

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.

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). Roughly two dozen countries, and dozens of U.S. cities and states, have taken steps toward decriminalization.² 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.

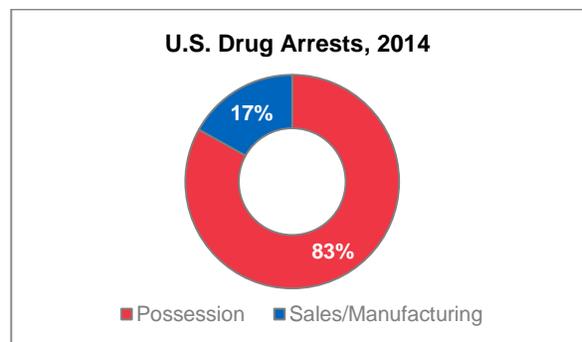
In the U.S. today, roughly 50,000 people are incarcerated in state prison for nothing more than possession of small quantities of drugs.³ Tens of thousands more are in jail, on probation, or sent to prison for a technical violation of probation or parole involving drug use or possession.

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, 2015.⁴

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.⁵

The National Research Council stated in 2015, that there is "little apparent relationship between severity of sanctions prescribed for drug use and prevalence or frequency of use."⁶

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 and methadone maintenance therapy.

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.⁷ 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.”⁸ Independent research concludes that “there is ample evidence of a successful reform.”⁹

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.¹⁰

Czech Republic: The Czech Republic 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.¹¹ 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,¹² without increasing rates of drug use.¹³

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, heroin overdose and injection drug use than the U.S. and much of Western Europe.¹⁴

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.

Efforts to Reduce Drug Penalties in the U.S.

State Efforts to Reduce Penalties. Twenty states and Washington, DC have reduced or eliminated criminal penalties for personal marijuana possession.

Thirty-four states still consider simple possession of small amounts of other drugs like cocaine or heroin a felony, while 16 states, as well as Washington, DC and the federal government, treat personal possession as a misdemeanor.¹⁵ Thirteen of these states never made simple possession a felony, but three states recently reclassified possession from felony to misdemeanor. Connecticut and Utah became the most recent states to reduce penalties for drug possession to a misdemeanor in 2015.

California did so one year prior with the adoption of Proposition 47, “The Safe Neighborhoods and Schools Act,” a law overwhelmingly passed by voter initiative in 2014. The new law changed six low-level crimes,

including drug possession, from felonies (or wobblers) to misdemeanors, retroactively and prospectively. Since its passage, more than 13,000 people have been released and resentenced – saving the state an estimate \$156 million in incarceration costs averted, which is being reinvested in drug treatment and mental health services, programs for at-risk students in K-12 schools, and victim services.¹⁶ The law is significantly easing notorious (and unconstitutional) jail overcrowding in California counties.¹⁷

Public sentiment in favor of reducing criminal penalties is growing in other parts of the country, too. In the nation's capital, a 2013 poll found that more than half (54 percent) of respondents supported decriminalizing possession of small amounts of drugs other than marijuana.¹⁸ A 2016 poll of presidential primary voters in New Hampshire found that a substantial majority (66 percent) support decriminalizing drug possession outright.¹⁹ A 2014 national Pew poll found that roughly two-thirds believe that people should no longer be prosecuted for possession of cocaine or heroin.²⁰

In addition, 32 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.

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 Seattle immediately direct them to drug treatment or other supportive services.²¹

An ongoing evaluation by the University of Washington has found that LEAD participants were up to 60 percent less likely to reoffend than non-LEAD participants,²² and that LEAD has resulted in "statistically significant reductions in average yearly criminal justice and legal system utilization and associated costs" among participants.²³

LEAD is a promising step in the direction of decriminalization and a working example of how cities can craft policies that avoid or minimize the use of criminal penalties – and do so in a manner that benefits public safety and health.

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."²⁴

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."²⁵

Organization of American States:

"Decriminalization of drug use needs to be considered as a core element in any public health strategy."²⁶

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."²⁷

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."²⁸

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."²⁹

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."³⁰

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."³¹

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 – such as civil asset forfeiture, administrative detention, driver's license suspension, excessive fines, and parental termination or child welfare interventions – run counter to the intent of a decriminalization policy and should not be imposed.

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.

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.

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