



Drug Decriminalization

Breaking our Addiction to Criminal Punishments

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THE UNITED STATES HAS DEVELOPED an unhealthy dependence on criminal punishment. For more than a half century, if there was a difficult societal problem, more often than not, policy makers have labeled it as criminal and “declared war” on it. If that approach did not solve the issue, legislators doubled down by increasing criminal penalties. And if this approach did not work, they shifted punishment to systems outside of the legal system, making it harder for those suffering criminal convictions to ever fully rejoin society. And if this strategy did not work, they increased penalties again. In the process, these policies destroyed communities—often Black and Brown communities—filled our jails and prisons beyond their capacities, and gave nearly unchecked, deadly power to police forces that did not have the trust of the communities that they were sworn to serve.

Nowhere is that destructive pattern more evident than with the War on Drugs. The criminalization of drug possession and use was not preordained or scientifically based; it was a policy choice born out of a particular time and societal situation, based on who was perceived to be consumers of those drugs (A Brief History of the Drug War, 2020). Substances like opium and cocaine were restricted close to the same time that alcohol use and sale were prohibited (Against Drug Prohibition, 2020). In the case of alcohol, what became widely recognized as a disastrous policy decision was eventually reversed, but the penalties associated with many other substances remained, and over the coming decades, steadily intensified.

The effects of the decision to apply criminal penalties to drug possession have been staggering. In 2018 alone, U.S. police agencies made over 1.6 million drug arrests—and more than 85% of these arrests were for possession only (Stellin, 2019). Hundreds of thousands of people in the U.S. are held in custody awaiting trial on a drug offense, and hundreds of thousands more are placed under government supervision based on a drug offense. Conviction for a drug offense imposes barriers to employment, housing, financial aid, legal immigration status, voting, jury service, and even the ability to be a parent. A

criminal conviction for a drug offense isn’t over after “serving time”—it is a perpetual ulcer that eats away at nearly all of the foundational elements of a person’s life.

The racial inequality that is evidenced throughout the criminal legal system is particularly prevalent in the War on Drugs (National Research Council, 2014). Prosecutors are twice as likely to pursue a mandatory minimum sentence for Black people, and Black and Indigenous people are more likely than any other group to be killed by law enforcement. For noncitizens, including legal permanent residents, possession of even a small amount of drugs can trigger automatic detention and deportation. The stigma that comes with drug criminalization becomes particularly toxic when combined with racial stereotypes and implicit bias. Communities of color have been at the front lines of the drug war, and they have been its most frequent casualties.

As with so many other forms of unhealthy dependence, the U.S. invests more and more in the criminal system, only to see diminishing results. After decades of pursuing the criminal approach—imposing ever higher penalties, spending ever more resources, and inflicting ever more human damage—drugs continue to be available, the demand for drugs remains constant, and overdose rates continue to climb (Centers for Disease Control and Prevention, 2020).

Frustrated with the ineffectiveness and destructiveness of this approach, some jurisdictions are turning away from the criminal system as a response to drug use. Cities, counties, and even states are deciding to decriminalize drug use and possession. Drug decriminalization refers to the removal of criminal penalties for possession of any drug for personal use. Decriminalization does not distinguish between drug type, and applies to all substances including psychedelics, cocaine, methamphetamine, and others.

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It can be accomplished in two ways: a) de jure: changing or repealing laws that treat drug use and possession as a crime; or b) de facto: changing practices and policies, such as enacting non-enforcement or non-prosecution policies for drug possession offenses, even if the underlying law remains intact.



Decriminalization is distinct from legalization, which entails the legal regulation of drug-related activities, including cultivation, production, distribution, and sale. It is a policy focused on the consumers of psychoactive substances and it is often paired with an increase in access to treatment or other social services.

The policy of decriminalization is neither new nor radical. Twenty-nine countries, most notably Portugal and the Czech Republic, have successfully decriminalized possession of various drugs and have achieved meaningful improvements in treating problematic drug use and reducing the harms wrought by the criminal system (Csete, 2011; Decriminalisation Across the World, 2020; Domoslawski, 2011). Support for eliminating criminal penalties for drug possession is growing across the U.S. and around the world. Leading medical, public health, and human rights groups have endorsed drug decriminalization, including the United Nations, World Health Organization, International Federation of Red Cross and Red Crescent Societies, American Public Health Association, Human Rights Watch, Movement for Black Lives, National Association for the Advancement of Colored People (NAACP), Latino Justice, National Latino Congreso, Organization of American States, and many others (It's Time for the U.S. to Decriminalize Drug Use and Possession, 2017).

The road to all-drug decriminalization has had many preparatory steps (Bronner, 2020). The Drug Policy Alliance (DPA) has been at the forefront of decades-long efforts—replacing jail and prison sentences with drug treatment; reclassifying drug possession from a felony to a misdemeanor offense; promoting pre-arrest and pre-plea diversion programs; decriminalizing or altogether legalizing marijuana; enacting 911 Good Samaritan laws that allow for limited decriminalization of drug use and possession at the scene of an overdose for those who are witnesses and call for emergency medical assistance; and supporting recent efforts at the local level to treat possession of drugs, including psychedelics, as the “lowest law enforcement priority.” Some district attorneys have adopted a “decline to prosecute” policy for drug possession offenses (Prudente & Jackson, 2020; Swan, 2020). As a result of these steps, millions of people across the country already live in jurisdictions where

drug possession has been de facto decriminalized—and most of them probably do not even realize it.

The latest, and most significant step towards drug decriminalization happened in Oregon on election night. Measure 110 (voteyeson110.org), the Drug Addiction Treatment and Recovery Act, makes Oregon the first state in the nation to decriminalize possession of all drugs for personal use. Instead of facing arrest, jail, and being saddled with a criminal conviction, a person in possession of a small amount of drugs would now be subjected to a fine and incentivized to seek social services. The measure redirects funds to build a health-oriented infrastructure and increase access to social services.

With Oregon's Measure 110, the policy of all-drug decriminalization steps onto the national stage in the U.S. in a way that it never has before. The landslide victory (by a 17-point margin) on election night has demonstrated decriminalization's strength as public policy (General Election, 2020). It has withstood intense scrutiny and debate, gained the support of mainstream groups across the political spectrum (Endorsements, 2020), and sailed to victory. Available empirical evidence from international models strongly suggests that decriminalization does not lead to a significant increase in rates of drug use (Hughes & Stevens, 2010). Moreover, the criminal system is not a necessary or even desired conduit to treatment. Voluntary, community-based treatment has been proven to be as effective, if not more effective, than criminal-based options.

Decriminalization is also a potent tool to ending racial disparities in the criminal system. In the case of Measure 110, a study by the Oregon Criminal Justice Commission estimated that its adoption would decrease racial disparities in drug arrests by 95%, and convictions of Black and Indigenous Oregonians would drop by 94% (IP 44 Racial and Ethnic Impact Statement, 2020). Replicating these results in other jurisdictions would be a critical step in addressing the systemic racism in policing that sparked this summer's historic protests.

Imposing criminal penalties on those who use and possess drugs was a policy decision. We have lived with the consequences of that decision, with people of color bearing the greatest brunt, for more than a century. Over those years, the U.S. has become more and more addicted to the idea that so-



cial problems can be solved by increasing criminal punishment. The road to recover from that flawed policy choice has been long, with many intermediary steps. Dealing with any form of unhealthy dependence takes dedication and sustained effort.

Beginning with small localities, building to large metropolitan areas, and culminating in a statewide initiative before voters, it is clear that decriminalization is a policy whose time has finally arrived.

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