

Why is Marijuana Decriminalization Not Enough?



February 2016

Decriminalization of marijuana possession is a necessary first step toward more comprehensive reforms of the drug prohibition regime. Yet decriminalization alone does not address many of the greatest harms of prohibition – such as high levels of crime, corruption and violence, massive illicit markets, and the harmful health consequences of drugs produced in the absence of regulatory oversight. Twenty states and the District of Columbia have decriminalized marijuana possession, while four – Colorado, Washington, Oregon and Alaska – have begun to legally regulate marijuana for adults over 21. The federal government has given a qualified greenlight to states that wish to legalize and regulate marijuana.

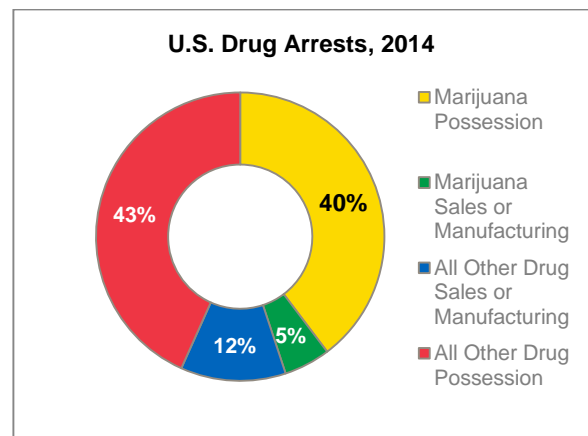
The Costs and Consequences of Prohibition

Marijuana prohibition has been a costly failure. In 2014, there were 700,993 marijuana arrests in the U.S. – roughly 45 percent of all drug arrests. The vast majority (88 percent) of these arrests were for simple possession, not sale or manufacture. There are more arrests for marijuana possession every year than for all violent crimes combined.¹

Yet marijuana is the most widely used illegal drug in the U.S. and the world. More than 117 million people in the U.S. – 44 percent of those surveyed – admit to having tried marijuana at least once in their lives, and more than 22 million to having used it in the past month.²

Marijuana arrests also disproportionately affect young people of color. Drug use and drug selling occur at similar rates across racial and ethnic groups.³ Yet black⁴ and Latino⁵ individuals are arrested for possessing or selling marijuana at vastly disproportionate rates. In fact, black people were nearly four times more likely to be arrested for

possession than white people in 2010.⁶



Source: Federal Bureau of Investigation, Uniform Crime Report, *Crime in the United States, 2014* (2015).

The huge number of arrests drains scarce resources at enormous cost to taxpayers.⁷ More than half of those admitted to treatment for marijuana each year are referred by the criminal justice system.⁸ Many, perhaps most, of these individuals did not need treatment.

Decriminalization

Twenty states and Washington D.C. have enacted various forms of marijuana decriminalization or legalization. Many of these states have replaced criminal sanctions with the imposition of civil, fine-only penalties; others have reduced marijuana possession from a felony to a fine-only misdemeanor.⁹

Evidence from jurisdictions that have reduced penalties shows no increase in marijuana or other drug use.¹⁰ The Institute of Medicine concluded that “there is little evidence that decriminalization of marijuana use necessarily leads to a substantial increase in marijuana use.”¹¹

Where decriminalization has been implemented effectively, it has resulted in substantial reductions in misdemeanor marijuana arrests.¹² In 2011, for example, California reclassified marijuana possession as an infraction (administrative violation) instead of a misdemeanor, leading to “a significant decline in misdemeanor marijuana arrests,” which plunged from 54,849 in 2010 to 7,764 in 2011 – a decrease of more than 85 percent.¹³

Why is Decriminalization Not Enough?

Despite its benefits, decriminalization falls short in many ways – largely because it still lies within the framework of *prohibition*. Consequently, decriminalization still suffers from the inherent harms of prohibition – namely, an illegal, unregulated market; the unequal application of the laws (regardless of severity of penalty) toward certain groups, especially people of color; and unregulated products of unknown potency and quality.¹⁴

Marijuana prohibition is unique among U.S. criminal laws – no other law is both enforced so widely and harshly yet deemed unnecessary by such a substantial portion of the population.

Under decriminalization, marijuana possession arrests may continue, or even increase, because police may be more inclined to make arrests if they present less administrative burdens as infractions, civil offenses, or even misdemeanors (without jail), as opposed to felonies.¹⁵ Such a process – often called “net-widening” – occurred in parts of Australia that decriminalized marijuana,¹⁶ as well as in states like New York and California, which reduced marijuana penalties in the 1970s but ultimately saw certain marijuana arrests increase.¹⁷

A misdemeanor conviction, moreover, can seriously hinder an individual’s ability to succeed and participate in society by preventing him or her from obtaining employment, housing and student loans. Even an arrest record can be an obstacle to opportunities for otherwise law-abiding individuals.¹⁸

Additionally, not all decriminalization schemes protect all people from risk of arrest. Some states have defined simple marijuana possession as only one-half ounce or even less; possession of more than these amounts may still trigger harsh criminal penalties. Some states have only decriminalized a first offense, while subsequent offenses are punished severely.¹⁹

In New York, personal marijuana possession is formally decriminalized, but possession in “public view” remains a crime. This loophole – coupled with pervasive and racially-biased over-policing of certain communities – has resulted in continued mass arrests for marijuana possession, overwhelmingly of black and Latino young men. The NYPD arrested more than 16,500 people for marijuana possession in 2015 – nearly 90 percent of whom were black or Latino.²⁰ While marijuana arrests under New York City Mayor Bill de Blasio have declined significantly compared to previous years, severe racial disparities remain.²¹

Decriminalization will also do nothing to eliminate the lucrative underground market for marijuana, estimated to be worth \$40 billion or more in the U.S.²² This immense market is completely untaxed, a source of revenue that federal and state governments can ill-afford to neglect.

Instead, prohibition ensures that this vast market enriches criminal organizations and contributes to high levels of violence, crime and corruption.²³ The effect has been unending bloodshed in countries like Mexico,²⁴ where at least 100,000 people have been killed in prohibition-related violence since 2007.²⁵ The U.S. government has asserted that “[M]arijuana distribution in the United States remains the single largest source of revenue for Mexican [drug] cartels,²⁶ and is “a cash crop that finances corruption and the carnage of violence year after year.”²⁷ Estimates by RAND Corporation and the Mexican Institute for Competitiveness project that legalizing marijuana nationally in the U.S. could reduce drug trafficking organizations’ drug export revenues by between one-fifth and one-third.²⁸

Taxation and Regulation

Legal regulation is not a step into the unknown – we have more than a century of experience in legally regulating thousands of different drugs. Legal regulation means commonsense controls. Under most regulatory proposals, marijuana would be taxed and regulated in a manner similar to alcoholic beverages, with age limits, licensing requirements, quality controls, and other regulatory restrictions.²⁹ Just as cities, counties and states vary in the way they regulate alcohol, the same could be true for marijuana.

A regulated market will help protect consumer safety by requiring that all marijuana products, including marijuana-infused products (“edibles”) and concentrates, are tested for safety and quality; and labelled with detailed information in child-proof packaging. Such regulations will ensure that consumers are informed of the potency, recommended dosage, and ingredients of all marijuana products and are educated on how to safely consume them – and keep them out-of-reach of children.

Regulating marijuana will also help protect the environment. Illegal marijuana cultivation has a deleterious impact on the environment, from water diversion, pollution, energy usage to clandestine grow operations threatening public parks. Transitioning to a legal, regulated market will mitigate or alleviate many of these environmental impacts of prohibition.³⁰

In November of 2012, residents of Colorado and Washington took the historic step of rejecting the failed policy of marijuana prohibition by deciding to permit the legal regulation of marijuana sales, cultivation and distribution for adults 21 and older. Both states have completely eliminated all penalties for personal marijuana possession by adults; Colorado also allows adults to cultivate six marijuana plants.

Alaska, Oregon and Washington D.C. voted to legalize marijuana in 2014, and legislators and activists in several other states will follow suit in the coming years.

In Congress, a bipartisan group of legislators has introduced historic legislation to end federal marijuana prohibition.³¹ In 2014, a bi-partisan amendment passed by Congress prohibited the Department of Justice from spending any money in 2015 to prevent states "from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."

Internationally, Uruguay recently became the first country in the world to legalize and regulate the marijuana trade. Additional legalization proposals are under consideration in several other countries.

Estimates of potential revenue from taxation of marijuana sales nationally range from \$8.7 billion per year³² to roughly \$15 billion per year³³ – on top of billions in saved law enforcement resources.

Federal Government Gives States a Qualified Green Light to Regulate Marijuana

In August of 2013, the Department of Justice (DOJ) announced that it will allow states to legally regulate the production, distribution, and sale of marijuana. The DOJ issued a directive to U.S. Attorneys, outlining federal priorities for enforcing marijuana laws in states that have legalized. While reserving its right to challenge state laws and enforce federal marijuana laws under certain circumstances, the directive states that the federal government will coordinate with states, rather than seek to interfere, unless states fail to meet certain federal priorities, such as preventing access by minors, diversion of marijuana, increases in violence or drugged driving, or damage to public lands.

In its memo, the DOJ openly acknowledged that responsible state marijuana regulations “may affirmatively address [federal] priorities by, for example... prevent[ing] diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market.”³⁴

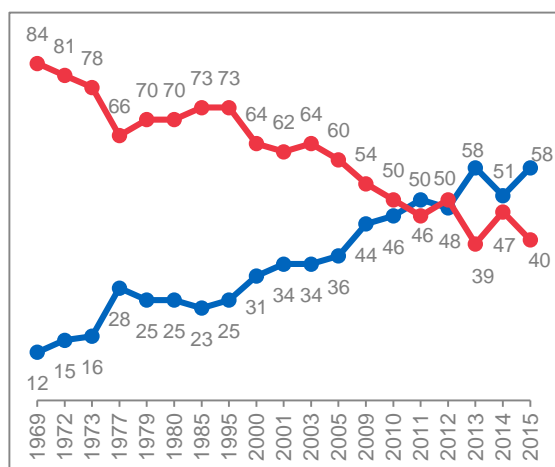
Public Support is Surging for Legalization

Public support for making marijuana legal has shifted dramatically in the last two decades, with most polls showing greater than majority support nationwide.³⁵

Support for Reform Nationwide

Do you think the use of marijuana should be made legal or not?

— % No, illegal
— % Yes, legal



Source: Gallup October 21 2015.³⁶

- ¹ Federal Bureau of Investigation, "Crime in the United States, 2014," (Washington, DC: U.S. Department of Justice, 2015).
- ² Substance Abuse and Mental Health Services Administration, "Results from the 2014 National Survey on Drug Use and Health: Detailed Tables," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015), Table 1.1A & B.
- ³ American Civil Liberties Union, "The War on Marijuana in Black and White," (2013); Ojmarrh Mitchell and Michael S. Cauly, "Race Differences in Drug Offending and Drug Distribution Arrests," *Crime & Delinquency* (2015); Ojmarrh Mitchell and Michael S. Cauly, "Examining Racial Disparities in Drug Arrests," *Justice Quarterly* (2013); Substance Abuse and Mental Health Services Administration, "Results from the 2014 National Survey on Drug Use and Health: Detailed Tables," Table 1.19B.
- ⁴ American Civil Liberties Union, "The War on Marijuana in Black and White; Holly Nguyen and Peter Reuter, "How Risky Is Marijuana Possession? Considering the Role of Age, Race, and Gender," *Crime & Delinquency* 58, no. 6 (2012); Harry G. Levine and Deborah P. Small, *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City 1997-2007* (New York: New York Civil Liberties Union, 2008); A. Golub, B.D. Johnson, and E. Dunlap, "The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City," *Criminology & public policy* 6, no. 1 (2007).
- ⁵ National arrest data by ethnicity are not collected systematically and are therefore incomplete, but state-level data show that Latinos are indeed disproportionately arrested for marijuana possession. See California Department of Justice, "Crime in California 2012," (2013); Harry Levine, Loren Siegel, and Gabriel Sayegh, "One Million Police Hours: Making 440,000 Marijuana Possession Arrests In New York City, 2002-2012," (New York: Drug Policy Alliance, 2013).
- ⁶ American Civil Liberties Union, "The War on Marijuana in Black and White."
- ⁷ *Ibid*; Jeffrey A Miron and Katherine Waldock, *The Budgetary Impact of Ending Drug Prohibition* (Cato Institute, 2010).
- ⁸ Substance Abuse and Mental Health Services Administration Center for Behavioral Health Statistics and Quality, "Treatment Episode Data Set (TEDS) 2002-2012: National Admissions to Substance Abuse Treatment Services," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014), Table 2.6.
- ⁹ Eleven states (California, Connecticut, Delaware, Maine, Maryland, Massachusetts, Mississippi, Nebraska, New York, Rhode Island, and Vermont) consider simple possession of marijuana as an administrative or civil infraction. Five states (Minnesota, Missouri, Nevada, North Carolina, and Ohio) treat marijuana possession as a misdemeanor without jail time. And four states (Oregon, Alaska, Washington and Colorado) plus Washington D.C. have completely eliminated all penalties for personal marijuana possession by adults.
- ¹⁰ 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); Clifford F. Thies and Charles A. Register, "Decriminalization of marijuana and the demand for alcohol, marijuana and cocaine," *The Social Science Journal* 30, no. 4 (1993); Organization of American States, "Scenarios for the Drug Problem in the Americas: 2013-2025," (2013) http://www.oas.org/documents/eng/press/Scenarios_Report.PDF; 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); 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); S. Ammerman et al., "The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update," *Pediatrics* (2015).
- ¹¹ Janet Elizabeth Joy, Stanley J Watson, and John A Benson, *Marijuana and medicine: assessing the science base*.
- ¹² Mike Males and Lizzie Buchen, "Reforming marijuana laws: Which approach best reduces the harms of criminalization? A Five-State Analysis," (San Francisco: Center on Juvenile and Criminal Justice, 2014) http://www.cjcj.org/uploads/cjcj/documents/cjcj_marijuana_reform_comparison.pdf.
- ¹³ Bureau of Criminal Statistics California Department of Justice, "Crime in California 2011," (2012); California Department of Justice, "Crime in California 2012; California Department of Justice, "Crime in California 2013," (2014).
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- ¹⁶ Peter Reuter, "Marijuana Legalization: what can be learned from other countries," (Santa Monica, CA: RAND, 2010), 9.
- ¹⁷ See, e.g., Michael R Aldrich and Tod Mikuriya, "Savings in California marijuana law enforcement costs attributable to the Moscone Act of 1976—A summary," *Journal of Psychoactive Drugs* 20, no. 1 (1988); Levine and Small, *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City 1997-2007*, Single, "The impact of marijuana decriminalization: an update; Eric Single, Paul Christie, and Robert Ali, "The impact of cannabis decriminalisation in Australia and the United States," *Journal of public health policy* (2000).
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- ²⁰ Kassandra Frederique and Alyssa Aguilera, "Annual Arrests for Marijuana in NYC Drop From 15,000 in 2011 to Under 17,000 in 2015," *Huffington Post*, February 4 2016.
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- ²⁴ *Ibid*.
- ²⁵ "México reporta 150 mil ejecuciones producto del narcotráfico," *TeleSUR*, April 14 2013 2013; Instituto Nacional de Estadística y Geografía (INEGI), "Banco de Datos: Defunciones por Homicidio," (INEGI, 2014) <http://www3.inegi.org.mx/sistemas/biinegi/?ind=6300000264>; Molly Molloy, "Peña Nieto's First Year: Iraq on Our Southern Border," *Small Wars Journal* (2014); Proceso, "Más de 121 mil muertos, el saldo de la narco guerra de Calderón: INEGI," *Proceso*, July 30 2014; Rafael Romo, "Mexican drug lord: Inside his abandoned mansion," *CNN.com*, February 6 2014.
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