

Approaches to Decriminalizing Drug Use & Possession



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More than 1.5 million drug arrests are made every year in the U.S. – the overwhelming majority for possession only.¹ Since the 1970s, the drug war has led to unprecedented levels of incarceration and the marginalization of tens of millions of Americans – disproportionately poor people and people of color – while utterly failing to reduce problematic drug use and drug-related harms. The severe consequences of a drug arrest are long-lasting – sometimes life-long. Drug courts, moreover, have not improved matters.²

One means to reduce the number of people swept into the criminal justice system (or deported) for drug law violations is to decriminalize drug use and possession.

Decriminalization is the removal of criminal penalties for drug law violations (usually possession for personal use).³ Roughly two dozen countries, and dozens of U.S. cities and states, have taken steps toward decriminalization.⁴ By decriminalizing possession and investing in treatment and harm reduction services, we can reduce the harms of drug misuse while improving public safety and health.

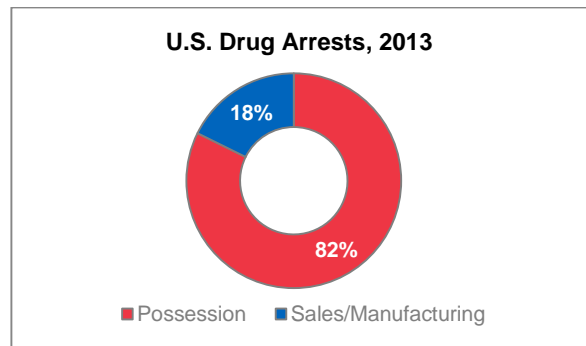
In the U.S. today, roughly 50,000 people are incarcerated in state prison for nothing more than possession of small quantities of drugs. ⁵ Tens of thousands more are in jail, on probation, or sent to prison for a technical violation of probation or parole involving drug use or possession.

Benefits of Decriminalization

Decriminalizing drug possession and investing in treatment and harm reduction services can provide major benefits for public safety and health, including:

- Reducing the number of people arrested;
- Reducing the number of people incarcerated;
- Increasing uptake into drug treatment;
- Reducing criminal justice costs and redirecting

- resources from criminal justice to health systems;
- Redirecting law enforcement resources to prevent serious and violent crime;
- Diminishing unjust racial disparities in drug law enforcement and sentencing, incarceration and related health characteristics and outcomes;
- Minimizing the social exclusion of people who use drugs, and creating a climate in which they are less fearful of seeking and accessing treatment, utilizing harm reduction services and receiving HIV/AIDS services;
- Improving relations between law enforcement and the community; and
- Protecting people from the wide-ranging and debilitating consequences of a criminal conviction.



Source: Federal Bureau of Investigation, 2014.⁶

Decriminalization Does Not Affect Drug Use Rates

Countries that have adopted less punitive policies toward drug possession have *not* experienced any significant increases in drug use, drug-related harm or crime relative to more punitive countries.⁷ A World Health Organization study, for example, found that the U.S. had the highest lifetime drug use rates by a wide margin, despite its punitive policies – concluding that decriminalization has little or no effect on rates of use.⁸

In practice, decriminalization means that otherwise law-abiding people are no longer arrested, let alone incarcerated, merely for possessing a drug.

The Portuguese Decriminalization Model

In 2001, Portuguese legislators enacted a comprehensive form of decriminalization of low-level possession and consumption of *all illicit drugs* and reclassified these activities as administrative violations. Alongside decriminalization, Portugal significantly expanded its treatment and harm reduction services, including access to sterile syringes, methadone maintenance therapy and other medication-assisted treatments.

After nearly a decade and a half, Portugal has experienced no major increases in drug use. Yet it has seen reduced rates of problematic and adolescent drug use, fewer people arrested and incarcerated for drugs, reduced incidence of HIV/AIDS, reduced drug-induced deaths, and a significant increase in the number of people receiving treatment.⁹ According to the United Nations, “Portugal’s policy has reportedly not led to an increase in drug tourism. It also appears that a number of drug-related problems have decreased.”¹⁰ Independent research concludes that “there is ample evidence of a successful reform.”¹¹

“[C]ombining the removal of criminal penalties with the use of alternative therapeutic responses to dependent drug users... can reduce the burden of drug law enforcement on the criminal justice system, while also reducing problematic drug use... [and] may offer a model for other nations that wish to provide less punitive, more integrated and effective responses to drug use.”¹²

— Hughes and Stevens, *British Journal of Criminology*, 2010.

Other Countries’ Experiences

In recent years, many other countries have taken steps toward decriminalization. The effectiveness of these approaches varies considerably depending on many factors – such as the quantities used to define “personal possession,” and the degree to which the policy is part of a larger health-centered agenda.

Mexico: Mexico’s 2009 decriminalization law is mostly symbolic. The threshold limits defining “possession” versus “trafficking” were set very low and penalties for “trafficking” were increased. Thus, there is evidence that Mexico’s law has actually increased the number of people arrested and sanctioned for drug law violations,

a phenomenon known as “net-widening.” Mexico also has not made the same investments in treatment and harm reduction as Portugal.¹³

Czech Republic: The Czech Republic, by contrast, has long integrated many elements of harm reduction and treatment into its drug policy, including low-threshold opioid substitution treatment and syringe access programs that are some of the most expansive in Europe. After its post-Soviet transition, personal drug possession was not criminalized, but in the late 1990s, the government imposed criminal penalties on possession of a “quantity greater than small” (though this quantity was never defined). The Czech government conducted an in-depth evaluation and found that criminal penalties had no effect on drug use or related harms and were therefore unjustifiable.¹⁴ In 2009, the country formally adopted a decriminalization law that defines personal use quantities, establishing some of the most pragmatic threshold limits of any country to have yet decriminalized. What data are available indicate that the Czech model seems to be producing net societal benefits.¹⁵

Netherlands: The Netherlands has a long-standing policy to instruct prosecutors not to prosecute possession of roughly a single dose of any drug for personal use. Neither civil nor criminal penalties apply to possession of amounts equal to or lesser than this threshold. The Netherlands has lower rates of addiction than the U.S. and much of Western Europe. The Dutch also have much lower heroin overdose rates and prevalence of injection drug use compared to the U.S. The number of young people who use drugs problematically has also decreased.¹⁶

Colombia: A series of court decisions in Colombia essentially decriminalized small amounts of marijuana and cocaine for personal use. In 2012, the Colombian Constitutional Court reconfirmed its decriminalization ruling – followed by the passage of a new law that makes drug addiction a matter of public health and obliges the state to guarantee comprehensive treatment for those who seek it voluntarily.

Argentina: In 2009, Argentina’s Supreme Court ruled that criminalizing possession of drugs for personal use is an unconstitutional violation of the right to privacy and personal autonomy. As a consequence, substantial reforms have been introduced in Congress to formalize the Court’s ruling.

“What would drug reform look like? Most serious commentators call for decriminalization – that is, downgrading of the status of personal drug use – so that using drugs is not a crime or is a lesser one....This is not the same as legalizing drugs.”

– *British Medical Journal*, 2012.¹⁷

Efforts to Reduce Drug Penalties in the U.S.

State Efforts to Reduce Penalties. Eighteen states and Washington, DC have reduced or eliminated criminal penalties for personal marijuana possession. Fourteen states, as well as Washington, DC and the federal government, already treat personal possession of other drugs as a misdemeanor – not a felony.¹⁸

California became the most recent state with the adoption of Proposition 47, “The Safe Neighborhoods and Schools Act,” in November, 2014. Prop. 47 changed six low-level crimes, including drug possession, from felonies (or wobblers) to misdemeanors. The independent Legislative Analyst’s Office projected the state could save up to \$250 million annually, and counties will also save hundreds of millions of dollars each year. Savings will be invested in treatment and mental health services, K-12 schools, and victim services. Prop. 47 is already significantly easing jail overcrowding in California counties.¹⁹

In the nation’s capital, a 2013 Public Policy Polling survey found that more than half (54 percent) support decriminalizing possession of small amounts of drugs other than marijuana.²⁰ Legislation introduced in Vermont would make it the first state to commission a study of the likely impact of decriminalization.²¹ A 2014 Pew poll found that roughly two-thirds of respondents believe that people should no longer be prosecuted for possession of drugs like cocaine or heroin.²²

In addition, 21 states and the District of Columbia have adopted 911 Good Samaritan immunity laws, which essentially decriminalize simple possession and other minor drug offenses at the scene of an overdose.

U.S. jurisdictions with reduced penalties do not have higher rates of drug use. In fact, many states that treat possession as a misdemeanor have slightly lower rates of illicit drug use and higher rates of admission to drug treatment than states that consider it a felony.²³

Seattle’s LEAD Program. Seattle recently instituted a pilot program known as “Law Enforcement Assisted Diversion,” or LEAD, that aims to bypass the criminal

justice system entirely. Instead of arresting and booking people for certain drug law violations, including drug possession and low-level sales, police in two Seattle neighborhoods immediately direct them to drug treatment or other supportive services.²⁴ LEAD is a promising step in the direction of decriminalization – though to be most successful, programs like LEAD must empower health professionals, rather than law enforcement, to assess and deliver services.

Supporters of Decriminalization

World Health Organization:

“Countries should work toward developing policies and laws that decriminalize injection and other use of drugs and, thereby, reduce incarceration. Countries should work toward developing policies and laws that decriminalize the use of clean needles and syringes.... Countries should ban compulsory treatment for people who use and/or inject drugs.”²⁵

American Public Health Association:

“[E]liminate federal and state criminal penalties and collateral sanctions for personal drug use and possession offenses and avoid unduly harsh administrative penalties, such as civil asset forfeiture.”²⁶

Organization of American States:

“Decriminalization of drug use needs to be considered as a core element in any public health strategy.”²⁷

Human Rights Watch:

“Drug control policies that impose criminal penalties for personal drug use undermine basic human rights... Subjecting people to criminal sanctions for the personal use of drugs, or for possession of drugs for personal use, infringes on their autonomy and right to privacy... The criminalization of drug use has undermined the right to health... [G]overnments should rely instead on non-penal regulatory and public health policies.”²⁸

NAACP:

“The U.S. government [should] pilot the Portugal Decriminalization program in three U.S. cities and apply the lessons learned... throughout the United States.”²⁹

National Latino Congreso:

“[T]he 2010 National Latino Congreso...urge[s] state and federal governments to follow the successful example of countries like Portugal that have decriminalized personal adult possession and use of all drugs, which has improved the health of drug users, reduced incarceration

and death, and saved taxpayer money with no negative consequences to society."³⁰

International Federation of Red Cross and Red Crescent Societies:

"Injecting drug use is a health issue. It is an issue of human rights. It cannot be condoned, but neither should it be criminalized."³¹

Global Commission on Drug Policy:

"Stop criminalizing people for drug use and possession – and stop imposing "compulsory treatment" on people whose only offense is drug use or possession."³²

Recommendations

The Drug Policy Alliance supports eliminating federal and state criminal penalties and collateral sanctions for drug use and possession violations.

Arresting people simply for using a drug is ineffective, unjust, costly and harmful.

Administrative penalties that unduly interfere with a person's life – such as civil asset forfeiture, administrative detention, driver's license suspension, or excessive fines – should be avoided.

Countries or states that pursue decriminalization using threshold limits should set maximum-quantity thresholds that reflect the realities of drug consumption in their jurisdictions. If threshold limits are set too low, the policy may have no impact, or may increase the number or length of incarcerations.

Decriminalization policies should be accompanied by an expansion of harm reduction and treatment programs, including medication-assisted treatment.

Ending the overreliance on the criminal justice system in drug control is a public health priority

In the absence of decriminalization, states should at minimum reclassify possession of illicit drugs as a misdemeanor or an infraction to lessen the severe consequences that accompany a felony conviction.

Local and state governments can take a step towards decriminalization by employing pre-arrest diversionary practices and adopting 911 Good Samaritan laws.

The U.S. and the international community must open a debate about regulatory alternatives to drug prohibition in order to address the harms of illicit drug markets and other problems not alleviated by decriminalization.

¹ Federal Bureau of Investigation, "Crime in the United States, 2013," (Washington, DC: U.S. Department of Justice, 2014).

² Eric L. Sevigny, Harold A. Pollack, and Peter Reuter, "Can Drug Courts Help to Reduce Prison and Jail Populations?," *The Annals of the American Academy of Political and Social Science* 647, no. 1 (2013); Drug Policy Alliance, *Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use* (Drug Policy Alliance, 2011).

³ See Caitlin Elizabeth Hughes and Alex Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?," *British Journal of Criminology* 50, no. 6 (2010): 999.

⁴ Ari Rosmarin and Niamh Eastwood, "A Quiet Revolution: Drug Decriminalisation Policies in Practice across the Globe," (London: Release, 2012).

⁵ E. Ann Carson, "Prisoners in 2013," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2014), Tables 13 & 14.

⁶ Federal Bureau of Investigation, "Crime in the United States, 2013."

⁷ See Hughes and Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?"; Robert J. MacCoun and Peter Reuter, *Drug War Heresies: Learning from Other Vices, Times, and Places* (Cambridge University Press, 2001); Robin Room et al., *Cannabis Policy: Moving Beyond Stalemate* (Oxford University Press, USA, 2010); Eric W. Single, "The Impact of Marijuana Decriminalization: An Update," *Journal of public health policy* (1989); Mike Vuolo, "National-Level Drug Policy and Young People's Illicit Drug Use: A Multilevel Analysis of the European Union," *Drug and Alcohol Dependence* 131, no. 1-2 (2013); Organization of American States, "The Drug Problem in the Americas: Analytical Report," (2013), 6; National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: The National Academies Press, 2014), 154.

⁸ Louisa Degenhardt et al., "Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys," *PLoS medicine* 5, no. 7 (2008).

⁹ See, for example, Hughes and Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?"; Serviço de Intervenção nos Comportamentos e nas Dependências (SICAD), "Relatório Anual 2013 – a Situação Do País Em Matéria De Drogas E Toxicodependências," (2014).

¹⁰ United Nations Office on Drugs and Crime (UNODC), "World Drug Report 2009," (Vienna: United Nations Office on Drugs and Crime, 2009).

¹¹ Caitlin Elizabeth Hughes and Alex Stevens, "A Resounding Success or a Disastrous Failure: Re-Examining the Interpretation of Evidence on the Portuguese Decriminalization of Illicit Drugs," *Drug and Alcohol Review* 31, no. 1 (2012).

¹² "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?," 1018.

¹³ See Kellen Russoniello, "The Devil (and Drugs) in the Details: Portugal's Focus on Public Health as a Model for Decriminalization of Drugs in Mexico," *Yale Journal of Health Policy, Law, and Ethics* 12, no. 2 (2013); Catalina Perez Correa, "(Des) Proporcionalidad Y Delitos Contra La Salud En México," (CIDE, 2012); Carlos Alberto Zamudio Angles and Asael Santos Santiago, "La Aplicación De La Ley Contra El Narcomenudeo: El Nuevo Reto Para Las Instituciones De Seguridad Y Justicia De La Ciudad De México," *Revista El Tribunal Superior de Justicia del Distrito Federal* 6, no. 15 (2013).

¹⁴ Zabransky T. et al., "Impact Analysis Project of New Drugs Legislation (Summary Final Report)," ed. Secretariat of the National Drug Commission Office of the Czech Government (Prague2001).

¹⁵ Joanne Csete, "A Balancing Act: Policymaking on Illicit Drugs in the Czech Republic," (New York: Open Society Foundations, 2012).

¹⁶ Alex Stevens, *Drugs, Crime and Public Health: the political economy of drug policy*. Abingdon: Routledge, 2010: 122-23.

¹⁷ I. T. Gilmore, "Drug Policy Debate Is Needed," *BMJ* 344(2012).

¹⁸ California, Delaware, Iowa, Maine, Massachusetts, Mississippi, New York, Pennsylvania, South Carolina, Tennessee, Vermont, West Virginia, Wisconsin and Wyoming.

¹⁹ County of Los Angeles Public Safety Realignment Team, "Public Safety Realignment: Year-Three Report," (2015), 24-25. See also Joshua Sabatini, "Thousands of SF Felony Cases under Prop. 47 Reduction Review," *San Francisco Examiner*, January 23 2015.

²⁰ Public Policy Polling, "Washington, D.C., Survey Results," (2013).

²¹ General Assembly of the State of Vermont, *An Act Relating to a Study of a Noncriminal, Public Health Approach to Illicit Drug Use* 2014, H712, <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-712.pdf>.

²² Pew Research Center, "America's New Drug Policy Landscape," *Pew Research Center*, April 2 2014.

²³ Substance Abuse and Mental Health Services Administration, "2012-2013 Nsdh State Estimates of Substance Use and Mental Disorders," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014), Tables 1, 21.

²⁴ LFA Group, "Law Enforcement Assisted Diversion (L.E.A.D.) Program and Evaluation Plan Narrative," (2011); The Defender Association, "Law Enforcement Assisted Diversion (L.E.A.D.): A Pre-Booking Diversion Model for Low-Level Drug Offenses," (2010).

²⁵ World Health Organization, "Policy Brief: H.I.V. Prevention, Diagnosis, Treatment and Care for Key Populations: Consolidated Guidelines July 2014," (Geneva: World Health Organization, 2014), 91.

²⁶ American Public Health Association, "A.P.H.A. Policy Statement 201312: Defining and Implementing a Public Health Response to Drug Use and Misuse," (Washington, DC: American Public Health Association, 2013).

²⁷ Organization of American States, "The Drug Problem in the Americas: Analytical Report."

²⁸ Human Rights Watch, "Americas: Decriminalize Personal Use of Drugs; Reform Policies to Curb Violence, Abuse," (2013).

²⁹ NAACP National Board of Directors, "Exit Strategy to End the War on Drugs," (Houston, Texas: NAACP, 2012).

³⁰ National Latino Congreso, "Resolution 11.03 - Resolution to Explore Alternatives to Drug Prohibition in Order to Reduce Drug-Related Harm and Eliminate Violence Along the United States-Mexico Border," (2010).

³¹ *International Federation of Red Cross and Red Crescent Societies, Statement to the United Nations Commission on Narcotic Drugs, 55th Session*.

³² Global Commission on Drug Policy, "Taking Control: Pathways to Drug Policies That Work," (2014).