

Report:

Dismantling the Federal Drug War: A Comprehensive Drug Decriminalization Framework

The Drug Policy Reform Act

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For most of the past century the United States has adopted increasingly punitive policies toward the possession, use and distribution of drugs; and, particularly in the last 50 years, has built a massive regime to enforce those policies. Congress and states have adopted harsher sentencing, including mandatory minimums and “three strikes” laws, established far-reaching and oppressive asset forfeiture schemes, opened the door to broad exceptions to the Fourth Amendment for drug searches, and fostered incentives for aggressive and militarized policing in the alleged pursuit of drugs.

Prohibition and the drug war have failed.

Punitive policies have achieved no reduction in supplies or prices, but instead have created illicit markets that have fostered violence and unnecessarily risky and harmful conditions for people who use drugs. They have led to militarized tactics that thwart the spirit of the constitution and have led to the deaths of countless Black and Brown people. And the drug war apparatus has cost the federal government *hundreds of billions of dollars* in direct enforcement and incarceration costs, and collateral impacts on the lives of those caught in its path.

The time has come to try a new approach:
drug decriminalization.

While drug decriminalization cannot fully repair our broken and oppressive criminal legal system or the harms of an unregulated drug market, shifting from absolute prohibition to drug decriminalization helps restore individual liberty, protect against some police abuses, better assist those in need, and save tax dollars.

The concept is neither new nor radical. Other nations, including Portugal, have successfully decriminalized personal use quantities of drugs and achieved meaningful

improvements in treating problematic drug use and reducing the harms of policing drugs. Support for eliminating criminal penalties for drug possession is growing across the U.S. and around the world. In addition to the Drug Policy Alliance, leading medical, public health, and human rights groups have endorsed drug decriminalization, including: United Nations, World Health Organization, International Federation of Red Cross and Red Crescent Societies, American Public Health Association, Human Rights Watch, American Civil Liberties Union, Movement for Black Lives, NAACP, Latino Justice, National Latino Congreso, Organization of American States.

In October 2020, the United States will mark the *50th anniversary of Congress’ enactment of the Controlled Substances Act*, which authorized and launched the harsh drug war policies sought by the Nixon Administration. In this moment, Congress must recognize the failed experiment in prohibition and move the country in a new direction.

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While refocusing the federal strategy requires significant and comprehensive changes, the first step must be to pivot from the central premise of the existing federal approach to drugs: the idea that controlling unauthorized drug possession and use is something that should be enforced and punished. Instead, the federal approach should be health focused, evidence-based, and respectful of self-determination.

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The DPA proposal for decriminalization, the **Drug Policy Reform Act**, takes these first steps in dismantling the punitive apparatus built up over the past 50 years. To begin refocusing federal drug policies, the legislation shifts the authority for classifying and regulating controlled substances from the Drug Enforcement Administration (DEA) to the National Institutes of Health (NIH) within the Department of Health and Human Services (HHS).

The legislation eliminates criminal penalties for all possession of personal-use quantities of controlled substances, and shifts federal resources away from futile enforcement strategies to supportive initiatives to protect the public health and safety.

Additionally, the bill

- Eliminates the inequitable and harsh sentencing constructs, such as mandatory minimums drug conspiracy offenses, that have significantly led to mass incarceration;
- Provides for decarceration and expungement of records for those imprisoned under the current system;
- Eliminates collateral consequences of drug convictions, including denial of public benefits and educational loans, for individuals who have been convicted of drug offenses; and,
- Abolishes the enforcement agencies that have been primarily responsible for creating the harmful enforcement strategies of the past.

Specifically, the Drug Policy Reform Act (DPRA) proposes the following components:

1. Shift Regulatory Authority

Substitute the National Institutes of Health (NIH) for the Drug Enforcement Administration (DEA) as the agency responsible for classifying drugs pursuant to the Controlled Substance Act (CSA).

2. Define Personal Use Thresholds

Establish a rulemaking task force, led by NIH and including, among other stakeholders, persons who use drugs, advocates for communities disparately impacted by past prohibitionist policies, organizations representing public defenders, addiction treatment professionals, and representatives of harm reduction service providers to draft a rule defining “personal use quantities” and procedures for facilitating voluntary access to services for those seeking addiction treatment.

- a. Any qualifying thresholds and criteria developed pursuant to this subsection shall not categorically disqualify circumstances involving the presence of scales, individual packaging, currency, “cutting” agents, and similar items.
- b. Requires that such thresholds and criteria be regularly reviewed and updated based on peer-reviewed scientific analysis.

3. Eliminate Criminal Penalties

- a. Repeal criminal penalties for simple possession of a controlled substance (amend 21 U.S.C. § 844, strike 21 U.S.C. § 844a));
- b. Repeal criminal penalties for possession with intent to distribute personal use quantities of a controlled substance (as defined in rules promulgated by the personal-use task force created herein) (amend 21 U.S.C. § 841(b) to eliminate all carceral and monetary sentences and replace with thresholds established by the task force rulemaking body).

4. Eliminate Federal Drug Enforcement Apparatus

Defund the Drug Enforcement Administration (DEA), the Office of National Drug Control Strategy (ONDCP), Bureau of International Narcotics Control and Law Enforcement Affairs (INCLE). Prohibit spending by other federal agencies on international drug interdiction efforts (including by Customs and Border Protection and the Coast Guard).

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5. Prohibit Funding to States for Drug Enforcement

Prohibit the use of grant funding to states provided through any federal program for the investigation, arrest, prosecution or incarceration in relation to alleged drug possession violations.

6. Prohibit the Distribution of Military Equipment to State Law Enforcement for Drug Enforcement

Eliminate federal programs, like the Department of Defense 1033 Program, that facilitate the transfer of military equipment to state, local, and tribal law enforcement for counter narcotic activities.

7. Remove Added Penalties for Offenses Involving Drugs

a. Repeal separate offenses for criminalizing the possession of certain tools for manufacturing controlled substances, use of communications equipment and advertising for sales of controlled substances, and fraudulent representations in the sale of controlled substances (21 U.S.C. § 843);

b. Repeal criminal penalties for attempt and conspiracy (21 U.S.C. 846), “continuing criminal enterprise” (21 U.S.C. § 848), and specified transportation offenses (21 U.S.C. §849);

c. Repeal mandatory minimum sentencing (21 U.S.C. § 851) and sentencing enhancements (34 U.S.C. § 12522, §12521 (“drug-free” zones).

8. Prohibit Surveillance Technologies

Prohibit federal agencies from using location-tracking technologies, cell-site simulators, and predictive-policing technologies for the investigation of solely drug-related offenses in the absence of particularized suspicion of a violent offense.

9. Prohibit No-Knock Warrants

Prohibit the issuance of any warrant by a federal judicial official authorizing the entry of a premises without

providing meaningful notice to occupants, identification as law enforcement, and statement of purpose. Additionally, codify and strengthen requirements for execution of any federal warrant to ensure compliance with the knock and announce rule.

10. Expunge Criminal Records

Mandate automatic retroactive record destruction for prior federal drug convictions.

11. Decarcerate

Mandate the automatic reopening of sentencing proceedings for individuals convicted solely of offenses related to the possession of personal use quantities of controlled substances; *require immediate release* pending resentencing and dismissal of proceedings for all qualifying individuals.

12. Repeal Ban on Federal Benefits for Needy Families

Repeal bans on federal financial assistance for individuals with drug convictions:

a. TANF and food/nutrition benefits (21 U.S. Code § 862a);

b. Educational benefits (20 USC § 1091(r));

c. Prohibit Public Housing Authorities from denying access to housing (i.e. supersede/strike 24 CFR § 982.553).

13. Eliminate Drug Testing

a. Drug Testing for Federal Benefits: Repeal code permitting drug testing federal beneficiaries (21 U.S. Code § 862b) and explicitly prohibit drug testing for receipt of federal benefits;

b. Drug Testing Individuals on Probation and Parole: Eliminate drug testing as a condition of federal probation and parole.

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14. Prohibit Employment Discrimination

Establish a federal prohibition on inquiring about criminal record for employment and Incentivize states to adopt “ban the box” legislation.

15. Protect Voting Rights

Establish that the right of an individual who is a citizen of the United States to vote in any election for federal office shall not be denied or abridged because that individual has been convicted of a drug-related criminal offense.

16. Repeal Civil Asset Forfeiture

Repeal statutes authorizing civil asset forfeitures (21 U.S. Code §§ 853 and 881).

17. Eliminate Immigration and Removal Consequences

Amend immigration code to eliminate drug offenses as “aggravated felony” for removal purposes and permanent bar to entering the United States, or to deny any other immigration benefit.

18. Repeal Land Use Prohibitions

Repeal the code criminalizing “maintaining drug-involved premises.”

19. Reinvest Funds in Supportive Programs

Establish a grant program to reinvest federal funding for health related / state incentives (separate and distinct from the Edward Byrne Memorial Formula Grant Program).

a. Authorize a grant program administered by the Department of Health and Human Services (HHS) with awards to be allocated by a board of stakeholders, including people from communities most harmed by drug law enforcement as well as people who use drugs, to:

- i.** Provide social, health, and other services to communities most harmed by drug law enforcement;

ii. Expand access to low barrier substance use disorder treatment, including medications for addiction treatment, that is evidence-informed, trauma-informed, culturally responsive, patient-centered, and non-judgmental;

iii. Fund harm reduction services, including for establishment and operation of safe-consumption facilities;

iv. Assist states in creating or expanding non-police crisis intervention programs;

v. Assist states in creating or expanding pre-arrest diversion programs.

b. Require that states enact legislation decriminalizing possession of personal-use quantities of controlled substances to be eligible for any grants pursuant to this subsection.

20. Remove Barriers to Medications for Addiction Treatment

Amend codes restricting medications for addiction treatment, primarily methadone and buprenorphine, to ensure equitable and wide-scale access.

21. Amend Findings and Intent

Amend the findings in Title 21 Chapter 13 to articulate the harms of criminalization (21 U.S.C. § 801) and the health and reparative justice intent of the Act.

a. Strike all subsections after (21 U.S.C. § 801(1));

b. Add statements to describe poor outcomes under enforcement-focused policies following passage of Controlled Substances Act of 1970, including billions of dollars spent on enforcement since 1973, millions of arrests (1.6 annually in 2020) for drug offenses and collateral consequences, rise in incarceration, racially disparate impacts, health outcomes, and no evidence of significant impact on supply or prices;



c. Add statements to describe the need for harm-reduction, health, reparative justice, and consumer-safety focus in federal approach to drug use.

22. Provide Evidence-Based Drug Education

Shift all addiction prevention programs within the jurisdiction of the Department of Justice to the Department of Health and Human Services and explicitly proscribe the Department of Justice from using appropriated funds for “drug education” programs.

23. Expand Research

Require the Substance Abuse and Mental Health Services Administration (SAMSHA), in cooperation with the National Institutes of Health, to expand research on harms of criminalization, harm reduction services, effectiveness of non-prohibitionist models of regulation, safe supply, and treatment, and patterns of drug use.

24. Require Data Collection

Require that states and localities receiving any federal funding make publicly available in “real time” uniform data regarding enforcement of drug laws, including tracking arrests for drug possession and distribution offenses, possession of drug paraphernalia, public use or intoxication, loitering, and all other drug-related violations.

a. Reporting standards shall include details regarding tactics used leading to such arrests (including any use of force), the alleged substances and quantities recovered, and demographic data for persons arrested;

b. Additionally, states and localities shall be required to submit an annual report identifying expenditures on drug offense enforcement;

c. The Department of Justice shall be required within one year to develop uniform standards for data reporting in consultation with specified entities and in cooperation with the “personal use task force” established by this Act, and further required to procure and deploy technology for local use within 18 months of the enactment of this Act.

25. Reform International Drug Policy

Express the sense of Congress that the President should submit amendments to the United Nations to Amend the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 to explicitly provide governments greater flexibility to pursue alternative, non-punitive strategies to address problematic drug use.