

# Reducing Sentencing for Simple Possession of Drugs

## I. Introduction

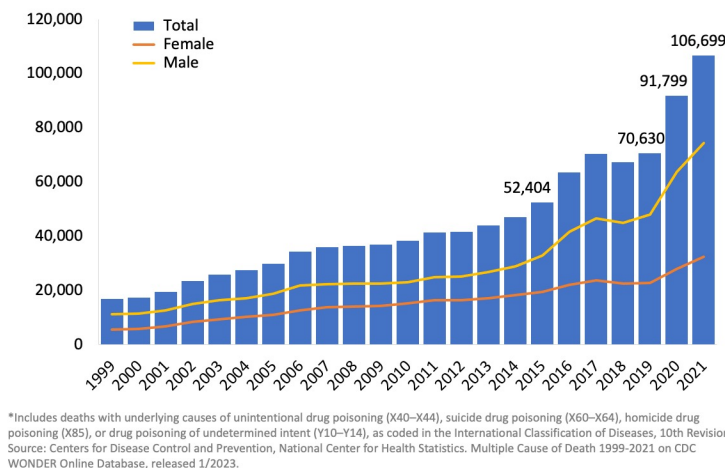
### A. Summary

Deaths related to drug overdose have increased every year since 2018, yet the United States has continued the same, ineffective approach to drug addiction: punishment and criminalization. As a result, people possessing small amounts of drugs have been forced into the criminal justice system, harming their access to employment, housing, and other basic necessities after release. It is hence necessary to rethink the United States' overly punitive response to drug addiction and look towards a more public health-minded approach, in particular modeling Portugal's drug strategy. This proposal advocates for people possessing no more than a 10-day supply of a substance to be sent to a dissuasion commission that will choose an individualized sanction or treatment, depending if they have a drug addiction, in order to truly give people the help they need and curb drug addiction in this country.

### B. The Problem

Drug abuse and addiction is an issue that is becoming increasingly prevalent and widespread in the United States. As shown in Figure 1, drug-involved overdose deaths have rapidly increased.<sup>1</sup> In addition, drug overdoses are one of the leading causes of preventable injury death in the United States,<sup>2</sup> with 38% of American adults having an illicit drug use disorder, and 1 in 25 Americans from age 12 to 17 battling a substance use disorder in 2017.<sup>3</sup>

Figure 1. National Drug-Involved Overdose Deaths\*, Number Among All Ages, by Gender, 1999-2021



<sup>1</sup> Figure 1. National Drug-Involved Overdose Deaths\*, Number Among All Ages, by Gender, 1999-2021 [Chart]. (2023, February 9). National Institute on Drug Abuse.

<https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates>

<sup>2</sup> Top Ten Leading Causes of Death in the U.S. for Ages 1-44 from 1981-2020. (2022, February 28). Centers for Disease Control and Prevention. <https://www.cdc.gov/injury/wisqars/animated-leading-causes.html>

<sup>3</sup> National Survey on Drug Use and Health. (2018, September 14).

<https://www.samhsa.gov/data/report/2017-nsduh-annual-national-report>

The United States has mostly taken a punitive approach in response to the increased rates of drug usage and addiction. Simple possession, which is defined as the possession of a small amount of an illegal substance solely for one's own consumption,<sup>4</sup> on a federal level can be penalized with one year of imprisonment and fines of at least \$1000, and any following drug crimes can have even higher sentences.<sup>5</sup> As a result, according to Human Rights Watch, every 25 seconds someone in the United States is arrested for simple possession,<sup>6</sup> and 44.5% of people incarcerated in federal prisons are there for these non-violent drug crimes.<sup>7</sup>

These arrests particularly affect Black Americans. Black people are 2.5 times more likely to be arrested for drug possession, despite using drugs at similar rates as white people. For simple marijuana possession, Black people are four times more likely to be arrested.<sup>8</sup> After imprisonment, they are then frequently denied rights such as public housing, student loans, employment, and voting, pushing primarily Black families into a cycle of poverty which often includes reentering prison. According to Harvard Political Review, 76.6% of incarcerated people are rearrested within five years.<sup>9</sup> Prisons recreate the conditions for crime, and specifically drug crimes, to reoccur.

The criminalization of drug use not only harms disproportionately Black families but also does not prevent drug use or addiction. As seen in Figure 1, drug-related overdose deaths have not significantly declined with the ongoing hyper-criminalization of drug usage. If anything, people are *less* likely to seek treatment out of fear of being imprisoned. Combined with the traumatic prison environment, the New England Journal of Medicine found that there is a higher risk of a drug overdose after being released from prison.<sup>10</sup> The Boston Reentry Study additionally found that one in five participants used a hard drug (e.g., cocaine and heroin) within a year of release from prison, and about 50% used cannabis,<sup>11</sup> displaying the ineffective and actively harmful effects of United States drug policy today. This proposal hence advocates for a

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<sup>4</sup> United States Sentencing Commission. (2016, September). *Weighing the Charges: Simple Possession of Drugs in the Federal Criminal Justice System*.  
[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/201609\\_Simple-Possession.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/201609_Simple-Possession.pdf)

<sup>5</sup> United States Sentencing Commission. (2016, September). *Weighing the Charges: Simple Possession of Drugs in the Federal Criminal Justice System*.  
[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/201609\\_Simple-Possession.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/201609_Simple-Possession.pdf)

<sup>6</sup> *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*. (2016, October 12). Human Rights Watch.  
<https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>

<sup>7</sup> *Offenses*. (2023, June 3). Federal Bureau of Prisons.  
[https://www.bop.gov/about/statistics/statistics\\_inmate\\_offenses.jsp](https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp)

<sup>8</sup> *US: Disastrous Toll of Criminalizing Drug Use*. (2016, October 12). Human Rights Watch.  
<https://www.hrw.org/news/2016/10/12/us-disastrous-toll-criminalizing-drug-use>

<sup>9</sup> Benecchi, L. (2021, August 8). *Recidivism Imprisons American Progress*. Harvard Political Review.  
<https://harvardpolitics.com/recidivism-american-progress/>

<sup>10</sup> Release from Prison — A High Risk of Death for Former Inmates. (2007). *The New England Journal of Medicine*.  
<https://doi.org/10.1056/NEJMsa064115>

<sup>11</sup> Western, B., & Simes, J. (2019). Drug use in the year after prison. *Social Science & Medicine*, 235.  
<https://doi.org/10.1016/j.socscimed.2019.112357>

health-centered approach to drug use in order to encourage people to get the help they need, reduce the high number of drug overdose deaths, and prevent more Black people from entering the cyclical criminal justice system.

### C. Legislative history

The Sentencing Reform and Corrections Act of 2015, or S. 2123, was approved by the Senate on October 19, 2015, in a 15-5 vote with 14 Republicans and 14 Democrats as co-sponsors. The bill proposed reduced mandatory minimums in specific situations, reduced sentences if the incarcerated person participates in job training, work, drug treatment, or another similar program in prison, and other reforms. After several amendments to gain more Republican support, the bill was reintroduced as S. 1917 which had 15 Republican co-sponsors, 15 Democrats, and 1 Independent, but it ultimately did not receive a vote. However, the bill may have been passed if it was introduced as a part of another bill.

The Smart Sentencing Act of 2021 similarly proposed to retroactively reduce mandatory minimum sentences, specifically in the cases of drug trafficking and particular instances of drug importation. This bill was introduced in the Senate, but it is uncertain if/when this Bill may become law. In the past, Congresswoman Eshoo voted for a similar bill, EQUAL Act of 2021 (H. R. 1693), which ended the sentencing disparity between crack and powder cocaine.

Unlike the Sentencing Reform and Corrections Act of 2015 and the Smart Sentencing Act of 2021, this proposal will remove sentences entirely for the possession of no more than a 10-day supply of a drug. The person found in possession of the drug will instead receive an individualized sanction or be encouraged to go into treatment, preventing them from going to prison for a minor offense while receiving the help or deterrence they require.

The shift in approach to address drug use as a health issue rather than a criminal one has been unanimously supported by the United Nations, which, in 2016, recognized “drug addiction as a complex multifactorial health disorder characterized by chronic and relapsing nature.”<sup>12</sup>

## II. Policy proposal

We propose the introduction of a bill inspired by Portugal’s “drug strategy.” This bill will make possessing no more than a 10-day supply of drugs an administrative offense with a sanction determined by a “dissuasion commission” rather than the justice system. The dissuasion commission will consist of three people: an attorney, a psychiatrist, and a social worker. If the person found in possession of drugs has a prior conviction, the commission will choose a sanction such as temporarily revoking a license (e.g., a driver’s license), banning foreign travel or visits to a certain place, confiscation of a gun or other personal possession, a verbal warning, or a day fine. Unlike usual fines, a day fine is based on the person’s personal income. A day fine can ensure the fine won’t severely affect the person’s livelihood while being negligible to a wealthier individual who has committed the same offense. Furthermore, if the commission

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<sup>12</sup> Volkow, N. D., Poznyak, V., Saxena, S., Gerra, G., & UNODC-WHO Informal International Scientific Network. (2017). Drug use disorders: impact of a public health rather than a criminal justice approach. *World Psychiatry*, 16(2), 213-214. <https://doi.org/10.1002/wps.20428>

determines that the person found possessing the drug has a drug addiction, their assigned sanction may be removed if they admit themselves to a drug rehabilitation facility, and the hearing will be suspended. The hearing can also be suspended if there are no prior convictions.

### III. Legislative Analysis

#### A. Effects of proposed policy in Portugal

Portugal implemented an almost identical set of regulations to the one recommended by this proposal in 2001, except the policy used traditional fines rather than day fines. As a result of the policy, from 2001 to 2015, Portugal saw a 50% decrease in the number of people convicted for drug trafficking.<sup>13</sup> To take one year for example, in 2005, 3,192 dissuasion commission hearings were held. 83% of commissions were suspended, 15% resulted in a sanction, and 2.5% were exonerated. There was additionally a 60% increase in the number of people seeking treatment,<sup>14</sup> and the number of drug-related deaths decreased from 131 to 20 from 2001 to 2008.<sup>15</sup>

#### B. Implementation tips

The dissuasion commissions will be funded by the Bureau of Prisons. Like Portugal, we recommend providing annual funding increases in accordance with the expected rise in cases and people who feel comfortable seeking treatment.<sup>16</sup> Portugal also established one commission in each of their 18 districts; the United States can similarly do so for each state or county. In addition, when implementing this proposal, we urge a non-judgemental, and health-promoting outlook on those being referred or willingly coming forward to the commission rather than treating them as criminals.

It is critical to note that Portugal did not implement this policy in isolation. At the same time, drug treatment services were expanded, after-care programs were created to help people find employment and housing, and increased education about drug addiction was emphasized in schools and communities. We encourage similar services to be adopted and expanded in the United States.

#### C. Voting considerations

Given the largely bipartisan support for the aforementioned bills S. 2123 and S. 1917, this bill is likely to have support from both Democrats and Republicans. This bill also only

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<sup>13</sup> Laqueur, H. (2015). Uses and Abuses of Drug Decriminalization in Portugal. *Law & Social Inquiry*, 40(03), 746-781. <https://doi.org/10.1111/lisi.12104>

<sup>14</sup> Hughes, C., & Stevens, A. (2007, December). *The Effects of Decriminalization of Drug Use in Portugal*. The Beckley Foundation Drug Policy Programme. [https://web.archive.org/web/20150426030351/http://www.beckleyfoundation.org/bib/doc/bf/2007\\_Caitlin\\_211672\\_1.pdf](https://web.archive.org/web/20150426030351/http://www.beckleyfoundation.org/bib/doc/bf/2007_Caitlin_211672_1.pdf)

<sup>15</sup> Vale de Andrade, P., & Carapinha, L. (2010). Drug Decriminalisation in Portugal. *BMJ*, 341. <https://doi.org/10.1136/bmj.c4554>

<sup>16</sup> Anderson, S. (2012). European Drug Policy: The Cases of Portugal, Germany, and The Netherlands. *The Eastern Illinois University Political Science Review*, 1(1). <https://thekeep.eiu.edu/eiupsr/vol1/iss1/2/>

applies to the possession of substances that can be used for no more than 10 days (while S. 1917 reduced sentences for armed career criminals, and the Smart Sentencing Act of 2021 reduced sentences for drug trafficking) so this may be easier to gain support for and ultimately sign into law.

#### D. Counter Arguments

A common argument against decriminalizing drug use is that there will be more people using drugs without an adequate deterrence mechanism. However, this argument assumes the United States' current drug policy acts as effective deterrence against drug use. In reality, drug overdose deaths have only increased over the years as a result of people not seeking treatment, increased drug usage after imprisonment, and other factors. Furthermore, the stigma that has developed around drug addiction due to it being linked with criminality has caused healthcare providers to avoid helping those with drug addiction. By passing this bill, however, people will get the help they need through the dissuasion commission instead of a 1-year sentence or a \$1000 fine. Moreover, in the case that the person does not have a drug addiction, the commission will be able to apply a sanction that will also act as deterrence without motivating the individual to use drugs even more like prisons often do. This sanction will be generally more beneficial to society due to its individualized approach. For instance, if a doctor is found using drugs, and the commission determines that their drug usage negatively affects their practice, the commission may temporarily remove their medical license which will act as a sufficient warning without entirely ruining their lives like a conviction may cause. Hence, this bill will reduce drug use and addiction while remaining humane to those found in possession of drugs.

One might also argue that people can easily evade drug treatment. However, the dissuasion commission can choose to routinely monitor the person's progress if that is a risk (e.g. if this is the second time they have been referred to the commission). Furthermore, the commission may apply a sanction if the person refuses to go to treatment.

Lastly, the cost of the dissuasion commissions may be brought forth as an issue. With that being said, the cost of criminalizing drugs is far higher and will cause much greater economic harm to the United States in the long term. In 2015, the federal government spent \$9.2 million every day to imprison people for drug crimes.<sup>17</sup> Furthermore, drug addiction has been linked with poverty and unemployment, as it is often difficult for people with drug problems to consistently attend work and perform well. This issue is only exacerbated by putting these people in cages, as they are further denied employment after release and frequently go right back to using drugs. This policy is alternatively a long-term solution that will encourage people with drug addiction to seek treatment rather than punishing them.

#### IV. Conclusion

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<sup>17</sup> Wagner, P., & Rabuy, B. (2015, December 8). *Mass Incarceration: The Whole Pie 2015*. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/Pie2015.html>

Imprisonment and unfair fines are not humane or effective responses to drug use and addiction. It is instead crucial to treat those who are found in possession of drugs with respect and dignity like every person. The discussion commissions will do just this, finding an appropriate sanction or encouraging drug rehabilitation treatment for people with no more than a 10-day supply of drugs. Given the incredible successes in Portugal around reducing drug trafficking, increasing the number of people seeking treatment, and decreasing drug-related deaths, this policy is a must for the United States to begin the process towards decriminalization.

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