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## The Lowdown on Getting High in Brazil: The Evolution of Brazilian Drug Law

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# THE LOWDOWN ON GETTING HIGH IN BRAZIL: THE EVOLUTION OF BRAZILIAN DRUG LAW

*Spencer Brown\**

## I. NEW BRAZILIAN DRUG LAW FOCUSES ON PREVENTION AND EDUCATION

ON August 23, 2006, Brazil enacted Public Law No. 11.343 to implement the National System of Public Politics on Drugs.<sup>1</sup> This new law aims to reduce drug use by focusing on education and drug abuse prevention for individual users, while reducing the flow of drugs into and through the country.<sup>2</sup> The law seeks to accomplish these goals by recognizing the differences between drug users and drug traffickers and providing what the Brazilian government believes are appropriate punishments for each.<sup>3</sup>

The new law does not completely decriminalize drug use and possession—rather it reduces the punishment for possession of small amounts of illicit drugs for personal consumption to alternative “social educational sentences.”<sup>4</sup> These “social educational sentences” include drug awareness counseling, drug rehabilitation treatment, and community service.<sup>5</sup> Any individual stopped by police, who is determined to possess illicit drugs for personal consumption, will not be detained.<sup>6</sup> Instead, the individual will be required to sign an order requiring him or her to appear for sentencing.<sup>7</sup> If the individual appears, they will receive one of the “social educational sentences,” but if they fail to appear the judge may impose a

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1. Lei No. 11343, de 23 de agosto de 2006, D.O.U. de 24.08.06. (Braz.), available at <http://www.senad.gov.br/>.

2. See *Brazil Drug Law User-Friendly*, CALGARY SUN, Aug. 25, 2006, at 33; *New Drug Laws for Brazil*, N.Y. TIMES, Aug. 25, 2006, at A4.

3. José Wilson Miranda, *In Brazil Cocaine and Marijuana Won't Land You in Jail Anymore*, BRAZZIL MAG., Aug. 27, 2006, <http://www.brazzilmag.com/content/view/7138/53/>.

4. Press Release, U.N. Off. on Drugs and Crime, UNODC Sees Advances in the New Brazilian Law on Drugs (Aug. 29, 2006), available at [http://www.unodc.org/brazil/pt/pressrelease\\_20060829.html](http://www.unodc.org/brazil/pt/pressrelease_20060829.html).

5. *Id.*

6. See Miranda, *supra* note 3.

7. *Id.*

fine.<sup>8</sup> Conversely, individuals convicted of drug trafficking are now subject to harsher penalties. The new law provides for a minimum sentence of three years imprisonment for drug traffickers and a maximum sentence of fifteen years in prison.<sup>9</sup> Additionally, a new category of punishment has been created for those that finance and conduct commerce related to drug trafficking.<sup>10</sup> Individuals convicted of running or financing a drug business now receive a minimum eight-year sentence and a maximum of twenty years in prison.<sup>11</sup> Under the new law, there are no set quantities of drugs that delineate between drug users and drug traffickers; rather, the judge determines whether the amount possessed is for personal consumption based on the nature, amount, place of apprehension, and personal and social circumstances of the individual.<sup>12</sup>

Proponents of the new drug laws contend that, instead of incarcerating drug users, they should be rehabilitated to reduce drug use and dependence. They argue that not placing drug users in prison will reduce abuse of illicit drugs, ease prison overcrowding, reduce likelihood of drug users joining drug gangs, and assist in reducing new AIDS infections.<sup>13</sup> Supporters also argue that the new law may reduce costs because outpatient therapy will cost less than housing, feeding, and clothing inmates.<sup>14</sup>

Critics argue that the law stimulates, rather than reduces, the primary source of funding for drug traffickers, and that Brazil's Unified Health System does not have the capacity to meet the increased demand for treatment of drug users that this law will create.<sup>15</sup> These critics further argue that reducing the penalties for drug use will encourage an increase in drug use amongst Brazilian youth.<sup>16</sup> While these critics may be correct that the new law does not immediately reduce the number of users purchasing drugs, they fail to recognize that the intent of the law is the prevention and treatment of drug users that will, over time, result in a reduction in the number of drug users.<sup>17</sup> According to General Paulo Roberto Yogh de Miranda Uchoa, Brazil's anti-drug secretary, "[u]nderlying this policy are a preventative and a municipalization ap-

8. *Id.*

9. *Id.*

10. Interview by Gabriela Mascarenhas & Adilson Barbosa with Pablo Pimenta, Representative, House of Representatives, Brasilia, Braz. (Sept. 1, 2006), available at <http://www.informes.org.br/pagina-interna.asp?NumeroMateria=17869>.

11. Miranda, *supra* note 3.

12. See Lei No. 11343, *supra* note 1.

13. See Miranda, *supra* note 3.

14. Andrew Downie, *Brazil's Drug Users will get Help, Instead of Jail*, CHRISTIAN SCI. MONITOR, Jan. 4, 2002, at 7, available at <http://www.csmonitor.com/2002/0104/p7s2-waom.html>.

15. See generally PUB. PROSECUTION SERVICE OF THE STATE OF CEARA, OFF. OF THE ATT'Y GEN. OF JUST., LEGAL ANALYSIS OF LAW 11323 (2006), <http://www.pgj.ce.gov.br/artigos/artigos.asp?iCodigo=92>.

16. Cassiano Santos Cabral, Considerations Concerning the New Toxic Law (Sept. 13, 2006), <http://www.gramadosite.com.br/cgi/cultura/artigos/cassiano/id:9042/xcoluna:1/xautor:1/leiapage:1/>.

17. See generally Interview by Gabriela Mascarenhas & Adilson Barbosa with Pablo Pimenta, *supra* note 10.

proach.”<sup>18</sup> Uchoa continued, “prevention acts on the root of [the] problem: it focuses on people not yet involved with drugs.”<sup>19</sup> Additionally, the new law will retard the growth of the membership and power of the Brazilian prison gangs that control the drug trade.

## II. EVOLUTION OF BRAZILIAN DRUG LAW

The new policies introduced by Law 11343 are a substantial departure from Brazilian drug policy of the last forty years. The sale and consumption of psychoactive substances, such as cocaine and marijuana, were legal in Brazil prior to the 1940s when the first laws governing the use of illicit drugs were created.<sup>20</sup> But Brazilian drug laws changed substantially beginning in the 1970s due to a marked increase in the use of psychoactive drugs in the 1960s and 1970s.<sup>21</sup> These new laws largely served international interests, and were based on a zero-tolerance policy.<sup>22</sup> In 1971, Brazil passed the first of these aggressive, punitive anti-drug laws, which punished both drug users and drug traffickers similarly.<sup>23</sup> In 1976, Brazil passed Law 6368 that imposed mandatory minimum sentences for drug trafficking of three to fifteen years.<sup>24</sup> Additionally, Law 6368 created mandatory sentences for “acquiring, keeping, or carrying” narcotics for personal use of six months to two years imprisonment.<sup>25</sup>

Under these laws, law enforcement seizures of illicit drugs did begin to increase.<sup>26</sup> Unfortunately, at the same time that seizures were increasing, consumption of illicit drugs was also increasing due to increased demand and decreasing prices.<sup>27</sup> The 1976 law also had another downside—drawing young children into the drug trade as couriers. The law did not specifically make the use of illicit drugs illegal, merely making the “acquiring, keeping, or carrying” of these substances illegal.<sup>28</sup> This functioned to create a class of wealthy customers that “prefer to pay high prices and consume drugs in the safety of their own homes, avoiding taking risks that can jeopardize their reputations.”<sup>29</sup> Additionally, under Brazil’s child protection legislation, a minor cannot be arrested unless caught during

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18. Astrid Van Den Broek, *Brazil’s new drug policy emphasizes prevention and community action*, J. of Addiction & Mental Health, AUTUMN 2004, AT 8.

19. *Id.*

20. JORGE ATILLO SILVA IULIANELLI ET AL., *A Pointless War: Drugs and Violence in Brazil*, Trans’l Inst., Drugs & Conflict Debate Paper No. 11, 2004, at 24-25, available at <http://www.tni.org/reports/drugs/debate11.pdf>.

21. *Id.*

22. *Id.* at 17.

23. Hilary L. Surratt & Paulo R. Telles, *The Harm Reduction Movement in Brazil: Issues and Experiences*, in HARM REDUCTION: NATIONAL AND INTERNATIONAL PERSPECTIVES 137, 140 (James A. Inciardi & Lana D. Harrison eds., 2000).

24. *Id.*

25. *Id.*

26. See IULIANELLI, *supra* note 20, at 17.

27. *Id.* at 17, 25.

28. See Surratt, *supra* note 23, at 140-41.

29. U.N. Off. on Drugs & Crime, *Country Profile: Brazil at 2* (2005), available at <http://www.unodc.org/pdf/brazil/COUNTRY%20PROFILE%20Eng.pdf> [hereinafter Country Profile].

the commission of a crime.<sup>30</sup> This exemption led drug gangs to target children as drug couriers, which often leads to them being killed or injured as a result of the violence associated with the drug trade.<sup>31</sup>

Numerous laws have been passed modifying Brazil's drug laws since 1976. The first, Law 7102 passed in June 1983, regulated the security of financial enterprises.<sup>32</sup> In March 1995, Law 9017 established norms to control chemicals and raw materials used in the production of cocaine and other drugs.<sup>33</sup> In 1999, Law 6368 was modified by Law 9804 to improve prevention and law enforcement efforts targeting drug trafficking and abuse of narcotics that produce physical or psychological addiction.<sup>34</sup> Law 10357, passed in late 2001, increased the regulation and control chemical production industry to control the illegal use of drug precursors used to manufacture addictive or psychotropic drugs.<sup>35</sup>

In January of 2002, the Brazilian government passed Law 10409, which was the first attempt to differentiate between drug users and drug traffickers, and provide non-penal punishment for drug users.<sup>36</sup> But the bill was originally introduced in 1991, and was not passed by the legislature for ten years.<sup>37</sup> Once the legislation was passed by the legislature, then President Fernando Henrique Cardoso vetoed all or part of thirty-three of the fifty-nine articles in the bill, essentially destroying the social reintegration and alternative sentencing aspects of the bill.<sup>38</sup> Nine days after Cardoso vetoed large portions of the law, the bill that would become Law 11343 was submitted to the Brazilian Congress.<sup>39</sup>

### III. THE BRAZILIAN DRUG PROBLEM

In order to understand the impact of this new stance on drug users and drug traffickers, it is important to explore the nature and extent of drug use and drug trafficking in Brazil. Brazil is the largest country in South America with almost 180 million residents, making it the most populous country in South America and the fifth most populous in the world.<sup>40</sup> The two primary drugs consumed in Brazil are cannabis and cocaine.<sup>41</sup> Drug use has been prevalent since the early 1900s, and today marijuana is often smoked publicly in bars and on beaches.<sup>42</sup> The use and trafficking

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30. *Id.* at 1.

31. *Id.*

32. *Id.* at 33-34.

33. *Id.*

34. *Id.*

35. *See id.*

36. *Id.*

37. Downie, *supra* note 14, at 7.

38. IULIANELLI, *supra* note 20, at 18.

39. *Id.*

40. DAVID CLEARY, DILWYN JENKINS & OLIVER MARSHALL, *THE ROUGH GUIDE TO BRAZIL* vi (Penguin Books) (2003).

41. BUREAU OF INT'L NARCOTICS & LAW ENFORCEMENT AFF., U.S. DEP'T OF STATE, *INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT 1* (2006), available at <http://www.state.gov/p/inl/rls/nrcrpt/2006/vol1/html/>.

42. Downie, *supra* note 14, at 4.

of cocaine largely began in the 1970s, and exploded in the 1980s and 1990s. Brazil is currently the second largest cocaine market in the world, behind only the United States.<sup>43</sup>

While a relatively small amount of the cannabis consumed in Brazil is produced domestically, the majority of drugs consumed in Brazil are imported from other countries.<sup>44</sup> Internationally, Brazil ranks sixth in the amount of cannabis seized annually, behind only Mexico, the United States, South Africa, Nigeria, and Morocco.<sup>45</sup> The majority of marijuana consumed in Brazil is smuggled into the country from Paraguay.<sup>46</sup>

A United Nations survey shows that 19.4 percent of the Brazilian population reported using an illicit drug during their lifetime.<sup>47</sup> The study showed specifically that 6.9 percent smoked cannabis; 5.8 percent used inhalants; 2.3 percent used cocaine; and 1.5 percent used stimulants.<sup>48</sup> Furthermore, according to the United Nations World Drug Report, Brazil is the largest single market for opiates in South America, with over 700,000 users.<sup>49</sup> The use of illicit drugs amongst Brazilian youth is particularly alarming with one study showing a 400 percent increase in cocaine consumption over the last decade.<sup>50</sup> Studies of Brazilian adolescents indicate that approximately 9 percent have used cannabis, and 5 percent have used cocaine.<sup>51</sup> But the United Nations reports that cocaine use in Brazil has stabilized from 1997 through 2004 following stunning growth between 1987 and 1997.<sup>52</sup>

Brazil is not considered a producer of illicit drugs, but the country has become a significant transshipment point for illegal drugs produced in neighboring countries headed for markets in Western Europe and the United States.<sup>53</sup> This is largely due to Brazil's vast borders with other drug producing nations and limited drug interdiction along these borders.<sup>54</sup> The availability of river access allows large amounts of illicit drugs to enter the country by boat destined for shipment out of Brazil's ports.<sup>55</sup> The United Nations World Drug Report states that of the cocaine shipped through Brazil, "about 70 percent of the cocaine originates in Colombia, 20 percent in Bolivia, and 10 percent in Peru."<sup>56</sup>

43. IULIANELLI, *supra* note 20, at 3.

44. BUREAU OF INT'L NARCOTICS & LAW ENFORCEMENT AFF., *supra* note 41.

45. U.N. OFF. ON DRUGS & CRIME, 2006 WORLD DRUG REPORT at 110, U.N. Sales No. E.06.XI.10 (2006), available at [http://www.unodc.org/pdf/WDR\\_2006/wdr2006\\_volume1.pdf](http://www.unodc.org/pdf/WDR_2006/wdr2006_volume1.pdf) [hereinafter, World Drug Report].

46. BUREAU OF INT'L NARCOTICS & LAW ENFORCEMENT AFF., *supra* note 41.

47. Country Profile, *supra* note 29, at 12.

48. *Id.*

49. World Drug Report, *supra* note 45, at 74.

50. Country Profile, *supra* note 29, at 23.

51. *Id.* at 22; see generally Denise De Micheli & Maria Lucia O.S. Formigoni, *Drug Use by Brazilian Students: Associations with Family, Psychosocial, Health, Demographic, and Behavioral Characteristics*, 99 ADDICTION 570 (2004).

52. World Drug Report, *supra* note 45, at 96.

53. BUREAU OF INT'L NARCOTICS & LAW ENFORCEMENT AFF., *supra* note 41.

54. *Id.*

55. Country Profile, *supra* note 29, at 3.

56. World Drug Report, *supra* note 45, at 89.

In addition to the lengthy unsecured borders and availability of infrastructure, Brazil has also become a hub of international drug trafficking due to the availability of precursors from its chemical industry. A drug precursor is a substance “which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance,” and “the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.”<sup>57</sup> Most Brazilian drug traffickers began by exporting drug precursors out of the country using the same networks they used to import illicit drugs.<sup>58</sup>

Brazil has one of the ten largest chemical industries in the world, and as a result, the country produces seven of the twelve precursors needed for the production of cocaine.<sup>59</sup> In an effort to combat drug trafficking, in 2004, the Brazilian government instituted the most stringent controls covering chemicals precursors of any South American country.<sup>60</sup> These controls force all companies involved in the production or use of these chemicals to register with the Brazilian Federal Police.<sup>61</sup>

#### IV. THE IMPETUS FOR CHANGE

The drive for change in Brazilian drug laws has been long in coming, and has been driven by numerous factors. As previously mentioned, the first bills aimed at implementing alternative sentences for personal drug consumption were introduced in 1991 and were not passed by the legislature for more than a decade.<sup>62</sup> But the problems that drove change have only escalated, namely, prison overpopulation, prison gangs and drug related violence, and the HIV/AIDS epidemic.

##### A. PRISON OVERPOPULATION

The Brazilian prison system is severely overpopulated and is presently incapable of rehabilitating and reintegrating prisoners into society.<sup>63</sup> There are currently over 248,000 inmates in the Brazilian prison system, which only has an official capacity for 186,500.<sup>64</sup> This overcrowding often leads to an increase in crime. For example, one report stated “that the jails were being turned into veritable schools for crime, where the experienced inmates taught the younger ones how to carry out different unlawful acts and established ties and dependencies geared to crime in a world of unlawful conduct from which escape is difficult, and which the prison

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57. 21 U.S.C. § 802 (2006).

58. U.N. Educ., Sci. & Cultural Org., *Globalisation, Drugs & Criminalisation: History of Two Cities in Between Drug Trafficking: Guajara Mirim and Costa Marques* 61 (2002), available at <http://unesdoc.unesco.org/images/0012/001276/127644e.pdf>.

59. Country Profile, *supra* note 29, at 20.

60. BUREAU OF INT’L NARCOTICS & LAW ENFORCEMENT AFF., *supra* note 41.

61. *Id.*

62. Downie, *supra* note 14, at 7.

63. U.N. Off. on Drugs & Crime, *Strategic Programme Framework: Brazil* at 5 (2006), available at <http://www.unodc.org/pdf/brazil/final2.pdf>.

64. Country Profile, *supra* note 29, at 39.

system in fact fosters.”<sup>65</sup> Adding to the overcrowding problem is the current recidivism rate that exceeds 50 percent.<sup>66</sup>

In addition to the total lack of rehabilitation of drug users through incarceration, it appears that incarceration does not even stop drug use while the users are in prison. One recent study indicated that 32 percent of prisoners incarcerated for cocaine use continued their use of cocaine while in prison.<sup>67</sup> The study further stated that only 3 percent of these users actually used intravenous drugs in prison.<sup>68</sup> Furthermore, the overcrowding and drug use within the prisons combine to increase HIV transmission among inmates.<sup>69</sup>

The new drug law implementing alternative, non-penal sentences will aid in reducing the overcrowding by not sending drug users that would be better served through drug treatment to prison.<sup>70</sup> Additionally, tests have shown that the use of alternative sentences can substantially reduce recidivism rates, thus lowering the prison population further.<sup>71</sup>

## B. DRUG RELATED VIOLENCE

The deplorable conditions and overcrowding of Brazilian prisons has given rise to powerful prison gangs that have become responsible for an increase in drug related violence.<sup>72</sup> Drug gangs, often operating from within Brazilian prisons, control the vast majority of the drug trade in Brazil.<sup>73</sup> The largest and most powerful of these prison gangs is the First Capital Command, known in Brazil as PCC.<sup>74</sup> The PCC was formed in 1993 in response to the killing of 111 prisoners by police, and their main goal was to improve the squalor and overcrowding in the prison system.<sup>75</sup> Unfortunately, the PCC degraded into a purely criminal enterprise, and is now involved in murder, robbery, and drug trafficking.<sup>76</sup> Much of the violence occurs due to battles with police and other gangs for control of drug markets and distribution networks.<sup>77</sup> A recent United Nations report stated that the high homicide rate in Brazil is largely “the result of the inability of those engaged in the illicit drug market to settle disputes

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65. INTER-AM. C.H.R., REPORT ON THE SITUATION OF HUMAN RIGHTS IN BRAZIL ¶ 27 (1997), available at <http://www.iachr.org/countryrep/brazil-eng/Chaper%204.htm>.

66. Country Profile, *supra* note 29, at 4.

67. John Dunn, Ronaldo R. Laranjeira & Jose Ricardo P. Marins, *HIV, Drug Use, Crime and the Penal System*, in *DRUG USE AND PRISONS: AN INTERNATIONAL PERSPECTIVE* 45, 48 (David Shewan & John B. Davies eds., 2000).

68. *Id.*

69. Country Profile, *supra* note 29, at 39.

70. Downie, *supra* note 14.

71. *Id.*

72. *Brazil's Mighty Prison Gangs*, BBC NEWS, May 15, 2006, <http://news.bbc.co.uk/2/hi/americas/4770097.stm>.

73. Andrew Downie, *Brazil Gang Takes on State*, THE CHRISTIAN SCI. MONITOR, May 16, 2006, at 6, available at <http://www.csmonitor.com/2006/0516/p06s01-woam.htm>

74. *Id.*

75. *Brazil's Mighty Prison Gangs*, *supra* note 72.

76. Downie, *supra* note 73.

77. *Id.*

over territory, distribution and leadership in a non-violent manner.”<sup>78</sup>

The gang leaders often run their illicit enterprises from inside the prison walls via mobile phone.<sup>79</sup> The overcrowded prisons functioned as a recruiting haven and training ground for the gangs, and as they recruited new members, their influence expanded out of the prisons into Brazil’s favelas, or shantytowns.<sup>80</sup> Recruiting new members into the gangs is made easier by Brazil’s large impoverished population, with over 40 percent of the total population living in the favelas.<sup>81</sup> Over 31 percent of Brazil’s population lives below the poverty line, and the average per capita annual income is a meager \$9,700.<sup>82</sup> The young people living in abject poverty in the favelas often have no choice other than to join a gang in order to obtain food and shelter, and many are lured by the opportunity to achieve social status that is otherwise unavailable to them.<sup>83</sup>

The level of violent crime in Brazil is staggering. Approximately 9 percent of global homicides occur in Brazil, but Brazil represents only 3 percent of the global population.<sup>84</sup> Over 55,000 murders were committed in Brazil in 2005, which places its death rate on par with a war zone.<sup>85</sup> Prior to the 1980s, parasitic diseases were the leading cause of death in Brazil.<sup>86</sup> But during that decade drug related violence increased at an alarming rate, and by 1989, violent homicide became the leading cause of mortality.<sup>87</sup> In Rio de Janeiro, the homicide rate increased 444 percent between 1983 and 2002 correlating with the increase in drug trafficking.<sup>88</sup> The new drug law will reduce the number of drug users placed in the prison system, which will aid in reducing the power of the drug gangs by impeding their ability to recruit new members from the prison population.

### C. THE HIV/AIDS EPIDEMIC

The United Nations has observed that the relationship between drug abuse and HIV/AIDS prevalence is one of the primary drug related problems in Brazil.<sup>89</sup> The Brazilian HIV/AIDS situation is at an epi-

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78. Country Profile, *supra* note 29, at 2.

79. *Brazil’s Mighty Prison Gangs*, *supra* note 72.

80. *Id.*

81. IULIANELLI, *supra* note 20, at 28.

82. U.S. Cent. Intelligence Agency, *The World Factbook: Brazil* (Oct. 17, 2006), <https://www.cia.gov/cia/publications/factbook/geos/br.html>; *see also* Country Profile, *supra* note 29, at 15.

83. Sam Logan, International Relations Center, *Impoverished Brazilian Youth Face Little Option But to Die Young*, (Sept. 16, 2003), <http://americas.irc-online.org/am/1630>.

84. AIDS POLICY RESEARCH CTR., UNIV. OF CAL. SAN FRANCISCO, *COUNTRY AIDS POLICY ANALYSIS PROJECT: HIV/AIDS IN BRAZIL 34* (2004), *available at* <http://hivinsite.ucsf.edu/doc/ari-br.doc>.

85. *Brazil Murder Rate Similar to War Zone*, REUTERS, Sept. 25, 2006, <http://www.alertnet.org/thenews/newsdesk/N25290277.htm>.

86. IULIANELLI, *supra* note 20, at 22.

87. *Id.*

88. *Id.* at 23.

89. Country Profile, *supra* note 29, at 23.

demic level with over 660,000 reported infections.<sup>90</sup> This number represents over one third of all cases reported in Latin America.<sup>91</sup> But the country has implemented successful education and prevention programs that are estimated to have prevented another 600,000 infections.<sup>92</sup>

Even with these prevention programs, HIV/AIDS infections among drug users remain a significant problem. Brazil successfully reduced the infection rate of drug users from over 65 percent in 1994 to only 40 percent in 2001.<sup>93</sup> But a 2004 study indicated that over half of all new reported HIV/AIDS cases are still attributable to intravenous drug use, with some areas of the country reporting rates as high as 64 percent.<sup>94</sup> Approximately 36 percent of the reported HIV/AIDS cases in children are due to a drug-injecting parent.<sup>95</sup> Furthermore, direct transmission from mother-to-child is responsible for over 83 percent of cases in children under thirteen years of age.<sup>96</sup>

The new focus on education and treatment embodied in the new drug law will further the prevention programs and other activities already underway to reduce the HIV/AIDS epidemic in Brazil. One study observed that, "Brazil has also adopted a less punitive approach to dealing with the dual challenge of injecting drug use and HIV infection, to good effect."<sup>97</sup>

## V. CONCLUSION

Brazil's Public Law No. 11343 represents a significant departure from the prior approach toward punishment for drug use. Historically, Brazil has followed a penal approach that did not significantly differentiate between drug users and drug traffickers. This new law distinguishes between these two classes and provides significantly different punishment for each. Drug users now receive non-penal sentences aimed at education and prevention of drug use, while the law strengthens the penal punishments for drug trafficking. This new law is needed for, and should address, a number of public concerns including: prison overcrowding, violent crime, and the spread of HIV/AIDS. The objectives of this law are to treat and rehabilitate drug users and reintegrate them into society, which should result in a reduction of the prison population, less violent crime, and preventing the spread of HIV/AIDS.

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90. AIDS POLICY RESEARCH CTR., *supra* note 84, at 19.

91. Cecilia Jorge, *Drug Users are Majority of New AIDS Cases in Brazil*, BRAZZIL MAG., Nov. 24, 2005, available at <http://www.brazzilmag.com/content/view/850/41/>.

92. Country Profile, *supra* note 29, at 3.

93. AIDS POLICY RESEARCH CTR., *supra* note 84, at 45.

94. *See* Jorge, *supra* note 91.

95. Country Profile, *supra* note 29, at 25.

96. *Id.*

97. HIV InSite: Latin America, <http://hivinsite.ucsf.edu/global?page=cr05-00-00> (last visited June 30, 2007).



# Updates

