

# Drug Policy Alliance

## Criminal Justice Issues and Prisoners' Rights

<https://drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession>

## Campaign and Advocacy

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By any measure and every metric, the U.S. war on drugs a constellation of laws and policies that seeks to prevent the use of certain drugs, primarily through punishment and coercion has been a catastrophic failure. Indeed, federal and state policies that are designed to be tough on people who use and sell illegal drugs have helped over-fill our jails and prisons, permanently branded millions of otherwise law-abiding civilians as criminals, and exacerbated drug-related death, disease and suffering all while failing at their stated aims.

This report offers a roadmap for how to begin to unwind our failed drug war. It focuses on one practical step that can and should be taken to avoid many of the harms that flow from punitive prohibitionist drug laws and to promote proven, effective health-based interventions.

*Drug decriminalization* is a critical next step toward achieving a rational drug policy that puts science and public health before punishment and incarceration. Decades of evidence has clearly demonstrated that decriminalization is a sensible path forward that would reap vast human and fiscal benefits, while protecting families and communities.

This report is the product of a comprehensive review of the public health and criminology literature, an analysis of drug policies in the U.S. and abroad, and input from experts in the fields of drug policy and criminal justice. By highlighting the benefits of eliminating criminal penalties for drug use and possession, we seek to provide policymakers, community leaders and advocates with evidence-based options for a new approach.

Drug decriminalization is the elimination of criminal penalties for drug use and possession, as well as the elimination of criminal penalties for the possession of equipment used for the purpose of introducing drugs into the human body, such as syringes.

Ideally, drug decriminalization entails the elimination of all punitive, abstinence-based, coercive approaches to drug use; however, for purposes of this report, the term encompasses a spectrum of efforts to eliminate criminal penalties, even if such efforts do not eliminate all forms of coercion entirely. Drug decriminalization also ideally entails the removal of criminal penalties for low-level sales, given that the line between seller and user is often blurred (this subject and the broader issue of people who sell drugs will be addressed in a subsequent DPA report).

The criminalization of drug possession is a major driver of mass incarceration and mass criminalization in the United States. Each year, U.S. law enforcement makes more than 1.5 million drug arrests more arrests than for all violent crimes combined. The overwhelming majority more than 80 percent are for possession only and involve no violent offense.

On any given night, there are at least 133,000 people behind bars in U.S. prisons and jails for drug possession and 63,000 of them are held pre-trial. Hundreds of thousands of people also remain under some form of correctional supervision (probation, parole, or other post-prison supervision) for drug possession. People convicted of drug possession face a host of additional consequences, including the loss of federal financial aid, eviction from public housing, disqualification from a wide range of occupational licenses, loss of the right to vote, and denial of public assistance.

Discriminatory enforcement of drug possession laws has produced profound racial and ethnic disparities at all levels of the criminal justice system. Black people comprise just 13 percent of the U.S. population and use drugs at a similar rate as other racial and ethnic groups but they comprise 29 percent of those arrested for drug law violations and roughly 35 percent of those incarcerated in state prison for drug possession only.

Drug criminalization also fuels mass detentions and deportations. For noncitizens, including legal permanent residents many of whom have been in the U.S. for decades and have jobs and families possession of any amount of any drug (except first-time possession of less than 30 grams of marijuana) can trigger automatic detention and deportation, often without the possibility of return.

Drug courts have spread across the country in an attempt to ameliorate some of the most devastating effects of the nations misguided drug laws. Yet available research does not support their continued expansion. Most drug courts do not reduce imprisonment, do not save money or improve public safety, and fail to help those struggling with drug problems. Most drug courts fail to offer real treatment to people in actual need of it, and they often inflict more (not less) punishment on people suffering drug problems than traditional criminal courts.

Decriminalization is a sound, effective solution to some of the myriad fiscal, public health, social, and public safety issues caused by the criminalization of drug possession.

A policy of drug decriminalization:

Many of the concerns often raised in opposition to drug decriminalization are not supported by evidence. Available data from the U.S.

and around the world strongly suggests that eliminating criminal penalties for possession of some or all drugs would not significantly increase rates of drug use. As with drug use rates, crime rates do not appear to correlate to the severity of criminal penalties. Use of the criminal justice system to get people into treatment is counter-productive for the majority of people who use drugs problematically. And though many people believe that so-called hard drugs like cocaine, heroin, and methamphetamine are more addictive than other substances, the data suggests that most people who use these drugs never become addicted.

There have been many modest, successful efforts to reduce drug penalties in the United States. Some of these efforts include defelonizing drug possession by reducing it to a misdemeanor, decriminalizing or legalizing marijuana possession, establishing pre-arrest diversion programs such as Law Enforcement Assisted Diversion (LEAD), and enacting 911 Good Samaritan laws, which 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. But more ambitious efforts are needed in the U.S.

Public sentiment in favor of reducing criminal penalties for drug possession is growing across the country. Polls of presidential primary voters in Maine, New Hampshire and even South Carolina recently found that substantial majorities in each state support ending arrests for drug use and possession. In 2016, the first-ever state-level decriminalization bill was introduced in Maryland, and a similar version of that bill was re-introduced in 2017. The Hawaii legislature, meanwhile, overwhelmingly approved a bill last year creating a commission to study decriminalization, the first of its kind in the U.S.

Most countries drug laws exist on a spectrum between criminalization and decriminalization. Some have eliminated penalties for possession of all drugs, while some countries (and U.S. states) have eliminated penalties only for marijuana possession. Still other countries and states have taken steps in the right direction by reducing criminal penalties, without eliminating them entirely.

Several countries have experience with decriminalization, most notably Portugal. The Portuguese policy emerged in reaction to an escalation of problematic drug use in particular unsafe injection and its impact on public safety and health. In 2001, Portuguese legislators enacted a comprehensive form of decriminalization eliminating criminal penalties for low-level possession and consumption of all drugs and reclassifying these activities as administrative violations.

Portugal's decriminalization was one aspect of a much larger drug policy shift a deliberate decision to address low-level drug possession through their public health system instead of their criminal justice system. The policy was part of a comprehensive health-oriented approach to addressing problematic drug use that also included a major expansion of treatment and harm reduction services, including access to sterile syringes, methadone maintenance and other health interventions, and the elimination of most barriers to such vital services.

Independent research of the Portuguese policy has shown promising outcomes. Today in Portugal, no one is arrested or incarcerated for drug possession, many more people are receiving treatment, and HIV/AIDS and drug overdose have drastically decreased.

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 war on drugs is a catastrophic failure. We can't end it until we stop arresting and locking people up simply for using or possessing drugs. Join us in the fight to end the criminalization of people who use drugs.

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