

Legal Regulation of Marijuana

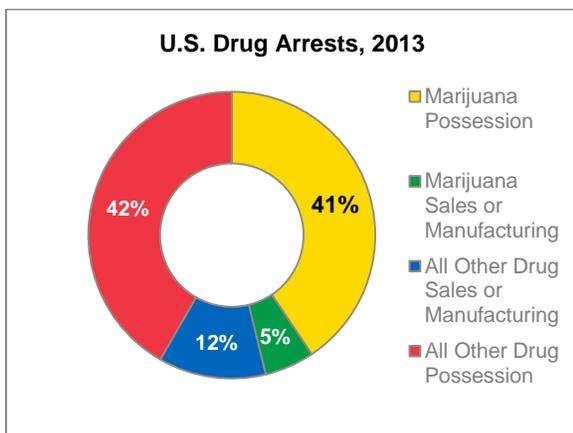
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The Costs and Consequences of Prohibition

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 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 – 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



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

The huge number of arrests drains scarce resources at enormous cost to taxpayers.⁷ More than half of those admitted to treatment for marijuana each year are referred by the criminal justice system.⁸ Many, perhaps most, did not need treatment.

Decriminalization

Eighteen 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.⁹

Evidence from jurisdictions that have reduced penalties shows no increase in marijuana or other drug use.¹⁰ The Institute of Medicine concluded that “there is little evidence that decriminalization of marijuana use necessarily leads to a substantial increase in marijuana use.”¹¹

Where decriminalization has been implemented effectively, it has resulted in substantial reductions in misdemeanor marijuana arrests.¹² 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.¹³

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;¹⁴ and the potential for continued arrests as part of a “net-widening” phenomenon.¹⁵

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

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.¹⁷

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.¹⁸ 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.¹⁹ Marijuana possession arrests under Mayor Bill de Blasio continued in 2014 at roughly the same racially disparate rates.²⁰

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.²¹ 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 violence, crime and corruption.²²

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. 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.²³ 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, and energy usage, to clandestine grow operations threatening public parks.²⁴

Revenue from taxation of marijuana sales could reach up to \$8.7 billion per year nationally – on top of billions in saved law enforcement resources.²⁵

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.

Colorado’s Experience with Legal Regulation

Colorado’s experience with marijuana regulation has been positive thus far, with several major benefits and few discernible negative consequences. A report by the Brookings Institution found that “initial implementation of legal retail marijuana has been largely successful.”²⁶

- **Millions in tax revenue:** In its first full year of legal marijuana sales, the state generated \$52.5 million in tax revenue (excluding revenue from licenses, fees and medical marijuana),²⁷ with

millions of this revenue allocated for school construction and youth education, drug prevention, and health programs.

- **Huge reductions in arrests, prosecutions and criminal justice involvement:** Total marijuana-related criminal charges decreased by approximately 80 percent between 2010 and 2014, with the bulk of this decrease occurring after 2012.²⁸
- **No impact on crime rates:** In fact, violent crime and property crime rates in Denver both decreased in 2014 compared to 2013.²⁹
- **No impact on traffic fatalities:** Traffic fatalities have remained stable since legalization.³⁰
- **Employment and economic growth:** As of December 31, 2014, 16,000 people have been licensed to work in the new industry.³¹
- **Widespread public support:** Coloradans appear quite satisfied with their choice to legally regulate marijuana. An April 2015 Quinnipiac University poll found that 62 percent of residents surveyed approved of the state's marijuana law – an eight-percent increase since 2012.³²

Alaska, Oregon and Washington D.C. voted to legalize marijuana in 2014, and several other states will follow suit in the coming years. In Congress, a bipartisan group of legislators has introduced historic legislation to end federal marijuana prohibition.³³ In 2014, a bipartisan amendment passed by Congress prohibited the Department of Justice from spending any money in 2015 to prevent states "from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."

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.

Federal Government Gives States a Qualified Green Light to Regulate 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

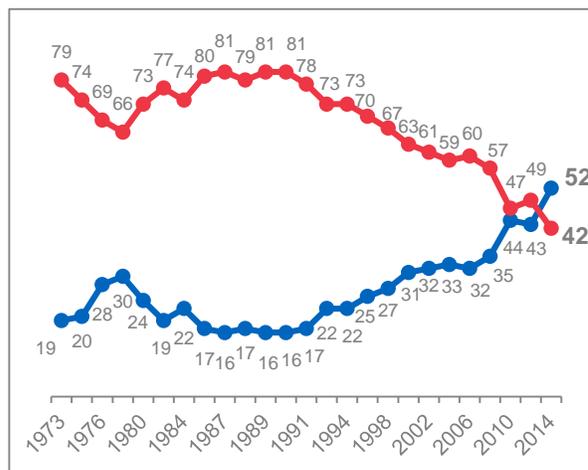
certain federal priorities, such as preventing access by minors, diversion of marijuana, increases in violence or drugged driving, or damage to public lands. Most importantly, the DOJ openly acknowledged the many benefits of legal regulation.³⁴

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

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

— % No, illegal
— % Yes, legal



Source: General Social Survey, March 2015.

Impact of Legal Regulation on Use

It is too early to determine actual prevalence in the states that have legalized. Nonetheless, early indications from Colorado are positive. Preliminary data from the 2013 Healthy Kids Colorado Survey, released by the state Department of Public Health and Environment in 2014, found that high school marijuana use in the past month slightly decreased from 22 percent in 2011 to 20 percent in 2013. Although these data were collected prior to the commencement of legal, adult marijuana sales, they show that the state's vote to legalize marijuana appears not to have sent the wrong message to its young people.

In addition, several reports have found that youth use either remained the same or actually *decreased* in most of the states that have legalized marijuana for medical purposes.

- A 2013 study in the *American Journal of Public Health* compared data from medical and non-medical states from 2003-2011 and found no “statistically significant...effect on the prevalence of either lifetime or 30-day marijuana use.”³⁶
- A 2012 study in the *Annals of Epidemiology* produced findings which suggested that medical marijuana laws may have actually “decreased past-month use among adolescents” and have had “no discernible effect on the perceived riskiness of monthly use.”³⁷
- A 2014 study in the *Journal of Adolescent Health* “did not find increases in adolescent

marijuana use related to legalization of medical marijuana.”³⁸

- A 2014 paper published by the National Bureau of Economic Research concluded, “Our results are not consistent with the hypothesis that the legalization of medical marijuana caused an increase in the use of marijuana and other substances among high school students.”³⁹
- The American Academy of Pediatrics concluded in a 2015 policy statement, “To date, data have shown that state-specific legalization of medical marijuana has not led to an increase in recreational use of marijuana by adolescents.”⁴⁰

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.

³Ibid., Table 1.19B; Ojmarrh Mitchell and Michael S. Caudy, “Race Differences in Drug Offending and Drug Distribution Arrests,” *Crime & Delinquency* (2015).

⁴ American Civil Liberties Union, “The War on Marijuana in Black and White,” (2013); Holly Nguyen and Peter Reuter, “How Risky Is Marijuana Possession? Considering the Role of Age, Race, and Gender,” *Crime & Delinquency* 58, no. 6 (2012); 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, but state-level data show that Latinos are 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 Ibid; Jeffrey A Miron and Katherine Waldock, *The Budgetary Impact of Ending Drug Prohibition* (Cato Institute, 2010).

⁸ 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.

⁹ 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.

¹⁰ Eric W Single, “The Impact of Marijuana Decriminalization: An Update,” *Journal of public health policy* (1989); Organization of American States, “Scenarios for the Drug Problem in the Americas: 2013-2025,” (2013); 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).

¹¹ Janet Elizabeth Joy, Stanley J Watson, and John A Benson, *Marijuana and medicine: assessing the science base*.

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁵ Peter Reuter, “Marijuana Legalization: What Can Be Learned from Other Countries,” (Santa Monica, CA: RAND, 2010).

¹⁶ 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); 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); Eric Single, Paul Christie, and Robert Ali, “The Impact of Cannabis Decriminalisation in Australia and the United States,” *Journal of public health policy* (2000).

¹⁷ 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).

¹⁸ See e.g., NORML, “State Laws,” <http://norml.org/laws>.

¹⁹ 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 N.Y.P.D.’S Marijuana Arrest Crusade Continues in 2014,” (2014).

²⁰ “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.” The Mayor’s Office announced plans to revise parts of the NYC Summons process, whereby people found with small amounts of marijuana would be issued a court summons and immediately released. Yet by simply issuing summonses instead of making arrests, NYPD could add roughly 30,000 people a year to the docket of the already overburdened NYC Summons Court.

²¹ Beau Kilmer et al., “What America’s Users Spend on Illicit Drugs: 2000-2010,” (Washington, D.C.: Office of National Drug Control Policy, 2014).

²² Peter Reuter, “Why Has Us Drug Policy Changed So Little over 30 Years?,” *Crime and Justice* 42, no. 1 (2013).

²³ Jonathan P Caulkins et al., “Design Considerations for Legalizing Cannabis: Lessons Inspired by Analysis of California’s Proposition 19,” *Addiction* (2012).

²⁴ 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.

²⁵ Miron and Waldock, *The Budgetary Impact of Ending Drug Prohibition*.

²⁶ John Hudak, “Colorado’s Rollout of Legal Marijuana Is Succeeding: A Report on the State’s Implementation of Legalization,” (Brookings Institution, 2014).

²⁷ Colorado Department of Revenue, <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

²⁸ Jon Gettman, “Marijuana Arrests in Colorado after the Passage of Amendment 64,” (Drug Policy Alliance, 2015).

²⁹ Denver Department of Safety, “Part 1 Crime in the City and County of Denver Based on UCR Standards,” January 2015,

http://www.denvergov.org/Portals/720/documents/statistics/2014/UCR_Citywide_Reported%20Offenses_2014.pdf

³⁰ Colorado Department of Transportation, “Historical Fatalities Graphs for Colorado since 2002.”

³¹ Email communication from Natricee Bryant, Communications Specialist, Colorado Department of Revenue, Executive Director’s Office, January 5, 2014.

³² Quinipiac University, “With Big Age, Party Gaps, Iowa Voters Split on Marijuana, Quinipiac University Swing State Poll Finds; Colorado, Virginia Voters Back Recreational Pot,” (2015).

³³ United States House of Representatives, *The Ending Marijuana Prohibition Act of 2013*, 2013, House Resolution 499, <http://hdl.loc.gov/loc.uscongress/legislation.113hr499>.

³⁴ 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).

³⁵ Lydia Saad, “Majority Continues to Support Pot Legalization in U.S.,” *Gallup*, November 6 2014; 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 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): 1500-6.

³⁷ S. Harper, E. C. Strumpf, and J. S. Kaufman, “Do medical marijuana laws increase marijuana use? Replication study and extension,” *Ann Epidemiol* 22, no. 3 (2012).

³⁸ Esther K. Choo et al., “The Impact of State Medical Marijuana Legislation on Adolescent Marijuana Use,” *Journal of Adolescent Health* 55, no. 2 (2014).

³⁹ D Mark Anderson, Benjamin Hansen, and Daniel Rees, “Medical Marijuana Laws and Teen Marijuana Use,” *National Bureau of Economic Research (NBER)* (2014): 19.

⁴⁰ S. Ammerman et al., “The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update,” *Pediatrics* (2015): 5; Committee On Substance Abuse and Committee On Adolescence, *ibid*.