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Robin Mohr

Chicago-Kent College of Law

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PREVENTING DRUG-RELATED DEATHS AT MUSIC
FESTIVALS: WHY THE “RAVE” ACT SHOULD BE AMENDED TO
PROVIDE AN EXCEPTION FOR HARM REDUCTION SERVICES

ROBIN MOHR

INTRODUCTION

Amid flashing lights and pulsing beats, nearly 100,000 electronic dance music fans attended Electric Zoo on New York’s Randall’s Island in August 2013.¹ Unfortunately the party was cut short. Following the deaths of two young fans, the final day of the three-day music festival was canceled at the request of city authorities.² In separate incidents, Olivia Rotondo, a twenty-year-old University of New Hampshire student, and Jeffrey Russ, a twenty-three-year-old Syracuse University graduate,³ died after collapsing at Electric Zoo with high body temperatures.⁴ Toxicology results revealed that Ms. Rotondo died from acute drug intoxication after taking pure MDMA, a “euphoria-producing drug” commonly known as “molly” in its powdered form and ecstasy in its pill form.⁵ The pills Mr. Russ ingested contained a deadly mix of MDMA and methyldone, a similar stimulant that drug dealers frequently cut with MDMA.⁶ That same year, four other Electric Zoo attendees were hospitalized in critical condition from apparent drug overdoses.⁷

Unfortunately, the ecstasy-related deaths at Electric Zoo are not isolated incidents. In 2014 alone, there were at least ten ecstasy-related deaths

1. Steve Knopper, *Drugs, Death and Dance Music*, ROLLING STONE (Sept. 11, 2013), <http://www.rollingstone.com/music/news/drugs-death-and-dance-music-20130911> [https://perma.cc/X2GX-H4JU].

2. James C. McKinley, Jr., *Overdoses of ‘Molly’ Led to Electric Zoo Deaths*, N.Y. TIMES: ARTSBEAT (Sept. 12, 2013, 6:06 PM), <http://artsbeat.blogs.nytimes.com/2013/09/12/overdoses-of-molly-led-to-electric-zoo-deaths/> [https://perma.cc/3XKG-86QX].

3. Knopper, *supra* note 1.

4. McKinley, Jr., *supra* note 2.

5. *Id.*

6. *Id.*

7. Kirstan Conley et al., *Agony of Ecstasy at Killer NYC Rave*, N.Y. POST (Sept. 2, 2013, 12:31 AM), <http://nypost.com/2013/09/02/agonny-of-ecstasy-at-killer-nyc-rave/> [https://perma.cc/U8D2-YKBD].

at music festivals across the United States.⁸ At some annual music festivals, drug-related deaths occur nearly every year. For example, in 2010, a fifteen-year-old girl died from a drug overdose after attending Electric Daisy Carnival at the Los Angeles Coliseum.⁹ Following the girl's death, the festival was forced to move from Los Angeles to Las Vegas.¹⁰ Since the festival's move to Las Vegas in 2011, there has been about one death at Electric Daisy Carnival every year, with most of the deaths being attributed to MDMA.¹¹ At HARD Summer Music Festival in Southern California, there was one death in 2014, two deaths in 2015, and three deaths in 2016.¹² The coroner confirmed that ecstasy contributed to all six fatalities.¹³

On August 31, 2013, Shelley Goldsmith, a nineteen-year-old University of Virginia honor student, died after taking MDMA at an electronic dance music ("EDM") show in a Washington, D.C., club.¹⁴ Like many people who suffer MDMA-related deaths at live music events, Shelley did not die from a drug overdose.¹⁵ Rather, her death "resulted from a combi-

8. Jason Henry, *Ecstasy Deaths Continue in Southern California Despite 2010 Crackdown*, SAN GABRIEL VALLEY TRIB. (Sept. 7, 2014, 12:09 AM), <http://www.sgvtribune.com/general-news/20140906/ecstasy-deaths-continue-in-southern-california-despite-2010-crackdown> [<http://perma.cc/WH2A-93M2>].

9. Alex Young, *Second Person Dies at Electric Daisy Carnival 2014, Marks Seventh Death Since 2011*, CONSEQUENCE OF SOUND (June 24, 2014, 8:03 AM), <http://consequenceofsound.net/2014/06/second-person-dies-at-electric-dance-carnival-2014-marks-seventh-death-since-2011/> [<https://perma.cc/GS2A-N5H8>].

10. *Id.*

11. Dennis Romero, *A SoCal Woman Who Attended EDC Vegas Has Died, Reports Say*, L.A. WEEKLY (June 24, 2016, 9:33 AM), <http://www.laweekly.com/music/a-socal-woman-who-attended-edc-vegas-has-died-reports-say-7068717> [<https://perma.cc/3UJ9-8PUY>].

12. Arman Sharif, *Arman Sharif: Preventing More Tragedy Following HARD Summer Musical Festival Deaths*, DAILY BRUIN (Aug. 14, 2016, 10:31 PM) <http://dailybruin.com/2016/08/14/arman-sharif-preventing-more-tragedy-following-hard-summer-musical-festival-deaths/>. Fortunately, there were no deaths reported at HARD Summer Music Festival in 2017. See Tracy Bloom, *107 Arrests Made, 19 Hospitalized During Hard Summer Music Festival in Devore: SBSB*, KTLA (Aug. 7, 2017, 8:16 AM), <http://ktla.com/2017/08/07/107-arrests-made-19-hospitalized-during-hard-summer-music-festival-in-devore-sbsb/> [<https://perma.cc/ZRW8-2XHG>].

13. See Rong-Gong Lin II, *Three Who Died After Hard Summer Rave Overdosed on Ecstasy, Coroner Says*, L.A. TIMES (Nov. 30, 2016, 7:20 AM), <http://www.latimes.com/local/lanow/la-me-ln-hard-summer-rave-ecstasy-overdose-20161130-story.html> [<http://perma.cc/P7WY-SQK8>] (stating that the three deaths in 2016 were ecstasy-related); Rong-Gong Lin II & Richard Winton, *After Fatal Drug Overdoses at Rave, Parents of Dead 19-Year-Old File Lawsuit*, L.A. TIMES (July 28, 2016, 4:15 AM), <http://www.latimes.com/local/lanow/la-me-ln-rave-lawsuit-20160728-snap-story.html> (stating that the three fatalities from 2014 and 2015 were ecstasy-related).

14. Dave Herrera, *Activist Whose Daughter Died from Drugs Wants Prevention at EDC Festivals*, LAS VEGAS REV.-J. (June 17, 2016, 12:57 PM), <http://www.reviewjournal.com/neon/electric-daisy-carnival/activist-whose-daughter-died-drugs-wants-prevention-edc-festivals> [<https://perma.cc/AJP7-AX59>]; AMEND THE RAVE ACT!, <https://www.amendtheraveact.org/> [<https://perma.cc/BY24-2CD2>].

15. AMEND THE RAVE ACT!, *supra* note 14.

nation of MDMA and dehydration after dancing for hours in a hot, overcrowded environment, which ultimately led to hyperthermia or heat stroke.”¹⁶ In fact, the most common cause of MDMA-related death is hyperthermia; dehydration, over-hydration, and toxic combinations of drugs misrepresented as MDMA also cause many MDMA-related hospitalizations and deaths.¹⁷

Is it possible to prevent future drug-related deaths at music festivals? Clearly zero-tolerance drug policies and strict security measures are not working. Many people argue that music festival promoters should finally acknowledge drug use by providing harm reduction services onsite.¹⁸ Drug-education organizations like DanceSafe offer a variety of harm reduction services at festivals—education in how to stay cool and hydrated at the festival, cool-down areas where people can take a break from dancing, and drug testing kits to determine if a pill is cut with potentially dangerous adulterants.¹⁹ Unfortunately, music festival producers often shun drug-education organizations like DanceSafe out of fear that they will be fined or criminally prosecuted for allowing or encouraging drug use on the festival’s premises.²⁰

Many music festival organizers believe that the presence of harm reduction measures could make them liable under the Illicit Drugs Anti-Proliferation Act of 2003, which imposes harsh fines and possible jail time on event organizers who allow or encourage drug use on their premises.²¹ The bill is commonly known as the RAVE Act (“Reducing Americans’ Vulnerability to Ecstasy Act”), the name under which the legislation was originally proposed in 2002.²² Although the text of the RAVE Act does not specifically target music festivals or concerts, the bill’s name, legislative history, and overly broad language rightfully give music festival organizers

16. *Id.*

17. Kristen Gwynne, *Meet the People Who Want to Make It Safer to Take Drugs at Festivals*, ROLLING STONE (Aug. 7, 2015), <http://www.rollingstone.com/culture/features/meet-the-people-who-want-to-make-it-safer-to-take-drugs-at-festivals-20150807> [<https://perma.cc/LF3F-ECU7>].

18. *Id.*

19. *Id.*

20. *Id.*

21. Janelle Brown, *Your Glow Stick Could Land You in Jail*, SALON (Apr. 16, 2003, 12:29 PM), <http://www.salon.com/2003/04/16/rave/> [<http://perma.cc/4TSW-2AFA>]; Pasquale Rotella (PasqualeRotella), *I am Pasquale Rotella, CEO of Insomniac, Electric Daisy Carnival and EDMBiz. Ask Me Anything.*, REDDIT (June 19, 2014), https://www.reddit.com/r/electronicmusic/comments/28kk8n/i_am_pasquale_rotella_ceo_of_insomniac_electric/cic2dlx [<https://perma.cc/LAE4-U58A>] (“Unfortunately some people view partnering with DanceSafe as endorsing drug use rather than keeping people safe, and that can prevent producers from getting locations and organizing events.”).

22. Brown, *supra* note 21. This Note will refer to the Illicit Drugs Anti-Proliferation Act of 2003 as the “RAVE Act.”

and promoters a right to fear prosecution under the Act.²³ Based on the RAVE Act's plain language, any music festival organizer who knowingly permits people to use drugs at their event could be held liable.²⁴ Therefore, the presence of harm reduction services at music festivals could be evidence that festival organizers knowingly and intentionally allowed drug use to occur.

Civil liberties groups, grass-roots activists, and the parents of children who have died at music festivals or concerts agree that the RAVE Act is counter-productive because it limits the availability of harm reduction services.²⁵ On the first anniversary of Shelley Goldsmith's MDMA-related death, her mother, Dede Goldsmith, started a campaign to amend the RAVE Act "in order to make EDM festivals and concerts safer for our young people."²⁶ As of January 2018, Dede's petition to amend the RAVE Act has garnered over 17,000 signatures.²⁷

Music festival organizers and promoters should *not* have to fear fines or jail time for providing potentially life-saving services to festival attendees. This Note seeks to demonstrate how the overly broad and vague language of the RAVE Act is contributing to an unsafe music festival environment by limiting the availability of onsite harm reduction services. This Note also advocates for Congress to enact legislation that amends the RAVE Act so that festival organizers will not be discouraged from providing harm reduction measures. Part I analyzes the long history of the RAVE Act, beginning with the 1986 "crack house statute" and continuing through the 2003 amendment that is still causing controversy today. Part II will discuss the history of EDM and raves, the skyrocketing popularity of music festivals, and the dangerous effects of MDMA and adulterated drugs. Part III looks at the detrimental effects of the RAVE Act by examining how the Act has harmed business owners, music festival organizers, and young music fans. Finally, Part IV argues policy reasons for amending the RAVE Act and provides suggestions for how the Act should be amended.

23. *Id.*

24. *Id.*

25. *Id.*

26. *About the Campaign, AMEND THE RAVE ACT!*, <https://www.amendtheraveact.org/about-the-campaign/> [<https://perma.cc/26YE-DVAV>].

27. *Id.*

I. THE HISTORY OF THE RAVE ACT

The passage of the RAVE Act is rooted in the United States Government’s ongoing—and substantially ineffective—war on drugs.²⁸ The RAVE Act’s beginnings go back to the 1986 amendment of the Controlled Substances Act, which is affectionately nicknamed the “crack house statute.”²⁹ The crack house statute took aim at the 1980s crack epidemic by making it illegal to run a crack house.³⁰ The crack epidemic eventually came to an end, but in the early 2000s, then-Senator Joe Biden found a new drug to combat—ecstasy.³¹ First, this Part will discuss the original crack house statute, including why the statute was passed and the statute’s implications for innocent business owners. Next, this Part will look at the history of the RAVE Act and the Illicit Drug Anti-Proliferation Act of 2003, which created controversial amendments to the crack house statute.

A. The 1986 “Crack House Statute”

In June 1986, University of Maryland basketball star Len Bias died from a drug overdose three days after he was selected by the Boston Celtics in the NBA draft.³² His death resulted in a media frenzy, with many people presuming that Bias, an African American, died of a crack cocaine overdose.³³ Several weeks after Bias’s death, Congress amended the Controlled Anti-Drug Abuse Act of 1986, which instituted harsher penalties for crack cocaine offenses than for powdered cocaine offenses and established federal mandatory minimum sentences for drug traffickers.³⁴ The driving force behind these provisions was Bias’s death and the upcoming mid-term election.³⁵ According to a House staff member, “the careful, deliberate proce-

28. Glenn Harlan Reynolds, *Raving Lunacy*, FOX NEWS (July 25, 2002), <http://www.foxnews.com/story/2002/07/25/raving-lunacy.html> [https://perma.cc/Z9D5-K3TU].

29. See *Reducing Americans’ Vulnerability to Ecstasy Act of 2002: Hearing on H.R. 5519 Before the H. Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 107th Cong. 20 (2002) (statement of Graham Boyd, Director, Drug Policy Litigation Project, American Civil Liberties Union), <https://permanent.access.gpo.gov/websites/www.judiciary.house.gov/media/pdfs/82263.pdf> [https://perma.cc/QCP6-X8LR] [hereinafter *RAVE Hearing*].

30. See DEBORAH J. VAGINS & JESSELYN MCCURDY, AM. CIVIL LIBERTIES UNION, *CRACKS IN THE SYSTEM: TWENTY YEARS OF THE UNJUST FEDERAL CRACK COCAINE LAW 2* (1996), https://www.aclu.org/files/assets/cracksinsystem_20061025.pdf [https://perma.cc/M5MN-XJG2].

31. Reynolds, *supra* note 28.

32. VAGINS & MCCURDY, *supra* note 30, at 1.

33. *Id.* at i.

34. *Id.* (“[D]istribution of just 5 grams of crack carries a minimum 5-year federal prison sentence, while for powder cocaine, distribution of 500 grams—100 times the amount of crack cocaine—carries the same sentence.”).

35. *Id.* at 1.

dures of Congress were set aside in order to expedite passage of the bill.”³⁶ After the Act’s hasty passage, an autopsy determined that crack cocaine did not cause Bias’s death; rather, he died from a powdered cocaine overdose after taking an unusually pure dose.³⁷

The Act’s rushed passage may help explain why one provision was enacted despite its dangerously overbroad language. The Anti-Drug Abuse Act of 1986 modified Part D of the Controlled Substances Act by adding section 416, “Establishment of Manufacturing Operations.”³⁸ Section (a)(1) of the crack house statute made it illegal to “knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance.”³⁹ Section (a)(2) of the crack house statute made it illegal to

manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.⁴⁰

The main purpose for enacting the crack house statute was to “[o]utlaw[] operation of houses or buildings, so-called ‘crack houses,’ where ‘crack,’ cocaine and other drugs are manufactured and used.”⁴¹ Individuals who violated the crack house statute could receive up to twenty years in prison, a \$500,000 fine, or both.⁴² Additionally, businesses could be fined up to \$2,000,000.⁴³ The plain language of the Act makes clear that Congress was targeting individuals and businesses who used their property—specifically a “building, room, or enclosure”—to run drug operations.⁴⁴

Critics of the crack house statute argued that its overly broad language could make innocent business owners liable for the drug offenses of others.⁴⁵ Despite the broad language, the crack house statute was legitimately

36. Eric E. Sterling, *The Sentencing Boomerang: Drug Prohibition, Politics and Reform*, 40 VILL. L. REV. 383, 408 (1995).

37. See VAGINS & MCCURDY, *supra* note 30, at 1.

38. Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1841, 100 Stat. 3207, 3207-52 (codified as amended at 21 U.S.C. § 856 (2012)). Section 416 became known as the “crack house statute.” *RAVE Hearing*, *supra* note 29.

39. Anti-Drug Abuse Act of 1986 § 1841.

40. *Id.*

41. See 132 CONG. REC. 26,474 (1986) (statement of Sen. Dole).

42. 21 U.S.C. § 856(b) (1986) (amended 2003).

43. *Id.*

44. See *id.* § 856(a)(2).

45. See *RAVE Hearing*, *supra* note 29, at 18 (statement of Graham Boyd).

used to prosecute people who ran literal crack houses as well as business owners who committed substantive drug offenses or who conspired with drug dealers.⁴⁶ But that all changed in late 1999 when the U.S. Drug Enforcement Agency ("DEA") and federal prosecutors sought to use the crack house statute to prosecute innocent business owners as part of the government's new "anti-rave initiative."⁴⁷

In December 1999, the DEA began investigating alleged drug use at the State Palace Theater, a concert venue in New Orleans, Louisiana.⁴⁸ The investigation was prompted by the death of seventeen-year-old Jillian Kirkland, who died from a drug overdose in 1998 after she spent an evening dancing at an EDM show held at the State Palace.⁴⁹ Beginning in February 2000, two undercover DEA agents attended at least eight raves at the State Palace.⁵⁰ During the investigation, the agents purchased forty-five hits of ecstasy and five other illegal pills.⁵¹ However, the agents did not arrest the drug dealers because they felt that such arrests typically result in minor convictions.⁵² Instead, the DEA wanted to avoid wasting its time on low-level dealers by using the crack house statute to prosecute the event organizers.⁵³

As a result of the undercover investigation, the United States Attorney brought charges under the crack house statute against the two corporate officers that managed the theater and the theater's rave promoter.⁵⁴ The three men were indicted by a grand jury for maintaining the venue "for the purpose of . . . distributing or using a controlled substance."⁵⁵ Eventually, the corporation signed a plea agreement and pled guilty to one felony count of conspiracy to violate the crack house statute.⁵⁶ The corporation was assessed a \$100,000 fine and the business owners agreed to refrain from sell-

46. *Id.* at 21 n.1 (statement of Graham Boyd) (listing cases where the crack house statute was legitimately implemented to prosecute people who were directly involved in the manufacture or distribution of drugs).

47. *See id.* at 21.

48. *McClure v. Ashcroft*, 335 F.3d 404, 406 (5th Cir. 2003).

49. John Cloud, *Ecstasy Crackdown*, CNN (Apr. 2, 2001, 1:16 PM), <http://www.cnn.com/ALLPOLITICS/time/2001/04/09/crackdown.html> [<https://perma.cc/YA37-DKDR>].

50. *Id.*

51. *Id.*

52. *Id.*

53. *RAVE Hearing*, *supra* note 29, at 22.

54. *McClure v. Ashcroft*, 335 F.3d 404, 406–07 (5th Cir. 2003). One of the corporate officers, Robert Brunet, leased the theater from the corporation. *Id.* at 406.

55. Cloud, *supra* note 49.

56. *McClure*, 335 F.3d at 406.

ing items associated with the rave scene, such as glow sticks and infant pacifiers.⁵⁷

Although drug use was clearly an issue at the State Palace Theater raves, the DEA's decision to prosecute the venue's owners under the crack house statute was misguided. The State Palace was hardly a "crack house" and the theater's owners were not running any kind of drug operation. In fact, EDM shows represented a minority of the venue's events. On most nights, mainstream acts like Dave Matthews Band and the Beastie Boys played at the State Palace.⁵⁸ Regardless of the genre of music being played on any given night, the theater had a zero-tolerance drug policy that it actively enforced.⁵⁹ The venue posted the zero-tolerance policy throughout the theater and even offered free concert tickets to anyone who turned in a person with drugs.⁶⁰ Additionally, the theater's staff reported approximately ten drug dealers to the New Orleans Police Department and the DEA.⁶¹ The theater's employees claim that their reports were ignored and that the police never came to arrest the drug dealers.⁶²

Moreover, prior to the DEA investigation, the theater's owners had taken reasonable precautions to help protect event attendees. Every venue owner knows that concert attendees are at risk of injury from overheating, dehydration, dangerous mosh pits, or, for those who imbibe, drug- or alcohol-related effects. As responsible venue owners, the State Palace employed medical personnel, hired an ambulance service, provided an air conditioned room where people could cool off, and sold bottles of water.⁶³ The government's prosecutors pointed to these precautions as evidence of a drug operation even though the theater's owners never sold any drugs.⁶⁴ The fact that the venue sold popular raver accessories such as glow sticks and pacifiers was also presented as evidence of a drug operation.⁶⁵ Even though the government successfully used the crack house statute to punish rave organizers, Congress was about to enact legislation that would make it even easier to prosecute rave organizers and promoters.

57. *Id.* at 406–07.

58. Cloud, *supra* note 49.

59. *RAVE Hearing*, *supra* note 29, at 22.

60. *Id.*

61. Cloud, *supra* note 49.

62. *Id.*

63. *RAVE Hearing*, *supra* note 29, at 22.

64. *Id.*

65. Cloud, *supra* note 49.

B. The RAVE Act

The Reducing Americans’ Vulnerability to Ecstasy Act (“RAVE Act”) was first introduced by then-Senator Joe Biden in June 2002 as an extension to the 1986 crack house statute.⁶⁶ As discussed in the previous section, the original crack house statute was enacted specifically to combat the 1980s crack epidemic by making it a felony to manage a “building, room, or enclosure . . . for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.”⁶⁷ Although the crack house statute had broad language, both the “building, room, or enclosure” language and the legislative history made clear that Congress intended to target property owners—specifically owners of crack houses—who ran an ongoing drug operation from an enclosed space.

The RAVE Act, which has the exact same language as the final 2003 amendment, expanded the applicability of the crack house statute by making it illegal to:

[(a)](1) knowingly open, **lease, rent, use**, or maintain any place, **whether permanently or temporarily**, for the purpose of manufacturing, distributing, or using any controlled substance;

[(a)](2) manage or control **any place** [previously “building, room, or enclosure”], **whether permanently or temporarily**, either as an owner, lessee, agent, employee, **occupant**, or mortgagee, and knowingly and intentionally rent, lease, **profit from**, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.⁶⁸

The RAVE Act expanded the crack house statute in several major ways. First, the addition of “lease, rent, use” in section (a)(1) as well as “occupant” in section (a)(2) clarifies that the law applies to promoters and organizers of events. By exchanging the phrase “building, room, or enclosure” for “any place,” the amendment clarifies that the law applies to both indoor and outdoor locations rather than just an enclosed space. Finally, the addition of “permanently or temporarily” clarifies that the law applies to one-night events as well as ongoing events.⁶⁹ Essentially, the amendment

66. Reynolds, *supra* note 28.

67. See Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1841, 100 Stat. 3207, 3207-52 (codified as amended at 21 U.S.C. § 856 (2012)).

68. 21 U.S.C. § 856 (the bolded words are additions or changes to the 1986 crack house statute).

69. Press Release, Dep’t of Justice, Drug Enf’t Admin., New Drug Law Protects Children: Unscrupulous Event Promoters Targeted (June 20, 2003), 2003 WL 24232303 (“The newly enacted Illicit Drug Anti-Proliferation Act of 2003 amended the statute to make it more feasible to successfully prosecute rogue event promoters. It clarifies that the law applies to promoters as well as owners, to any location rather than just the previously defined ‘enclosures,’ and to one-night events as well as on-going events.”).

could make a music festival promoter or organizer liable for any drug use that takes place on the festival's premises.

Additionally, while the original crack house statute only imposed a criminal penalty, the proposed 2002 amendment added civil penalties for violations.⁷⁰ Because the original crack house statute only imposed criminal violations, the government had to prove that someone violated the statute "beyond a reasonable doubt," which is a difficult burden to meet due to the stakes involved in criminal cases.⁷¹ By adding civil penalties, the RAVE Act lowered the burden of proof to "preponderance of the evidence," which is a substantially easier burden to meet than "beyond a reasonable doubt."⁷² The RAVE Act's civil penalty imposes a fine of either \$250,000 or "2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person."⁷³ Violators were also subject to declaratory and injunctive remedies.⁷⁴

When Joe Biden introduced the bill, he proclaimed that "most raves are havens for illicit drugs."⁷⁵ After the RAVE Act cleared the Senate Judiciary Committee, infuriated electronic music fans and civil liberties groups flooded Congress with thousands of letters and phone calls.⁷⁶ In five days, nearly ten thousand people signed a petition stating that the bill was "a serious threat to civil liberties, freedom of speech and the right to dance."⁷⁷ Their outrage was sparked by the congressional findings section of the bill, which made clear that the RAVE Act was unambiguously targeting raves, electronic dance music, and rave culture in general.⁷⁸

For example, one congressional finding states that "[e]ach year tens of thousands of young people are initiated into the drug culture at 'rave' parties" which typically feature "loud, pounding dance music."⁷⁹ The congressional findings go on to say that ecstasy use is "deeply embedded in the rave culture" and that rave promoters sell things like glow sticks, massage oils, menthol nasal inhalers, and pacifiers to enhance the effects of ecstasy

70. Brown, *supra* note 21.

71. *See id.*

72. *See id.*

73. Reducing Americans' Vulnerability to Ecstasy Act of 2002, S. 2633, 107th Cong. § 4 (2002).

74. *Id.* § 5.

75. David Montgomery, *Ravers Against the Machine*, WASH. POST (July 18, 2002), <https://www.washingtonpost.com/archive/politics/2002/07/18/ravers-against-the-machine/d5f8d828-ce3c-471f-a06a-26055a1a8ada/> [http://perma.cc/EP5Z-T467].

76. *See RAVE Hearing*, *supra* note 29, at 20; Brown, *supra* note 21.

77. Montgomery, *supra* note 75.

78. *See* S. 2633, § 2.

79. *Id.* § 2(1).

and other club drugs.⁸⁰ The most flagrant and damaging congressional finding is one that specifically targets common drug harm reduction measures:

Because rave promoters know that Ecstasy causes the body temperature in a user to rise and as a result causes the user to become very thirsty, many rave promoters facilitate and profit from flagrant drug use at rave parties or events by selling over-priced bottles of water and charging entrance fees to "chill-rooms" where users can cool down.⁸¹

Regardless of whether people are taking drugs or not, drinking water and taking time to cool down is essential for anyone who is dancing in a hot, crowded environment for an extended period of time. If overpriced bottles of water are actually evidence of a major drug operation, then the DEA should be investigating every sports stadium in America. In an article published shortly after the RAVE Act was proposed, a University of Tennessee law professor wrote: "My three-year-old nephew is fond of bottled water and glow sticks, and usually needs a 'chill room.' Presumably Biden regards him as a dangerous criminal."⁸²

Ultimately, two of the bill's original co-sponsors, Richard "Dick" Durbin (D-IL) and Patrick Leahy (D-VT), the Senate Judiciary chairman, withdrew their support because the bill lacked protections for innocent business owners.⁸³ Senator Leahy noted that the RAVE Act could be used to prosecute "business owners who take serious precautions to avoid drug use at their events."⁸⁴ He also expressed concern about the Act's inclusion of civil penalties because they greatly increased a business owner's potential liability. Senator Leahy worried that this increased liability would cause "even conscientious promoters" to avoid holding large events "where some drug use may be inevitable despite their best efforts."⁸⁵ Shortly after Senators Leahy and Durbin withdrew their support, the RAVE Act seemingly died in the fall of 2002 without being brought up for a full Senate vote.⁸⁶

C. *The Illicit Drug Anti-Proliferation Act of 2003*

Joe Biden and the co-sponsors of the RAVE Act were undeterred by the setback in the fall of 2002. In January 2003, the exact same amend-

80. *Id.* § 2(3), (7).

81. *Id.* § 2(6).

82. Reynolds, *supra* note 28.

83. Erin Treacy, *The Rave Act: A Specious Solution to the Serious Problem of Increased Ecstasy Distribution: Is It Unconstitutionally Overbroad?*, 28 HASTINGS COMM. & ENT. L.J. 229, 254 (2006).

84. 149 CONG. REC. S5148 (daily ed. Apr. 10, 2003) (statement of Sen. Leahy).

85. *Id.*

86. Treacy, *supra* note 83.

ments to the crack house statute were added to the Justice Enhancement and Domestic Security Act of 2003, a domestic security bill sponsored by Senator Tom Daschle.⁸⁷ The provisions of the RAVE Act, despite having nothing to do with domestic security, were tacked on to the completely unrelated bill, but without using the word “rave.”⁸⁸ Instead, the RAVE Act’s provisions were found in a section of the Act titled “Crack House Statute Amendments.”⁸⁹ Despite hiding the crack house statute amendments in an unrelated bill, the controversial legislation still failed to become law.⁹⁰

Not long after, Biden found a sneaky way to reintroduce and finally pass the RAVE Act’s provisions before anyone had time to protest. In April 2003, Biden removed the controversial congressional findings section of the RAVE Act and attached the provisions as a rider to the unrelated, and almost unanimously passed, AMBER Alert bill.⁹¹ The AMBER Alert bill was created to “prevent child abduction and . . . sexual exploitation of children”; the bill was especially popular because it was proposed shortly after kidnapping victim Elizabeth Smart was found.⁹²

Eventually, the AMBER Alert bill was added to the PROTECT Act (“Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act”).⁹³ Under a “Miscellaneous Provisions” section of the PROTECT Act, the exact same language as the RAVE Act appears under the title “Illicit Drug Anti-Proliferation Act.”⁹⁴ One co-sponsor of the 2003 bill, Senator Chuck Grassley (R-IA), stated that the crack house statute needed to be updated so that “the laws that have been effectively used to shut down crack houses” can be used to “go after temporary events used as a cover to sell drugs.”⁹⁵

On April 30, 2003, President George W. Bush signed the PROTECT Act into law, consequently enacting the controversial provisions of the RAVE Act.⁹⁶ Although the controversial congressional findings section of the RAVE Act was removed, critics of the Act argued that the legislation was overly broad and a serious threat to First Amendment freedoms. For

87. Brooke A. Levy, Comment, *When Cute Acronyms Happen to Bad Legislation: The Reducing Americans’ Vulnerability to Ecstasy “Rave” Act*, 98 NW. U. L. REV. 1251, 1267–68 (2004).

88. *See id.* at 1268.

89. *Id.*

90. *Id.*

91. Brown, *supra* note 21.

92. Levy, *supra* note 87, at 1268–69.

93. *Id.* at 1269.

94. *Id.*

95. 149 CONG. REC. S1679 (daily ed. Jan. 28, 2003) (statement of Sen. Grassley).

96. Levy, *supra* note 87, at 1269.

example, Graham Boyd, Director of the American Civil Liberties Union, testified to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security that the RAVE Act would

apply to hotel and motel owners, cruise ship operators, stadium owners, landlords, real estate managers, and event promoters. It is so broadly written that anyone who used drugs in their own home or threw an event (such as a party or barbecue) in which one or more of their guests used drugs could potentially face a \$500,000 fine and up to twenty years in federal prison. If the offense occurred in a hotel room or on a cruise ship, the owner of the property could also go to jail.⁹⁷

In reality, the controversial amendments to the crack house statute have rarely been used to punish innocent event promoters and business owners.⁹⁸ In spite of this, music festival organizers and promoters still view the RAVE Act as a potential threat. Tammy Anderson, a professor of sociology and expert on rave culture, explained: "If I were a promoter, I would be afraid of the RAVE Act, but if I were a promoter, I would also be relieved by it. It sort of gives me an excuse in a way not to provide some protections."⁹⁹ Unfortunately, Anderson is correct that some music festival promoters are using the RAVE Act as an excuse to not provide harm reduction services.¹⁰⁰ Now that EDM shows and music festivals have reached mainstream popularity, it is more important than ever that music festival promoters not be disinclined from providing patrons with certain harm reduction services.

II. EDM AND THE RAVE SCENE GO MAINSTREAM

This Part will provide background information that is essential to understanding why the RAVE Act should be amended. First, this Part will discuss how EDM has gone from underground to mainstream and look at the increasing popularity of large music festivals. Second, this Part will discuss the pervasiveness of drugs at music festivals, the connection between EDM and MDMA, and the potential dangers associated with ingesting MDMA.

97. *RAVE Hearing*, *supra* note 29, at 20.

98. See Jason Henry, *Why Drug Safety Advocates Blame Joe Biden's RAVE Act for Music Festival Deaths*, SAN GABRIEL VALLEY TRIB. (Oct. 8, 2015, 1:39 PM), <http://www.sgvtribune.com/arts-and-entertainment/20151008/why-drug-safety-advocates-blame-joe-bidens-rave-act-for-music-festival-deaths> [<http://perma.cc/V53G-ZX3R>].

99. *Id.*

100. See Rotella, *supra* note 21.

A. The Rise of EDM and Music Festivals

In the late 1980s and early 1990s, the rising popularity of European techno music and American house music led to the emergence of private, all-night dance parties known as raves.¹⁰¹ According to the U.S. Department of Justice, raves “feature dance music with a fast, pounding beat and choreographed laser programs.”¹⁰² Initially, raves were so secretive that the invitees were not informed of the rave’s location until the night of the party.¹⁰³ But by 1987, London raves grew so popular that they drew thousands of people to “large, open fields on the outskirts of the city.”¹⁰⁴ By the late 1980s, the first raves in the United States were being held in Los Angeles, New York, and San Francisco.¹⁰⁵ Within a couple more years, raves could be found in most metropolitan areas across the country.¹⁰⁶

In 1993, the original rave scene in the United States reached mainstream focus when over 17,000 people purchased tickets for a New Year’s Day party called “K-Rave ‘93” at Knott’s Berry Farm in California.¹⁰⁷ At the time, it was “the largest event of its sort ever held in the country There were six outdoor stages and dance floors lit with lasers, studded with television monitors and marked with move-to-the-music lights. Beams were shining from the park’s trees.”¹⁰⁸ After K-Rave, there was a lull in the rave and electronic music scene until the late 1990s, when electronic acts like the Prodigy, the Chemical Brothers, and Fatboy Slim gained popularity on MTV and in movie soundtracks.¹⁰⁹ By the early 2000s, electronic music fell out of style again in favor of radio-friendly pop and nu-metal acts.¹¹⁰ While bands like the Strokes and the White Stripes gained popularity in the United States, some American DJs moved to Europe for better work opportunities.¹¹¹ For the next decade, mainstream,

101. NATIONAL DRUG INTELLIGENCE CENTER, DEP’T OF JUSTICE, DOC. ID No. 2001-L0424-004, INFORMATION BULLETIN: RAVES 1 (2001), <https://www.justice.gov/archive/ndic/pubs/656/656p.pdf> [<https://perma.cc/24ZA-EZVH>].

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Dennis Romero, *Raving Fanatics: Well, 17,254 People Can’t Be Wrong. The All-Night Party Scene Has Left the Underground*, L.A. TIMES (Jan. 5, 1993), http://articles.latimes.com/1993-01-05/news/vw-986_1_party-scene [<https://perma.cc/M5L5-R23M>].

108. *Id.*

109. Simon Reynolds, *How Rave Music Conquered America*, GUARDIAN (Aug. 2, 2012, 3:00 PM), <https://www.theguardian.com/music/2012/aug/02/how-rave-music-conquered-america> [<https://perma.cc/UBJ3-U9RL>].

110. *Id.*

111. *Id.*

large-scale raves and similar events were rarely seen in the United States until 2010, when 130,000 people attended Electric Daisy Carnival at the Los Angeles Coliseum.¹¹²

Today, EDM has evolved into a \$6.9 billion industry that garners most of its revenue from large-scale live events.¹¹³ Currently, EDM encompasses a wide variety of sub-genres including house, dubstep, techno, trap, and trance.¹¹⁴ Electronic dance music is no longer limited to underground raves and is now featured prominently at major United States music festivals such as Lollapalooza, Bonnaroo, and Coachella. Insomniac Events—the tour promoter behind Electric Daisy Carnival and several other EDM-focused festivals—generated \$3.17 billion for the U.S. economy from 2010–2014.¹¹⁵ During that same period, Insomniac put on forty-eight events across fourteen cities for over three million attendees.¹¹⁶

EDM-focused festivals are not the only music festivals experiencing a surge in popularity. Today, music festivals are more popular than they have ever been—"32 million people attend at least one U.S. music festival each year."¹¹⁷ In 2014, the top five largest U.S. music festivals generated a combined \$183 million in ticket sales alone.¹¹⁸ While the largest music festivals include EDM acts, they also feature a variety of other genres such as rock, pop, hip-hop, and folk. This recent trend towards music festivals, particularly EDM festivals, is notable because music festivals and drug use typically go hand in hand. Therefore, it is imperative that music festival organizers be able to take proactive measures that will reduce the harm associated with the drug use that will inevitably occur at these events.

112. *Id.*

113. See Natalie Robehmed, *The \$6.9 Billion Bubble? Inside the Uncertain Future of EDM*, FORBES (Oct. 15, 2015, 12:10 PM), <http://www.forbes.com/sites/natalierobehmed/2015/10/15/the-future-of-edm/#7db4c4b0792f> [https://perma.cc/6ZC7-9P9R].

114. Androids, *An Idiot's Guide to EDM Genres*, COMPLEX (Oct. 13, 2017), <http://www.complex.com/music/an-idiots-guide-to-edm-genres/> [https://perma.cc/ZAP4-AQF4].

115. Matthew Meadow, *Insomniac Has Generated More Than \$3 Billion for the US Economy in the Past 5 Years*, YOUR EDM (July 31, 2015), <http://www.youredm.com/2015/07/31/insomniac-has-generated-more-than-3-billion-for-the-us-economy-in-the-past-5-years/> [https://perma.cc/5L97-CB5A].

116. *Id.*

117. Neil Shah, *Music Festivals: Peace, Love and a Business Battle*, WALL ST. J. (July 30, 2015, 6:43 PM), <http://www.wsj.com/articles/music-festivals-peace-love-and-a-business-battle-1438296207> [https://perma.cc/65Q9-Z87X].

118. Hugh McIntyre, *America's Top Five Music Festivals Sold \$183 Million in Tickets in 2014*, FORBES (Mar. 21, 2015, 7:30 AM), <http://www.forbes.com/sites/hughmcintyre/2015/03/21/americas-top-five-music-festivals-sold-183-million-in-tickets-in-2014/#1d52d0661b1a> [http://perma.cc/3Y5X-9UY4].

B. EDM, MDMA, and Adulterated Drugs

Most of the people, I don't think they would go if they didn't have [drugs], to be honest, because I don't think they would enjoy the music as much as everyone else.

—Andrew Guiliani, a twenty-one-year old festival attendee.¹¹⁹

Andrew Guiliani made this comment to a reporter after attending the all-ages Mad Decent Block Party, an annual single-day EDM festival held in several cities across the country.¹²⁰ In suspected drug-related incidents, two young men died and nineteen others were hospitalized after attending the same event as Mr. Giuliani.¹²¹ While alcohol and marijuana use occurs at nearly every musical event, many young adults who attend EDM shows and festivals feel like they need to take other drugs, particularly MDMA, to fully enjoy the music.¹²² Drug-related deaths and injuries do occur at festivals that feature a variety of musical genres; however, deaths and hospitalizations are more common at EDM-focused festivals because of the pervasiveness of MDMA and tainted drugs at these events.

MDMA, or 3,4-methylenedioxymethamphetamine, is a euphoria-producing chemical frequently known as “molly” in its powdered form and ecstasy in its pill form.¹²³ Molly, which is short for “molecule,” is particularly popular because of its reputation as being “pure” MDMA.¹²⁴ The drug acts as both a stimulant and a psychoactive, flooding users’ brains with feel-good neurotransmitters serotonin and dopamine.¹²⁵ Those who consume the drug are left full of energy and with an overall feeling of euphoria and elation.¹²⁶ “It felt like everything was amplified. It felt euphoric—almost like a crazy adrenaline rush for a long time,” said a young professional who took MDMA at Ultra Music Festival in Miami.¹²⁷ After a few

119. Wesley Case et al., *Deaths Draw Attention to Drugs in EDM Scene*, BALTIMORE SUN (Aug. 5, 2014) (alteration in original), http://articles.baltimoresun.com/2014-08-05/news/bal-deaths-draw-attention-to-drugs-in-edm-scene_1_moonrise-festival-edm-scene-mad-decent-block-party [https://perma.cc/Q6KY-VZK4].

120. Chris Mench, *All the 2016 Tour Dates for Diplo's Mad Decent Block Party*, COMPLEX (May 3, 2016), <http://www.complex.com/music/2016/05/2016-tour-dates-diplo-mad-decent-block-party> [http://perma.cc/AVS5-P2NQ].

121. Case, *supra* note 119.

122. *See id.*

123. Marina Csomor, *There's Something (Potentially Dangerous) About Molly*, CNN (Aug. 16, 2012, 1:48PM), <http://www.cnn.com/2012/08/16/health/molly-mdma-drug/> [http://perma.cc/ZL9L-ZVKP].

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

hours of dancing, the trip will come to an end. Because of MDMA's relatively short-term effects, users need to take several doses over an extended period to continue feeling the drug's euphoric effects throughout a full day or weekend of music.¹²⁸

In the music festival scene, molly is often considered a "safe" drug because of its supposed purity.¹²⁹ However, many young users fail to realize the potentially dangerous side effects associated with the drug. Even in its pure form, MDMA can raise a user's heart rate and cause their body temperature to rise.¹³⁰ For someone with an underlying heart condition or high blood pressure, these effects can be particularly dangerous.¹³¹ Complications from MDMA range from mild effects like dehydration and exhaustion to more serious effects like hyperthermia, seizures, cardiac episodes, and comas.¹³² While some may assume that MDMA is only lethal when someone "overdoses," in most MDMA-related deaths where the person took no other drugs, the deceased had taken a dose within the normal recreational range.¹³³

Someone who has taken molly or ecstasy several times may think they are immune from harm because they have never experienced any serious side effects. A veteran user may take all the proper precautions—ingesting "safe" dosages of the drug, drinking the appropriate amount of water, and taking breaks from dancing to let their body cool down. However, without a drug testing kit, even experienced users may not know if their MDMA is cut with other drugs. For example, some drug dealers market their molly as pure MDMA even though it is cut with synthetic stimulants known as "bath salts."¹³⁴ Although bath salts produce the same euphoric effects as MDMA, they are often much more potent.¹³⁵ Therefore, an MDMA-sized dose of molly cut with bath salts or another synthetic stimulant could be lethal. The director of medical toxicology at Hartford Hospital in Connecticut explained: "Just the slightest increase in one of these more potent analogues

128. *See id.*

129. *Id.*

130. *Id.*

131. Emanuel Sferios & Missi Wooldridge, *MDMA-Related Deaths: Stop Calling Them Overdoses*, DANCESAFE, <https://dancesafe.org/mdma-related-deaths-stop-calling-them-overdoses/> [https://perma.cc/D634-TSX8].

132. Csomor, *supra* note 123.

133. Sferios & Wooldridge, *supra* note 131.

134. Max Kutner, *College Kids Are Unknowingly Rolling On Bath Salts*, NEWSWEEK (Mar. 25, 2015, 1:25 PM), <http://www.newsweek.com/2015/04/03/college-kids-are-unknowingly-rolling-bath-salts-316550.html> [http://perma.cc/6YV3-LRDX].

135. *Id.*

can mean the difference between a ‘great high’ and cardiac arrest.”¹³⁶ More often than not, substances that are marketed as molly are anything but pure MDMA. Between 2009–2013, the DEA seized 143 substances purported to be molly—only thirteen percent of these substances contained MDMA, but not necessarily pure MDMA.¹³⁷

The best way to prevent MDMA-related deaths and hospitalizations from occurring at music festivals is to educate patrons about the dangers of MDMA and adulterated drugs, as well as providing safety tips for those who choose to partake. To reduce the dangers associated with adulterated drugs, free onsite drug testing should be provided. Non-profit organizations like DanceSafe and the Bunk Police are willing and able to provide various harm reduction services free of charge to music festivals.¹³⁸ But, until the RAVE Act is amended, music festival organizers will continue to fear that the presence of drug harm reduction services will make them liable under the Act for allowing drug use on the festival premises.¹³⁹

III. PROSECUTION OF EVENT ORGANIZERS UNDER THE RAVE ACT

No major music festival organizer has been prosecuted under the RAVE Act. However, that fact has not relieved event organizers’ fear of prosecution under the Act. Insomniac Events is the American tour promoter behind a dozen EDM-focused music festivals, including the enormously popular Electric Daisy Carnival.¹⁴⁰ Insomniac’s CEO, Pasquale Rotella, does not allow harm reduction services or organizations like DanceSafe at any of Insomniac’s festivals because he fears persecution under the RAVE Act. Mr. Rotella explained that

some people view partnering with DanceSafe as endorsing drug use rather than keeping people safe Part of me is grateful that I got denied from bringing in DanceSafe everywhere I went, because when the DEA started going after innocent event producers under the Crack House Law, having DanceSafe at an event was one of the things they looked at to justify putting them in jail for 20 years.¹⁴¹

136. *Id.* The director, Dr. Mark Neavyn, made this statement in reaction to twelve Wesleyan University students who were hospitalized at Hartford Hospital in February 2015 after they ingested a drug they believed to be pure MDMA.

137. *Id.*

138. *See* Brown, *supra* note 21.

139. *Id.*

140. Jemayel Khawaja, *Billboard’s Dance Exec of the Year Pasquale Rotella on Insomniac’s World Expansion and Why You’re Never Too Old to Rave*, BILLBOARD (June 9, 2016), <https://www.billboard.com/articles/news/magazine-feature/7400346/pasquale-rotella-billboard-dance-executive-of-the-year-on-insomniac-events> [<https://perma.cc/HYN9-W3ZU>].

141. Rotella, *supra* note 21.

Mr. Rotella's fear of prosecution under the RAVE Act is not unreasonable. Not long after the Act's passage in 2003, the DEA persuaded an innocent venue owner to cancel an event that had nothing to do with raves or selling drugs. On May 30, 2003, DEA agents presented the manager of the Fraternal Order of Eagles Lodge in Billings, Montana, with a copy of the Illicit Drug Anti-Proliferation Act of 2003.¹⁴² The DEA agents arrived at the lodge just hours before a concert to benefit the local chapters of the National Organization for the Reform of Marijuana Laws (NORML) and Students for a Sensible Drug Policy.¹⁴³ The benefit concert was organized to raise funds for a campaign to put a medical marijuana initiative on the 2004 ballot.¹⁴⁴

Unsurprisingly, the lodge canceled the event after the DEA agents arrived.¹⁴⁵ Various reports of the incident claim that the DEA agent involved did not threaten the Eagles Lodge manager or tell her to cancel the concert.¹⁴⁶ However, the manager was told that if any drug use occurred on the premises, the lodge would be fined up to \$250,000.¹⁴⁷ Although a DEA spokesman refused to talk specifically about the incident at the Eagles Lodge, he implied that event was an anomaly. According to the DEA spokesman, the law should only be used against an "owner or promoter who is putting on an event in order to facilitate drug trafficking."¹⁴⁸ Senator Joe Biden echoed the DEA's concern regarding the incident at the Eagles Lodge:

If someone uses a rave, or any other event, as a pretext to sell ecstasy to kids, they should go to jail, plain and simple. But that sad reality should not prevent responsible event promoters and venue owners . . . from putting on live music shows and other events, just because some of their patrons will inevitably use drugs.¹⁴⁹

Senator Biden went on to say that "the law only applies to those who 'knowingly and intentionally' hold an event 'for the purpose of' drug manufacturing, sale and use."¹⁵⁰ Moreover, Biden informed the DEA that the

142. Michael V. Sachdev, Note, *The Party's Over: Why the Illicit Drug Anti-Proliferation Act Abridges Economic Liberties*, 37 COLUM. J.L. & SOC. PROBS. 585, 606–07 (2004).

143. *Id.*

144. *Id.*

145. Robyn E. Blumner, *New Law Isn't Just Antidrug, It's Antiparty*, ST. PETERSBURG TIMES (June 22, 2003), http://www.sptimes.com/2003/06/22/news_pf/Columns/New_law_isn_t_just_an.shtml [<https://perma.cc/8YZU-UEF8>].

146. *Id.*

147. *Id.*

148. *Id.*

149. 149 CONG. REC. S10,608 (daily ed. July 31, 2003) (statement of Sen. Biden).

150. *Id.* at S10,606.

RAVE Act should be implemented “narrowly and responsibly.”¹⁵¹ Unfortunately, some government officials continue to broadly construe the RAVE Act’s provisions by targeting event organizers who lack the requisite “intent” to hold an event “for the purpose of” drug use.¹⁵²

For example, James Tebeau was charged under the RAVE Act for maintaining a property “for the purpose of manufacturing, storing, and distributing controlled substances.”¹⁵³ From 2004–2010, Mr. Tebeau organized twenty-four weekend music festivals on his 300-acre property in Missouri.¹⁵⁴ Approximately 3600 to 8000 people attended each festival, where various bands performed, including Mr. Tebeau’s own Grateful Dead cover band.¹⁵⁵ Undercover officers attended ten of the weekend festivals between April 2009 and August 2010, where they made controlled purchases of various illegal drugs.¹⁵⁶ The officers noted that some people congregated in an area known as “Lovers Lane” where they sold marijuana, LSD, and ecstasy.¹⁵⁷

Mr. Tebeau admitted that he was present at each festival and he knew that drug sales occurred. Additionally, he operated a medical facility on the festival’s campground known as “Safestock” where campers who had overdosed were treated. The undercover officers also learned that Mr. Tebeau allegedly instructed festival employees to allow certain drugs at the festival, such as marijuana, LSD, and mushrooms. However, he said that “anyone selling crack cocaine, methamphetamine, heroin, or nitrous oxide gas should be ejected.”¹⁵⁸ Although Mr. Tebeau was aware that drug sales and consumption were occurring at his festivals, there was no evidence that he was personally involved with or profiting directly from the drug sales.¹⁵⁹

To be liable under § 856(a)(2) of the RAVE Act, an owner must make their property available “for the purpose of” selling or using drugs.¹⁶⁰ Clearly Mr. Tebeau’s primary purpose was to hold a popular music festival and to profit from the ticket sales; the fact that illegal drug use and sales

151. *Id.*

152. *See id.*; *United States v. Tebeau*, 713 F.3d 955, 961 (8th Cir. 2013) (finding that an indictment under the RAVE Act did not require proof that an owner of land used for music festivals “had the illegal purpose to use, manufacture, sell, or distribute controlled substances” because “it [was] sufficient that [he] intended to make his property available to others who had that purpose”).

153. *Tebeau*, 713 F.3d at 957.

154. *Id.*

155. *Id.* at 957–58.

156. *Id.* at 958.

157. *Id.*

158. *Id.*

159. *See id.*

160. 21 U.S.C. § 856(a)(2) (2012).

occurred at the festivals is just incidental to the festival environment. Like most music festivals, Mr. Tebeau’s events included various forms of entertainment—in addition to bands, there were “dancers, parades, bonfires, drum circles, fire-baton acts and laser light shows.”¹⁶¹ This is further evidence that the music festivals were legitimate events and not just a front for an illegal drug enterprise. In fact, Mr. Tebeau only caught the attention of the DEA because he deposited over four million dollars in cash between 2004 and 2010; however, he lawfully earned this money by selling tickets to the festivals in addition to selling camping spots, food, drinks, and firewood.¹⁶²

After being threatened with nine years imprisonment, Mr. Tebeau admitted in a plea agreement that he made his property available for use to individuals who sold controlled substances.¹⁶³ The district court ordered Mr. Tebeau to pay a \$50,000 fine and to spend thirty months in prison.¹⁶⁴ However, he sought to dismiss the indictment on grounds that § 856(a)(2) “should be read to require the government to show that [Mr. Tebeau] had the specific intent” to sell or use drugs at the music festival.¹⁶⁵

As demonstrated by Senator Biden’s comments regarding the incident at the Eagles Lodge in Montana, the “intent” requirement of § 856(a)(2) is a high legal standard that is only met when a property owner specifically intended for drug use to occur.¹⁶⁶ However, the Eighth Circuit concluded that Mr. Tebeau was properly charged under § 856(a)(2) even though he did not have the “illegal purpose to” sell or use controlled substances at the festivals; it was sufficient that Mr. Tebeau “ma[de] his property available to others who had that purpose.”¹⁶⁷ The outcome of Mr. Tebeau’s case seemingly goes against Senator Biden’s contention that the RAVE Act should not be used to punish responsible event organizers “just because some of their patrons will inevitably use drugs.”¹⁶⁸

While Mr. Tebeau’s acquiescence to the drug use at his festivals is troubling, he is far from the only music festival organizer to turn a blind

161. Keegan Hamilton, *He’s Gone: As Schwagstock Founder Jimmy Tebeau Enters Federal Prison, Should Other Music-Festival Organizers Worry About On-Site Drug Use?*, RIVERFRONT TIMES (June 13, 2013), <http://www.riverfronttimes.com/stlouis/hes-gone-as-schwagstock-founder-jimmy-tebeau-enters-federal-prison-should-other-music-festival-organizers-worry-about-on-site-drug-use/Content?oid=2503535> [https://perma.cc/72SX-GFZ3].

162. *Id.*

163. *Id.*

164. *Tebeau*, 713 F.3d at 957.

165. *Id.* at 958–59.

166. 149 CONG. REC. S10,607 (daily ed. July 31, 2003) (statement of Sen. Biden).

167. *Tebeau*, 713 F.3d at 961.

168. *See* 149 CONG. REC. S10,608.

eye to the presence of controlled substances on festival grounds.¹⁶⁹ For example, some major music festivals have a specific area where unlicensed vendors are known to sell a variety of drugs and things like food, clothing, and jewelry. Like “Lovers Lane” at Mr. Tebeau’s festivals, “Shakedown Street” is the area where people head to buy drugs at a Phish show or at Bonnaroo Music and Arts Festival in Manchester, Tennessee.¹⁷⁰ In addition, Bonnaroo and other music festivals permit licensed head shop vendors to sell marijuana paraphernalia like bongos, pipes, and grinders under the guise that the items will be used for tobacco.¹⁷¹

By continually allowing these licensed and unlicensed vendors to sell drugs and drug paraphernalia, music festival organizers are tacitly acknowledging that controlled substances are being sold and consumed on festival premises. Yet these same festival owners kick out organizations like DanceSafe and the Bunk Police because they provide harm reduction services to attendees.¹⁷² From 2011–2014, Bonnaroo allowed the Bunk Police to distribute test kits at the festival.¹⁷³ Then, in 2015, police officers raided their tents and confiscated \$12,500 worth of test kits, in addition to fliers, stickers, and walkie talkies.¹⁷⁴

Also in 2015, Electric Forest’s organizer, Madison House Productions, asked DanceSafe to cease operations despite the organization’s presence at Electric Forest for the previous five years.¹⁷⁵ Adam Auctor, the founder of the Bunk Police, has noticed that festivals “have become incrementally stricter as [they] are becoming more and more corporate.”¹⁷⁶ To avoid liability under the RAVE Act, festivals are distancing themselves from anything drug related, including the potentially life-saving services provided by harm reduction organizations.¹⁷⁷ This zero-tolerance approach to harm reduction services is obviously failing to prevent drug-related deaths and

169. See Hamilton, *supra* note 161 (noting the widespread drug use at festivals such as Bonnaroo and Gathering of the Juggalos).

170. Dick Corvette, *I Survived a Phish Show*, VICE (July 11, 2012, 11:19 AM), <http://www.vice.com/read/i-survived-a-phish-show> [<http://perma.cc/7QJF-ER53>].

171. Ryan Bassil, *What’s in My Baggie? Well, the MDMA You’ve Been Taking at Festivals This Summer Is Probably Bath Salts*, VICE: NOISEY (Sept. 17, 2014, 4:00 AM), https://noisey.vice.com/en_us/article/whats-in-my-baggie-well-the-mdma-youve-been-taking-at-festivals-this-summer-is-probably-bath-salts-interview-documentary-2014 [<http://perma.cc/6J4L-FTZU>].

172. David Garber, *The Bunk Police Are Risking Prison to Bring Drug Testing Kits to Music Festivals*, VICE: THUMP (July 16, 2015, 1:35 PM), https://thump.vice.com/en_us/article/the-bunk-police-are-risking-prison-to-bring-drug-testing-kits-to-music-festivals [<http://perma.cc/5U99-RHCB>].

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

injuries at music festivals. The RAVE Act needs to be amended so that music festival organizers will no longer fear the presence of potentially lifesaving harm reduction services.

IV. AMENDING THE RAVE ACT

The last Part of this Note will discuss the various policy arguments for amending the RAVE Act. This Part will also suggest how the RAVE Act should be amended.

A. Policy Arguments

There are various policy arguments for why the RAVE Act should be amended. First and foremost, drug use is inevitable at music festivals. Therefore, music festival organizers should be able to enact measures to reduce the harm associated with this inevitable drug use without fear of prosecution under the RAVE Act. Clearly, a zero-tolerance approach toward drugs and harm reduction services has not prevented drug-related deaths and injuries from happening at music festivals. Even if a festival has extremely strict search procedures, drugs are bound to make their way into the festival. At camping festivals like Bonnaroo, it would be unfeasible to thoroughly search every tightly packed car for small quantities of controlled substances. Considering that many drugs are in pill or powder form and can be easily hidden in shoes or undergarments, nothing short of strip and cavity searches will prevent all drugs from entering a music festival.

Moreover, much like abstinence-only education has been proven to be ineffective at preventing teenage pregnancies, an abstinence-only approach to drug use is also highly ineffective.¹⁷⁸ It has been proven that states with a comprehensive sex education program in their public schools have lower teenage pregnancy and birth rates than states that provide abstinence-only education.¹⁷⁹ Similarly, festival attendees will only be able to avoid the risks associated with recreational drug use if they are armed with the proper education and tools.

Second, music festival organizers should not be deterred from providing harm reduction services when there is evidence that festival attendees

178. Molly Beauchemin, *Safe from Harm: Drugs and Festival Culture*, PITCHFORK (Sept. 11, 2014), <https://pitchfork.com/thepitch/477-safe-from-harm-drugs-and-festival-culture/> [http://perma.cc/ULP2-3TVQ].

179. See generally Kathrin F. Stanger-Hall & David W. Hall, *Abstinence-Only Education and Teen Pregnancy Rates: Why We Need Comprehensive Sex Education in the U.S.*, PLOS ONE, Oct. 2011, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3194801/pdf/pone.0024658.pdf> [https://perma.cc/X8L9-3DCL].

want to make safe and informed decisions about their drug use. For example, twenty-two-year-old Beau Brooks asked his friends about appropriate MDMA dosages shortly before he died from MDMA toxicity at Paradiso Music Festival in Washington State.¹⁸⁰ Although Mr. Brooks wanted to make an informed decision, he unfortunately and naively relied on his misinformed friends. Mr. Brooks' mother believes that festival organizers should do more to educate naive attendees like her son who might decide to try MDMA or other drugs.¹⁸¹

Additionally, the director of harm reduction agency DanceSafe says that young people do care about their health and what they consume.¹⁸² When DanceSafe is permitted to administer onsite drug testing at music festivals, most people choose to throw out the substance if the result of the test is not what they expected.¹⁸³ The RAVE Act should not deter festival organizers from providing harm reduction services to their attendees, especially when there is evidence that attendees want to use these types of services.

Finally, until the RAVE Act is amended, the law as it is currently written will continue to discourage music festival organizers from providing harm reduction services. As discussed above, the owner of Insomniac Events, one of the largest EDM tour promoters in the United States, blames the RAVE Act for the lack of harm reduction services at his festivals.¹⁸⁴ Additionally, the director of Mysteryland, a New York-based EDM festival, asserted that the RAVE Act prevents the festival from providing certain harm reduction services, including drug testing kits.¹⁸⁵ Parents of children who died from drug-related deaths at music festivals blame the RAVE Act's provisions for the lack of harm reduction measures at those festivals.¹⁸⁶ Moreover, there are numerous articles about the link between the RAVE Act, a lack of harm reduction services, and the consequential drug-related deaths at music festivals.¹⁸⁷ Until the RAVE Act is amended,

180. Henry, *supra* note 98.

181. *Id.*

182. Kutner, *supra* note 134.

183. *Id.*

184. Rotella, *supra* note 21.

185. Anna Schumacher, *Why Making the Music Festival Drug Scene Safer Is So Hard*, COSMOPOLITAN (Mar. 26, 2016), <http://www.cosmopolitan.com/lifestyle/a54323/drug-safety-music-festivals/> [<https://perma.cc/8UW5-FJZ7>].

186. See Goldsmith, *supra* note 14; Henry, *supra* note 98.

187. E.g., Anna Codrea-Rado, *How Do We Stop Drug Deaths at Festivals?*, VICE: NOISEY (Mar. 17, 2016, 2:07 PM), https://thump.vice.com/en_us/article/harm-reduction-festivals-drugs-west-coast [<http://perma.cc/LAN9-MBD8>]; Derek Staples, *How Misguided Drug Policies Are Failing the EDM Community*, CONSEQUENCE OF SOUND (Jan. 27, 2016, 11:00 AM),

it will serve as both an excuse and a deterrent from providing adequate harm reduction services at music festivals.

B. Suggested Amendments

There are various ways to amend the RAVE Act so that innocent music festival organizers will no longer fear criminal or financial liability for providing certain services. As the law is currently written, music festival organizers have no idea what type of harm reduction services they may provide, if any, without raising suspicion of “[m]aintaining drug-involved premises” under the Act.¹⁸⁸

First, the RAVE Act should be amended to include a definition of the term “for the purpose.” Currently, section (a)(2) of the Act provides that it is unlawful to “manage or control any place . . . for the purpose of unlawfully . . . distributing[] or using a controlled substance.”¹⁸⁹ The definition of “for the purpose” should elaborate that unlawfully manufacturing, selling, or using drugs must be the *primary* purpose for managing or controlling the premises in question. Moreover, to establish criminal or financial liability under the Act, the government must show that a festival organizer held an event as a *pretext* for providing a place to manufacture, distribute, or use drugs. This amendment clarifies Senator Biden’s statements about how the RAVE Act should be construed by enforcement officers.¹⁹⁰

In addition, or in the alternative, the RAVE Act should include a section stating that the presence of harm reduction services at a music festival or other live event will not be evidence of maintaining drug-involved premises. This section should apply to all people affiliated with the production of an event that provides harm reduction services, such as property owners and the event’s promoters, owners, and organizers. This amendment should define “harm reduction services” as “all reasonable measures taken to reduce the harm associated with recreational drug use.” The amendment should also provide a list of harm reduction services, which should include, but not be limited to: onsite drug testing services, drug testing kits, unbiased and fact-based information about the effects of drugs and potential

<http://consequenceofsound.net/2016/01/how-misguided-drug-policies-are-failing-the-edm-community/> [<https://perma.cc/242K-MXFG>]; Gwynne, *supra* note 17.

188. See 21 U.S.C. § 856 (2012).

189. *Id.* § 856(a)(2).

190. See 149 CONG. REC. S10,606–08 (daily ed. July 31, 2003) (statement of Sen. Biden).

harms, safety literature about safe dosages and adulterated drugs, chill rooms, and free and easily accessible water and sports drinks.¹⁹¹

The United States government is likely to view some of these harm reduction services—particularly drug testing—as promoting drug use rather than preventing it. However, the availability of free and easily accessible drug testing is extremely important because of the harm associated with adulterated drugs. Drug testing kits should not be viewed as paraphernalia because they are public health tools that could save lives. If someone has already purchased drugs, he or she is going to take them unless given a good reason otherwise. So why not give that person the opportunity to see if the “pure MDMA” they purchased is tainted with unwanted substances, such as methamphetamine or bath salts? This would give people the opportunity to make informed decisions about what drugs they put in their body.

Onsite drug testing could be beneficial at music festivals for another reason—when someone has their drugs tested, they could be given educational literature about drugs. This could be an unbiased and fact-based brochure with information about the effects of various drugs, safe dosage levels, and tips for safely taking drugs in the music festival environment. Additionally, many people who go to festivals, especially younger attendees, fear they will get in trouble with the law if they seek medical help.¹⁹² Therefore, the brochure could be used to inform attendees that they will not get in trouble for seeking medical help if they are having a drug overdose or a bad trip.

Non-profit organizations like DanceSafe and the Bunk Police are currently willing and able to provide harm reduction services free of charge at music festivals.¹⁹³ But many of the biggest festival organizers do not allow these organizations on the premises because they fear liability under the RAVE Act.¹⁹⁴ Making the above amendments to the RAVE Act would let festival organizers know that harm reduction services are permissible. While harm reduction services at music festivals may not prevent every drug-related death or hospitalization, they certainly could not make the situation any worse.

191. See *Top 10 Safety Tips from DanceSafe*, DANCESAFE, <https://dancesafe.org/top-10-safety-tips-from-dancesafe/> [<https://perma.cc/UCD2-DL6C>].

192. Codrea-Rado, *supra* note 187.

193. Garber, *supra* note 172.

194. *Id.*

CONCLUSION

The RAVE Act was drafted with the intention of combatting ecstasy and other drug use, but the frequent MDMA-related deaths and injuries at music festivals demonstrate that ecstasy use is still a major problem. The implementation of harm reduction services at music festivals and other live events could possibly prevent some of these drug-related deaths and injuries. However, the RAVE Act's overly broad language prevents music festival organizers from knowing whether certain harm reduction services will make them criminally or financially liable under the Act.

The only solution is to amend the RAVE Act. One amendment to the Act should make clear that event organizers will only be liable if the primary purpose of their event is to manufacture, distribute, or use drugs. A second amendment to the RAVE Act should specify that the presence of harm reduction services will not be used as evidence of maintaining drug-involved premises. This amendment should explicitly lay out the types of harm reduction measures that festivals may implement, including onsite drug testing. Until the RAVE Act is amended, these potentially life-saving measures will not be widely available at music festivals. To make music festivals safer and potentially prevent more unnecessary deaths, the RAVE Act must be amended.