REPORT 04.16.19

The Case for Marijuana Decriminalization

Katharine Neill Harris, Ph.D., Alfred C. Glassell, III, Fellow in Drug Policy
William Martin, Ph.D., Director, Drug Policy Program

INTRODUCTION

In 1972, a National Commission on Marihuana and Drug Abuse, comprising establishment figures chosen mostly by President Richard Nixon himself, issued a report declaring that "neither the marihuana user nor the drug itself can be said to constitute a danger to public safety" and recommended that Congress and state legislatures decriminalize the use and casual distribution of marijuana and seek means other than prohibition to discourage use.[1]

Nixon, intent on pursuing his newly announced "war on drugs," ignored the report and Congress declined to consider its recommendations, but during the 40-plus years since its publication, at least 44 states have acted to refashion a crazy-quilt collection of regulations, nearly always in the direction favored by the commission. The specifics vary by state, but most reforms have followed one of three formulas: decriminalization of possession of small amounts of marijuana for personal use, legalization of marijuana for medical use, or legalization of marijuana for commercial sale and general adult use.

Opponents of marijuana reform have argued that a system of prohibition, which carries possible penalties of jail time and imposes a lifelong criminal record on offenders, is necessary to keep people from using marijuana. In 2017, nearly 123 million people aged 12 or older (45 percent of the population) had tried marijuana at least once and 41 million had used in the past year.[2] The percentage of the U.S. adult population that uses marijuana regularly (defined as past 30-day use) has been slowly rising since 2000, long before any state fully legalized the drug. And while teens today are less likely to use marijuana than their peers from a decade ago, they continue to report that marijuana is easy to get, a trend that has held constant over the last 40 years. During this time, illicit marijuana has flourished, increasing in both variability and potency. Taken together, these trends are evidence that prohibition has done little to reduce supply or demand of the drug. Prohibition has, however, cost taxpayers billions of dollars, saddled millions of Americans—many of them young adults who will eventually stop using marijuana on their own—with a criminal record, and contributed to the racial disparities of the U.S. criminal justice system.

Opponents of reform may argue that if not for prohibition, marijuana would be even more available, more potent, and more frequently used. There are legitimate public health concerns about the effects that a legal commercial marijuana market may have on use. But decriminalization, which would still prohibit selling marijuana but would remove the negative consequences of possessing it for personal use, is a very different policy, one that arguably has little impact on use rates or other outcomes of concern, except to reduce the collateral consequences associated with a criminal record.

This paper is the first in a series of reports elaborating on issue briefs published in February 2015 and February 2017 on the same topic. Then, as now, the Texas

In recent years public opinion surveys have found that a consistent and increasing percentage of Texans support marijuana reform, but this support has not translated into policy change.

Legislature was considering several bills to reform marijuana laws. The goal of the 2015 and 2017 reports was to present evidence about the effects of various marijuana reform options, in hopes that the existing research—which overwhelmingly supported the assertion that ending marijuana prohibition benefits society in numerous and significant ways that outweigh potential negative impacts—would motivate elected officials to enact pragmatic policy reforms. That did not happen in Texas. During the current 2019 session, the legislature is again considering several bills that would reduce penalties for marijuana possession and allow legal access to medical marijuana for patients with a variety of conditions. We present the case for reducing penalties below, and address medical marijuana in a subsequent report.

MARIJUANA DECRIMINALIZATION

We use "decriminalization" to refer to the removal of all criminal sanctions for possession of small amounts of marijuana for personal use. We consider laws that lower the status of the offense from a felony or misdemeanor crime to a civil violation, like a traffic ticket, to be a form of decriminalization because such laws remove the criminal status of the offense. We acknowledge, however, that some observers may not consider this full decriminalization because marijuana possession is still considered a civil offense and some sanction, usually a fine, still exists. Policies that reduce penalties but retain the criminal status of marijuana possession, such as a reduction in classification from a Class B to a Class C misdemeanor, are not considered decriminalization. Policies that decriminalize marijuana possession for personal use still prohibit marijuana sales.[3]

Between 1973 and 1978, 11 states reduced penalties for or the criminal status of marijuana possession. This led some observers to believe the U.S. was on the path toward marijuana legalization decades ago, but several cultural and political shifts halted further reforms and marijuana laws remained relatively stagnant until 1996,

when California legalized marijuana for medical use. In the early 2000s, states began making small changes in marijuana laws—e.g., creating diversion programs for first offenders and lowering the length of jail time—that did not necessarily constitute decriminalization but did have implications for the consequences of a marijuana arrest. During this time, large cities (including Seattle, Denver, and San Francisco) also started using their discretion to treat marijuana possession as the "lowest law enforcement priority," or to reduce penalties for individuals arrested for marijuana possession, especially first offenders.

At least 22 states have now reclassified low-level marijuana possession as fine-only offenses with no prospect of jail time or as civil violations punishable with a modest fine but no criminal charge or record. The amounts of the drug subject to decriminalization vary, ranging from as low as half an ounce (Connecticut and Maryland) to just under 4 ounces (Ohio).[4] Incongruities exist. In Mississippi, for example, possessing up to 30 grams is a civil violation with a maximum penalty of $250, but possession of paraphernalia to use it—e.g., a pipe, a vaporizer, or a bong—is a misdemeanor with a possible $500 fine and six months in a county jail.[5]

The ability to study the impact of decriminalization on use rates and other outcomes of interest is fraught with measurement challenges due to variability in state laws and enforcement, and an inability to determine causal links between policy changes and individual behaviors and attitudes. A 2004 review of decriminalization statutes found that of the 11 states thought to have "decriminalized" marijuana possession between 1973 and 1978, four states still considered marijuana a criminal offense. The review also found that 31 of the 38 states considered non-decriminalized as of 1996 had provisions for first offenders to avoid jail time. This review highlights the difficulties in differentiating between decriminalized and non-decriminalized states, yet the majority of analyses studying the impact of decriminalization treat it as a yes/no policy variable. In addition, cross-state analyses of

decriminalization typically do not account for large cities located in prohibitionist states that enact de facto decriminalization policies in their jurisdictions, an increasingly common practice that is likely to have an effect on some statewide measures such as arrest rates and jail population sizes.

Marijuana Policy in Texas

Since 1989, possession of less than 2 ounces of marijuana has been a Class B misdemeanor in Texas, with possible penalties of 180 days in state jail, a $2,000 fine, and most damaging of all, a criminal record. Since 2005, the Texas Legislature has had the opportunity to pass a bill to reduce the penalty for low-level marijuana possession from a Class B to a Class C misdemeanor (thus removing jail time), and since 2015 it has had the opportunity to enact legislation to remove criminal penalties for marijuana possession entirely and treat the offense like a traffic ticket.[6] In recent years public opinion surveys have found that a consistent and increasing percentage of Texans support marijuana reform (a June 2018 poll shows that 69 percent of registered Texas voters support penalty reduction[7]), but this support has not translated into policy change.

Despite state inaction on marijuana policy, a package of criminal justice reforms that the legislature passed in 2007 has allowed local jurisdictions to issue tickets for certain offenses, including low-level marijuana possession, instead of taking people to jail. Called "cite and release," these programs have been enacted around the state. Travis County was the first to implement such a program, in 2009, when Austin police officers were allowed to issue tickets for marijuana possession. While this program enabled officers to use their time more efficiently, individuals still received a criminal record for the possession offense, thus doing little to address the negative and long-lasting consequences of an encounter with the criminal justice system. Recognizing this shortcoming, the Travis County Commissioner's Court approved a program to start in January 2018 that allows individuals found with 2 ounces or less of marijuana to take a four-hour class, pay a fee of $45, and, by doing so, avoid a criminal record.[8]

In Harris County, Texas, the Misdemeanor Marijuana Diversion Program (MMDP) took effect March 1, 2017, allowing individuals found in possession of 4 ounces or less of marijuana the opportunity to avoid charges, arrest, ticketing, and a criminal record if they agree to take a four-hour drug education class, regardless of past criminal history.[9]

While not technically decriminalization, because the possibility of arrest remains if a person does not take the drug class, Harris County's MMDP is one of the more progressive programs implemented in a state that has long upheld prohibitionist policies. As of February 2019, 8,685 people had participated in the program. Of these, 51 percent (4,467 participants) had completed it and 23 percent (1,992 participants) were in the process of completing the program. About 25 percent of participants (2,212 people) had failed to complete the program and have had warrants issued for their arrest.[10] An earlier assessment of the program found that the primary reason for program failure was that participants could not afford the $150 payment to take the four-hour drug education class.[11]

The district attorney's office estimates that the MMDP saves Harris County $27 million per year.[12] This estimate is based on the avoided costs of arresting, detaining, and prosecuting 10,000 people per year, which is what the county averaged prior to implementation of the program. Current figures suggest the program has closer to 4,500 participants per year. It is likely, however, that the MMDP has led some law enforcement officers to ignore marijuana possession offenses entirely, thus contributing to overall cost savings. Bexar County and Dallas County are also experimenting with alternatives to prosecution for low-level marijuana offenders, as are several smaller counties in Texas.

The fact that numerous Texas counties, including the four most populous, are taking steps to reduce the impact of a marijuana arrest suggests widespread dissatisfaction with current laws and is consistent with public opinion polls finding that a majority of Texans support decriminalizing marijuana possession. Possible impacts of statewide decriminalization are discussed in greater

The available evidence provides no reason to think that Texas would see a spike in marijuana use or other negative outcomes as a result of decriminalization.

detail below, but evidence to date from Harris County, the most populous county in Texas and the jurisdiction with a diversion program most akin to decriminalization, indicates that decriminalizing marijuana possession would not have a negative impact on the state.

In 2019 the 86th Texas Legislature could decriminalize marijuana possession by passing House Bill 63 (HB 63), which would replace jail time with a maximum fine of $250 for individuals possessing up to 1 ounce of marijuana. The offense would be treated like a traffic ticket, and offenders would not receive the stain of a criminal record. Other measures to reduce penalties for marijuana possession have been introduced this session, but HB 63 is the only one that removes criminal penalties entirely.

DECRIMINALIZATION AND POSSIBLE NEGATIVE CONSEQUENCES

Opponents of marijuana reform argue that relaxing prohibition will result in several negative consequences, including increased drug use, particularly among teens, increased crime, and increased driving accidents. Such fears are understandable, but their relevance is primarily in the context of legalization of a commercial market for marijuana. There is limited evidence to suggest that decriminalization has a significant impact on use rates, crime rates, or drugged driving.

Possible Effects on Marijuana Use Rates

A primary objection to marijuana reform is that liberalization of current policies will increase teen access to marijuana or lead teens to think that using it does not carry risks. Numerous studies in the U.S. and abroad have found that decriminalization does not lead to increased use.[13]

In the U.S., several studies that assessed the impact of penalty reductions enacted by 11 states between 1973 and 1978 found conflicting evidence, with some studies indicating no relationship between penalty reduction and use and others finding a small increase in use or probability of use in states with more relaxed laws.[14] A more

recent study looking at decriminalization's impact in five states (MA, CT, RI, VT, and MD) found no positive relationship between decriminalization of marijuana possession and past-month marijuana use among 9th-12th graders. In Rhode Island, the study authors found a 4 percent decrease in marijuana use associated with decriminalization.[15]

On the other hand, a study using data from Monitoring the Future, an annual survey of roughly 50,000 high school students, looked at the impact of California's 2010 decision to decriminalize marijuana possession and found that after the law change 12th graders were significantly more likely than 12th graders in other states to report past-30 day marijuana use and to be less likely to perceive a "great risk" associated with marijuana use. The authors suggest this finding supports the hypothesis that decriminalization signals to teens that marijuana use is not dangerous and therefore increases the likelihood of use. However, they also find evidence that the observed impact may be a limited cohort effect that could attenuate following a decline in public attention and media coverage to marijuana issues. In 2010, when decriminalization was adopted, California was also debating whether to legalize a commercial market for marijuana sales, so it is quite possible that increased focus on the topic affected youth attitudes toward marijuana use.

Another analysis also using Monitoring the Future data that were not confined to California found no association between marijuana decriminalization and increased use of marijuana, cocaine, or heroin, suggesting that the law change has had little impact on marijuana or other illicit drug use.[16]

There are a few explanations for why decriminalization may not affect use. One is that laws prohibiting marijuana possession are sporadically and unevenly enforced. Even in cases where significant resources are dedicated to enforcing marijuana laws, the likelihood of getting arrested for using marijuana in one's own home is relatively low, thus limiting the law's ability to serve as a deterrent from use. Another reason is

The vast majority of arrests related to marijuana are for simply possessing the substance, a crime that would be eliminated if possession were decriminalized.

that a person's decision about whether to use marijuana regularly is more likely to be driven by perceptions about its health risks and social acceptability than its criminal status,[17] suggesting that criminal penalties have little deterrent effect anyway, regardless of enforcement practices, except perhaps for some would-be experimental users. Further, laws that decriminalize possession for use still outlaw marijuana sales and therefore do little to increase availability.

The available evidence provides no reason to think that Texas would see a spike in marijuana use or other negative outcomes as a result of decriminalization.

Possible Effects on Crime Rates

The relationship between marijuana policy and crime is a contested issue. Supporters of reform argue that decriminalization lowers crime by freeing up police resources to pursue more serious offenses and reducing the need for economically motivated offenses (such as theft) created by the burden of a criminal record on employment prospects.

Reform opponents have argued that liberalization could increase property crimes by leading to more users who commit offenses to support their habit. While some evidence has been found linking use of drugs such as cocaine and heroin to economically motivated crimes, there is no evidence to suggest that marijuana users engage in this behavior.[18]

Opponents of reform also argue that ending marijuana prohibition will lead to an increase in crime by increasing the number of marijuana users who commit offenses as a result of their drug use. To date, there is a lack of evidence demonstrating that the pharmacological properties of marijuana cause users to commit crimes. An extensive literature review conducted in 2013 by the RAND Corporation on behalf of the Office of National Drug Control Policy found that "even though marijuana is commonly used by individuals arrested for crimes, there is little support for a contemporaneous, causal relationship between its use and either violent or property crime."[19] The majority of offenders who use marijuana use other

drugs; "marijuana alone is involved in fewer than 10 percent of all crimes and fewer than 15 percent of robberies."[20] The vast majority of arrests related to marijuana are for simply possessing the substance (marijuana accounts for nearly half of drug possession arrests nationally), a crime that would be eliminated if possession were decriminalized.

Few studies exist that examine the impact, if any, that decriminalization has on crime rates. Especially more recently, the bulk of research in this area has focused on whether legalization of marijuana sales, either for medical or adult use, might increase crime. But an analysis using 2014 data found no statistical relationship between marijuana's decriminalized status and property or violent crime rates. Aggravated assault and larceny theft rates were lower in states that had decriminalized.[21] This is not to suggest that decriminalizing causes a reduction in assault and theft, but at a minimum it indicates that decriminalization does not cause an increase.

Possible Effects on Crime Related to Mental Illness

That said, there are populations for whom extensive marijuana use could lead to criminal activity. For example, there is some evidence to suggest that using marijuana in adolescence is associated with committing crimes in adulthood, with heavier and earlier use increasing the odds of engaging in future crimes, although some studies have found a link only between marijuana use and drug-related and property crime, not violent crime. But most studies finding an association between adolescent marijuana use and later crime are not able to determine the nature of this link (i.e., is it the biochemistry of the plant or contextual factors surrounding its use that affect criminality?), nor are they able to rule out additional circumstantial factors. While the mechanisms behind the possible link between early marijuana use and criminal risk are unclear, the research is quite clear that adolescents, whose developing brains make them vulnerable to long-term and negative effects of repeated exposure to

THC, should not use marijuana.[22] Research also suggests that marijuana use can exacerbate mental illness, especially schizophrenia, and people diagnosed with schizophrenia or other forms of psychosis should not use marijuana. For people at risk of psychosis, marijuana use can contribute to psychotic episodes, during which a person may be more likely to commit violent acts. Alex Berenson, who has recently written extensively about the relationship between marijuana, psychosis, and violence, argues that marijuana use causes psychosis, and that people with psychosis are more likely to commit acts of violence, and thus that marijuana use causes violence.[23]

Critics of this argument have countered that researchers have not been able to rule out the possibility of a "shared vulnerability," by which people at risk for schizophrenia are also more likely to use marijuana while young due to other mediating factors.[24] And while there is substantial evidence that marijuana may trigger a psychotic episode in a person with schizophrenia, the research linking marijuana use itself to violence and crime is less robust; most studies cannot isolate marijuana use from use of other drugs and alcohol or environmental factors that may contribute to criminality.

The relationship between marijuana and psychosis, and the relationship that marijuana-related psychosis may have with a propensity toward violence, are important public health concerns that should be at the forefront of conversations about whether and how to legalize marijuana sales. But there is no evidence to suggest that decriminalization has any such associated consequences. Even critics of legalizing marijuana for commercial sale, whose primary objection is that doing so will increase violence, have expressed support for decriminalization. Berenson himself supports decriminalization as a "compromise" policy that is warranted in order to remove the burden of arrest and a criminal record for marijuana possession. Implicit in this support for decriminalization is the assumption that reduction or removal of legal penalties does not lead to increased marijuana use.

Possible Effects on Driving Accidents

Opponents of reform argue that relaxation of marijuana laws will increase the prevalence of drugged driving. In the last couple of years, some states that have legalized marijuana sales are seeing an increase in the number of drivers who are under the influence of marijuana. One limitation of these assessments is that only recently have states and localities more actively tested for marijuana-related impairment, limiting the validity of comparing rates of drugged driving before and after law changes.

Most studies of the impact of marijuana policy on drugged driving have focused on legalization of a medical or adult-use commercial market, not decriminalization. One recent study found that Massachusetts experienced a significant increase in THC-involved fatal crashes after decriminalizing in 2009 compared to states with prohibition.[25] As the authors point out, however, the study could not determine any causal effects of the law change, and other factors that could cause variation between Massachusetts and comparison states were not controlled for. Another study found that after California decriminalized marijuana in 2010, there was an increase in THC-involved traffic fatalities, but not an increase in marijuana-impaired weekend nighttime drivers. The study authors note several possible explanations for this, one of which is that due to "changes in vigilance regarding 'drugged driving' enforcement over time," THC was more likely to be tested for and its presence recorded after marijuana decriminalization took effect, compared to the period before the law change.[26]

Research on marijuana-impaired driving is also complicated by challenges in distinguishing between the presence of THC in drivers involved in accidents and the role that THC may have played in driver impairment. Delta-9-THC is the main psychoactive component in marijuana and the best indicator of whether a person is impaired. A blood sample can determine the presence of delta-9-THC, but active levels of the compound in a person's blood decline quickly, making time an essential aspect of accurate testing. Due to logistical issues, collecting blood samples from suspected drivers, when feasible, is usually an hours-long process.

Further complicating matters, marijuana use leaves traces of another compound, carboxy-THC, which can be identified through urinalysis and can linger in users' systems for months, even after impairment has long gone. Regular users can build up both delta-9-THC and carboxy-THC in their systems, meaning that a drug test might show a person to be under the influence of marijuana when that is not the case.

The difficulties associated with accurately determining whether an individual is impaired from marijuana use create uncertainties for law enforcement officers and drivers, as well as for researchers trying to evaluate the prevalence of drugged driving and the connection between this behavior and policy change. Complications in the ability to assess the prevalence and consequences of marijuana-impaired driving highlight the need for improved testing methods, but are not a reason to reject decriminalization. It is still too early to determine whether broad legalization of marijuana increases drugged driving, although there is some evidence to suggest an association. The data regarding decriminalization are far less persuasive.

It is also worth noting that roughly two-thirds of THC-positive drivers involved in fatal crashes tested positive for alcohol, other drugs, or a combination of both.[27] This is not to contend that driving while intoxicated on marijuana is safe. It is not, and DUI laws should apply to marijuana users as stringently as to users of alcohol, but there is no question that alcohol poses the greater threat. A review of numerous studies of the impact of marijuana or alcohol on motor vehicle crashes found that driving while using marijuana raises the chances of an accident by 1.3 to 3 times, compared to 6 to 15 times for alcohol.[28] Other analyses have found similar differences.[29] Legislators seriously interested in reducing traffic accidents should consider lowering the permissible level of blood alcohol concentration. They might also crack down further on the use of cell phones while driving, which quadruples the risk of an accident. Texting while driving is estimated to be 6 times more likely to cause an accident than alcohol.[30]

BENEFITS OF MARIJUANA DECRIMINALIZATION

Reduction in Arrests and Collateral Consequences

Over 62,000 people were arrested for marijuana-related offenses in Texas in 2017. Ninety-seven percent of those arrests were for simple possession.[31] Decriminalization would result in a substantial reduction in those arrests and, by extension, a reduction in the consequences that come with a criminal record.

States that have decriminalized marijuana have seen significant drops in low-level marijuana arrests following the policy change. A year after decriminalization, marijuana possession arrests for adults decreased by 90 percent in Massachusetts, 86 percent in California, and 67 percent in Connecticut.[32] Another analysis of decriminalization's impact on arrests found a 75 percent decline in youth arrests across five states (MA, CT, RI, VT, and MD), and a 78 percent reduction in adult arrests.[33]

Arrests for marijuana possession disproportionately affect communities of color. Despite similar use rates, blacks are roughly 3 times more likely to be arrested for marijuana possession than whites and 10 times more likely to be incarcerated.[34] In Texas, blacks make up roughly 12 percent of the state's population but accounted for 31 percent of marijuana arrests in 2017.[35] These troubling statistics explain why "marijuana is already legal if you're white" has become a common aphorism. Decriminalizing marijuana would not eliminate racial disparities in marijuana arrests. Even in places that have fully legalized marijuana use, blacks and Latinos are more likely to be arrested for marijuana-related offenses, such as possession as a juvenile or public consumption, highlighting the deeply ingrained nature of disparate law enforcement practices.[36] Still, the overall reduction in marijuana arrests that results from decriminalization will result in fewer people of color becoming ensnared in the criminal justice system.

Despite similar use rates, blacks are roughly 3 times more likely to be arrested for marijuana possession than whites and 10 times more likely to be incarcerated. In Texas, blacks make up roughly 12 percent of the state's population but accounted for 31 percent of marijuana arrests in 2017.

Decriminalization is a fairly modest policy proposal that does not increase access to marijuana or allow advertising for its use.

Some opponents of marijuana reform have argued that very few people actually serve time in jail for marijuana possession. This is increasingly true, in large part because local jurisdictions are implementing alternatives to incarceration for low-level offenders. Still, the consequences of an arrest and a criminal record can be severe. Individuals with a criminal conviction often face difficulties finding employment. They may lose or be barred from obtaining professional licenses, public housing, and educational assistance. Twelve states, including Texas, revoke a person's driver's license for a criminal conviction for a period of six months to two years and impose fees to get it back.[37] Noncitizens can face deportation.[38] The negative impacts of a criminal record can extend beyond an individual, potentially affecting long-term outcomes for a person's family and community. Disparate enforcement of prohibition means that all of these consequences are likely to fall more heavily on minority communities. It is because of the severely negative consequences associated with enforcement of prohibition, and their disproportionate impact on minority youth and young adults, that organizations such as the American Academy of Pediatrics and the American Public Health Association, which strongly oppose adolescent marijuana use, support decriminalizing marijuana possession as a way to minimize the harms associated with its use.[39]

More Efficient Use of Resources

Removing the criminal status of marijuana possession would mean federal, state, and local governments would no longer need to spend money to arrest, process, and jail defendants; to provide taxpayer-funded legal counsel to indigent defendants; or to incarcerate convicted offenders or monitor them through probation.

Most recent analyses of the economic benefits of marijuana reform focus on legalization. Decriminalization, a more moderate policy, has more modest economic potential. Still, decriminalizing can save significant dollars in enforcement. Jeffrey Miron and Katherine Waldock of the

Cato Institute estimate that Texas spends $330 million (2008 dollars) per year just on marijuana prohibition.[40] That considerable sum could be used to greater benefit if directed to such needs as education, transportation, public health, human trafficking, or to other reforms within the criminal justice system.

Decriminalization could also improve resource allocation for drug treatment. In 2016, roughly half of admissions to publicly funded treatment providers for marijuana use were criminal justice referrals, a pattern that has remained stable for 20 years.[41] People arrested for marijuana (and other drug) possession are often required to undergo treatment, whether they need it or not—and many do not. One study found that 74 percent of treatment participants who had been referred through probation or parole did not meet the criteria for substance use or dependence.[42] In an environment where resources are scarce, mandating participation in treatment programs from people who do not need, or desire, treatment can result in someone else who does need assistance being denied access or put on a waiting list. And while more cautious supporters of decriminalization may like to see mandated treatment as an alternative to incarceration, imposing such requirements can be a significant burden on individuals that complicates their lives and increases unnecessary contact with the criminal justice system.

This is not meant to suggest that marijuana users are never in need of treatment. Approximately 4 million people aged 12 or older, which is 1.5 percent of the U.S. population but 15.6 percent of past-month users, are estimated to have a marijuana use disorder requiring attention.[43] But evidence suggests that people referred to treatment for marijuana use through the criminal justice system are actually less likely to need it than people who enter treatment for marijuana use through other channels. Fewer legal mandates for marijuana users to participate in drug treatment could provide an opportunity to focus limited resources on people who have more serious substance use disorders.

CONCLUSION

The issue of whether and how to reform marijuana laws has garnered widespread public attention in recent years. Decriminalization of possession for personal use has received considerably less media and research focus than legalization of commercial marijuana sales. There is some justification for this. Compared to legalization of a regulated marijuana market, there is greater consensus about the possible impacts of marijuana decriminalization, which, many experts agree, would be relatively few beyond the intended reduction in marijuana possession arrests. And as states continue to legalize marijuana for medical and adult sale and use, identifying the implications of these more substantial policy changes has become a more pressing issue. That decriminalization has been increasingly eclipsed by debates over full legalization may contribute to the tendency among some of its opponents to conflate penalty reduction for marijuana possession with legalization of sales.[44] This is unfortunate because decriminalization of possession for personal use is a substantively different policy than legalizing the selling of marijuana in any form. A serious conversation about the potential public health consequences of creating a commercial market for marijuana is warranted. But decriminalization is a fairly modest policy proposal that does not increase access to marijuana or allow advertising for its use. The main goal of decriminalization is to remove the permanent damage that an arrest and criminal record can have for an individual, and to use public resources more efficiently in the process.

Decriminalization is not a perfect policy. Under many decriminalization schemes, people can still be arrested, and inability to pay the fines associated with civil penalties will result in incarceration for some people, most likely minorities and the poor. Decriminalization also fails to address the needs of individuals who can benefit from the plant's medicinal properties. Its greatest flaw, however, is that as long as growing and selling marijuana remain illegal, criminals decide what and to whom to sell, and they get to keep the money, tax-free.

Still, decriminalization is a major improvement over prohibition, one that would reduce arrests and the collateral consequences of a criminal record, reduce racial disparities in drug law enforcement, and allow for more efficient use of taxpayer dollars. Research shows these gains can be had without endangering public safety or encouraging use. Decriminalization is a sensible, conservative policy proposal. Perhaps this is why Gov. Greg Abbott and both major political parties in Texas have expressed support for reducing penalties for marijuana possession. A bill to do just that will come before the Texas Legislature in 2019, and elected officials will have the opportunity to support a policy that is fiscally prudent, socially just, and politically popular.

ENDNOTES

1. National Commission on Marihuana and Drug Abuse, http://bit.ly/2mkmcaT.

2. Substance Abuse and Mental Health Services Administration (SAMHSA), 2017 *National Survey on Drug Use and Health*.

3. A system in which it is legal to use marijuana but illegal to sell it creates significant tension in the legal system; this paradox as it relates to the Dutch coffee shop model, for example, has been written about extensively. See, for instance, https://bit.ly/2TtLosp

4. For information on CT marijuana possession law, see https://bit.ly/2usnuU4. For MD, see https://bit.ly/2JC8zRG. For OH, see https://bit.ly/2HSLVlw.

5. See Mississippi State Legislature, House Bill 272, 1998 Reg. Sess., http://bit.ly/2lEIaBk.

6. Dan Solomon, "Could Texas Decriminalize Pot in 2015?" https://bit.ly/2HFJGmk

7. Ross Ramsey, "Most Texas Voters Want to Legalize Marijuana, UT/TT Poll Finds," https://bit.ly/2KcDnlE.

8. Jay Wallis, "Travis County approves new diversion class for marijuana offenders," https://bit.ly/2U9grht

9. Office of Harris County District Attorney, "Marijuana program participants given final opportunity to make things right," https://bit.ly/2YoUHxq.

10. Ibid.

11. Meagan Flynn, "Not Having $150 'No. 1 Reason' Nearly 300 Have Failed Marijuana Diversion Program," https://bit.ly/2CC7inV.

12. Mississippi State Legislature, H.B. 292.

13. Carolyn Talmadge, "A Budding Revolution or Destined for Flames? Determining the Effects of Marijuana Legislation on Adolescent Prevalence Use Rates in the United States" (thesis, Tufts University, 2014), http://bit.ly/2mkq5wz; Glenn Greenwald, "Drug Decriminalization in Portugal" (Washington, D.C.: The Cato Institute, 2009); J. Fetherston and S. Lenton, "A Pre-post Comparison of the Impacts of the Western Australian Cannabis Infringement Notice Scheme on Public Attitudes, Knowledge and Use" (Perth: National Drug Research Institute, Curtin University of Technology, 2007).

14. Beau Kilmer, "Do Cannabis Possession Laws Influence Cannabis Use?" *Cannabis 2002 Report*, Ministry of Public Health of Belgium, pp. 100–124.

15. Rates of past-30 day marijuana use were higher in the five states that decriminalized compared to states that had not, but this was true prior to marijuana law changes. Richard A. Grucza, et al., "Cannabis decriminalization: A Study of Recent Policy Changes in Five U.S. States," https://bit.ly/2FqnKYL.

16. Angela K. Kills, et al., "The Effects of Marijuana Liberalizations: Evidence from Monitoring the Future," https://bit.ly/2gWpj5A .

17. Perceived health risks of marijuana use may play a greater factor in decisions about whether to use than the drug's criminal status—see Eric W. Single, "The Impact of Marijuana Decriminalization: An Update," *Journal of Public Health Policy* 10 (1989): 456–466—as may social norms surrounding marijuana use, see Craig Reinarman, et al., "The Limited Relevance of Drug Policy: Cannabis in Amsterdam and San Francisco," *American Journal of Public Health* 94 (2004): 836–842.

18. Office of National Drug Control Policy, "Improving the Measurement of Drug-Related Crime," 2013.

19. Charles Ksir and Carl L. Hart, "Cannabis and Psychosis: A Critical Overview of the Relationship," *Current Psychiatry Report* 18 (2016): iv.

20. Ibid., p. 73

21. Shana L. Maier, et al., "The Implications of Marijuana Decriminalization and Legalization on Crime in the United States," *Contemporary Drug Problems* 44 (2017):125–146.

22. Sarah-Jayne Blakemore, "Teenage Kicks: Cannabis and the Adolescent Brain," *The Lancet* 381 (2013): 888–889.

23. Berenson, *Tell Your Children.*

24. Ksir and Hart, "Cannabis and Psychosis," p. 1–12. :

25. See Jaeyoung Lee, et al., "Investigation of Associations between Marijuana Law Changes and Marijuana-Involved Fatal Traffic Crashes: A State-Level Analysis," https://bit.ly/2YwQQPa.

26. See Robin A. Pollini, et al., "The Impact of Marijuana Decriminalization on California Drivers," https://bit.ly/2OwgSgz.

27. AAA Foundation for Traffic Safety, "Fact Sheet: Prevalence of Marijuana Involvement in Fatal Crashes: Washington 2010–2014," https://bit.ly/1T2f2Sf.

28. See Robin Room, et al., Cannabis Policy: *Moving Beyond Stalemate*, http://bit.ly/2n45MVl.

29. For example, a 2016 meta-analysis found an increased risk of 1.22 to 1.36 for a traffic crash involving marijuana, compared to an average increased risk of 7.5 for fatal crashes involving alcohol. See Ole Rogeberg and Rune Elvik, "The Effects of Cannabis Intoxication on Motor Vehicle Collision Revisited and Revised," *Addiction* 111 (2016): 1348–1359.

30. See "Texting and Driving Accident Statistics," Edgar Snyder & Associates, http://bit.ly/2lnIb0U.

31. Texas Department of Public Safety, "The Texas Crime Report for 2017," https://bit.ly/1qmWejA.

32. Mike Males and Lizzie Buchen, "Reforming Marijuana Laws: Which Approach Best Reduces the Harms of

Criminalization? A Five-State Analysis," Center on Juvenile and Criminal Justice, September 2014.

33. Ksir and Hart, "Cannabis and Psychosis," p. 73.

34. American Civil Liberties Union, *The War on Marijuana in Black and White* (New York: American Civil Liberties Union, 2013).

35. See Drug Policy Alliance, "From Prohibition to Progress: A Status Report on Marijuana Legalization," https://bit.ly/2E2YJ4T.

36. Ibid.

37. Brentin Mock, "Why is Pennsylvania Still Suspending Driver's Licenses for Drug Offenses?" https://bit.ly/2Yp0F1x.

38. John Kelly, "Home and Away: DHS and the Threats to America," https://bit.ly/2x2r1lc. However, it is possible to obtain an exception for a first offense involving possession of 30 grams or less of marijuana, see https://bit.ly/2urtY5t.

39. American Academy of Pediatrics, "The Impact of Marijuana Policies on Youth: Clinical, Research and Legal update," https://bit.ly/2HSXyZU.

40. Jeffrey Miron and Katherine Waldock, "The Budgetary Impact of Ending Drug Prohibition" (Washington, D.C.: The Cato Institute, 2010), 33.

41. Treatment Episode Data Set (TEDS): 2016, Admissions to and Discharges from Publicly Funded Substance Use Treatment, https://bit.ly/2FBgIC4; Karen McElrath, et al., "Black-White Disparities in Criminal Justice Referrals to Drug Treatment: Addressing Treatment Need or Expanding the Diagnostic Net?" *Behavioral Science* 6 (2016): 1-15.

42. S.P. Kubiak, et al., "Treatment at the Front End of the Criminal Justice Continuum: The Association between Arrest and Admission into Specialty Substance Abuse Treatment," *Substance Abuse Treatment Prevention Policy* 1(2006): 20.

43. SAMHSA, 2017 *National Survey*.

44. The Texas Police Association recently opposed decriminalization by framing it within the context of commercial legalization. See https://bit.ly/2U2Brr6, https://bit.ly/2CEMHzd.

AUTHORS

William Martin, Ph.D., is the director of the Drug Policy Program. He is also the Harry and Hazel Chavanne Senior Fellow in Religion and Public Policy at the Baker Institute and the Chavanne Emeritus Professor of Sociology at Rice University. His research and writing focus on two major areas: the political implications of religion and the importance of the separation of religion and government, and ways to reduce the harms associated with drug abuse and drug policy.

Katharine Neill Harris, Ph.D., is the Alfred C. Glassell, III, Fellow in Drug Policy. Her current research focuses on the availability of drug treatment for at-risk populations, the opioid epidemic, and the legalization of medical and adult-use cannabis.

Rice University's Baker Institute for Public Policy

DRUG POLICY