

Why is Marijuana Decriminalization Not Enough?



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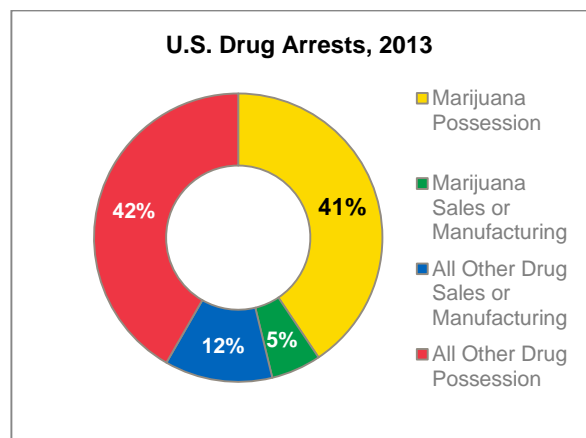
Decriminalization of marijuana possession is a necessary first step toward more comprehensive reforms of the drug prohibition regime. Yet decriminalization alone does not address many of the greatest harms of prohibition – such as high levels of crime, corruption and violence, massive illicit markets, and the harmful health consequences of drugs produced in the absence of regulatory oversight. Eighteen states and the District of Columbia have decriminalized marijuana possession, while four – Colorado, Washington, Oregon and Alaska – have begun to legally regulate marijuana for adults over 21. The federal government has pledged not to interfere with states that legalize and regulate marijuana.

The Costs and Consequences of Prohibition

Marijuana prohibition has been a costly failure. In 2013, there were 693,482 marijuana arrests in the U.S. – more than 45 percent of all drug arrests. Nearly 88 percent 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 114 million Americans – more than 43 percent of U.S. residents surveyed – admit to having tried marijuana at least once in their lives, and nearly 20 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

Prohibition empowers criminal organizations and contributes to violence, crime and corruption on a massive scale – from U.S. street corners to places like Mexico, where more than 100,000 people have been killed since 2006 in the country's drug war.



Source: Federal Bureau of Investigation, Uniform Crime Report, *Crime in the United States, 2013* (2014).

Decriminalization

Eighteen states and Washington D.C. have enacted various forms of marijuana decriminalization or legalization. Decriminalization is commonly defined as the reduction or elimination of criminal penalties for minor marijuana possession. 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.⁷

Evidence from states and countries that have reduced penalties not only shows no increase in marijuana or other drug use,⁸ but also substantial reductions in misdemeanor arrests where decriminalization has been implemented effectively.⁹ In 2011, 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. Overall misdemeanor drug arrests declined from 129,182 in 2010 to between 75,000 and 81,000 in 2011-2013.¹⁰

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; unregulated products of unknown potency and quality;¹¹ and the potential for continued arrests as part of a “net-widening” phenomenon.¹²

Marijuana prohibition is unique among American 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.¹³ Such a process – often called “net-widening” – occurred in parts of Australia that decriminalized marijuana, where the number of people arrested (but not booked) actually increased. Because many could not afford to pay the fines imposed after an arrest, the result was “an increase in the number of individuals being incarcerated for marijuana offenses, albeit now indirectly for their failure to pay a fine.”¹⁴

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.¹⁵

Additionally, not *all* decriminalization schemes protect *all* people from risk of arrest. Even in many of the states that have reduced penalties, marijuana possession is not fully “decriminalized.” 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.¹⁶ Other states’ laws have loopholes, such as New York’s, in which personal possession is formally decriminalized, but possession in “public view” remains a crime; as a result, the NYPD still arrested nearly 29,000 people in 2013 – 87 percent of whom were black or Latino.¹⁷ Marijuana possession arrests under New York City Mayor Bill de Blasio in 2014 are on track to equal – or even surpass – the number of arrests under his predecessor, Mayor Michael Bloomberg – and at roughly the same racially disparate rates.¹⁸

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.¹⁹ 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 produces massive violence, crime and corruption. Virtually all marijuana-related violence is the result of prohibition, which keeps responsible businesses out of the market. Illegal businesses have no legitimate means to settle disputes, so violence inevitably results – as it did during alcohol Prohibition.²⁰

The effect has been unending bloodshed in countries like Mexico, where at least 100,000 people have been killed in prohibition-related violence since late 2006.²¹ Marijuana prohibition is a major cause of this carnage; in fact, one scholar recently argued, “Perhaps the most serious harms [of marijuana] relate to its trafficking and production in Mexico...It has caused great harm to Mexico, as a source of both homicides and corruption.”²²

The federal government has asserted that “[M]arijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels,”²³ and is “a cash crop that finances corruption and the carnage of violence year after year.”²⁴ Estimates by RAND Corporation and the Mexican Institute for Competitiveness project that legalizing marijuana nationally in the U.S. could reduce cartels’ drug export revenues by between one-fifth and one-third.²⁵

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 – marijuana wouldn't be treated like Coca-Cola, available to anyone of any age, anywhere, at any time. Under most regulatory proposals, it would be taxed and regulated in a manner similar to alcoholic beverages, with age limits, licensing requirements, quality controls, and other regulatory restrictions.²⁶ Just as cities, counties and states vary in the way they regulate alcohol, the same could be true for marijuana.

In November of 2012, residents of Colorado and Washington took the historic step of rejecting the failed policy of marijuana prohibition by deciding to permit the legal regulation of marijuana sales, cultivation and distribution for adults 21 and older. Both states have completely eliminated all penalties for personal marijuana possession by adults; Colorado also allows adults to cultivate six marijuana plants. These states determined that simply eliminating criminal penalties for possession was not enough. Both have established sensible regulations for the cultivation, distribution and sale of marijuana to adults.

Alaska, Oregon and Washington D.C. voted to legalize marijuana in 2014, and legislators and activists in several other states will likely follow suit in the coming years. In Congress, a bipartisan group of legislators has introduced historic legislation to end federal marijuana prohibition.²⁷ Internationally, Uruguay recently became the first country in the world to legalize and regulate the marijuana trade. Additional legalization proposals are under consideration in several other countries.

Revenue from taxation of marijuana sales could reach up to \$8.7 billion per year if taxed like alcohol or tobacco – on top of billions in saved law enforcement resources.²⁸ The New York City Comptroller's Office recently estimated "the total fiscal impact of legalizing marijuana in New York City at roughly \$431 million annually."²⁹ A cost-benefit analysis of regulating marijuana in England and Wales estimated "overall net external benefits in the range £0.5-1.25 billion."³⁰

Federal Government Gives States the Green Light

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.

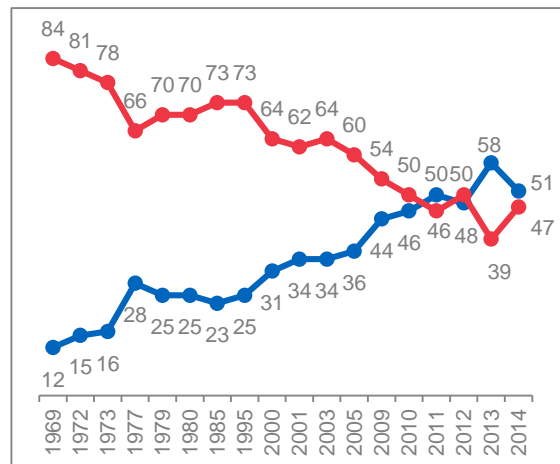
In its memo, the DOJ openly acknowledged the many benefits of legal regulation:

[S]trong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana...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 in which revenues are tracked and accounted for.³¹

Support for Reform Nationwide

Do you think the use of marijuana should be made legal or not?

— % No, illegal
— % Yes, legal



Source: Gallup, November 6, 2014.

Public Support is Surging for Legalization

The administration's new policy is consistent with the will of the people of Colorado and Washington, as well as a substantial majority of American voters, who strongly

oppose federal intervention in these states.³² Indeed, public support for making marijuana legal has shifted dramatically in the last two decades, with recent polls showing greater than majority support nationwide.³³

¹ Federal Bureau of Investigation, "Crime in the United States, 2013," (Washington, DC: U.S. Department of Justice, 2014).

² Substance Abuse and Mental Health Services Administration, "Results from the 2013 National Survey on Drug Use and Health," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014), Table 1.1A & B.

³ American Civil Liberties Union, "The War on Marijuana in Black and White," (2013); Substance Abuse and Mental Health Services Administration, "Results from the 2013 National Survey on Drug Use and Health," 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 Nine states (California, Connecticut, Maine, Maryland, Massachusetts, Nebraska, New York, Rhode Island, and Vermont) consider simple possession of marijuana as an administrative or civil infraction. Five states (Nevada, North Carolina, Minnesota, Mississippi, and Ohio) treat marijuana possession as a misdemeanor without jail time. And four states (Oregon, Alaska, Washington state and Colorado) plus Washington D.C. have completely eliminated all penalties for personal marijuana possession by adults.

⁸ 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); Jonathan P. Caulkins et al., *Marijuana Legalization: What Everyone Needs to Know* (Oxford: Oxford University Press, 2012); Sarah D. Lynne-Landsman, Melvin D. Livingston, and Alexander C. Wagenaar, "Effects of State Medical Marijuana Laws on Adolescent Marijuana Use," *American Journal of Public Health* 103, no. 8 (2013); Organization of American States, "Scenarios for the Drug Problem in the Americas: 2013-2025," (2013); 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); 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); 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).

⁹ 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).

¹⁰ Bureau of Criminal Statistics California Department of Justice, "Crime in California 2011," (2012); California Department of Justice, "Crime in California 2012," "Crime in California 2013," (2014).

¹¹ Jennifer McLaren et al., "Cannabis Potency and Contamination: A Review of the Literature," *Addiction* 103, no. 7 (2008); Nicholas Sullivan, Sytze Elzinga, and Jeffrey C. Raber, "Determination of Pesticide Residues in Cannabis Smoke," *Journal of toxicology* 2013(2013).

¹² Peter Reuter, "Marijuana Legalization: What Can Be Learned from Other Countries," (Santa Monica, CA: RAND, 2010).

¹³ Aldrich, M. et al., *Fiscal Savings in California Marijuana Law Enforcement, 1976-1985 Attributable to the Moscone Act of 1976* (1986).

¹⁴ Reuter, "Marijuana Legalization," 9.

¹⁵ 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."

¹⁶ See e.g., NORML, "State Laws," <http://norml.org/laws>.

¹⁷ John C. Liu, "Regulating and Taxing Marijuana: The Fiscal Impact on Nyc," (New York City: New York City Comptroller's Office, 2013); Drug Policy Alliance and Marijuana Arrest Research Project, "Race, Class and Marijuana Arrests in Mayor De Blasio's Two New Yorks: The Nypd's Marijuana Arrest Crusade Continues in 2014," (2014).

¹⁸ "Race, Class and Marijuana Arrests in Mayor De Blasio's Two New Yorks: The Nypd's Marijuana Arrest Crusade Continues in 2014; 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).

¹⁹ Beau Kilmer et al., "What America's Users Spend on Illicit Drugs: 2000-2010," (Washington, D.C.: Office of National Drug Control Policy, 2014).

²⁰ Peter Reuter, "Why Has Us Drug Policy Changed So Little over 30 Years?," *Crime and Justice* 42, no. 1 (2013).

²¹ "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); 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 NarcoGuerra De Calderón: Inegi," *Proceso*, July 30 2014; Rafael Romo, "Mexican Drug Lord: Inside His Abandoned Mansion," *CNN.com*, February 6 2014.

²² Reuter, "Why Has Us Drug Policy Changed So Little over 30 Years?."

²³ 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).

²⁴ 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).

²⁵ 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).

²⁶ Jonathan P. Caulkins et al., "Design Considerations for Legalizing Cannabis: Lessons Inspired by Analysis of California's Proposition 19," *Addiction* (2012).

²⁷ United States House of Representatives, *The Ending Marijuana Prohibition Act of 2013*, House Resolution 499, <http://hdl.loc.gov/loc.uscongress/legislation.113hr499>.

²⁸ Jeffrey A. Miron and Katherine Waldo, *The Budgetary Impact of Ending Drug Prohibition* (Cato Institute, 2010).

²⁹ Liu, "Regulating and Taxing Marijuana: The Fiscal Impact on Nyc."

³⁰ Stephen Pudney, Mark Bryan, and Emilia DelBono, "Licensing and Regulation of the Cannabis Market in England and Wales: Towards a Cost-Benefit Analysis," (2013).

³¹ 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).

³² Frank Newport, "Americans Want Federal Gov't out of State Marijuana Laws," (Gallup, 2012).

³³ CNN/ORC International Survey, (2014); Pew Research Center, "Majority Now Supports Legalizing Marijuana," *Pew Research Center* 2013; "America's New Drug Policy Landscape," *Pew Research Center*, April 2 2014; Lydia Saad, "Majority Continues to Support Pot Legalization in U.S.," *Gallup*, November 6 2014.