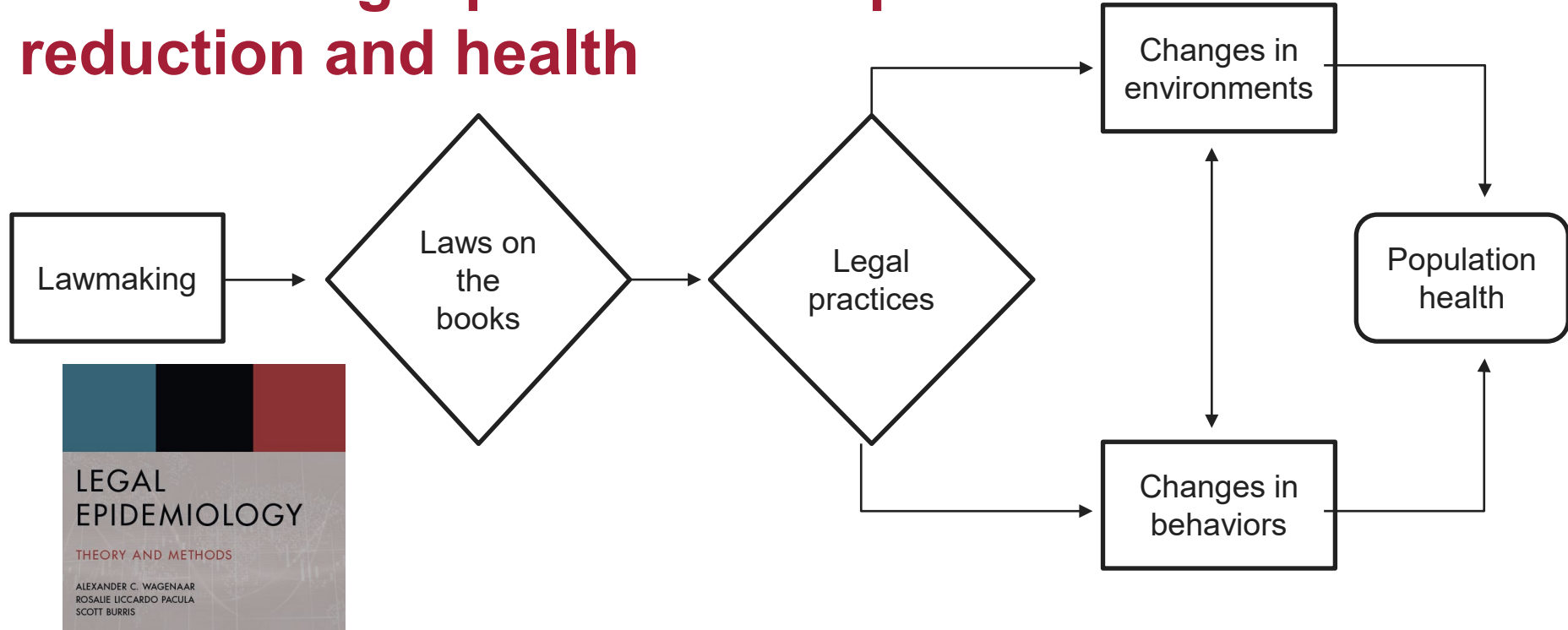
(2) Research matters ...



“If we could first know *where* we are, and *whither* we are tending, we could better judge *what* to do, and *how* to do it.... A house divided against itself cannot stand.”



We urgently need ^{quality} research on how laws and legal practices shape harm reduction and health



Logic Model of Public Health Law Research (Burris et.al. 2010)

More BUT ALSO Better Research

- The first naloxone access law came into effect in 2001.
- As the intervention changed and spread to all 50 states by 2017, there were only a handful of implementation studies
- The first sophisticated quasi-experimental causal inference study did not appear until 2018.
McClellan, C., Lambdin, B. H., Ali, M. M., Mutter, R., Davis, C. S., Wheeler, E., . . . Kral, A. H. (2018). Opioid-overdose laws association with opioid use and overdose mortality. *Addictive Behaviors*,
[doi:https://doi.org/10.1016/j.addbeh.2018.03.014](https://doi.org/10.1016/j.addbeh.2018.03.014)

IZA DP No. 11489

The Moral Hazard of Lifesaving Innovations: Naloxone Access, Opioid Abuse, and Crime

Jennifer L. Doleac
Anita Mukherjee

APRIL 2018



This “preprint” made headlines, but among other problems used enactment of naloxone access laws as proxy for actual naloxone access

Proper measurement of exposure is key

As many as half of sophisticated causal inference studies on the effects of laws exhibit deficiencies in reporting (and most likely conducting) the measurement of the independent variable.

Pepin, D. A. et al. (2023). A Narrative Review of Literature Examining Studies Researching the Impact of Law on Health and Economic Outcomes. *Journal of Public Health Management and Practice*, doi:10.1097/phh.0000000000001833

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Review essay

Theory and methods in comparative drug and alcohol policy research: Response to a review of the literature

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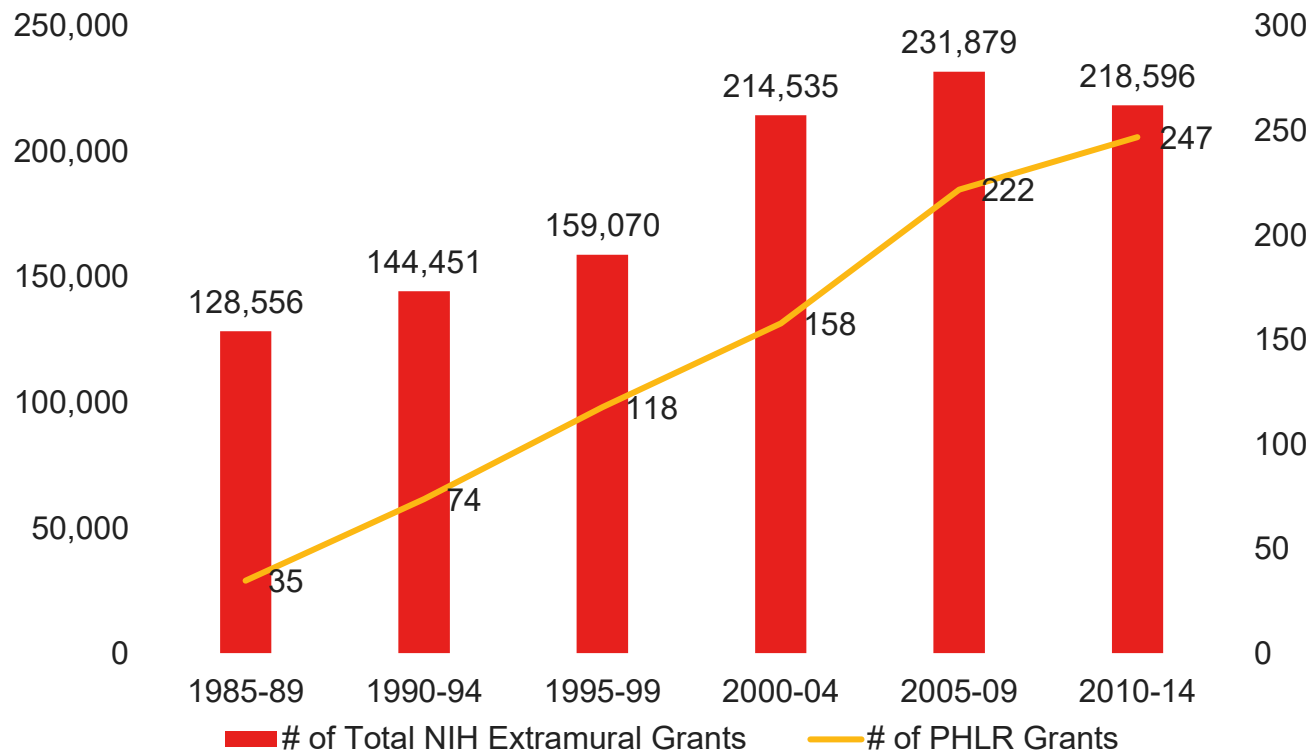


A source of rigorous legal data for researchers and detailed policy information for the public.

PDAPS was created with funding from the National Institute on Drug Abuse to track key state laws related to prescription drug abuse. Click on any topic area to reach an interactive page where you can investigate the history and features of the law or download data and other documentation for research.

Please send a message to NIH about funding legal epi

NIH grants
1985-2014



Ibrahim, J. K., Sorensen, A. A., Grunwald, H. and Burris, S. (2017) Supporting a Culture of Evidence-Based Policy: Federal Funding for Public Health Law Evaluation Research, 1985-2014. *J Public Health Manag Pract*, **23**, 658–666.

Take-Aways:

- Law matters to drug user health
- Law has always been as much a hindrance as a help to harm reduction
- More and **better** research is needed to guide policy

