

# 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.<sup>1</sup> 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 life-long. Drug courts, moreover, have not improved matters.<sup>2</sup>

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).<sup>3</sup> Roughly two dozen countries, and dozens of U.S. cities and states, have taken steps toward decriminalization.<sup>4</sup> 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.

**More than 55,000 people were incarcerated in U.S. state prisons at year-end 2011 for nothing more than possession of small quantities of drugs.<sup>5</sup>**

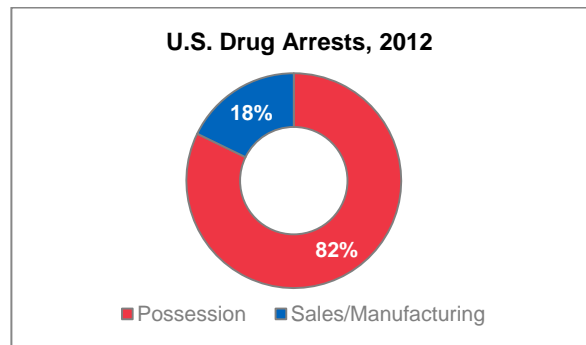
## Benefits of Decriminalization

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

- Reducing the number of people arrested and 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;

- Addressing racial disparities in drug law enforcement and sentencing, incarceration and related health outcomes;
- Minimizing stigma and creating a climate in which people who use drugs are less fearful of seeking and accessing treatment, utilizing harm reduction services and receiving HIV/AIDS services; and
- Protecting people from the wide-ranging and debilitating consequences of a criminal conviction.



Source: Federal Bureau of Investigation, 2013.<sup>6</sup>

## 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 drug-related crime relative to more punitive countries.<sup>7</sup> A World Health Organization study 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.<sup>8</sup>

## 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 more than a decade, Portugal has experienced no major increases in drug use. More importantly, it has seen reduced rates of problematic and adolescent drug use, fewer people arrested and incarcerated for drugs, reduced incidence of HIV/AIDS, reduced opiate-related deaths, and a significant increase in the number of people receiving drug treatment. 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.”<sup>9</sup> Independent research concludes that “there is ample evidence of a successful reform.”<sup>10</sup>

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**“The Portuguese evidence suggests that combining 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.”<sup>11</sup>**

— *British Journal of Criminology*, 2010.

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### Other Countries’ Experiences

In recent years, many other countries have taken steps toward 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:* 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 has also not made the same investments in treatment and harm reduction as Portugal.<sup>12</sup>

*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.<sup>13</sup> 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.<sup>14</sup>

*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.<sup>15</sup>

*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.

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**“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. The aim is to prioritize health considerations over criminal ones in personal users, but with the secondary goals of reducing criminal behavior and improving the health of the population. This is not the same as legalizing drugs.”**

– *British Medical Journal*, 2012.<sup>16</sup>

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These laws – and similar efforts around the world – reflect an increasing awareness that prohibitionist policies are counterproductive, at least with respect to drug possession.<sup>17</sup>

### **Efforts to Reduce Drug Penalties in the U.S.**

*State Efforts to Reduce Penalties.* Seventeen 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.<sup>18</sup> Thirteen states, as well as Washington, DC, and the federal government, already treat personal drug possession as a misdemeanor – not a felony.<sup>19</sup>

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.<sup>20</sup>

*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.<sup>21</sup> 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. Ultimately, full decriminalization of possession offers more promise in achieving a health-centered approach to drug misuse.

## **Supporters of Decriminalization**

### *Organization of American States:*

“The decriminalization of drug use needs to be considered as a core element in any public health strategy.”<sup>22</sup>

### *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.”<sup>23</sup>

### *Global Commission on Drug Policy:*

“End the criminalization, marginalization and stigmatization of people who use drugs but who do no harm to others.”<sup>24</sup>

### *International Federation of Red Cross and Red Crescent Societies:*

“Treating drug addicts as criminals is destined to fuel the rise of HIV and other infections not only among those unfortunate enough to have a serious drug addiction, but also for children born into addicted families and ordinary members of the public ... Injecting drug use is a health issue. It is an issue of human rights. It cannot be condoned, but neither should it be criminalized.”<sup>25</sup>

### *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.”<sup>26</sup>

### *United Nations Development Programme’s Global Commission on HIV and the Law:*

“Countries must... [d]ecriminalize the possession of drugs for personal use, in recognition that the net impact of such sanctions is often harmful to society.”<sup>27</sup>

## Recommendations

The Drug Policy Alliance supports eliminating criminal penalties for personal drug possession and use.

In the absence of decriminalization, 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 – 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.

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

Americas: Analytical Report," (2013); Organization of American States, "Scenarios for the Drug Problem in the Americas: 2013-2025," (2013).

<sup>8</sup> 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).

<sup>9</sup> United Nations Office on Drugs and Crime (UNODC), "World Drug Report 2009," (Vienna: United Nations Office on Drugs and Crime, 2009).

<sup>10</sup> 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, no. 1 (2012).

<sup>11</sup> Caitlin Elizabeth Hughes and Alex Stevens, "What Can We Learn From The Portuguese Decriminalization of Illicit Drugs?," 1018.

<sup>12</sup> 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 narcotráfico: 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).

<sup>13</sup> 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); Robin Room and Peter Reuter, "How well do international drug conventions protect public health?," *The Lancet* 379, no. 9810 (2012).

<sup>14</sup> Ari Rosmarin and Niamh Eastwood, "A quiet revolution: drug decriminalisation policies in practice across the globe," 23; Joanne Csete, "A balancing act: Policymaking on illicit drugs in the Czech Republic," (New York: Open Society Foundations, 2012).

<sup>15</sup> Alex Stevens, *Drugs, Crime and Public Health: the political economy of drug policy*. Abingdon: Routledge, 2010: 122-23.

<sup>16</sup> I. T. Gilmore, "Drug policy debate is needed," *BMJ* 344(2012).

<sup>17</sup> Transnational Institute, *Drug Law Reform in Latin America*,

<http://www.druglawreform.info/>.

<sup>18</sup> 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.

<sup>19</sup> Delaware, Iowa, Maine, Massachusetts, Mississippi, New York, Pennsylvania, South Carolina, Tennessee, Vermont, West Virginia, Wisconsin and Wyoming.

<sup>20</sup> Substance Abuse and Mental Health Services Administration, "2011-2012 NSDUH State Estimates of Substance Use and Mental Disorders," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013), Tables 1 and 21.

<sup>21</sup> 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).

<sup>22</sup> Organization of American States, "The Drug Problem in the Americas: Analytical Report."

<sup>23</sup> Human Rights Watch, "Americas: Decriminalize Personal Use of Drugs; Reform Policies to Curb Violence, Abuse," (2013).

<sup>24</sup> Global Commission on Drug Policy, "Report of the Global Commission on Drug Policy," (2011).

<sup>25</sup> *International Federation of Red Cross and Red Crescent Societies, Statement to the United Nations Commission on Narcotic Drugs, 55th Session*.

<sup>26</sup> 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).

<sup>27</sup> Global Commission on HIV and the Law, "H.I.V. and the Law: Risks, Rights & Health," (New York: Secretariat, Global Commission on HIV and the Law, United Nations Development Programme, HIV/AIDS Group, 2012), 35.

<sup>1</sup> Federal Bureau of Investigation, "Crime in the United States, 2012," (Washington, DC: U.S. Department of Justice, 2013).

<sup>2</sup> 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).

<sup>3</sup> Legalization is defined as "the complete removal of sanctions, making a certain behavior legal and applying no criminal or administrative penalties." 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.

<sup>4</sup> Ari Rosmarin and Niamh Eastwood, "A quiet revolution: drug decriminalisation policies in practice across the globe," (London: Release, 2012).

<sup>5</sup> E. Ann Carson and Daniela Golinelli, "Prisoners in 2012: Trends in Admissions and Releases, 1991-2012," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2013).

<sup>6</sup> Federal Bureau of Investigation, "Crime in the United States, 2012."

<sup>7</sup> Caitlin Elizabeth Hughes and Alex 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, *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