

Decriminalization of Drug Possession: Policy Recommendations for Maryland

These recommendations were informed by a multi-stakeholder harm reduction meeting held at JHSPH in October 2015

Decriminalization refers to the removal of criminal penalties for simple possession of a controlled substance. Instead, possession of specified small amounts of a controlled substance result in a civil offense, typically with the penalty of a fine rather than an arrest. In Maryland, efforts are underway to address ineffective and unjust sentencing practices and to improve release and reentry programs.¹ Decriminalization may reduce the need for such efforts by reducing the negative consequences associated with arrests.

Summary of current Maryland state law

To date, the only controlled substance that Maryland has decriminalized is marijuana. As of Oct. 1, 2014 it is now a civil (no longer criminal) offense to use or possess less than 10 grams of marijuana. The penalty is a fine not exceeding \$100. The second offense is a fine not exceeding \$250. The third or subsequent offense is a fine not exceeding \$500 and possible court ordered drug education and/or assessment for substance use disorder and referral to substance use treatment. As of January 2016, marijuana paraphernalia is also decriminalized and carries the same civil penalties as possession of marijuana, above.^{2,3} For prior convictions for possession of marijuana under 10 grams (no longer a crime), individuals may file to have their criminal records expunged immediately. Maryland also has laws that shield employers and schools from accessing records related to non-violent misdemeanors (i.e. marijuana and/or paraphernalia possession).

Research evidence

As of February 2016, 18 US states and Washington, D.C. have reduced or eliminated criminal penalties for simple possession of marijuana.

- Decriminalization is intended to reduce drug arrests, which disproportionately affect black communities in Maryland. Preliminary analysis shows that marijuana decriminalization in Maryland has led to a decline in drug arrests in Baltimore City.⁴ Furthermore, despite comparable rates of marijuana use among blacks and whites, blacks were arrested for marijuana possession at higher rates in every county in Maryland and these, racial disparities worsened from 2001 to 2010.⁵
- States with marijuana decriminalization laws experienced savings in criminal justice costs.⁶ In California, the total cost of marijuana enforcement decreased from \$17 million to under \$4.4 million in the year following decriminalization.⁷
- Decriminalization of marijuana has not resulted in increased rates of marijuana use by youth. Research has shown that states with more liberal marijuana policies have not seen increases in lifetime or current marijuana use among high school students.^{8,9}
- In 2001, Portugal decriminalized low level possession and consumption of all illicit drugs, taking a public health approach to substance use disorders by expanding its treatment and harm reduction programs. In Portugal, a person found in possession of small amounts of illicit drugs is ordered to appear in front of a commission comprised of a legal official and two health or social service officials to determine whether the person should be referred to a voluntary treatment program or pay a fine. Alongside decriminalization, Portugal expanded harm reduction services, including access to needle exchange and drug treatment such as methadone maintenance therapy. Portugal did not reduce or eliminate penalties for production or distribution of illicit drugs. Research on this model indicates:
 - Five years after the passage of law, drug use by teenagers decreased, rates of HIV infection attributed to injection drug use decreased, and rates of people seeking treatment for substance use disorders doubled.¹⁰
 - After the first 15 years of policy implementation, decriminalization is not associated with increased lifetime drug use among any age group, and is associated with decreased drug use among ages 15 to 19 years.¹¹
 - Decriminalization, coupled with expanded treatment and harm reduction services, led to cost savings. Health and non-health related social costs of drugs declined 12 percent over 5 years and 18 percent over 11 years.¹²

Additional research is required to understand the impact of decriminalization on violence and drug trafficking.¹³

Policy recommendations

- 1) Decriminalize small amounts of all controlled substances for personal possession.
- 2) De-prioritize non-violent drug law enforcement. In 2014, there were 43,705 arrests for nonviolent drug crimes in Maryland including 81 percent for simple drug possession.
- 3) Renew and expand the Public Safety Compact, a partnership between the Maryland Department of Public Safety and Correctional Services, Maryland Parole Commission and the Safe and Sound Campaign, which uses private foundation grants to fund drug treatment programs to reduce recidivism¹⁴. Programs that receive funding should be evidence-based and may include, but are not limited to the expansion of needle exchange programs, increased access to naloxone, and medication assisted treatment.

Implementation considerations

- Despite decriminalization at the state level, marijuana and other illicit drugs remain a Schedule I drug under the federal Controlled Substance Act. The U.S. Department of Justice stated in 2013 that it is unlikely to aggressively enforce federal marijuana laws in states with legal markets,

provided that legalization is accompanied by state-level regulatory and enforcement efforts that achieve several goals, including preventing marijuana distribution to minors.¹⁵

- Alongside decriminalization, Maryland can consider implementing a program similar to the Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM Ohio) Program, which allocates funding to localities for youth-centered programming to reduce recidivism among juvenile offenders.¹⁶
- Lawmakers will need to determine specific amounts that would qualify as personal possession for illicit drugs other than marijuana, and law enforcement officers will need training to determine the amount of drugs prior to making an arrest.
- Decriminalization and pre-trial diversion to treatment programs like the Law Enforcement Assisted Diversion (LEAD) program in Seattle often go hand in hand as such programs provide a way of increasing rates of treatment and decreasing demand for drugs under decriminalization.

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