

PROPOSAL TO END MANDATORY MINIMUM SENTENCING FOR DRUG
CRIMES AND DECRIMINALIZE POSSESSION OF ALL ILLICIT DRUGS

by
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ABSTRACT

This capstone project entitled “Proposal to End Mandatory Minimum Sentencing for Drug Crimes and Decriminalize Possession of All Illicit Drugs” explores the societal and economic costs that the current drug policy has on American society. The policy proposed focuses on decriminalization and harm reduction methods as an alternative solution to the “tough on crime” drug policy stance that has dominated since the 1980’s.

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MEMORANDUM

TO The Honorable Senator Kamala Harris

FROM Leah Shirley

SUBJECT Proposal to End Mandatory Minimum Sentencing for Drug Crimes and Decriminalize Possession of All Illicit Drugs

DATE August 29 2017

Action-Forcing Event

On May 10th 2017, US Attorney General Jeffery Sessions wrote a memorandum informing federal prosecutors around the country to seek the highest possible charges and sentences against drug offenses and to furthermore disclose all facts that can impact sentencing to the sentencing court in order to be fair and consistent when enforcing the law.¹ In a statement made after the release of the memorandum US Attorney General, Jeffrey Sessions, noted that, "This policy fully utilizes the tools Congress has given to us. By definition the most serious offenses are those that carry the most substantial guidelines sentence, including mandatory – minimum sentences".² This policy memorandum effectively rolls back drug-sentencing policies from the Obama Era

¹ "Department Charging and Sentencing Policy." Jeff Sessions to Memorandum to all Federal Prosecutors. May 10, 2017. May 10, 2017. Accessed September 4, 2017.

<https://assets.documentcloud.org/documents/3719247/Jeff-Sessions-s-criminal-charging-policy.pdf>

² Ford, Matt. "Jeff Sessions Reinvigorates the Drug War." The Atlantic. May 12, 2017. Accessed September 05, 2017. <https://www.theatlantic.com/politics/archive/2017/05/sessions-sentencing-memo/526029/>

and brings back into effect the controversial mandatory minimum sentencing laws that were implemented during the height of the “War on Drugs”.³

Statement of Problem

Since its inception the cornerstone concept of the “War on Drugs” has always been to eradicate the use and distribution of drugs in the United States. The “War on Drugs” took a notable tough on crime turn in the 1980’s when the 99th United States Congress passed the “Anti-Drug Abuse Act of 1986”, which required mandatory sentencing minimums for drug use and drug related crimes.⁴ The policy of mandatory minimum sentencing for drug offenses needs to be re-evaluated as mandatory sentencing has proven to be ineffective. Since the passage of the 1986 Act and subsequent legislation in the 80’s and 90’s mandatory sentencing has proven to be an ineffective and costly policy for eradicating the use and abuse of drugs and has furthermore created additional issues such as mass incarceration of non-violent drug offenders and has further deepened racial inequality in the criminal justice system.⁵

While drug related arrests have increased since the implementation of mandatory sentencing minimums, the availability and use of drugs in the United States has steadily remained unaffected. ⁶ When it comes to drug use, “the

³ Tanfani, Joseph, and Evan Halper. "Sessions restores tough drug war policies that trigger mandatory minimum sentences." Los Angeles Times. May 12, 2017. Accessed September 05, 2017.

<http://www.latimes.com/politics/la-na-politics-sessions-drugwar-20170511-story.html>

⁴ "Anti-Drug Abuse Act of 1986 (1986 - H.R. 5484)." GovTrack.us. Accessed September 16, 2017.

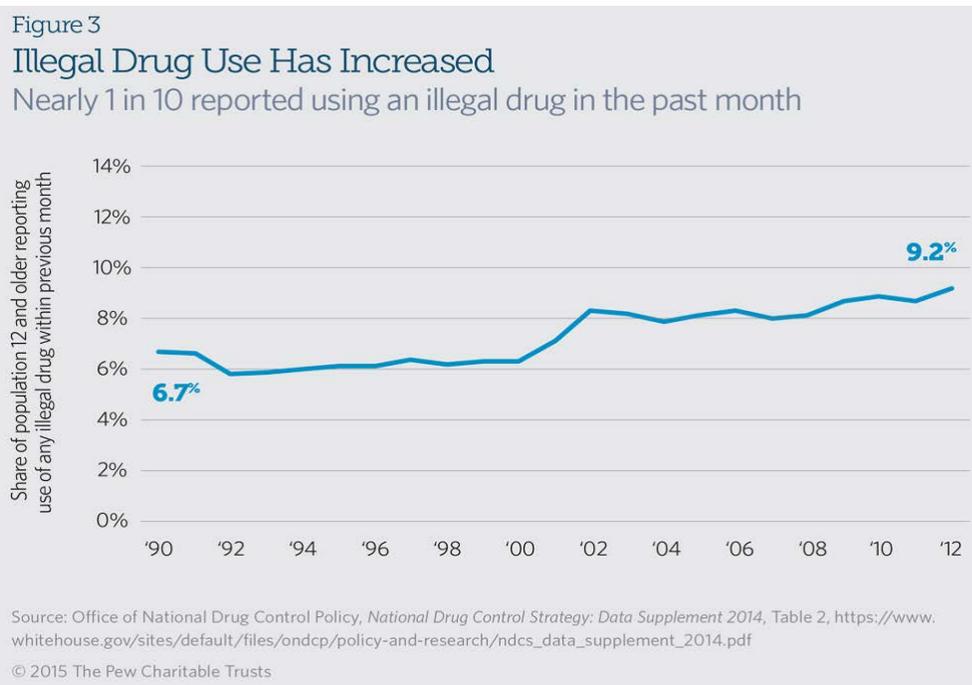
<https://www.govtrack.us/congress/bills/99/hr/5484>.

⁵ "ACLU Releases Crack Cocaine Report, Anti-Drug Abuse Act of 1986 Deepened Racial Inequity in Sentencing." American Civil Liberties Union. Accessed September 16, 2017.

<https://www.aclu.org/news/aclu-releases-crack-cocaine-report-anti-drug-abuse-act-1986-deepened-racial-inequity-sentencing>.

⁶ "Federal Drug Sentencing Laws Bring High Cost, Low Return." Federal Drug Sentencing Laws Bring High Cost Low Return. Accessed September 16, 2017. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>

share of Americans age 12 and older who said in a national survey that they had used an illicit drug during the previous month increased from 6.7 percent in 1990 to 9.2 percent—or nearly 24 million people—in 2012”.⁷ The current Opioid Crisis in America also points to a deadly increase in the use of drugs and demonstrates how mandatory minimum sentencing is not an effective deterrent; the data shows that increased punitive action has created little to no impact on deterring drug use and abuse, and the opioid crisis has ushered in an increase not only in drug use but also in drug related overdoses.⁸ Over the years as mentioned above drug use has steadily increased, the graph below depicts this through data compiled from the Office of National Drug Control Policy.



⁷ "Federal Drug Sentencing Laws Bring High Cost, Low Return." Federal Drug Sentencing Laws Bring High Cost Low Return. Accessed September 16, 2017. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>

⁸ Katz, Josh. "Drug Deaths in America Are Rising Faster Than Ever." The New York Times. June 05, 2017. Accessed September 16, 2017. <https://www.nytimes.com/interactive/2017/06/05/upshot/opioid-epidemic-drug-overdose-deaths-are-rising-faster-than-ever.html?mcubz=3>.

Source: PEW Trust ⁹

Although the increase in illegal drug use has been subtle over the years, it has increased; this is a cause to question the current policy for tackling drug distribution and use throughout the United States.

Another victim of mandatory drug sentencing is the United States Prison System, which has seen an explosion in populations, and overcrowding, "The federal prison population has ballooned 790 percent since 1980, and almost half of those now imprisoned are there for drugs."¹⁰ A large contributor to this increased prison population are the changes to punishment and sentencing for drug crimes, specifically mandatory minimum sentencing.¹¹ Overcrowded prisons are an issue for a number of reasons but when it comes to mandatory sentencing for drug offenses they are an issue because low level dealers and drug users are filling our prison cells while kingpins, and distributors are still infiltrating the streets with drugs; the cycle continues and instead of getting the treatment and rehabilitation users and low level dealers desperately need, they are put behind bars.¹² Mandatory minimum sentencing does not only impact the prison system by bloating the amount of inmates but it takes a toll on drug offenders once they exit the prison system, leaving ex-inmates with limited options to improve their

⁹ "Federal Drug Sentencing Laws Bring High Cost, Low Return." Federal Drug Sentencing Laws Bring High Cost Low Return. Accessed September 16, 2017. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>

¹⁰ "As Federal Prison Population Spiked 790 Percent, Average Drug Sentences Doubled." ThinkProgress. Accessed September 17, 2017. <https://thinkprogress.org/as-federal-prison-population-spiked-790-percent-average-drug-sentences-doubled-ed31d23d6ea9/>.

¹¹ Watts, J.C. "Prisons are full of low-level offenders. It's time to rethink federal sentencing laws." The Washington Post. January 26, 2016. Accessed September 17, 2017. https://www.washingtonpost.com/posteverything/wp/2016/01/26/prisons-are-full-of-low-level-offenders-its-time-to-rethink-our-sentencing-laws/?utm_term=.3870937442b7.

¹² "Mass Criminalization." Drug Policy Alliance. Accessed September 17, 2017. <http://www.drugpolicy.org/mass-criminalization>.

life. The data shows that there is, “little relationship between the length of prison terms and recidivism rates generally—a pattern that holds among drug offenders at the federal level. Of the more than 20,000 federal drug offenders who concluded periods of post-release community supervision in 2012 (the latest year for which statistics are available), 29 percent either committed new crimes or violated the conditions of their release. This proportion has changed little since the mid-1980s, when sentences and time served began increasing sharply. Conversely, targeted reductions in prison terms for certain federal drug offenders have not led to higher recidivism rates. In 2007, the Sentencing Commission retroactively reduced the sentences of thousands of crack cocaine offenders. A follow-up study on the effects of this change found no evidence of increased recidivism among offenders who received sentence reductions compared with those who did not. In 2010, Congress followed the Sentencing Commission’s actions with a broader, statutory reduction in penalties for crack cocaine offenders.”¹³ Mandatory minimum sentencing wreaks havoc on the prison system by bloating the population and further perpetuating recidivism.

When we dive deeper into the demographic of individuals who are locked up for low level drug offences we find a disturbing trend that mandatory drug sentencing disproportionality affects the African American community.¹⁴ Before the passage of the Anti-Drug Abuse Act of 1986 the average drug sentence for African Americans was 11% higher than their white counterparts, four years after

¹³ "Federal Drug Sentencing Laws Bring High Cost, Low Return." Federal Drug Sentencing Laws Bring High Cost Low Return. Accessed November 25, 2017. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>.

¹⁴ "Race and the Drug War." Drug Policy Alliance. Accessed September 17, 2017. <http://www.drugpolicy.org/race-and-drug-war>.

the passage of the 1986 Act this number jumped to 49% higher sentences for the same offences as their white counterparts.¹⁵ With high incarceration rates and lengthier sentences the African American family began to suffer from the impacts of mandatory sentencing and drug crime laws.¹⁶ The statistics do not end at those figures, in a 2006 report by the ACLU, it was confirmed that, “African Americans now serve virtually as much time in prison for a drug offense at 58.7 months, as whites do for a violent offense at 61.7 months.”¹⁷ Mandatory sentencing for drug crimes is a major problem, it is damaging and ineffective, were seeing similar rates of drug use, exploding rates of drug availability, and deepened racial inequality that can be demonstrated through sentencing that disproportionately impacts African Americans.

Mandatory sentencing for drug related crimes not only has a detrimental impact on drug use, availability and racial inequality but it has also proven to be extremely costly. The data does not lie as the cost of mandatory sentencing for drug related crimes has taken a toll on tax payers wallets, “The increased imprisonment of drug offenders has helped drive the explosive overall growth of the federal prison system, which held nearly 800 percent more inmates in 2013 than it did in 1980.”¹⁷ One study found that the increase in time served by drug offenders was the “single greatest contributor to growth in the federal prison population between 1998 and 2010.”¹⁸ Growth in the prison population has driven

¹⁵ "ACLU Releases Crack Cocaine Report, Anti-Drug Abuse Act of 1986 Deepened Racial Inequity in Sentencing." American Civil Liberties Union. Accessed September 16, 2017. <https://www.aclu.org/news/aclu-releases-crack-cocaine-report-anti-drug-abuse-act-1986-deepened-racial-inequity-sentencing>.

¹⁶ Ibid, 1.

¹⁷ Ibid, 2.

a parallel surge in taxpayer spending. From 1980 to 2013, federal prison spending increased 595 percent, from \$970 million to more than \$6.7 billion in inflation-adjusted dollars.¹⁹ Taxpayers spent almost as much on federal prisons in 2013 as they paid to fund the entire U.S. Justice Department—including the Federal Bureau of Investigation, the Drug Enforcement Administration, and all U.S. attorneys—in 1980, after adjusting for inflation.”¹⁸ Mandatory minimums and criminalization of drug crimes have come at a high price, which is exhibited through the above data. The figures above merely account for the cost of mandatory minimums for drug crimes, they do not also include the skyrocketing cost of drug enforcement, “The total costs of criminalizing drug possession are difficult to calculate, but we know that they are exorbitant. Criminalizing drug possession and placing people in prison, jail or on probation or parole is an enormous waste of criminal justice resources that comes with a staggering price tag for U.S. taxpayers. In a 2010 report published by the Cato Institute, Harvard economist Jeffrey Miron estimated that the cost of policing low-level drug possession offenses exceeds \$4.28 billion annually – and this does not include the massive additional costs of incarceration, supervision and court processing.”¹⁹ The cost of drug enforcement and increased cost associated with mandatory minimum sentencing is one that not only impacts drug users but also tax payers. The benefit of mandatory minimums is futile when you compare it to

¹⁸ "Federal Drug Sentencing Laws Bring High Cost, Low Return." Federal Drug Sentencing Laws Bring High Cost Low Return. Accessed November 28, 2017. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>.

¹⁹ "It's Time for the U.S. to Decriminalize Drug Use and Possession." Drug Policy Alliance. July 2017. Accessed November 28, 2017. <http://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession>.

the cost to society and the limited to no return society receives for penalizing drug users.

The return on investment for mandatory minimum sentencing is little to none, with the high cost to tax payers, and the rate of drug use increasing in the United States, the data continues to compound and prove the dangerous impact of mandatory sentencing. From overcrowded prisons, to an increasingly addicted population it is clear that mandatory sentencing for drug offenses is an archaic, discriminatory and dangerous approach to solving drug use and abuse in the United States.

History and Background:

The US government in the 1970s decided that drug use was the United States' public enemy number one and ushered in what we know as today as the "War on Drugs".²⁰ The early 1970s we're a time of many changes to American life, including anti-war sentiment from the ongoing war in Vietnam, to increased recreational drug use amongst rebellious youth, and returning Vietnam War Veterans, which promoted the declaration of war against drugs.²¹ This new focus on tackling drug abuse came along with the first federal methadone program as well as the Comprehensive Drug Abuse Prevention and Control Act of 1970, which introduced the Drug Enforcement Administration (DEA).²²

²⁰ "Richard Nixon: Remarks About an Intensified Program for Drug Abuse Prevention and Control. - June 17, 1971." The American Presidency Project. Accessed September 16, 2017. <http://www.presidency.ucsb.edu/ws/?pid=3047>.

²¹ Nixon and the Start of 'The Drug War' (1969-1974)." SmartDrugPolicy. June 23, 2017. Accessed October 01, 2017. <https://www.smartdrugpolicy.org/nixon-and-the-start-of-the-drug-war-1969-1974/>.

²² Ibid,1

Prior to the 1970's there had been little policy around recreational drug use, this decade brought forth a new focus on reducing drug use through harm reduction and treatment, and the 1980's brought a more militant enforcement of drug policy through strengthening punishment for drug solicitation and use.^{23 24} In the 1980's there was a combination of public concern and political hysteria around drug use, perpetrated by the media's emphasized focus on "crack cocaine" use in the streets of urban American Cities, which demonized people of color and in return put pressure on Congress to create the Anti-Drug Act of 1986 in order to reduce the distribution and solicitation of narcotics.^{25 26} The 1986 Act introduced mandatory minimum sentencing for drug related crimes and had disproportionately harsher penalties for crack cocaine use (100:1 versus cocaine powder) with little to no evidence or reasoning as to why one particular drug was singled out.²⁷ In 1988, drug related crimes were still on the rise, and Congress introduce the Anti Drug Abuse Act of 1988, which "created a 5 year mandatory minimum and 20 year maximum sentence for simple possession of 5 grams or more of crack cocaine."²⁸

²³Reagan Raises the Battle Flag Against Drugs (1981-1989)." SmartDrugPolicy. February 28, 2017. Accessed October 01, 2017. <https://www.smartdrugpolicy.org/reagan-raises-the-battle-flag-against-drugs-1981-1989/>.

²⁴ A Focus on Harm Reduction under Ford and Carter (1974-1981)." SmartDrugPolicy. February 16, 2017. Accessed October 01, 2017. <https://www.smartdrugpolicy.org/a-focus-on-harm-reduction-under-ford-and-carter-1974-1981/>.

²⁵A Brief History of the Drug War." Drug Policy Alliance. Accessed October 01, 2017. <http://www.drugpolicy.org/issues/brief-history-drug-war>.

²⁶ ACLU Releases Crack Cocaine Report, Anti-Drug Abuse Act of 1986 Deepened Racial Inequity in Sentencing." American Civil Liberties Union. Accessed September 16, 2017. <https://www.aclu.org/news/aclu-releases-crack-cocaine-report-anti-drug-abuse-act-1986-deepened-racial-inequity-sentencing>.

²⁷ Ibid, 1

²⁸ Ibid, 2

Shortly after the 1988 Act was passed, Congress made the decision to investigate the effect of mandatory minimums through the United States Sentencing Commission and discovered that “non-whites were much more likely to receive mandatory minimum sentences and that they were being applied in a discriminatory manner”.²⁹ Congress additionally had the Federal Judicial Center investigate mandatory minimums and discovered that, “African Americans were more likely than whites to be sentenced to at least the minimum sentence in cases where a mandatory prison term could be applied.”³⁰ Congress decided to again investigate the impact of mandatory minimums and the United States Sentencing Commission provided two recommendations from their 1995 investigation, “the Commission establish methods within the guidelines structure to deal with the crimes of possession and distribution of both crack cocaine and powdered cocaine; such commission action to take place by the normal 1995 – 1996 cycle [and] that in light of the Commissions guidelines amendments, Congress revisiting the 100-to-1 quantity ration as well as the penalty structure for simple possession that provides a mandatory five-year penalty for simple possession of crack cocaine but a statutory maximum penalty of one year for simple possession of any other drug.”³¹ Many thought that the recommendation from the U.S Sentencing Commission to eliminate the disparity between crack cocaine and powder cocaine sentencing would pass through Congress, especially since then President Bill Clinton advocated for treatment for drug

²⁹ Ibid, 3

³⁰ Ibid, 4

³¹ United States Sentencing Commission. *Cocaine and federal sentencing policy*. Washington, D.C.: United States Sentencing Commission, 1995.

users throughout his campaign, this did not come to fruition and Congress overrode the recommendation.³² The tone of the 1980's and 1990's definitely echoed a "Tough on Crime" sentiment, and this was evident in the policy shifts throughout the decades that put an increased amount of non-violent drug offenders behind bars and provided a strict adherence to mandatory minimums for drug offenses.

Mandatory minimum sentencing for Drug offenses did not have another major change until the 2010 Fair Sentencing Act signed by then President, Barack Obama, the new law "repealed the five year mandatory sentence for first time offenders and for repeat offenders with less than 28 grams of cocaine. This change reduced the 100-to-1 sentencing disparity between crack and powder cocaine down to 18-to-1."³³ The sentencing divide that the US Sentencing Commission recommended to end did so under the Obama Presidency, and the tide began to turn for non violent drug offenders. In a 2013 memo then Attorney General, Eric Holder asked prosecutors around the country to, "ensure that our most severe mandatory minimum penalties are reserved for serious, high level, or violent drug traffickers. In some cases mandatory minimum and recidivist enhancement statutes have resulted in unduly harsh sentences and perceived or actual disparities that do not reflect our Principles of Federal Prosecution. Long sentences for low level, non-violent drug offenses do not promote public safety, deterrence, and rehabilitation. Moreover, rising prison costs have resulted in

³² A Brief History of the Drug War." Drug Policy Alliance. Accessed October 01, 2017. <http://www.drugpolicy.org/issues/brief-history-drug-war>.

³³ Conversation, Tanya Golash-Boza The. "Column: 5 charts show why mandatory minimum sentences don't work." PBS. June 01, 2017. Accessed October 01, 2017. <http://www.pbs.org/newshour/rundown/5-charts-show-mandatory-minimum-sentences-dont-work/>.

reduced spending on criminal justice initiatives, including spending on law enforcement agents, prosecutors, and prevention and intervention programs.”³⁴ The Obama Administration aimed to reform the sentencing structure and the results were evident, “In 2012, after years of steadily increasing prison admission rates, the number of new admissions to federal prisons began to decline. In 2015, just 46,912 people were admitted to federal prison- the lowest number in 15 years.”³⁵ The Obama Administration took many steps in the direction of harm reduction policies, and aimed to decrease inequality in the justice system.

The tides have change yet again and currently President Donald Trump and Attorney General Jeffery Sessions have made their “Tough on Crime” stance extremely clear by making the announcement to “stop seeking leniency for low-level drug offenders and start seeking the toughest penalties possible.”³⁶ We have not seen the impacts of this memo as of yet but history can shine light on outcomes of enforcing harsh mandatory minimums for low-level drug offenses. As current policy it stands mandatory minimums should be enforced, and more over prosecutes are instructed to seek the toughest penalty for drug offenders.

Policy Proposal

The goal of this policy would be to reduce drug-related harm such as diseases transmitted by drug use (i.e. HIV/AIDS, Hepatitis and other infectious

³⁴ United States. Office of the Attorney General. By Eric Holder. August 12, 2013. Accessed October 1, 2017. <https://www.documentcloud.org/documents/1094233-attorney-general-eric-holders-memorandum-on.html>.

³⁵ Conversation, Tanya Golash-Boza The. "Column: 5 charts show why mandatory minimum sentences don't work." PBS. June 01, 2017. Accessed October 01, 2017. <http://www.pbs.org/newshour/rundown/5-charts-show-mandatory-minimum-sentences-dont-work/>.

³⁶ Schuppe, Jon. "Attorney General Sessions Charts Course Back to Long Drug Sentences." NBCNews.com. May 13, 2017. Accessed October 01, 2017. <https://www.nbcnews.com/news/us-news/attorney-general-sessions-charts-course-back-long-drug-sentences-n758866>.

diseases), death by over dose, and drug addiction in the United States by 10% 2025. This goal is a drastic change from the current “law and order” strategy for drug policy goals in the United States. In order to achieve this goal, the proposal would decriminalize all low-level drug offenses and provide more drug abuse and addiction treatment centers.

Policy Authorization Tool

The proposal entitled, Drug Decriminalization and Treatment Improvement Act of 2018, would be authorized by introducing and passing a nationwide law to decriminalize all low-level drug offenses; which will be defined as possession of less than 5 grams of all illicit drugs, decriminalization does not apply to drug trafficking, which will remain criminalized. This policy would effectively shift drug addiction from a criminal issue to a health issue, and would set the tone on a national level that we can reduce the impacts of addiction and treat individuals for drug addiction. This new implementation would conflict with the current policy, the Anti-Drug Abuse Act of 1988, so in introducing the above bill this legislation (if enacted) would supersede this federal law. Due to the major shift in the direction of drug policy this tool would be incrementally implemented by 2019 similar to the timeline of California’s period prior to legalizing Marijuana, with an additional year to aid the implementation process on the federal scale.³⁷

Policy Implementation Tool

The proposal would require a fine (up to \$500 – similar to California marijuana possession laws) for individuals who are caught with 5 grams or less

³⁷ Thetomzone. "When does California's marijuana law go into effect? These are the key dates to know." Mic. November 12, 2016. Accessed October 20, 2017. <https://mic.com/articles/159284/when-does-california-s-marijuana-law-go-into-effect-these-are-the-key-dates-to-know#.FiegofEcT>.

of an illicit drug (equivalent to a week's use of drugs, per each illicit drug). An individual can be fined up to 3 times for drug possession, if a fourth drug offense occurs they will be directed to a drug treatment facility and or other supportive services in the local area. This is similar to the Law Enforcement Assisted Diversion program practiced in Seattle, Washington, "Instead of arresting and booking people for certain drug law violations, including drug possession and low-level sales, police in select Seattle neighborhoods immediately direct them to drug treatment or other supportive services. LEAD is based on a commitment to "a harm reduction framework for all service provision." The program does not require abstinence, and clients cannot be sanctioned for drug use or relapse. LEAD emphasizes "individual and community wellness, rather than an exclusive focus on sobriety."³⁸

This policy will decriminalize personal drug use, which is deemed as possession of 5 grams or less of a controlled substance, this decriminalization will not apply to drug trafficking or large-scale distribution. Possession of drugs will still be illegal, but personal possession will be deemed a health issue rather than a criminal issue. The Drug Enforcement Administration will continue to eradicate drug traffickers and large-scale drug distributors, but will have added resources to capture and arrest drug dealers, since the Drug Enforcement Administration will no longer be seeking out individual drug users, but will focus on large-scale drug offenders.³⁹

³⁸ "It's Time for the U.S. to Decriminalize Drug Use and Possession." Drug Policy Alliance. July 2017. Accessed November 28, 2017. <http://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession>.

³⁹ DEA.gov / Mission Statement. Accessed October 31, 2017. <https://www.dea.gov/about/mission.shtml>.

This health centered proposal is similar to the one taken in Portugal, “after decriminalizing drug possession for personal use for all illicit substances in 2001 people apprehended with a small quantity of drugs are now referred on a voluntary basis to specialized committees, know as dissuasion commissions (CDTs) – to determine if they need assistance in addressing their drug use.”⁴⁰ According to the National Institute on Drug Abuse, the cost of treating drug abuse (including health costs, hospitalizations, and government specialty treatment) is estimated to be \$14.6 billion annually versus the current cost of penalization is \$113 billion.⁴¹ We will use the annual figure of \$14.6 billion for this policy proposal as it is related to the goal of reducing harm, and promoting treatment as outlined by the National Institute on Drug Abuse.

Policy Analysis

Advantages

1. **Reducing costs in the long run.** The National Institute on Drug Abuse discusses cost in relation to treating drug use abuse with treatment instead of imprisonment, and compares the cost between both. “In 2007, it was estimated that the cost to society of drug abuse was \$193 billion ... a substantial portion of which—\$113 billion—is associated with drug related crime, including criminal justice system costs and costs borne by victims of crime. A fraction of these overall societal costs ... treatment also consistently has been shown to reduce the costs associated with lost productivity, crime,

⁴⁰ Ibid, 2.

⁴¹ Abuse, National Institute on Drug. "Is providing drug abuse treatment to offenders worth the financial investment?" NIDA. Accessed October 20, 2017. <https://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations/providing-drug-abuse-treatment-to-offenders-worth-f>

and incarceration across various settings and populations. The largest economic benefit of treatment is seen in avoided costs of crime (incarceration and victimization costs).⁴² Shifting the policy from one in which addicts should be imprisoned to one in which individuals addicted to drugs should be treated for their illness, will lead to better health outcomes, save costs, and will be beneficial to improving the outcomes for addicts. Additionally, there are currently large cities in the United States that run quasi decriminalization programs that have shown progress with harm reduction methods. In Seattle, Washington there is an example of effective decriminalization practices for low-level offenders; “In 2011, Seattle launched the Law Enforcement Assisted Diversion (LEAD) pre-booking pilot program, a scheme that redirects low-level drug offenders or those engaged in sex work away from the criminal justice system to community based services... results from the initial evaluation phase of LEAD have been overwhelmingly positive. Participants in LEAD were found to be 60 percent less likely to reoffend than non-participants, resulting in reduced cost to the criminal system.”⁴³

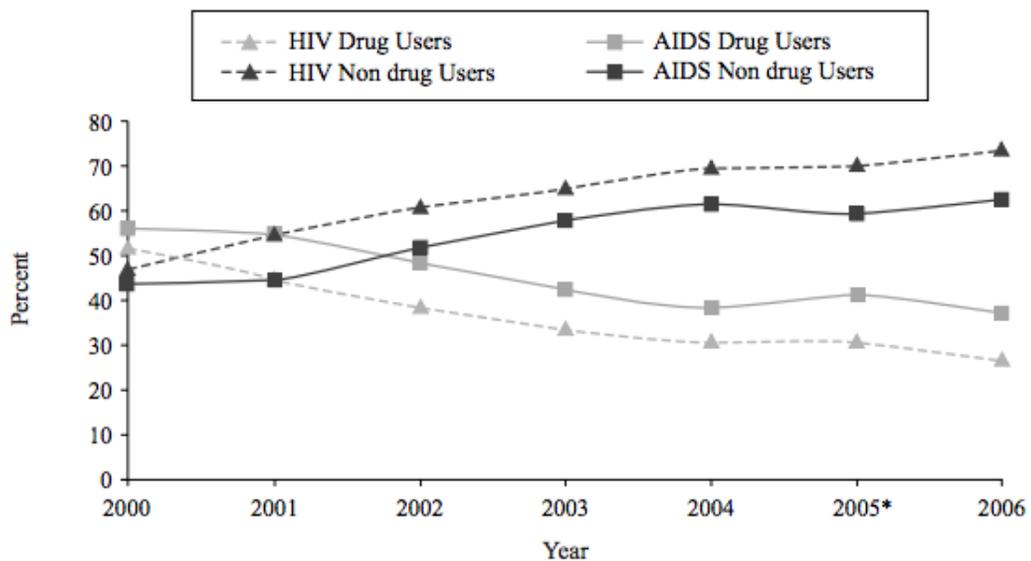
2. **Reducing Risk Associated with Drug Use.** There is high risk associated with using injection equipment for drug use, including contracting HIV and AIDS, “In 2015, 6%(2,393) of the 39,513 diagnosis of HIV in the United States were attributed to injection drug use (IDU) and another 3%(1,202) to male to

⁴² *ibid*, 1

⁴³ Open Society Foundations (OSF), *Advancing Drug Policy Reform: A New Approach to Decriminalization*, November 2016, available at: <http://www.refworld.org/docid/4e3250d32.html> [accessed 15 October 2017]

male sexual contact and IDU.”⁴⁴ Harm reduction policies have shown to have a positive impact on reducing the amount of drug related disease cases. Since implementation of decriminalization in Portugal, “the percentage of newly diagnosed HIV and AIDS patients who are drug addicts has steadily decreased”.⁴⁵

Figure 9
HIV/AIDS Notifications, Percent Drug Users and Nondrug Users, by Year of Diagnosis



Source: Greenwald, G.⁴⁶

This decrease in HIV and AIDS patients is related to the needle exchange program introduced in Portugal as well as decriminalization of drugs.⁴⁷ If one of the primary goals of this policy is to decrease drug related diseases, then a stronger needle exchange program may help aid the progress of decreasing the spread of disease.

⁴⁴ "HIV/AIDS." Centers for Disease Control and Prevention. March 16, 2017. Accessed October 27, 2017. <https://www.cdc.gov/hiv/risk/idu.html>.

⁴⁵ Greenwald, G. (2009). Drug Decriminalization in Portugal, Lessons For Creating Fair and Successful Drug Policies (White Paper). CATO Institute

⁴⁶ Ibid,1

⁴⁷ Ibid,2

3. **Decreasing Accidental Death by Drug Overdose.** Death by overdose is a real consequence to drug use and decriminalization has shown overtime after implementation to decrease the risk of overdose, “Although the number of toxicological exams undertaken as part of postmortem investigations has increased substantially every year since 2002, the number of positive results is far lower than the levels during 2001 and 2001. In 2001 for instance, 280 toxicological tests found a positive result (Out of 1,259 tests undertaken). In 2006, the number of positive results was only 216 (out of a much higher 2308 tests undertaken).⁴⁸
4. **Reduction in Number of Incarcerated Individuals.** One of the main issues with drug criminalization and mandatory sentencing is the increased amount of individuals being arrested and incarcerated. In the Portuguese example, “The number of people arrested and sent to criminal courts for drug offenses annually declined by more than 60 percent following decriminalization. The number of people referred for administrative offenses under the new law has remained constant (between 6,000 and 8,000 per year) for most of the period since decriminalization, “indicating no overall increase in the amount of formal contact that drug offenders are having with Portuguese police.” The vast majority – more than 80 percent – of dissuasion commission cases are deemed non-problematic and dismissed without sanction. Given the fact that the majority of drug users in the U.S. are not using drugs problematically, it is likely that we would see a similar outcome here if drug use and possession

⁴⁸ Ibid, 3

were decriminalized. The percentage of people behind bars in Portugal for drug law violations also decreased dramatically, from 44 percent in 1999 to 24 percent in 2013. This decrease reflected a significant drop in people incarcerated for all drug offenses, not just possession.”⁴⁹ This reduction in the number of incarcerated individuals will take the burden off of taxpayers who pay heavily into the prison system in the United States.

Disadvantages

1. **Initial Spike in Drug related Issues.** Data has shown that decriminalization causes an initial surge in drug use, and in drug related diseases. Although long term data shows that decriminalization has a positive impact on reducing harm related activities such as overdose, drug use, and spread of infectious disease the Portugal case study shows that there is an initial uptick in drug use, disease and overdose.⁵⁰ This may be problematic for certain populations, in a recent study on Oregon after their marijuana legalization, it was found that “the use of marijuana among students at an Oregon college increased relative to that of students in states where the drug is still illegal. But, in a twist, the rise was mainly seen among those students who had also reported drinking heavily recently. The Oregon students who binge drank were 73 percent more likely to also report using marijuana, compared to

⁴⁹ "It's Time for the U.S. to Decriminalize Drug Use and Possession." Drug Policy Alliance. July 2017. Accessed November 28, 2017. <http://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession>.

⁵⁰ Desiree, Serene. "16 Years Later: What Happened After Portugal Decriminalized Drugs in 2001?" Leafly. June 13, 2017. Accessed October 29, 2017. <https://www.leafly.com/news/politics/portugal-drug-decriminalization-statistics>.

binge-drinking students in states that didn't legalize marijuana."⁵¹ This policy does not take into consideration the potential initial spike in drug use and the impact that may have socially, or economically. This policy also does not take into consideration the impact a sustained increase in drug use may have on the population.

- 2. Increased Drug Use at younger Age.** Data from Portugal, the country in which this policy is modeled from, shows that a damaging impact from decriminalization has been increased drug use amongst youth.

Table 1: Changes in lifetime prevalence of drug use among students aged 16-18 (Tavares *et al.* 2005)

DRUG	1999	2003
Any drug	12.3%	17.7%
Cannabis	9.4%	15.1%
Heroin	2.5%	1.8%

Source: Hughes and Stevens (2007)⁵²

The above graph shows a large increase in drug use amongst youth in Portugal, in 1999 when drugs were criminalized and illegal the drug rate amongst youth stood at 12.3%, 2 years after the 2001 drug decriminalization policy was passed the drug rate amongst students jumped to 17.7%. This jump in drug use comes just 2 years after the implementation of the decriminalization policy in Portugal. This initial spike shows that decriminalization did impact people's interest in drugs, since criminal

⁵¹ Khazan, Olga. "The Surprising Effect of Marijuana Legalization on College Students." *The Atlantic*. June 16, 2017. Accessed October 27, 2017. <https://www.theatlantic.com/health/archive/2017/06/marijuana-legalization-college-students/530607/>.

⁵² Stevens, Caitlin, and Alex Hughes. "THE EFFECTS OF DECRIMINALIZATION OF DRUG USE IN PORTUGAL." *THE BECKLEY FOUNDATION DRUG POLICY PROGRAMME*. December 2007. Accessed November 19, 2017. <https://pdfs.semanticscholar.org/3482/d0dea62d9d551a534f84ad9d2b2d5d9bcc40.pdf>.

punishment was no longer associated with drug use. This also shows a large jump in cannabis use amongst youth. This data is not promising as youth are a vulnerable group in society and this shows that decriminalization can have negative impacts on youth drug consumption.

- 3. Increased Drug – Related Crime.** Although the relationship between drugs and crime are complex data shows that after the initial decriminalization of drugs in Portugal there was a spike in drug crimes, “the evaluation of the national strategy noted that the number of crimes that were “linked strongly to drugs rose by 9% between 1999 and 2003 (Tavares et al. 2005).”⁵³ The data demonstrates that after the implementation of the decriminalization policy in Portugal, drug related crime increased sharply.

Political Analysis

This policy focuses on a shift on treating addiction as a health issue rather than a criminal one, and with that the key stakeholders that actively advocate for drug decriminalization include health centered organizations such as the “ World Health Organization, American Public Health Association, International Red Cross” additional stakeholders include “Organization of American States, NAACP, Human Rights Watch, National Latino Congreso and the Global Commission on Drug Policy”.⁵⁴ In the summer of 2017, The World Health Organization released a statement on ending discrimination in health care settings, within the statement the organization called for, “Reviewing and

⁵³ Ibid, 1.

⁵⁴ "World Health Organization Calls for Drug Decriminalization and Broad Drug Policy Reforms." Drug Policy Alliance. Accessed November 14, 2017. <http://www.drugpolicy.org/news/2014/07/world-health-organization-calls-drug-decriminalization-and-broad-drug-policy-reforms>.

repealing punitive laws that have been proven to have negative health outcomes and that counter established public health evidence. These include laws that criminalize or otherwise prohibit [...] drug use or possession of drugs for personal use.”⁵⁵

On an international level there is a call for decriminalization of drug possession, with the aim to open doors to recovery, rather than opening more jail cells. International Red Cross takes on a similar standpoint as The World Health Organization, going as far to say, “We often ignore the evidence that to be successful in our drug policies, health services must provide a comprehensive package known as harm reduction programmes ... Instead, the best people who use drugs can hope for is to be driven underground to live with the addiction in the dark back streets and abandoned buildings of our towns and cities. Or even worse, they are criminalized and jailed with little or no regard for their healthcare rights or the impact of this policy on the health of their communities. Left unchecked and untreated, drug use constitutes a serious public health concern that can only be addressed through rational public health services that act according to medical science rather than misinformed laws.”⁵⁶

The American Public Health Association takes a similar stance on decriminalization, with their recommendation of ending the criminalization of drugs and drug consumers, prioritizing proven treatment and harm reduction

⁵⁵ "Joint United Nations statement on ending discrimination in health care settings." World Health Organization. Accessed November 1, 2017. <http://www.who.int/mediacentre/news/statements/2017/discrimination-in-health-care/en/>.

⁵⁶ "Statement to the Commission on Narcotic Drugs, 55th Session." Statement to the Commission on Narcotic Drugs, 55th Session - IFRC. Accessed November 1, 2017. <http://www.ifrc.org/en/news-and-media/opinions-and-positions/speeches/2012/to-the-commission-on-narcotic-drugs-55th-session/>.

strategies, and expanding (and removing barriers to) treatment and harm reduction services, including repealing any bans on funding syringe access programs.”⁵⁷ While some organizations look at decriminalization solely as a health issue, groups such as NAACP see it as a civil rights issue, and advocate for decriminalization as they find that the justice system has unequally target people of color through drug law enforcement. ⁵⁸ Supporters for drug decriminalization and/or legalization are in support of treating drug use as a health issue rather than a criminal issue.

Drug decriminalization is a controversial topic with many opponents including these key stakeholders: The National Center on Addiction and Substance Abuse, and the Drug Enforcement Administration. The Drug Enforcement Administration takes a strong stance against decriminalizing and legalizing drugs, including arguments that demand has been decreased through the current policy we have in place, “On the demand side, the U.S. has reduced casual use chronic use addiction to drugs, and prevented others from even starting to use them. According to the Monitoring the Future National Survey, between 2001 and 2008 illicit drug use was down 25 percent among 8th, 10th, and 12th grade students. That means approximately 900,000 fewer young people are using drugs today, compared to 2001.”⁵⁹ The Drug Enforcement Administration also argues that Harm Reduction Policies would not work in the

⁵⁷ Defining and Implementing a Public Health Response to Drug Use and Misuse." AMERICAN PUBLIC HEALTH ASSOCIATION. Accessed November 10, 2017. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/08/04/defining-and-implementing-a-public-health-response-to-drug-use-and-misuse>.

⁵⁸ State NAACP backs marijuana legalization initiative." Los Angeles Times. Accessed November 1, 2017. <http://latimesblogs.latimes.com/lanow/2010/06/state-naacp-backs-marijuana-legalization.html>.

⁵⁹ DEA. "Speaking Out Against Drug Legalization, Fact 6." U.S. Drug Enforcement Administration. Accessed November 11, 2017. <http://www.justice.gov/dea/demand/speakout/06so.htm>

United States, as the results are unsteady from this model, “Liberalization of marijuana laws in Switzerland has likewise produced damaging results. After liberalization, Switzerland became a magnet for drug users from many other countries. In 1987, Zurich permitted drug use and sales in a part of Platzpitz, dubbed “Needle Park.” By 1992, the number of regular drug users at the park reportedly swelled from a few hundred at the outset in 1987 to about 20,000. The area around the park became crime-ridden, forcing closure of the park. The experiment has since been terminated.”⁶⁰ The Drug Enforcement Administration takes a strong stance of opposition on decriminalization and legalization of any illicit drugs and firmly backs the notion that drugs are a criminal issue and should continue to be treated as one. The National Center on Addiction and Substance Abuse (CASA) firmly believes that decriminalization will increase availability and by default increase use. Additionally, CASA agrees that personal drug use should be a criminal issue, “Vigorous and intelligent enforcement of criminal law makes drugs harder to get and more expensive. Sensible use of courts, punishment and prisons can encourage misusers to enter treatment and thus reduce crime. Why not treat a teenager arrested for marijuana use in the same way that the U.S. treats someone arrested for drunk driving when no injury occurs? See the arrest as an opportunity and require the teenager to be screened, have any needed treatment, and attend sessions to learn about the dangers of marijuana use.”⁶¹ Stakeholders who oppose decriminalization do so

⁶⁰ Ibid, 1

⁶¹ Califano, Jr. Joseph A. "Should Drugs Be Decriminalized? No." The National Center on Addiction and Substance Abuse. November 11, 2013. Accessed November 7, 2017. <https://www.centeronaddiction.org/newsroom/op-eds/should-drugs-be-decriminalized-no>.

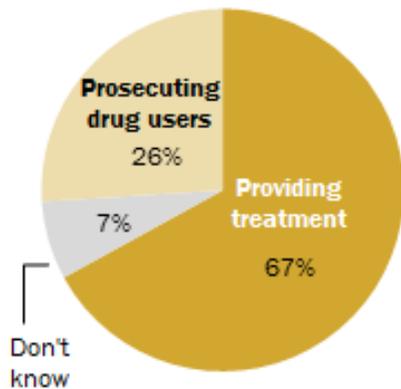
on the grounds that drugs are harmful to society, and should continue to be punishable by the law in order to deter use.

Public support yields to more affordable treatment options, due to the impact drugs have on the community and loved ones. In a study released by NORC Center for Public Affairs Research surrounding American attitudes toward Substance Use in the United States, researchers found that, “In line with the public’s preference for more affordable substance use treatment programs, under the Affordable Care Act, ... the substance use treatment services are considered essential health benefits that are required to be covered by health plans in the health insurance marketplace at a level comparable to medical and surgical benefits. Drug treatment should have the same insurance coverage as other ailments according to 47 percent, and 38 percent say addiction therapies should get even more coverage than other medical problems.”⁶². According to research from the Pew Research Center, “67% of Americans say that the government should focus more on providing treatment for those who use illegal drugs such as heroin and cocaine.”⁶³

⁶² Connelly, Marjorie, Dan Malato, Jennifer Benz, Trevor Tompson, Nada Ganesh, Eric Goplerud, and Emily Alvarez. "American Attitudes toward Substance Use in the United States." American Attitudes toward Substance Use in the United States: Issue Brief. 2015. Accessed November 15, 2017. <http://www.apnorc.org/projects/Pages/HTML%20Reports/american-attitudes-toward-substance-use-in-the-united-states.aspx>.

⁶³ Motel, Seth. "America's New Drug Policy Landscape." Pew Research Center for the People and the Press. April 02, 2014. Accessed October 27, 2017. <http://www.people-press.org/2014/04/02/americas-new-drug-policy-landscape/>.

On Drug Policy, Gov't Should Focus More On...



Survey conducted Feb. 14-23, 2014.

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There is clear support for drug policy to have a stronger focus on providing treatment. If the proposed policy maintains its focus on treating drug addiction then there will definitely be social support for this policy.

Additionally there is support for Defelonizing drug possession. While some states have taken steps to de-felonize illicit drugs, there may not be political support for fully decriminalizing personal drug use. Oregon recently passed a law to defelonize first-time drug possession for illicit drugs including, cocaine, methamphetamine, heroin, oxycodone, MDMA, and LSD.⁶⁵ While Oregon has not taken their policy to the level of full decriminalization they have taken steps down the same road to full decriminalization. Politically there is support for taking a second take on drug policy, but full decriminalization will take some time to be

⁶⁴ Ibid, 1

⁶⁵ Wing, Nick. "Drug Possession Is No Longer A Felony Offense In Oregon." The Huffington Post. August 18, 2017. Accessed October 27, 2017. https://www.huffingtonpost.com/entry/oregon-defelonizing-drug-possession_us_5963b4a4e4b03f144e2c85d5.

implemented nationwide. “Publicly Americans support marijuana legalization but want it to have some restrictions, among the public, 6 in 10 say the use of marijuana should be legal, but two-thirds of them temper that endorsement by favoring at least some restrictions. Among those who support legalizing marijuana use, 43 percent favor restrictions on purchase amounts and 24 percent say it should only be legal with a medical prescription. Thirty-three percent prefer no restrictions... On the other hand, very few Americans say the use of other drugs, such as heroin or cocaine, should be made legal. Just 7 percent say so, compared to 93 percent who say use of these drugs should remain illegal.”⁶⁶ Americans are in support of legalizing marijuana but not other hard drugs, this is important to note with this policy as it gives an idea on how the public would feel about decriminalizing all illicit drugs. While this policy proposes to decriminalize all illicit drugs it does not propose to legalize them, all illicit drugs will remain illegal.

This policy will be difficult to sell the American people on, and with a possible Presidential run, proposing this policy may be damaging to your reputation. Decriminalizing all drugs is definitely a risky policy to propose as Americans view drug use and abuse as a morality issue and could cause for some outrage. This policy would have to be explained extremely well, so that Americans understand, that decriminalization does not equate to legalization. The data does show that Americans are ready for drug policy to change, “More

⁶⁶ Connelly, Marjorie, Dan Malato, Jennifer Benz, Trevor Tompson, Nada Ganesh, Eric Goplerud, and Emily Alvarez. "American Attitudes toward Substance Use in the United States." American Attitudes toward Substance Use in the United States: Issue Brief. 2015. Accessed November 15, 2017. <http://www.apnorc.org/projects/Pages/HTML%20Reports/american-attitudes-toward-substance-use-in-the-united-states.aspx>.

than six in ten Americans (63%) say that state governments moving away from mandatory prison terms for drug law violations is a good thing, while just 32% say these policy changes are a bad thing. This is a substantial shift from 2001 when the public was evenly divided (47% good thing vs. 45% bad thing). The majority of all demographic groups, including Republicans and Americans over 65 years old, support this shift.”⁶⁷ There is support for ending mandatory sentencing, but this policy calls for full decriminalization, which is a very controversial proposal.

Recommendation

I recommend that you propose this policy, this is a key policy initiative that if properly proposed can catapult you as a newly elected junior senator to a notable political leader with a strong and proven criminal justice background who understands the damaging impacts of our current drug laws. One of the largest disadvantages to this policy is the impact decriminalization tends to have on youth drug use, in the Portuguese model as stated above youth experimented more with drugs after decriminalization was implemented in the country. Youth are a vulnerable population and our country has a long history of creating programs to protect youth from drugs, so the data presented here is disheartening. However, this could be combatted through the same mechanisms we use to deter youth from using drugs, community drug prevention programs, such as Drug Abuse Resistance Education, D.A.R.E. The important piece about

⁶⁷ "New Pew Poll Confirms Americans Ready to End War on Drugs." Drug Policy Alliance. April 1, 2014. Accessed November 20, 2017. <http://www.drugpolicy.org/press-release/2014/04/new-pew-poll-confirms-americans-ready-end-war-drugs>.

this policy in general is education, educating the public on the note that while drugs are decriminalized they are still illegal. There are still consequences for drug dealers, and fines for drug users.

The advantages to this drug policy far outweigh the negatives; one of the advantages that stand out from the others is the decrease in accidental death by overdose. In a nation that is plagued with an opiate epidemic, accidental death by overdose, is a problem families are facing everywhere. In looking at the Portuguese model the nation saw a large drop in overdose fatalities, "Drug overdose fatalities also dropped from about 80 in 2001 to just 16 in 2012."⁶⁸ This would be an important step for the United States to take. With more and more families suffering from losing loved ones to drug overdose, this policy could help take that pain away and help find treatment options for families. The opiate epidemic has brought a new light to drug issues in America, and a proposal that ensures a health centered focused is something that aligns with what the people of America want. This policy will also improve outcomes for drug users once they are clean and ready to re-enter society. We see in our society that drug offenders often repeat crimes once they are released from prison; this is heavily related to their felony status, which greatly hinders their post prison outcomes.⁶⁹ A policy like this can truly change the lives of many individuals, by allowing them to re-enter society without a felony stamp on their backs. This policy is aimed at

⁶⁸ "It's Time for the U.S. to Decriminalize Drug Use and Possession." Drug Policy Alliance. July 2017. Accessed November 28, 2017. <http://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession>.

⁶⁹ A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits." US Human Rights Network. December 11, 2013. Accessed November 28, 2017. <http://www.ushrnetwork.org/resources-media/lifetime-punishment-impact-felony-drug-ban-welfare-benefits>.

reducing the harm associated with drug use, many American families struggle with addiction, and our current policies do not provide any relief to them, this policy will. This policy will change our long relationship with punishing individuals who use drugs, provide individuals with treatment options, instead of prison sentences and reduce the harm associated with drug use.

CURRICULUM VITAE

Leah Shirley was born in Pomona, California and raised in Upland, California. She earned her Bachelor of Arts in Political Science from Chapman University and is a candidate for her Masters of Arts in Public Management at The Johns Hopkins University. Leah's professional background is primarily in relationship building, recruitment and business development, her first post was an International Development Recruitment Associate. She is currently working to complete her Masters Degree and is aspiring to get back into the field of International Development.