

Marijuana Decriminalization and Legalization

February 2018



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 nine – Colorado, Washington, Oregon, Alaska, Massachusetts, Maine, Nevada, California and Vermont – now allow for legal regulation of marijuana for adults over 21.

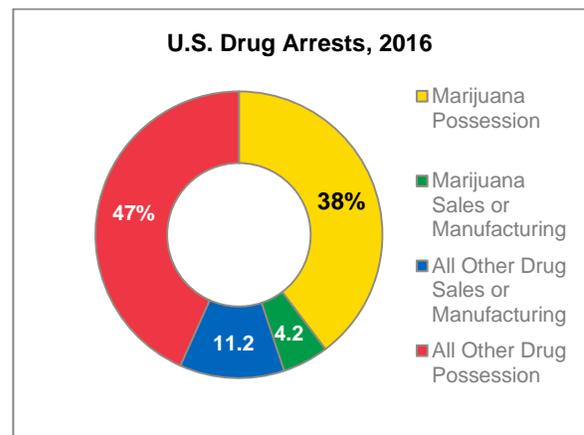
The Costs and Consequences of Prohibition

Marijuana prohibition has been a costly failure. In 2016, there were 587,700 marijuana arrests in the U.S. – roughly 40 percent of all drug arrests. The vast majority (nearly 90 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 118 million people in the U.S. – 44 percent of those surveyed – admit to having tried marijuana at least once in their lives, and nearly 24 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 Investigation⁷,

*Because of rounding, the percentages may not add up to 100.0

The huge number of arrests drains scarce resources at enormous cost to taxpayers.⁸ More than half of those admitted to treatment for marijuana each year are referred by the criminal justice system.⁹ Many, perhaps most, of these individuals did not need treatment.

Decriminalization

Twenty-nine 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.¹⁰

Evidence from jurisdictions that have reduced penalties shows no increase in marijuana or other drug use.¹¹ The Institute of Medicine concluded that "there is little evidence that decriminalization of marijuana use necessarily leads to a substantial increase in marijuana use."¹²

Where decriminalization has been implemented effectively, it has resulted in substantial reductions in misdemeanor marijuana arrests.¹³ 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.¹⁴

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.¹⁵

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.¹⁶ Such a process – often called “net-widening” – occurred in parts of Australia that decriminalized marijuana,¹⁷ as well as in states like New York and California, which reduced marijuana penalties in the 1970s but ultimately saw certain marijuana arrests increase.¹⁸

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.¹⁹

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.²⁰ 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 nearly 17,000 people²¹ for lowest-level marijuana possession in 2015 – 85 percent of whom were black or Latino.²² While marijuana arrests under New York City Mayor Bill de Blasio have declined significantly compared to previous years, severe racial disparities remain.²³

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.²⁴ 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.²⁵ The effect has been unending bloodshed in countries like Mexico,²⁶ where at least 100,000 people have been killed in prohibition-related violence since 2007.²⁷ 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,”²⁸ and is “a cash crop that finances corruption and the carnage of violence year after year.”²⁹ 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.³⁰

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.³¹ 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.³²

In 2012, Colorado and Washington became the first two states – and first two places in the world – to legalize marijuana for adult use. Two years later Alaska, Oregon and Washington, D.C. followed suit. In 2016 voters in four additional states – California, Massachusetts, Maine and Nevada – also approved ballot measures legalizing marijuana. In January 2018, Vermont became the first state to legalize marijuana through a state legislature. More states are expected to legalize in the near future.

In Congress, Senator Cory Booker has introduced a historic legislation to end federal marijuana prohibition in the senate and Senators Barbara Lee and Ro Khanna have done so in the House of Representatives.³³ Each year since 2014, a bipartisan amendment passed by Congress has prohibited the Department of Justice from spending any money to prevent states "from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."

Internationally, Uruguay became the first country in the world to legalize and regulate the marijuana trade in 2013. Canada became the second country to do so passed marijuana legalization in 2017. Additional legalization proposals are under consideration in several other countries.

Tax revenues in Colorado, Washington and Oregon have all exceeded initial revenue estimates, totaling \$552 million. This number is expected to increase significantly after the passing of legalization measures in 2016, most notably in the nation's most populous state, California³⁴.

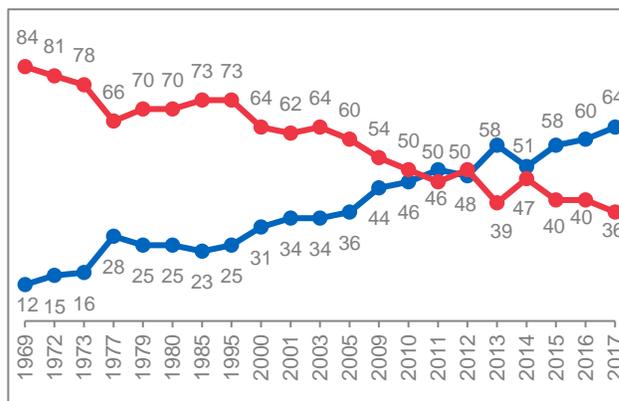
Public Support is Surging for Legalization

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 19 2017.³⁶

States Don't Need Federal Permission to Legalize 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."³⁷

In early January 2018, the Attorney General Jeff Sessions announced that he would rescind the

Obama-era directive. However, states never needed permission from the federal government to legalize marijuana under state law. The memo merely offered guidance to the state about federal enforcement priorities. States are thus well within their 10th Amendment rights to legalize marijuana.

More than 90% of drug law enforcement is carried out

¹ Federal Bureau of Investigation, "Crime in the United States, 2016." (Washington, DC: U.S. Department of Justice, 2016).; Ingraham, Christopher "More people were arrested last year over pot than for murder, rape, aggravated assault and robbery – combined", *Washington Post*, September 26th, 2017

² Substance Abuse and Mental Health Services Administration, "Results from the 2015 National Survey on Drug Use and Health: Detailed Tables," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2016), Table 1.33A & B.

³ American Civil Liberties Union, "The War on Marijuana in Black and White," (2013); Ojmarrh Mitchell and Michael S. Caudy, "Race Differences in Drug Offending and Drug Distribution Arrests," *Crime & Delinquency* (2015); Ojmarrh Mitchell and Michael S Caudy, "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 "2016 Crime in the United States," U.S. Department of Justice, Federal Bureau of Investigation Uniform Crime Report, Criminal Justice Information Division, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016>; Data obtained through a request to the FBI

⁸ *Ibid*; Jeffrey A Miron and Katherine Waldo, *The Budgetary Impact of Ending Drug Prohibition* (Cato Institute, 2010).

⁹ 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.

¹⁰ Ten states (Connecticut, Delaware, Maine, Maryland, Massachusetts, Mississippi, Nebraska, New York, Rhode Island, and Vermont) consider simple possession of marijuana as an administrative or civil infraction. Four states (Minnesota, Missouri, North Carolina, and Ohio) treat marijuana possession as a misdemeanor without jail time. And eight states (Oregon, Alaska, Washington, Colorado, California, Massachusetts, Maine and Nevada) plus Washington D.C. have completely eliminated all penalties for personal marijuana possession by adults.

¹¹ 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).

¹² Janet Elizabeth Joy, Stanley J Watson, and John A Benson, *Marijuana and medicine: assessing the science base*.

¹³ 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.

¹⁴ 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).

¹⁵ Jennifer McLaren et al., "Cannabis potency and contamination: a review of the literature," *Addiction* 103, no. 7 (2008); Nicholas Sullivan, Sytze Elzinga, and

at the local and state levels. The federal government may be able to go after some individual marijuana businesses, but it has neither the political support nor the resources to stamp out every marijuana business operating in compliance with state law.

Jeffrey C Raber, "Determination of pesticide residues in cannabis smoke," *Journal of toxicology* 2013(2013).

¹⁶ Aldrich, M. et al., *Fiscal Savings in California Marijuana Law Enforcement, 1976-1985 Attributable to the Moscone Act of 1976* (1986).

¹⁷ Peter Reuter, "Marijuana Legalization: what can be learned from other countries," (Santa Monica, CA: RAND, 2010), 9.

¹⁸ 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).

¹⁹ Babe Howell, "Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing," *New York University Review of Law & Social Change* 33(2009); Richard Glen Boire, *Life Sentences: Collateral Sanctions Associated with Marijuana Offenses* (Center for Cognitive Liberty & Ethics, 2007); American Civil Liberties Union, "The War on Marijuana in Black and White."

²⁰ See e.g., NORML, "State Laws," <http://norml.org/laws>.

²¹ Mel Evans, "Still Too High? Marijuana Arrests Barely Budge in NYC," WNYC, January 16, 2018, <https://www.wnyc.org/story/still-too-high-marijuana-arrests-barely-budge-nyc/>

²² Marijuana Arrest Research Project and Drug Policy Alliance, "Unjust and Constitutional: 60,000 Jim Crow Marijuana Arrests in Mayor de Blasio's New York, The NYPD's Racially-Targeted Enforcement of Marijuana Possession Continues, 2014 – 2016" https://www.drugpolicy.org/sites/default/files/Marijuana-Arrests-NYC--Unjust-Unconstitutional--July2017_2.pdf

²³ Drug Policy Alliance and Marijuana Arrest Research Project, "Race, Class and Marijuana Arrests in Mayor de Blasio's Two New Yorks: the N.Y.P.D.'s Marijuana Arrest Crusade Continues in 2014," (2014) <http://www.drugpolicy.org/resource/race-class-and-marijuana-arrests-mayor-de-blasios-two-new-yorks-ny-pds-marijuana-arrest-crusade>; Harry Levine and Loren Siegel, "80 Marijuana Possession Arrests a Day is More of the Same: NYPD daily marijuana possession arrest numbers are the same under de Blasio and Bratton as they were under Bloomberg and Kelly," (Marijuana Arrest Research Project, 2014) <http://marijuana-arrests.com/docs/MORE-OF-THE-SAME--NYC-Marijuana-Arrests-June2014.pdf>; Marijuana Arrest Research Project and Drug Policy Alliance, "Unjust and Constitutional: 60,000 Jim Crow Marijuana Arrests in Mayor de Blasio's New York, The NYPD's Racially-Targeted Enforcement of Marijuana Possession Continues, 2014 – 2016" https://www.drugpolicy.org/sites/default/files/Marijuana-Arrests-NYC--Unjust-Unconstitutional--July2017_2.pdf

²⁴ Beau Kilmer et al., "What America's users spend on illicit drugs: 2000-2010," (Washington, D.C.: Office of National Drug Control Policy, 2014) http://www.whitehouse.gov/sites/default/files/page/files/wausid_report_final_1.pdf.

²⁵ Peter Reuter, "Why Has US Drug Policy Changed So Little over 30 Years?," *Crime and Justice* 42, no. 1 (2013).

²⁶ *Ibid*.

²⁷ "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.

²⁸ David G. Ogden, Memorandum for Selected United States Attorneys. Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana," (Office of the Deputy U.S. Attorney General, 2009).

²⁹ Kevin L. Perkins and Anthony P. Placido, "Drug Trafficking Violence in Mexico: Implications for the United States," in *Statement for the Record of Kevin L. Perkins, Assistant Director, Criminal Investigative Division, FBI; and Anthony P. Placido, Assistant Administrator for Intelligence, DEA, Before the U.S. Senate Caucus on International Narcotics Control, May 5, 2010*. (U.S. Senate Caucus on International Narcotics Control, 2010).

³⁰ Beau Kilmer et al., *Reducing drug trafficking revenues and violence in Mexico: Would Legalizing Marijuana in California Help?* (Santa Monica: RAND Corporation, 2010); Alejandro Hope and Eduardo Clark, "Si los vecinos legalizan: Reporte técnico," (Instituto Mexicano para la Competitividad (IMCO), 2012).

³¹ Jonathan P Caulkins et al., "Design considerations for legalizing cannabis: lessons inspired by analysis of California's Proposition 19," *Addiction* (2012).

³² Warren, Gina S., Regulating Pot to Save the Polar Bear: Energy and Climate Impacts of the Marijuana Industry (September 24, 2014). Columbia Journal of Environmental Law Vol. 40, No. 3, <http://ssrn.com/abstract=2501126>.

³³ Drug Policy Alliance, "Senator Cory Booker Introduces Marijuana Legalization Bill, focused on Racial Justice" <http://www.drugpolicy.org/press-release/2017/07/senator-cory-booker-introduces-marijuana-legalization-bill-focused-racial>.

³⁴ Drug Policy Alliance, "So Far So Good: What We Know About Marijuana Legalization in Colorado, Washington, Alaska, Oregon and Washington D.C." (2016)

³⁵ Art Swift, "Support for Legal Marijuana Use Up to 60% in U.S.," *Gallup*, October 19 2016; Pew Research Center, "In Debate Over Legalizing Marijuana, Disagreement Over Drug's Dangers; In Their Own Words: Supporters and

Opponents of Legalization," *Pew Research Center*, April 15 2015; Christopher Ingraham, "A majority favors marijuana legalization for first time, according to nation's most authoritative survey," *Washington Post*, March 4, 2015.

³⁶ Justice McCarthy, "Record-High Support for Legalizing Marijuana Use in U.S.," *Gallup*, October 25th 2017.

³⁷ James Cole, "Memorandum for all United States Attorneys: Guidance Regarding Marijuana Enforcement," (Washington, DC: U.S. Department of Justice, Office of the Deputy Attorney General, 2013).