

Approaches to Decriminalizing Drug Use & Possession



February 2013

More than 1.5 million people are arrested every year for a drug law violation. Since the 1970s, drug war practices have 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 life-long.

One solution to reducing the number of people swept into the criminal justice system (or deported) for drug law violations is to enact various forms of decriminalization of drug use and possession. Decriminalization is the removal of criminal penalties for drug law violations (usually possession for personal use).ⁱ Roughly two dozen countries, and dozens of U.S. cities and states, have taken steps toward decriminalization.ⁱⁱ 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.

Benefits of Decriminalization

Decriminalizing drug possession can provide several major benefits, including:

- reducing the number of people behind bars;
- helping more people receive drug treatment;
- reducing criminal justice costs;
- redirecting law enforcement resources to prevent serious and violent crime;
- addressing racial disparities in drug law enforcement; and
- protecting people from the devastating consequences of a criminal conviction.

Effects of Decriminalization on 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 drug-related crime relative to more punitive countries.ⁱⁱⁱ

A World Health Organization (WHO) study of lifetime drug use rates among 17 countries found that the U.S. had the highest drug use rates by a wide margin, despite its punitive drug policies. The WHO researchers concluded that decriminalization has little or no effect on rates of consumption.^{iv}

“The US, which has been driving much of the world’s drug research and drug policy agenda, stands out with higher levels of use of alcohol, cocaine, and cannabis, despite [more] punitive illegal drug policies...than many comparable developed countries. Clearly, by itself, a punitive policy towards possession and use accounts for limited variation in nation-level rates of drug use.”

— *“Findings from the WHO World Mental Health Surveys.” PLOS Medicine, 2008.*^v

The Portuguese Decriminalization Model

In 2001, Portugal enacted the most extensive reforms in the world when it comprehensively decriminalized low-level possession and use of illicit drugs, reclassifying these activities as administrative violations.

A person caught with personal-use amounts of any drug in Portugal is no longer arrested, but rather ordered to appear before a local “dissuasion commission” comprised of three officials – one from the legal arena and two from the health arena – who determine whether and to what extent the person is addicted to drugs. Based on these findings, the commission can order someone to attend a treatment program, complete other monitoring activities, pay a fine or submit to other administrative sanctions. Drug

trafficking remains illegal and is still processed through the criminal justice system.

Independent research of the Portuguese policy has shown remarkably promising outcomes.^{vi}

No significant increases in drug use. There have been no significant increases in overall illicit drug use among adults, and any slight increases in lifetime use of some drugs appear to be part of a regional trend. Portugal's drug use rates remain below the European average – and far lower than the U.S.

Reduced problematic and adolescent drug use. More importantly, adolescent drug use, as well as problematic drug use – or use by people deemed to be dependent or addicted, and by people who inject drugs – has decreased overall since 2003.

Fewer people arrested and incarcerated for drugs. The number of people arrested and sent to criminal courts for drug law violations declined by more than half after decriminalization. The percentage of people in Portugal's prison system for drugs also decreased by about half, from 44 percent in 1999 to 21 percent in 2008.^{vii} The overall quantity of illicit drugs seized by Portuguese law enforcement increased as well.

More people receiving drug treatment. Between 1998 and 2008, the number of people in drug treatment increased by more than 60 percent (from 23,654 to 38,532 people).^{viii}

Reduced opiate-related deaths. The proportion of drug-related deaths in which opiates were the primary substance involved declined from 95 percent in 1999 to 59 percent in 2008.

Reduced incidence of HIV/AIDS. The number of new HIV and AIDS diagnoses fell considerably. Between 2000 and 2008, new HIV cases among people who use drugs declined from 907 to 267 and the number of new AIDS cases declined from 506 to 108.

“[C]ontrary to predictions, the Portuguese decriminalization did not lead to major increases in drug use. Indeed, evidence indicates reductions in problematic use, drug-related harms and criminal justice overcrowding.”

— British Journal of Criminology, 2010

These positive outcomes cannot be attributed to decriminalization alone. Alongside its decriminalization law, Portugal significantly expanded its treatment and harm reduction services, including access to sterile syringes as well as methadone maintenance therapy and other medication-assisted treatments.

Overall, evidence after 10 years shows that none of the fears of drug war proponents has come to pass. According to the United Nations Office on Drugs and Crime, “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.”^{ix} Experts agree that, on balance, there “is ample evidence of a successful reform.”^x

Other Countries' Experiences

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

Mexico: Many observers, for instance, consider Mexico's 2009 decriminalization law to be mainly 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,^{xi} a phenomenon known as “net-widening.” Mexico has also not made the same investments in treatment and harm reduction as Portugal.

Czech Republic: The Czech Republic, by contrast, has long integrated some elements of harm reduction into its drug policies and in 2010 adopted a decriminalization law with more realistic threshold limits. While data is not yet available, the Czech model seems more likely to produce net societal benefits.^{xii}

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 most of western Europe and the U.S. From 1979 to 1994, Dutch drug use rates decreased

from approximately 15 percent to less than 3 percent. 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.^{xiii}

Colombia. A series of court decisions in Colombia has essentially decriminalized small amounts of marijuana and cocaine for personal use. In the summer of 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. The law recognizes “that the consumption, abuse, and addiction to psychoactive substances – licit or illicit – are an issue of public health and family, community, and individual well-being”. Importantly, Colombia did not stop at decriminalization but is also expanding its voluntary treatment capacity.

Argentina. In 2009, Argentina’s Supreme Court ruled that legislation 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 drafted and introduced in Congress to formalize the Court’s ruling.

Paraguay: In 1988, Paraguay formally decriminalized possession of less than 2 grams of cocaine or heroin. However, a judge may mandate a person to residential treatment if he or she is assessed to be drug dependent.^{xiv} After more than two decades of decriminalization, Paraguay has the lowest prevalence of heroin use, and nearly the lowest prevalence of cocaine use, in all of South America.^{xv}

These laws – and similar efforts around the world – reflect an increasing awareness that prohibitionist policies are counterproductive, at least with respect to drug possession.^{xvi}

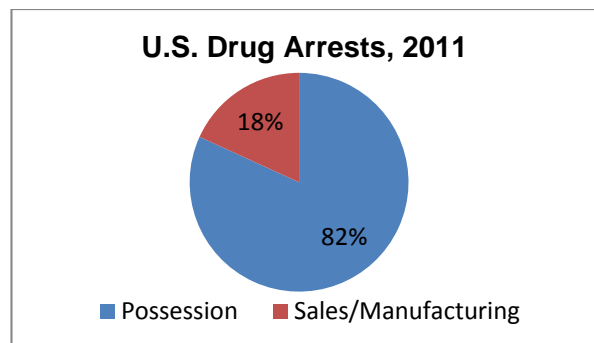
Efforts to Reduce Drug Penalties in the U.S.

State Efforts to Reduce Penalties. Fifteen states have reduced or eliminated criminal penalties for personal marijuana possession. Some states, such as California, have recently considered lessening penalties for possession of other drugs as well – a change that nearly three-quarters of Californians support.^{xvii} Thirteen states, as well as Washington, DC, and the federal government, already treat personal drug possession as a misdemeanor.^{xviii}

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.^{xix}

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 will immediately direct them to drug treatment or other supportive services.^{xx} LEAD is a promising step in the direction of decriminalization – though to be most successful, programs like LEAD must empower health professionals to assess and deliver services to each individual. Ultimately, full decriminalization of possession offers more promise in achieving a health-centered approach to drug misuse.

More than 80 percent of all drug arrests in the United States every year are for possession alone.



Source: Federal Bureau of Investigation, *Uniform Crime Report, Crime in the United States, 2011*

Recommendations

The Drug Policy Alliance supports policies that eliminate criminal penalties for personal drug possession.

In the absence of decriminalization or regulation, states should treat possession of illicit drugs as a misdemeanor or an infraction to lessen the lifelong stigma and substantial consequences that accompany a felony conviction.

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.

Administrative penalties that unduly interfere with a person's life – such as civil asset forfeiture, administrative detention, driver's license suspension, or excessive fines – are likely to run counter to the intent of a decriminalization policy and should be avoided.

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

Local governments unable or unwilling to implement decriminalization can take a step in the right direction by employing pre-arrest diversionary practices to remove drugs from the criminal justice system and treat them as a health issue.

The United States 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.

ⁱ Legalization is defined as “the complete removal of sanctions, making a certain behavior legal and applying no criminal or administrative penalties”. Caitlin Elizabeth Hughes and Alex Stevens, “What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?” *British Journal of Criminology* 50 (2010): 999.

ⁱⁱ Ari Rosmarin and Niamh Eastwood, *A Quiet Revolution: Drug Decriminalisation Policies in Practice across the Globe* (Release, 2012), <http://www.release.org.uk/downloads/publications/release-quiet-revolution-drug-decriminalisation-policies.pdf>.

ⁱⁱⁱ Robin Room et al., *Cannabis Policy: Moving Beyond Stalemate: Report of the Global Cannabis Commission*, (Oxford: Oxford University Press, 2010); Peter Reuter & Rob MacCoun, *Drug War Heresies* (Cambridge: Cambridge University Press, 2001); Eric Single, “The Impact of Marijuana Decriminalization.” *Journal of Public Health Policy* 1989, 456-466; Lloyd Johnson, Jerald Bachman and Patrick O'Malley. “Marijuana Decriminalization: The Impact on Youth 1975-1980.” *Monitoring the Future Occasional Paper #13*. (Ann Arbor, University of Michigan: 1981).

^{iv} 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): 1053-56.

^v Ibid.

^{vi} Hughes and Stevens (2010): 999-1022. (See 1006-8 for drug use figures; 1011 for drug seizure figures; and 1014-16 for public health outcomes).

^{vii} Instituto Português da Droga e da Toxicoddependência, *Relatório Annual 2008: A situação do país em materia de drogas e toxicoddependências*, Vol. I: Informação estatística Lisboa: 2009

^{viii} Ibid.

^{ix} United Nations Office on Drugs and Crime, *World Drug Report, 2009*, http://www.unodc.org/documents/wdr/WDR_2009/WDR2009_eng_web.pdf.

^x Caitlin Elizabeth Hughes and Alex Stevens, “A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs,” *Drug and Alcohol Review* 31 (2012): 101–113.

^{xi} Jorge Hernández Tinajero and Carlos Zamudio Angles, “Mexico: The Law Against Small-Scale Drug Dealing: A Doubtful Venture,” (Transnational Institute, 2009), <http://www.tni.org/sites/www.tni.org/files/download/dlr3.pdf>; and Ana Paula Hernandez, “Drug Legislation and the Prison Situation in Mexico,” in *System Overload: Drug Laws and Prisons in Latin America* (Transnational Institute and Washington Office on Latin America: 2011).

^{xii} Rosmarin and Eastwood 23.

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

^{xiv} Martin Jelsma, *Drug Law Reform Trends in Latin America*, Transnational Institute, 2009: 2 (http://www.akzept.org/pdf/volltexte_pdf/nr23/drogenpo_inter/ntrends_latam0110.pdf).

^{xv} United Nations Office on Drugs and Crime (UNODC), *World Drug Report 2011*. Vienna: UNODC, 2011: 220 (http://www.unodc.org/documents/dataand-analysis/WD_R2011/World_Drug_Report_2011_ebook.pdf).

^{xvi} Transnational Institute, *Drug Law Reform in Latin America*, <http://www.druglawreform.info/>.

^{xvii} Tulchin Research, “New California Statewide Poll Finds Voters Support Reducing Penalties for Personal Drug Possession to a Misdemeanor to Reduce Jail Overcrowding and Save Money,” May 21, 2012, https://www.aclunc.org/issues/criminal_justice/asset_upload_file19_10808.pdf.

^{xviii} Delaware, Iowa, Maine, Massachusetts, Mississippi, New York, Pennsylvania, South Carolina, Tennessee, Vermont, West Virginia, Wisconsin and Wyoming.

^{xix} Substance Abuse and Mental Health Services Administration, “Table B.6 Illicit Drug Use Other Than Marijuana in Past Month, by Age Group and State: Percentages, Annual Averages Based on 2008 and 2009 NSDUHs,” *State Estimates of Substance Use and Mental Disorders from the 2008-2009 National Surveys on Drug Use and Health* (2011), <http://www.samhsa.gov/data/2k9State/AppB.htm>.

^{xx} The Defender Association, “Law Enforcement Assisted Diversion (LEAD): A Pre-Booking Diversion Model for Low-Level Drug Offenses.” (2010); and LFA Group, *LEAD Program & Evaluation Plan Narrative*, 2012, <http://leadwa.squarespace.com/storage/LFA%20Evaluation%20Narrative%20-%20February%202012.pdf>.