

In Support of the Decriminalization of Personal Drug and Paraphernalia Use and Possession: Position Statement of AMERSA, Inc. (Association for Multidisciplinary Education, Research, Substance use and Addiction)

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Executive Summary

Background: More than 25% of all arrests made nationwide are related to drug offenses, impacting almost 1.2 million people and their social networks. Further, roughly 20% of people in jails and prisons across the US are incarcerated for a drug offense and millions more are under community supervision for these charges. This criminalization of drug use has negatively impacted the health and wellbeing of people who use drugs (PWUD) as incarceration is associated with many poor health outcomes.

Responses and Policy Options: Decriminalization – a process of removing criminal sanctions for a previously criminalized behavior – of drug use is central to harm reduction as it mitigates these negative consequences of drug use and supports the health of PWUD.

AMERSA's Position: AMERSA supports the decriminalization of drug and paraphernalia possession for personal use for all currently illicit drugs and all associated equipment. AMERSA continues to strongly advocate for the funding of harm reduction strategies and addiction services to improve the health and wellbeing of PWUD since decriminalization without complementary funding for harm reduction services, addiction treatment services, and social safety nets will be incomplete.

Recommendations: Call for the opposition of policies that continue to criminalize personal drug use and possession. Advocate for the redirection of funds from efforts to criminalize drug use to evidence-based strategies to improve the health and wellbeing of PWUD. Support policies that aim to improve the health of PWUD of color, who have been disproportionately harmed by the criminalization of drug use. Support the rigorous evaluation of decriminalization as a harm reduction strategy.

Background

Policies that criminalize drug use are typically based in the belief that using drugs should be a crime (i.e., an offense punishable by law).¹ Those who support such policies often assert that criminalization should discourage drug use and decrease other crimes that may co-occur with drug use. These beliefs – *which are both factually and morally misguided* – have lent themselves to a long history of laws and regulations in the United States that place people who use drugs (PWUD) in prisons and jails and/or under criminal legal supervision (e.g., probation, parole, drug courts). Further, the history of drug use criminalization is irrevocably tied to systemic racism, as Black people and other people of color have been targeted and disproportionately arrested and incarcerated for drug-related charges.

A Brief History of the Criminalization of Drug Use

In the United States, laws criminalizing drug use have been used as a tool to discriminate against immigrants and people of color as early as the 1800s. The first law that made drug use a crime in the United States was the San Francisco Opium Den Ordinance of 1875 which created a misdemeanor offense for owning or using “opium dens” (i.e., places people could smoke opium); this law targeted communities of Chinese immigrants where such businesses were more prevalent.^{2,3} Over the next few decades, this type of law spread to other states until a federal law was eventually passed that banned the importation, possession, and use of smokable forms of opium: the 1909 Smoking Opium Exclusion Act.⁴ Just a few years later, the Harrison Act was passed by Congress in 1914 to regulate opiate and cocaine use. This law was created in response to racist and inflammatory claims about Black people who use cocaine, including assertions that Black people who use cocaine were a threat to White people.⁵⁻⁸ Cannabis use was essentially criminalized shortly thereafter via the 1937 Marijuana Tax Act. This act largely targeted Mexican immigrants at the US’ Southern Border.^{9,10}

In 1970, the Controlled Substances Act was signed into law by President Richard Nixon and created a scheduling system for controlled drugs based on medical value and risk of addiction, with Schedule 1 drugs carrying no medical utility and high risk of addiction.¹¹ However, little research was used to justify the placement of drugs in their respective schedules (e.g., heroin and cannabis were both placed in Schedule 1 despite their different risks). Most people mark the beginning of the “War on Drugs” in June of 1971 when Nixon declared, “Public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.”¹¹ Thus, Nixon set out to create harsh penalties for the possession and sale of controlled drugs outside of medical and scientific use. The Drug Enforcement Administration was created shortly thereafter in 1973, allocating funding for specialized police that targeted unregulated drug use and the underground drug trade.¹² This War on Drugs was racialized from its inception, with Nixon’s domestic policy chief, John Ehrlichman, quoted as saying “By getting the public to associate the hippies with cannabis and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did.”¹³

A decade later, President Ronald Reagan and the First Lady Nancy Reagan supported “Just Say No,” a campaign designed to teach children to refuse and abstain from drugs.^{14,15} This campaign lacked theoretical justification and evidence of effectiveness from the start; not only did this campaign not meet its intended goals (e.g., high schoolers had high rates of drug use throughout the 1980’s and 1990’s) but also created a rhetoric that drug use was a personal failing.^{16,17} Further, President Reagan contributed greatly to the expansion and intensification of the drug war —and, specifically, racial disparities created by the drug war — through support of mandatory minimum laws such as the Comprehensive Crime Control Act of 1984 and the Anti-

Drug Abuse Act of 1986.^{18–20} Media outlets reiterated and amplified the fear-based and punitive messages of the administration by tying drug use to morality. Harmful and stigmatizing depictions of PWUD fueled many citizens to think drug use was a problem among racial minorities; Black people were targeted and criminalized for use of “crack cocaine”.^{21,22}

Funding for police officers and prisons expanded rapidly under President Bill Clinton’s Violent Crime Control and Law Enforcement Act of 1994, which drastically increased the number of people arrested and sentenced for drug-related charges.^{23–25} Efforts to incarcerate PWUD – and especially those of color – largely remained status quo going into the 21st century. This eventually was scaled back, marked by President Barack Obama signing the Fair Sentencing Act in 2010.²⁶ This law aimed to reduce racial disparity gaps in sentencing that were created by the racialized mandatory minimums set by Reagan’s Anti-Drug Abuse Act of 1986. Since 2010, there has been progress – though slight – to address the harms created by the War on Drugs. For instance, President Joe Biden has made progress towards removing sanctions for cannabis possession and use.²⁷

However, there are still numerous policies both in place and being proposed that maintain and increase criminalization of drug use. Many of these new policies focus specifically on fentanyl; for instance, Senators in the New Hampshire legislature are proposing mandatory minimums for possession of 5 grams of fentanyl (S.B. 415) though some PWUD use this amount of fentanyl every day.²⁸ Multiple policies across the US have focused on creating punishments for ‘drug-induced homicide,’ which aim to target drug dealers (e.g., S.380 - Felony Murder for Deadly Fentanyl Distribution Act of 2023).²⁹ Ultimately, such laws not only create a false dichotomy between drug dealers and people who use drugs, but also will not meet their intended goal to decrease the sale of drugs in the community.³⁰

Current Trends Resulting from the Criminalization of Drug Use

The War on Drugs paved the way for numerous federal and state laws that criminalize many types of drugs, drug use, and drug possession. Such laws have resulted in a devastating rise in the number of people involved in the criminal legal system. More than 25% of all arrests made nationwide are related to drug offenses, impacting almost 1.2 million people and their social networks.³¹ Approximately 8 out of 10 of these drug-related arrests are for personal drug possession.³² After trial and sentencing, this translates to roughly 20% of people in jails and prisons across the United States being incarcerated for a drug offense.^{33,34} Further, millions of people who were incarcerated for drug related charges are then released back into their communities under supervision (e.g., parole, probation, drug courts), where they (a) are often mandated to provide regular drug tests, (b) have insufficient access to evidence-based treatment for their substance use, and/or (c) struggle to reintegrate into society due to barriers to key social needs (e.g., housing, child care, employment).^{33,34}

The criminalization of drug use has disproportionately impacted Black people – though people of all races have been shown to use drugs at very similar rates – as laws stemming from the War on Drugs intentionally targeted Black communities as a mechanism to uphold tenets of White supremacy.^{35,36} These racist laws have resulted in high rates of arrest and longer sentences for Black people; for instance, in 2020, Black people represented almost 25% of all drug arrests in the United States despite making up only about 13% of the population and engaging in similar rates of drug use as white people.^{37–39}

Public Health Outcomes

A Failed War and the Overdose Crisis

Prioritizing drug arrests and the continued criminalization of drug use has not been successful at stopping drug use.⁴⁰ In fact, our nation is facing an unprecedented overdose crisis with over one million people dying in the past two decades; approximately 110,000 people died in 2022 alone.⁴¹ It is clear: punishing and arresting PWUD has created a crime out of a health issue. Criminalization of drug use has negatively impacted the health and wellbeing of PWUD, as well as their communities. Some of these implications to public health are described below.

Dangers of Incarceration

Exposure to incarceration can be a risk factor for poor health outcomes.⁴² Moreover, our criminal legal system is ill-equipped to address drug use and related outcomes (i.e., overdose).⁴³ Alcohol and drug-involved deaths have increased by over 600% in state prisons since 2001, in some part due to the fact that most jails and prisons fail to provide access to evidence-based prevention (e.g., naloxone) or treatments (e.g., methadone, buprenorphine).^{44–46} Further, studies show the risk of fatal overdose is 27 times higher among people recently released from incarceration than the general public due to disrupted access to services, lower drug tolerance upon release, and a rapidly changing unregulated drug supply.⁴⁷

Impact of Collateral Consequences

Having a criminal record – which one can have as a result of either arrest and/or incarceration – extends the punishment of drug laws into the community. These “collateral consequences” may come in the form of background checks for employment, bans in public housing, voter disenfranchisement, exclusion from licensing and certification in certain professions, and ongoing fees for probation or parole supervision.^{48,49} Without access to a steady source of income, stable housing, and other basic needs, PWUD with past or current contact with the criminal legal system are at risk for poorer health outcomes.^{50,51} Further, the stigma of using currently-illicit drugs that has stemmed from media portrayals and the drug war, compounded by a criminal record, can often deter PWUD from seeking healthcare and other supportive services for fear of mistreatment and/or misunderstanding by medical providers.^{52–54} In this way, the negative health effects of incarceration have long-lasting and far-reaching consequences for the health of PWUD.

Policy Options

Decriminalization is Central to Harm Reduction

Substance use disorders and high-risk drug use are public health issues, not criminal ones. In fact, having a use disorder, per the criteria of the Diagnostic and Statistical Manual of Mental Disorders–5 (DSM-5), includes symptoms such as (a) continued drug use despite knowing such use causes problems socially and (b) recurrent use despite knowing associated risks.⁵⁵ In fact, the previous version of the DSM (i.e., the DSM-4), included legal problems as one of the criteria to diagnose a substance use disorder.⁵⁶ Removing this criterion from the DSM was a step in the right direction, but more needs to be done to recognize that crime and drug use are not synonymous. Further, not only is the criminalization of drugs punitive and at odds with improving the health and wellbeing of PWUD, but criminalization is ineffective at decreasing drug use.⁵⁷ Instead, criminalization can lead to serious health impacts on PWUD.^{58,59}

As such, our nation is in dire need of laws and regulations that mitigate these impacts. Decriminalization – a process of removing criminal sanctions for a previously criminalized behavior – is a policy that has been supported by groups like the American Public Health Association, American Society of Addiction Medicine, American Pharmacists Association, UNAIDS, the World Health Organization, and others.^{60–64} Community-based harm reductionists

and PWUD both began and continue to drive this social justice movement through grassroots efforts in response to the failure of drug policy. Ultimately, the decriminalization of drug use is central to harm reduction and to supporting the rights of PWUD.⁶⁵

Real-World Examples of Decriminalization

The preeminent example of drug decriminalization globally is Portugal, which decriminalized simple possession and use of drugs in 2001. Criminal charges for drug use were removed and were replaced with administrative violations in tandem with increased investments into health services for use disorders. After more than two decades, research has found positive results from such decriminalization including reductions in new cases of HIV, increases in the number of people receiving treatment for use disorders, and decreased incarcerations.^{66,67} Further, though it can be difficult to tease apart preexisting temporal trends, decriminalization of drug use in Portugal was associated with decreases in past-month and past-year drug use in the general population.⁶⁸⁻⁷⁰ Ultimately, some key lessons from Portugal have arisen through their efforts to create policy around decriminalization; this includes the importance of (a) funding public health services such as housing and harm reduction in parallel to decriminalizing drugs, (b) ensuring there are sufficient resources for robust data collection and reporting around drug use, and (c) including multidisciplinary perspectives and PWUD in decision making.⁷¹

The year 2020 was a turning point for the United States' progress towards *de jure*, or legally recognized, decriminalization of drug use, as voters in Oregon endorsed Measure 110 on the ballot (the Drug Addiction Treatment and Recovery Act). This measure changed possession of small amounts of all drugs from misdemeanors to civil violations (i.e., citations and fines) while also increasing funding for substance use disorder treatment and harm reduction services.⁷² Accordingly, this measure decreased the number of drug possession-related arrests and increased access to services for PWUD.^{73,74} However, fentanyl entered the drug supply in Oregon – and much of the Pacific Northwest – before Measure 110 was implemented and overdose deaths began to dramatically rise. Although research conducted by the Centers for Disease Control and Prevention and national experts showed that this increase in overdose deaths was *not* due to Measure 110, opponents argued that the lack of pressure or coercion into treatment from law enforcement was to blame for the rise in overdose deaths.⁷⁵ Despite early signs of Measure 110's success and with insufficient time to develop a new system for managing substance use in the community, Oregon's leaders re-criminalized drug possession and stifled ongoing efforts to help PWUD in early 2024 by adding provisions to require jail time for drug possession if treatment was not completed.

One primary policy step towards larger scale decriminalization in the United States has been through Good Samaritan Laws, which protect those who try to intervene (e.g., call 911, administer naloxone, etc.) while witnessing a drug overdose.⁷⁶ Most states have passed laws, though heterogenous, providing some form of legal protection (e.g., immunity, reduced sentences) for being in the presence of drugs during an overdose, indicating that a legislature can prioritize public health over supposed crimes.⁷⁷⁻⁷⁹ However, many Good Samaritan Laws are too restrictive, often leaving those who witness an overdose worried about their criminal legal safety if they attempt to call 911.⁸⁰⁻⁸⁸

Additionally, over 25 states have passed legislation related to cannabis decriminalization (i.e., removing criminal sanctions for small amounts of cannabis possession for personal use).⁸⁹ Further, in late 2022, President Biden announced a pardon for those with previous Federal offenses of simple possession of cannabis.⁹⁰ Such policies and decisions both set precedent and demonstrate how decriminalization of other drugs could be feasible.

Lastly, some states have moved towards decriminalizing drug “paraphernalia,” which is a term used by law enforcement to describe objects that people use to “produce, conceal, and consume” drugs.^{91,92} In harm reduction spaces, these “paraphernalia” are instead called safe supplies, drug checking tools, or sterile equipment, and are intended to prevent harm for PWUD and are often necessary for the success of harm reduction services.⁹³ As such, legislation has been designed to ensure people not only have access to these tools, but also that people are not at risk for incarceration for simply possessing these mechanisms to use safely. For instance, multiple states have carved out parts of drug paraphernalia laws to decriminalize sterile syringes, smoking equipment, and/or fentanyl test strips; yet, paraphernalia criminalization continues to vary greatly.⁹²

Intended Outcomes of Decriminalization Policies

Currently, criminalizing drug use and any resulting criminal records from drug use can harm PWUD’s reentry into their communities and progress towards their treatment goals. As such, decriminalizing drug use may lead to improvements in some of the following measurable areas:

- *Criminal Legal System:* With decriminalization of drug use, there would be a corresponding decrease in the number of people entering prisons and jails across the United States. This means a proportion of PWUD would no longer have to face the consequences of arrest and incarceration, and the poor health outcomes that are associated with these exposures.
- *Law Enforcement:* Upon decriminalization, police forces would no longer need to spend time arresting people for drug use (i.e., a health issue); instead, they would have increased time to address other more pertinent issues (i.e., serious crimes). Additionally, alternative first responder teams (i.e., social workers, peer workers, etc.) could take on the role of responding to overdoses, saving additional time for police officers.
- *Collateral Consequences:* If PWUD do not have to face arrests and incarceration due to their own drug use, a higher proportion of PWUD will not have criminal records. This means they will have an easier time navigating their communities in housing, receiving public assistance, getting jobs and education, and more. All of these sources of stability can help them to maintain their treatment goals and stability in their lives.
- *Harm Reduction:* Criminalizing drug use interferes with many evidence-based harm reduction strategies as fear of arrest is a substantial barrier to engaging with services (e.g., calling 911 during an overdose, going to an emergency department, visiting a harm reduction center or drug checking program, accessing syringe services, carrying sterile drug-using equipment, etc.). As such, decriminalization is likely to increase the number of PWUD that feel able and empowered to use harm reduction services, treatment, and healthcare, and are truly safe to do so.
- *Health:* With funding diverted from the criminal legal system and law enforcement, there can be increased attention to properly funding systems and structures allowing providers to adopt evidence-based, clinical best practices for the prevention and treatment of use disorders. Additionally, there can be increased effort to provide continuity of care for injection-related infectious complications such as skin and soft tissue infections, endocarditis, and viral hepatitis.

AMERSA’s Position

AMERSA supports rigorous, evidence-based prevention and intervention strategies that decrease rates of overdose, reduce rates of infectious diseases associated with drug use, and improve the quality of life for PWUD. Accordingly, we support the decriminalization of drug and paraphernalia possession for personal use – for all currently illicit drugs (e.g., fentanyl, methamphetamine, cocaine, etc.) and all associated drug tools and equipment (e.g., safer smoking supplies, test strips, etc.) – by adults. Further, AMERSA continues to strongly advocate

for the funding of harm reduction strategies, substance use treatment services, and addiction treatment services to improve the health and wellbeing of PWUD. Decriminalization without complementary funding for such strategies and services, as well as social safety nets, is incomplete. Additionally, decriminalization coinciding with forced treatment or funneling people into drug courts for mandated treatment is also insufficient. PWUD need access to evidence-based services and treatment, should they decide to pursue this, without fear of arrest or incarceration. Drug use is a health issue, not a criminal one.

Recommendations

Decriminalization is a key tenet of harm reduction and improving the success of all harm reduction strategies. As such, we propose that we leverage the position of AMERSA as interdisciplinary leaders in substance use education, research, care, and policy to:

- Call for the opposition of policies that continue to criminalize personal drug use and possession – the US must stop arresting, sentencing, and incarcerating people who possess and use drugs and/or for possessing drug-using equipment. Sustainable and community-informed policies must be created to begin to reverse the harms caused by the criminalization of drugs.
- Advocate for the redirection of funds from efforts to criminalize drug use to evidence-based strategies to improve the health and wellbeing of PWUD. This refocus should include funding for addiction treatment, social services, and harm reduction services. Decriminalization policies should be matched with increased funding to programs related to substance use disorder treatment, health, education, and more.
- Support policies that aim to improve the health of PWUD of color, who have been disproportionately harmed by the criminalization of drug use.
- Support the rigorous evaluation of decriminalization as a harm reduction strategy.

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