

Mario Morales<sup>1</sup> / Pieter Baker<sup>2</sup> / Claudia Rafful<sup>2,3,4,5</sup> / Maria L. Mittal<sup>2</sup> / Teresita Rocha-Jimenez<sup>6</sup> / Erika Clairgue<sup>2</sup> / Jaime Arredondo<sup>2,7,8</sup> / Javier A. Cepeda<sup>2</sup> / Steffanie A. Strathdee<sup>2</sup> / Leo Beletsky<sup>2</sup>

# Conflicting Laws and Priorities as Drug Policy Implementation Barriers: A Qualitative Analysis of Police Perspectives in Tijuana, Mexico

<sup>1</sup> School of Government and Public Policy, College of Social and Behavioral Science, University of Arizona, Social Science 315, 1145 E South Campus Dr. Tucson, AZ 85719, United States of America, E-mail: mariomoraes@email.arizona.edu

<sup>2</sup> School of Medicine, Division of Infectious Diseases and Global Public Health, University of California, San Diego, La Jolla, CA 92093, USA, E-mail: pabaker@ucsd.edu, craffull@ucsd.edu, mlmittal@ucsd.edu, eclairgue@ucsd.edu, jaime.arredondo@cide.edu, jacepeda@ucsd.edu, sstrathdee@ucsd.edu, lbeletsky@ucsd.edu. <https://orcid.org/0000-0002-2731-5470>.

<sup>3</sup> Faculty of Psychology, Universidad Nacional Autónoma de México, Circuito Ciudad Universitaria Avenida, C.U., 04510 Mexico City, Mexico, E-mail: craffull@ucsd.edu

<sup>4</sup> Center of Global Mental Health Research, National Institute of Psychiatry, Calz México-Xochimilco 101, Colonia, Huipulco, Tlalpan, 14370 Mexico City, Mexico, E-mail: craffull@ucsd.edu

<sup>5</sup> Centre on Drug Policy Evaluation, St. Michael's Hospital, 30 Bond St, ON M5B 1W8 Toronto, Canada, E-mail: craffull@ucsd.edu

<sup>6</sup> Society and Health Research Center, Universidad Mayor, Badajoz 130, Las Condes, Región Metropolitana HCVG+4P Santiago, Chile, E-mail: teresita.rocha@umayor.cl

<sup>7</sup> Programa de Política de Drogas, Centro de Investigación y Docencia Económica, Circuito Tecnopolio Norte #117. Col. Tecnopolio Pocitos II. 20313 Aguascalientes, Mexico, E-mail: jaime.arredondo@cide.edu

<sup>8</sup> British Columbia Centre on Substance Use, 1045 Howe St Suite 400, BC V6Z 2A9 Vancouver, Canada, E-mail: jaime.arredondo@cide.edu

## Abstract:

**Background and Aims:** Drug policy reforms typically seek to improve health among people who use drugs (PWUD), but flawed implementation impedes potential benefits. Mexico's 2009 drug policy reform emphasized public health-oriented measures to address addiction. Implementation has been deficient, however. We explored the role of municipal police officers' (MPOs) enforcement decision-making and local systems as barriers to reform operationalization.

**Methods:** Between February-June 2016, 20 semi-structured interviews were conducted with MPOs in Tijuana. Interviews were transcribed, translated and coded using a consensus-based approach. Emergent themes, trends and frameworks were analyzed through a hermeneutic grounded theory protocol.

**Results:** In conceptualizing their orientation towards municipal (not state) law, MPOs reported prioritizing enforcement of nebulous anti-vice ordinances to control PWUD activity. Local laws were seen as conflicting with drug policy reforms. Incentives within the police organization were aligned with ordinance enforcement, generating pressure through quotas and reinforced by judges. Driven by discretion, fuzzy understanding of procedures, and incentives to sanitize space, detention of PWUD for minor infractions was systematic.

**Conclusions:** Failure to harmonize policies and priorities at different levels of government undermine effective operationalization of health-oriented drug policy. Implementation must address local priorities and administrative pressures shaping MPO decision-making and enforcement practice.

**Keywords:** people who use drugs, municipal police officers, drug law reforms, municipal ordinances, Tijuana, qualitative study

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## 1 Introduction

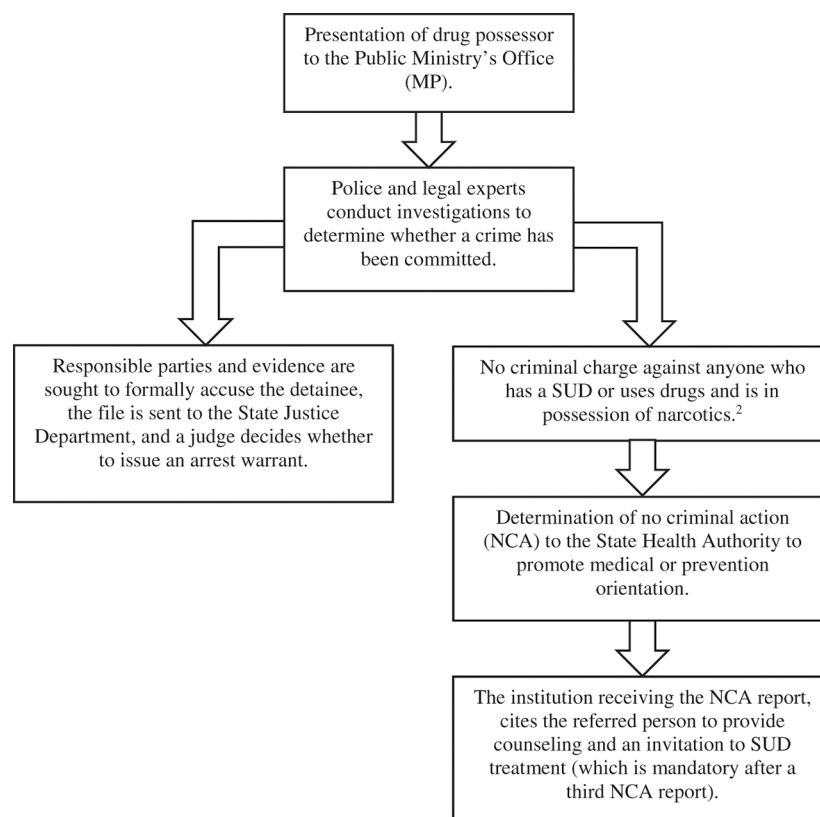
Broad evidence on the limited benefit and numerous collateral harms of drug criminalization has pushed at least 30 countries to enact different forms of drug liberalization policies (Werb et al. 2014; Strathdee, Beletsky,

Leo Beletsky is the corresponding author.

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and Kerr 2015). Such reforms are intended to redress the harms of drug prohibition and reduce barriers to effective services, including treatment for addiction as well as HIV prevention and care (Rights 1993; Policy 2011, 2013, and 2014). However, some drug policy reforms have produced mixed results and limited benefits, largely because of the conflicting policies at federal, state and municipal levels (Smith 2001; Beckett and Herbert 2008; Stuart 2015). In the 1990s, approximately 75% of municipalities in the U.S. passed “quality-of-life” ordinances intended to aggressively target minor faults to reduce crime (Mitchell 1997; Smith 2001; Herbert and Brown 2006; Stuart 2015). These municipal ordinances served to physically neutralize and warehouse vulnerable individuals including economically-marginalized people who use drugs (PWUD). Such ordinances punished, segregated and normatively branded them as distinct from “deserving” citizens (Wacquant 2009; Wacquant, Slater, and Borges-Pereira 2014). By criminalizing behaviors on which PWUD relied for daily survival (e. g., urinating, attending to one’s personal possessions, sleeping or begging in public places), the ordinances territorially stigmatized them and undermined constitutional rights and due process (Beckett and Herbert 2008; Wacquant, Slater, and Borges-Pereira 2014). In consequence, the U.S. Supreme Court invalidated local vagrancy/loitering statutes in Florida, California, and Texas arguing that they penalized behaviors over which people had no control (Beckett and Herbert 2008).

In 2009, Mexico promulgated the *Narcomenudeo* reforms focusing on small-scale drug dealing (Diario Oficial de la Federación 2009; Shapiro 2010; Russoniello 2012). These reforms shifted responsibility for prevention of problematic drug use, the provision of substance use treatment and the prosecution of small-scale drug dealing from the federal to the state level (Diario Oficial de la Federación 2009; Atuesta 2014; Madrazo 2014b, Madrazo 2014a). This signaled a more prominent role for evidence-based health-centric approaches within Mexico’s drug policy (Mackey et al. 2014; Robertson et al. 2014; Werb et al. 2014; Beletsky et al. 2016). While the fight against major organized crime and drug trafficking remained the province of federal law enforcement (H Bustamante-Moreno, Izazola-Licea, and Rodríguez-Ajenjo 2010; Camara de Diputados 2007), the use of substances for personal and immediate consumption was partially depenalized under federal law (Diario Oficial de la Federación 2009). Based on these changes, the prosecutor (Public Ministry Office [MP]) would not file criminal charges against a person possessing small volumes of the following drugs:  $\leq 2$  g of opioid, 50 mg of heroin, 5 g of marijuana, 500 mg of cocaine, 0.015 mg of LSD, or 40 mg of MDA, MDMA or methamphetamine (Diario Oficial de la Federación 2009). The law also mandated states to establish a framework for diverting people with substance use disorder (SUD) to treatment in lieu of incarceration (Diario Oficial de la Federación 2009; Bustamante-Moreno, Izazola-Licea, and Rodríguez-Ajenjo 2010). Figure 1 shows the process for presentation before judges under the reforms once a person is detained for illegal drug possession (Pérez and Silva 2014).



**Figure 1:** Legal process triggered by detention for drug possession. (Figure 1 was elaborated considering Perez and Silva's explanation on illicit drug consumption in Mexico after *Narcomenudeo* reforms (Pérez and Silva 2014). The narcotics are indicated in the Table of Maximum Quantities for Personal and Immediate Consumption (Diario Oficial de la Federación 2009)).

The *Narcomenudeo* reforms bore great potential for public health benefit to cities like Tijuana, Baja California. In 2015, this northwest Mexican-US border city had 1,722,348 inhabitants (CONAPO 2014), among whom 135,000 people were deported from the U.S in 2010; a high proportion of whom were drug involved (Pinedo, Burgos, and Ojeda 2014). In the 2000s, it was estimated that there were 10,000 persons who inject drugs (PWID), 9,000 female sex workers and more than 200 shooting galleries in the city (Strathdee et al. 2005). Moreover, HIV prevalence in Tijuana (0.9 %) was three times the national average (0.3 %) and was concentrated among vulnerable groups, such as PWID (Magis-Rodríguez et al. 2002; Pinedo, Burgos, and Ojeda 2014; Strathdee et al. 2012). This situation has placed considerable pressure on local authorities to stem the negative societal effects associated with drug use. In December 2014, for instance, a federally-funded municipal program (*Tijuana Mejora*) permanently exiled approximately 1,000 homeless people living in the Tijuana River Canal (Rafful, Medina-Mora et al.).

The *Narcomenudeo* reforms did not contain any directives regarding harmonization with municipal or other local provisions criminalizing petty drug offenses. This, despite the reality that municipal ordinances function as a critical source of drug law enforcement in Mexico and elsewhere. In Tijuana, MPOs base their work on the Police and Government Ordinance for the Municipality of Tijuana, Baja California (*Bando*, in Spanish) (Tijuana 2009). The ordinances in Tijuana also penalize numerous “quality-of-life” activities commonly carried out by PWUD. These include sleeping, begging and urinating/defecating in public places; cleaning, selling goods, offering services or fixing vehicles in public thoroughfares; and using vacant lots or abandoned buildings. Most critical to this analysis, several provisions directly criminalized behaviors ostensibly covered by the *Narcomenudeo* reforms. These expansive provisions include leading another person into vice or antisocial behavior, inviting or inducing deviant practices, and consuming alcohol or intoxicating substances in public thoroughfares, abandoned buildings or inside vehicles. Tijuana's punitive approach contradicts the federal/state *Narcomenudeo* reforms (Stuart 2015).

Formal drug laws often differ from their street-level implementation due to weak rule of law and police officers' broad enforcement discretion (Beletsky, Macalino, and Burris 2005; Beletsky et al. 2016; Burris et al. 2004; Green et al. 2012; Stuart 2014). According to Burris and colleagues (Burris et al. 2004), police officers around the world decide, using a toolkit of options, the specific laws that they should apply to meet their objectives. The roles of fuzzy legal logic and perverse incentives shaping enforcement practices have also been established as a possible contributor to poor reform implementation (Beletsky L, Macalino GE, Burris S. Attitudes of police officers towards syringe access, occupational needle-sticks, and drug use: a qualitative study of one city police department in the United States. *International Journal of Drug Policy*. 2005;16:267-74). Prior research in Tijuana suggests that the implementation of federal drug law reforms has been extremely limited (Werb, Strathdee et al. 2015, Beletsky et al. 2016; Cepeda et al. 2017; Gaines et al. 2017, Borquez A, Beletsky L et al. 2018). We previously reported poor knowledge of the reforms among both PWUD and MPOs. In a cohort of 735 PWID in Tijuana from 2010–2013, only 11 % reported awareness of the reforms and none experienced evidence of its application (Beletsky et al. 2016). Among a cohort of 1,319 MPOs (2015–2016), 71% reported incorrect legal knowledge after the reforms (Cepeda et al. 2017). In a panel analysis, we found no significant association between the reforms implementation and arrests for drug possession or other violent and non-violent crimes, implying the reforms did not measurably impact police enforcement patterns (Arredondo et al. 2018). In addition, key stakeholders in Baja California representing the three levels of government identified the following barriers to the implementation of the reforms: lack of scientific and technical expertise in assessing SUD, lack of a coordinated action plan, and the perception of the reforms as an unfunded mandate (Werb, Strathdee et al. 2015).

These findings map onto evolving literature on the challenges in effective design and thorough implementation of drug law reforms in other contexts. For instance, the implementation of 911 Good Samaritan law to encourage overdose witnesses to seek help in the US state of Washington has been found to be largely ineffective in changing police knowledge and practices. The failure to properly inform and equip law enforcement agents in translating the law into practice raises questions about the effective design of this provision. Another recent example is in cannabis reform. Cannabis decriminalization in the US has been motivated, at least in part, by the rationale of reducing racial disparities of drug law enforcement. However, evaluation of decriminalization measures has found that while the overall number of arrests declined in the wake of decriminalization, racial disparities in enforcement actually increased, which resulted in aggravating (rather than reducing) racial disparities.

Aside from other considerations, pervasive implementation gaps in these and other areas are a particular concern to public health. This is especially salient in the realm of infectious disease prevention. Police encounters have been associated with risky behaviors among PWID including polydrug use, syringe sharing, seeking

assistance to inject, and injecting in shooting galleries (Pollini et al. 2007; Philbin et al. 2008; Robertson et al. 2010; Beletsky et al. 2016). Insofar as reforms aim to reduce negative encounters, failure to properly implement such reforms constitute a lost public health prevention opportunity. The aim of this analysis was to explore police perspectives regarding the role of conflicting formal provisions and police discretion as explanatory mechanisms behind the inadequate implementation of *Narcomenudeo* reforms in Tijuana. The two main research objectives were (1) to characterize MPO's decision-making process to detain and process illicit drug carrier suspects despite legality under federal and state law; and (2) to characterize the detention process for PWUD and presentation before judges at the municipal, state and federal levels. To our knowledge, no previous study about the drug law reforms has explored enforcement decision-making and other MPO factors contributing to gaps in the implementation of drug policy reforms in Mexico.

## 2 Methods

### 2.1 Study Setting and Sample

The *Escudo* (Shield) Project is a longitudinal research study that implemented a police education program (PEP) to (1) prevent occupational needlestick injuries (NSI) among MPOs and (2) to align policing practices with public health priorities (Strathdee et al. 2015). One aim of *Escudo* was to assess enforcement practices with the drug law reforms in the context of blood-borne disease prevention (Strathdee et al. 2015). Between February 2015 and May 2016, 1,806 MPOs were trained in the Tijuana Police Academy and a random sub-sample of MPOs were followed-up for two years. Follow-up participants also provided written consent to take part in semi-structured interviews. Leveraging the qualitative study sample of the *Escudo* parent study, we interviewed 20 MPOs between February and June 2016. Eligibility criteria for this sample included being active-duty, completion of the *Escudo* training, completion of the baseline survey, and reporting ever experiencing an NSI while on-duty. However, one MPO expressly requested to participate without meeting the last two criteria and five MPOs denied previous experience of NSI during the interviews. Respondents were provided a \$20 gift card for participation. This study had binational research ethics approval from the University of California San Diego's Human Research Protections Program and the *Universidad Xochicalco, Facultad de Medicina, Campus Tijuana* Institutional Review Board.

### 2.2 Data Collection and Analysis

An interview guide was developed and applied until saturation of research themes was achieved. Interviews were conducted by the first author in Spanish, audio-recorded, and lasted approximately one to two hours. The interview followed a face-to-face, in-depth, and semi-structured format. Interviews were transcribed *verbatim*, translated into English, double-checked for quality by trained bilingual personnel, and verified against the audio recordings. A codebook combined *a priori* and emerging themes. Codification and analysis were conducted using Atlas.ti software following a consensus-based approach. Emergent themes, trends and frameworks were tallied using a hermeneutic grounded theory approach (Beletsky, Macalino, and Burris 2005; Charmaz 2000; Glaser 2004; Strauss and Corbin 1994; Suddaby 2006). The similarities and differences across the coded transcripts exposed connections between codes that outlined themes (i. e., reasons for the detention of PWUD, legal framework to enforce the law, and presentation of PWUD in front of judges). The process was repeated multiple times and codes were revised, expanded and/or condensed. The authors read samples of the interview transcripts and assessed the coding scheme until discrepancies were resolved.

## 3 Results

Of twenty participants, 15 were men and the age range was 22 to 63 years old with a median age of 37. As for rank, 75% (n = 15) were officers (as opposed to district chief, deputy or supervisor). We identified four salient themes that related to MPOs' decision-making process to detain drug possession suspects. First, participants commonly penalized homeless PWUD for municipal ordinance violations in a highly-discretionary but systematic way, highlighting the applied importance of legally nebulous ordinances such as loitering. Second, MPOs' reasons for prioritizing ordinances over state laws amended by the drug law reforms included the following motives: viewing their role as municipal not state law enforcement, considering PWUD profiling as a crime prevention strategy, and feeling pressure from superiors to meet *quotas*. Third, participants frequently presented



PWUD before municipal judges for violation of municipal ordinances; MPOs did not typically present PWUD before the MP where they may have had some protection under the *Narcomenudeo* drug law reforms. Finally, MPOs reported mixed attitudes about the reforms and only two participants emphasized their perceived benefits in terms of criminal justice and health.

### 3.1 Discretionary and Systematic Arrests of PWUD for Quality-of-life Offences

All MPOs enforced quality-of-life offenses frequently associated with homeless PWUD. This included “sleeping in the streets,” “wandering,” “urinating,” “drinking intoxicating beverages,” “removing and spreading trash,” “quarreling verbally,” “begging,” and “engaging in activities that lead to vice.”

I don’t focus on laws because I am not the one who applies them. That’s the judge who does that. I just use the *Bando* and the traffic rules, it’s very well specified. One article says that a person shouldn’t be a public nuisance or that a person shouldn’t carry certain substances, right? – Female, 34.

Regularly you apply the *Bando* because of what they are doing which is messing with the trash, loitering, recycling copper to sell it, so, you apply the *Bando*. Regularly, they don’t commit serious crimes. – Male, 41.

During a single 12-hour shift, hundreds may be detained for ordinance violations in the Downtown District. PWUD arrests were so common that, at times, there were many police cars with detained PWUD lined outside the judges’ office. Even though the formal procedure states that each detainee must be presented by the MPOs that arrested him/her, to avoid having each MPO wait for his/her turn during long periods of time, designated MPOs collected their colleagues’ referral slips and brought the detainees before a municipal judge. MPOs also routinely found drug residue as well as drug paraphernalia such as pipes, bulbs and syringes. Most MPOs limited themselves to bringing PWUD before municipal judges for ordinance violations, leaving petty drug dealing and drug trafficking to the Special Task Forces Group and state or federal law enforcers. Participants considered that bringing PWUD before municipal judges for committing ordinance violations was the least severe penalty for drug issues (considering that federal and state penalties were stronger). However, this was not always the case as in many instances, arrests for quality-of-life offenses were highly selective and systematic. 3.2 *Reasons for prioritizing ordinances over state laws amended by the reforms.*

#### 3.1.1 Viewing Their Role as Municipal Not State Law Enforcement

All respondents indicated that their primary job was to enforce municipal, not state or federal laws. Participants reported that they were focused on ordinance violations and drug use, not drug-related crimes. MPOs also brought those who commit state or federal crimes before the MP. Except for those MPOs belonging to the Special Task Forces Group, participants stated that drug crimes were to be handled by the Federal Government and the state, not the municipality.

The *Bando* is only for drug consumption ... we don’t work on big [drug] confiscations or anything like that. All of that would be related to the federal code, right? Our work relates to ordinance violations because of the quantities that we manage. For example, if you carry what is called a “*globito*” [personal dose of crystal meth] ... that amount of drug is not considered a serious crime, right? However, according to the *Bando* it is considered an ‘act inciting substance abuse’ so, it is considered an ordinance violation and you have to bring him/her in before the [municipal] judge. – Male, 33.

#### 3.1.2 Profiling PWUD to Prevent Crime

Most participants indicated that their main task was to prevent crime, not prosecute it once it has been committed. Respondents reported that drug circulation prevention reduced drug addiction in the streets, and that was why they constantly stopped and frisked potential drug users and dealers.

If you could prevent drugs from circulating, or restrain them, there would be fewer drug addicts on the street. That’s the only thing I see that you can make an impact that way ... and that’s why here in *Downtown* I am very watchful of people who have antisocial behaviors, which are the people who are circulating drugs. – Male, 28.

Most participants contended that PWUD tend to commit property and other nonviolent crimes to get money for their next dose. To obviate citizens' complaints about PWUD, respondents reported profiling drug users based on their appearance as a preventive measure.

They are poorly clothed, dirty, they wander around the crossroads, traffic lights, they ask for money on the bridges, they sweep the streets, but we try to prevent them from wandering around those districts [i.e. Downtown and the commercial area] because stealing is what they do most. – Female, 30.

### 3.1.3 Feeling Pressure from Superiors to Meet Quotas

In Downtown precincts, participants reported frisking approximately 15 but sometimes up to 47 people for “activities leading to vice” in a 12-hour shift. MPOs contended that arrests of homeless PWUD were discretionary and systematic because supervisors asked for a steady number of detainees and PWUD were the easiest people to apprehend for committing ordinances violations.

Here, they [supervisors] ask for a steady number of detainees. And even for a small dose, I have to take you in. I mean, I have to bring in four, five detainees per unit. So, what do I do as an officer? Well, I already know who has minimal doses, I know who they are. They are the same repeat offenders. If you go, well they won't let you take it, but if you go into the station and look at the same names as always, you'll see the repeat offender. The one who has a “globito,” a needle, you already know they use, so if you ask me for five detainees, I'll bring you five detainees. – Female, 37.

One MPO mentioned that the number of arrests had dropped since 2014 because of the National Human Rights Commission “coming in strong and starting to visit the delegations to see how the police was working.” In contrast, other participants showed frustration that the number of arrests has not changed because “the bosses were asking for lots of numbers, statistics (quotas).”

So, your district boss thinks that oh, because you stopped 1,000 people today, you're doing your job. I mean, excuse me, but no! Just grabbing people and bringing them in, recyclable people, bring them and sticking them in an agency for offenders and you're working. No, it's not like that. Unfortunately, it's like ... 'oh, I brought in 100', another district is like 'I brought in 200', and another brought in 50, 'oh, you're not working' – Male, 39.

A younger respondent with more recent training mentioned that he has never been explicitly asked to reach quotas of PWUD apprehensions. However, he always brought PWUD in front of a judge, no matter the amount of drugs.

Since I started, I have never been asked a quota. My superiors have never said 'you need to bring so many people in' ... I've never had that. I stop and transport people, detain and transport, that's how it should be, right? When you detain someone, you immediately have to bring them in, that's their right, to take them in right away to see the judge. – Male, 26.

## 3.2 PWUD Presentation before Municipal Judges for Ordinances Violations

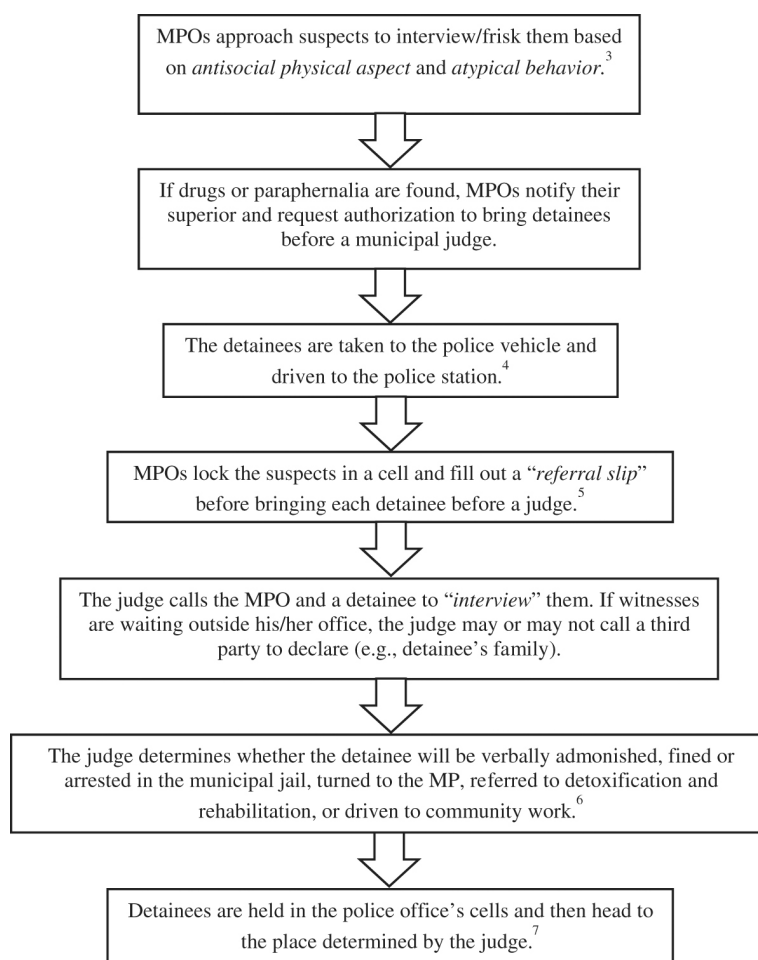
All the interviewed MPOs generally felt it appropriate to bring before municipal judges those who commit ordinances violations, not before the MP for small-scale drug dealing.

If I find one dose of crystal meth, I don't bring him in front of the MP, I bring him in front of the municipal judge and he sends him to the municipal jail ... If he has a considerable amount ..., that's a sign that it's a drug dealer. – Male, 42.

The municipal judge determined whether the detainee would be: 1) admonished (verbal recommendation) and set free, 2) fined (equivalent of “20 to 30 Mexican minimum wages”) or arrested (for up to 36 hours in the municipal jail in case he/she is not able to pay the fine), 3) turned over to the MP for committing crimes against health in small-scale (mixed/petty drug dealing agency) or large-scale (National Attorney General's Office), 4) referred to a drug detoxification and rehabilitation center, or 5) driven to community work (e. g., sweeping the streets or various other activities in the municipal jail) (Tijuana 2009). Most of the time the homeless PWUD were arrested for up to 36 hours in the municipal jail because they do not have money to pay the fine.

The judge will ask him some questions about the type of possession, either for consumption or sale, and he determines if the person, depending on the amount as well, if it's an amount that is a bit high, he is going to determine whether they are turned over [to the MP] or not. If it's just residue, they go to the municipal jail, where they can be held a maximum of 36 hours, but he's the one who determines that. – Male, 38.

In order to characterize the “on the street” process for detainment and presentation before judges, we synthesized MPO responses regarding the typical legal procedure following PWUD detainment (Figure 2). This process, derived by participant responses, reflects the influence of municipal ordinances such as *Bando* and other factors affecting PWUD detention in Tijuana. It also highlights several of the barriers to *Narcomenudeo* reform implementation when compared to Figure 1, the “expected” process for detainment and presentation before judges.



**Figure 2:** “On the street” process triggered by detention for drug possession. (Examples of the first criteria are: “*dressing in dirty clothes*”, “*having injection-related scars, dry or spotty skin, glassy eyes and dilated pupils*”. As for the second criteria: nervousness; shakiness; being “*dosed off*” by the effect of heroin; and throwing objects, changing direction when walking or “*avoiding eye contact*” with a MPO). The ride takes anywhere from a few minutes to several hours, depending on matters like whether the police vehicle (a car or a covered pick-up) is empty or not, in which case the detainees must wait until the vehicle fills up with more detainees. The referral slip includes data pertaining to the detainee (name, date of birth, place of birth and address) and the detention (date and time, the reason for the detention, detainee’s testimony, officer’s registration and unit number). The *Bando* points out that the detainee undergoes a medical exam to certify his/her condition, and the enforcement of the administrative sanction (turn over or hand over) depends on the exam’s result. Ayuntamiento (2009). The flow of detainees to the municipal jail depends on the distance from which they are transported, on the availability of vehicles and of the available places in the municipal jail.

### 3.3 MPOs’ Attitudes Towards Narcomenudeo Reforms

MPOs expressed differing and contrasting attitudes concerning Mexico’s *Narcomenudeo* drug reforms and the topic of drug policy reform in general. Some participants considered the reforms somewhat inconsequential, emphasizing the role of individual responsibility as it pertains to drug consumption:

There are many other products that are bad for us and we decide whether to buy them and have them; it's the same with drugs ... In the end, if they legalize it or not, it is the citizen who will decide whether to buy it and use it. – Female, 38.

Others disagreed with the rationale for decriminalizing drugs for personal consumption, contending that nefarious players (e. g. dealers) may try to hide behind that element of the reform with a negative impact on policing and public safety.

I don't think it's right. Why? Because people will say: I only have one dose, I'm a consumer ... I think it should be prohibited no matter if you have one dose or a large amount. – Male, 33.

In contrast, several participants recognized the benefits of the *Narcomenudeo* reforms as they relate to criminal justice and health.

I think that is going to speed up the criminal system because sometimes they just lost a lot of time and money in someone that didn't really have drugs on ... I mean, drug addicts are going to be treated as simple drug addicts because it's not worth it to take them to the MP. – Male, 41.

Not all people should go to jail. If we say it is a public health issue, well there should be a specific amount of drugs for them to be able to carry. – Female, 37.

## 4 Discussion

In the sample of 20 MPOs in Tijuana, we identified a number of factors that contextualize the implementation of the *Narcomenudeo* reform. In view of participants' conflicting attitudes and lack of clarity on the reform, they perceived the shift in the law as a state and federal concern. Therefore, they prioritized the enforcement of local ordinances in their day-to-date practice. In addition, MPOs reported prioritizing crime and drug use prevention, which spurred them to arrest and present PWUD in front of municipal judges. Respondent MPOs expressed concern about supervisor pressure for a steady stream of detainees, acknowledging that PWUD were the easiest people to apprehend for committing petty ordinance violations. The enforcement practices described in the interviews undermine efforts to incorporate a health-based framework as a core element of the Mexican drug policy, resulting in continued harm toward and harassment of PWUD.

*Narcomenudeo* reforms aimed to reduce the number of detentions, preliminary investigations, and sentences for drug offenses at the federal level, while also building cross-sectoral collaboration to address addiction at the state level. Interestingly, from 2009 to 2012, all Mexican states combined reported fewer detentions, preliminary investigations and drug sentences than those on the federal level (Pérez, Alonso, and Silva 2013; Pérez and Meneses 2014). Given that the state figures are significantly below those of the national numbers, it has been suggested that state authorities were not handling petty drug dealing or were doing so only marginally (Pérez and Meneses 2014). We explained particularly low numbers in Baja California (Pérez and Silva 2014) by the fact that PWUD were brought, at least in Tijuana (the city with the highest population density in the state) before municipal judges and not before the state-level MP. While theoretically the municipalities' ordinances were presumed to be subordinated to those at federal and state level (Madrado 2014a), the fact that municipalities were not mentioned in the *Narcomenudeo* reforms turned out to be a crucial gap in the legal architecture of these reforms. This is because MPOs in Tijuana anchored their activity to ordinances, rather than federal/state laws. Consequently, it is necessary to document in other municipalities how drug policies are enforced to establish whether what happens in Tijuana is the norm or the exception.

Our results also indicate that MPOs may be detaining PWUD out of adherence to ordinances rather than ignorance of or apathy toward state or national reforms. This is supported by the fact that some MPOs indicated their support of the *Narcomenudeo* reforms. Ordinances like the *Bando* appeared to have universal applicability and served to target PWUD (Mitchell 1997), (Stuart 2015). Ordinances were used to exclude "deviant" individuals from public spaces in direct conflict with efforts by civil rights advocates to prevent the criminalization of PWUD, reflecting the struggle over the built environment (Amster 2003; Wacquant, Slater, and Borges-Pereira 2014). Wacquant argues that the global crisis in public service provision, which includes health services and substance use disorder treatment, has bolstered instead penal state action focused on punishment (Wacquant 2009). From this perspective, differences between drug laws at the federal, state and municipal levels should be understood in the context of the municipal governments' territorial stigmatization efforts. This is not merely a technical conflict, but a conflict of objectives. It is therefore essential to understand local ordinances (such as *Bando* in Tijuana) as a core operational element on the agenda to promulgate meaningful national and international drug policy reforms (Stuart 2015; Wacquant 2007).



The presentation of homeless PWUD before municipal judges in Tijuana has been previously studied through the risk environment theoretical framework for infectious diseases (Rhodes 2002, 2009; Rhodes et al. 2005, 2012). Such analyses have demonstrated the negative effects of arbitrary policing practices regarding health risk exposure and access to SUD treatment among PWUD (Miller et al. 2008; Pollini et al. 2007; Strathdee, Lozada et al. 2008a, Strathdee, Lozada et al. 2008b; Beletsky et al. 2016; Pinedo et al. 2015; Volkmann et al. 2011). The criminalization of homeless PWUD is partially successful in the eyes of the municipality because it physically incapacitates, disciplines and incarcerates PWUD (Wacquant 2001). Likewise, it strengthens the boundaries that separate the “good” citizens from the marginally poor in Tijuana (Wacquant 2000, 2009). Alarmism of visible PWUD that “pollute” the urban landscape and the categorization of PWUD as delinquents through the *Bando* are examples of how penal municipality has replaced the notion of a welfare municipality (Wacquant 2009). Unfortunately, the zero-tolerance and broken windows approaches championed by U.S. law enforcement carry even more unintended consequences in contexts of elevated poverty, violence, impunity and lack of services in low-income settings, such as Tijuana (Wacquant 2003).

Our findings also demonstrate that the “on the street” process of detainment for possession in Tijuana (Figure 2) differed from the legal process contemplated under the reforms (Figure 1). Notably, PWUD were brought before a municipal judge, rather than the MP. Future research in this context should recognize the process by which MPOs bring PWUD before municipal judges. First, a detailed study of the role of police chiefs in deciding who is brought before a municipal judge would inform our understanding of key stakeholders’ priorities for PWUD detention. Second, analyzing incentive systems like “quotas” could improve our understanding of trends and correlates of the criminalization and detention of PWUD. Third, a future study on municipal judges’ knowledge, attitudes, and behavior towards drug policy, ordinances, MPOs and PWUD could shed light on their role in the legal process for PWUD after detainment. Fourth, MPOs merit further research as they constitute a potential level of intervention to reduce harm towards PWUD given their frequent encounters with them.

These results indicate that the *Narcomenudeo* reforms have not been implemented in Tijuana, primarily due to conflicting laws and objectives. The inappropriate profiling of PWUD and the enforcement of municipal ordinances played a large role in MPOs’ decision to detain. Participants acknowledged that this is a common practice, yet there may be modifiable factors (such as knowledge of SUD or attitudes toward PWUD) that influence MPOs discretion when it comes to enforcing drug policy. PEPs such as *Escudo* may be effective in improving MPOs knowledge and attitudes relating to issues of addiction and PWUD (Strathdee et al. 2015). Moreover, the modification of MPOs’ occupational risks and attitudes towards harm reduction strategies can contribute to the alignment of health and security in law enforcement (Cepeda et al. 2017).

## 5 Limitations

Given the purposive sampling and the qualitative nature of this study, these findings may not be generalizable to other MPOs in Tijuana or elsewhere. Also, given that the primary objective of the parent study was to evaluate occupational NSI, the qualitative sample was selected based on the report of previous NSI experience. As two-thirds of our sample reported a previous NSI while on duty, there is a risk of bias if these participants are systematically more likely to advocate for stricter drug law enforcement or harbor different attitudes toward PWUD than officers who have not experienced an occupational NSI. However, to our knowledge, no previous study has given voice to police officers regarding discrepancies in the implementation of drug policy reform. Information regarding PWUD presentation before municipal judges was self-reported by MPOs. Thus, it is necessary to compare them with reports produced by both PWUD and the judges. Lastly, the New Penal Justice System came into force at the national level just after the interviews were conducted. Hence, the procedure described for the presentation of PWUD before judges could differ from what MPOs are currently doing.

## 6 Conclusion

To contextualize the limited operationalization of formal drug law reform, this study illustrated how and why MPOs in Tijuana detained PWUD. Our findings highlight that criminalization of drug use is intricately tied to the criminalization of poverty and spatial control. In addition to the reality that the federal and state *Narcomenudeo* reforms conflicted with municipal policies in Tijuana, departmental incentives such as apprehension quotas played a major role as drivers of police practice. This explains, at least in part, why PWUD in Tijuana have yet to experience any public health-oriented benefits of the reforms. It is necessary to re-examine local ordinances from a public health perspective and identify opportunities for reform. Additionally, international

and national drug policy reform efforts must consider the critical role of ordinances such as the *Bando* in Tijuana. Trainings that target MPO knowledge, attitudes and behaviors related to drug law enforcement show promise to improve the application of drug policy reforms. This is especially relevant for police supervisors given their influence in policy enforcement and the legal process for PWUD detainees. Finally, the role of municipal judges warrants further research as key stakeholders that play a critical role in the detention and legal experiences of PWUD and have the legal responsibility to refer PWUD to facilities for medical assistance or treatment of addiction.

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