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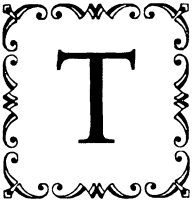
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The Impact of Marijuana Decriminalization: An Update

ERIC W. SINGLE

 HROUGHOUT the 1970s there was a movement in Canada and the United States in favour of reforming marijuana laws. Widespread and increasing use of marijuana despite its criminalization had led to substantial enforcement and court costs, public attitudes were becoming more accepting of marijuana use, and there was a distinct trend toward the “decriminalization” of possession of small amounts for personal use. In October 1973, Oregon reduced the offense of possession of less than 1 oz. of marijuana to a civil violation, with a maximum penalty of a \$100 fine. Within 5 years, 10 other states had enacted similar legislation.¹

The purpose of this paper is to review the evidence regarding the impact of these “decriminalization” measures.² The presentation begins with a set of caveats. First, there is no consensus on the meaning of the term “decriminalization.” In a strict sense the term should only be used to apply to behavior which is not sanctioned by criminal law. However, with respect to marijuana, the term “decriminalization” has generally been used to describe laws which reduce the legal sanctions for possession of small amounts to penalties other than imprisonment. It is important to bear in mind that even in the so-called “decriminalization” states, the possession of marijuana remains against the law and is subject to penalties, although the maximum penalty is only a fine.³ Thus, in evaluating the impact of “decriminalization,” we are really only dealing with the impact of reducing penalties rather than the impact of removing penalties altogether.

A second difficulty concerns the lack of systematic data on the effects of changes in the law. In spite of the considerable public attention on this issue, only two of the “decriminalization” states (California and Ohio) attempted a systematic study of the measures by collecting data before and after the change in the law (2,3). In some of the other states, however,

data were collected after the change in law. Furthermore, national surveys on drug use permit secondary analyses concerning the impact of “decriminalization.” A final hazard in evaluating the impact of “decriminalization” is personal bias. In arriving at conclusions based on incomplete evidence, it is impossible to remain completely objective. I can only reiterate the words of Griffith Edwards when faced with the same problem:

Although the paper tries to take a dispassionate position, it is inevitable that to some the attempted stance of rationality will be seen as a mere stalking horse for personal prejudices. Such a judgment is not only inevitable, but also right. It is unlikely that anyone could write a paper on this topic without a personal bias at times betraying objectivity. No claim is made otherwise, and the critic is asked guardedly to bear this likelihood in mind. (4:12)

THE DUAL PURPOSE OF MARIJUANA POLICY

Marijuana policy has two goals: to minimize health and safety hazards associated with use, and to minimize the social costs and adverse individual consequences that result from attempts to control use.

The attainment of these two goals can be, to a certain extent, contradictory. Vigorous enforcement of criminal sanctions against possession may reduce levels of use but it also escalates the social costs and adverse individual consequences. Conversely, a reduction in enforcement may reduce costs but contribute to an increase in consumption, and thus increase health and safety risks. Thus, the policy considerations center upon balancing social costs against the deterrent impact of the law.

The social costs associated with marijuana prohibition include: the financial costs of law enforcement, encroachment on individual rights and freedoms in order to facilitate drug enforcement, the adverse effects of a criminal record for the large numbers of convicted offenders, and the impact of the penalties (fines and imprisonment) on the users.

The presumed benefit of criminal penalties for marijuana possession is its deterrent effect on use. There is little evidence that marijuana laws exert a strong deterrent effect. It is noteworthy that substantial increases in marijuana use occurred in both the U.S. (5–7) and Canada (8) despite the allocation of substantial resources to the enforcement of very coercive measures. It is difficult to estimate the deterrent effect of marijuana prohibition solely from trends in use, since use might have increased even

more in the absence of coercive measures. In surveys, most nonusers cite potential health hazards as the main reason for not using marijuana, but some also mention fear of punishment (5,9). The evidence from experience in deterring other types of deviant behaviour indicates that one would not expect a deterrent impact if the risk of detection and punishment is very low, as is the case with marijuana (10). The LeDain Commission (9) estimated that fewer than 1 in 100 users are ever detected.

Thus, in the 1970s, North American legislators were confronted with a situation in which marijuana laws appeared to be having little effect on deterring consumption at a time when the social costs were escalating and increasing numbers of individuals were adversely affected by the prohibition (1:407-9). As noted earlier, 11 states enacted "decriminalization" measures.

THE EFFECTS OF "DECRIMINALIZATION": INITIAL EVALUATIONS

In the decade prior to the enactment of "decriminalization" laws, with the risk of arrests very low and marijuana readily available, trends in use appear to have been relatively unaffected by the existing criminal laws against possession. Under these circumstances, one would expect "decriminalization" to result in minimal changes in the number of users, while reducing the social costs and adverse individual consequences of criminalization. The available evidence supports this conclusion. "Decriminalization" measures have had little or no impact on rates of use but they have substantially reduced the social costs associated with the enforcement of marijuana laws.

The first evaluation of a "decriminalization" law was conducted by the Drug Abuse Council, a Washington-based research foundation, in Oregon in 1974. A series of studies conducted after the change in law (11) indicated no major change in rates of use, but given the lack of data prior to the change (other than retrospective questions of dubious reliability) no conclusive interpretation of the results is possible. In Maine, a similar *ex post facto* study by the Maine Office of Alcoholism and Drug Abuse Prevention (12,13) resulted in a very positive assessment of a "decriminalization" measure, but the conclusions may have been somewhat overreaching given the lack of data from before the change in law.

Fortunately, in two states surveys were conducted before and after "decriminalization" measures were enacted. In Ohio, a "decriminalization" measure went into effect in November 1975. Among those aged 18-24, use increased from 27% in 1974 to 33% in 1978 (3), while

among those aged 25–34 use increased from 6% in 1974 to 19% in 1978. In California (2), the proportion of adults reporting that they had ever used marijuana increased from 28% in February 1975 to 35% in November 1976, eleven months before and after “decriminalization.”

In brief, then, all four state-wide evaluations of “decriminalization” measures found modest increases in rates of self-reported use. The authors of all of these studies chose to interpret the increases as insignificant, deeming the “decriminalization” measures to be successful, although the very same data might well have been used to support the opposite conclusion.

THE EFFECTS OF “DECRIMINALIZATION”: CONTROLLED STUDIES

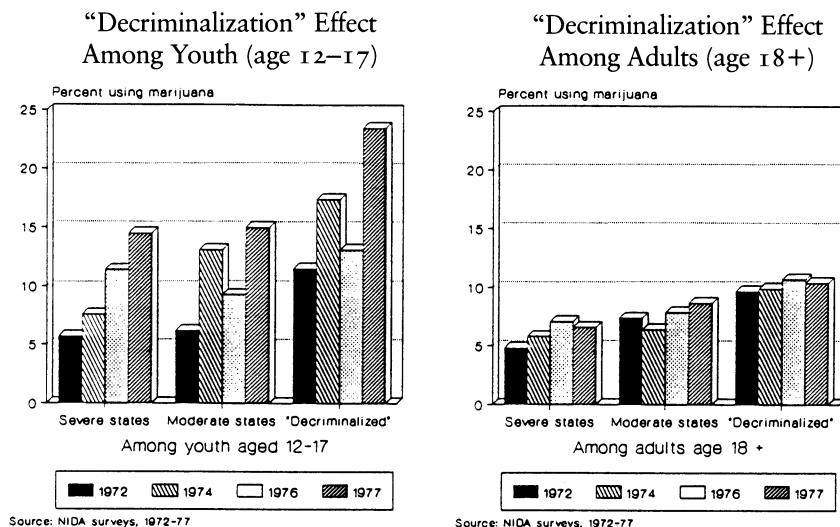
The major limitation of these early evaluations was the lack of control groups or comparative data to provide an estimate of what one might have expected the rates of use to be if there had been no change in the law. Three studies conducted in the mid-1970s did use control groups.

The first was a study by Stuart and his colleagues (14) of self-reported drug use in Ann Arbor and three neighboring communities in Michigan. The original purpose of the study was not to study marijuana “decriminalization.” However, over the brief course of the study, Ann Arbor serendipitously went through four major changes in policy: prohibition, reduction of penalties (but still involving possible imprisonment), “decriminalization” (maximum penalty of a \$5 fine), reinstatement of severe penalties, and finally, a return to “decriminalization.” Data collected at four points in time in Ann Arbor and the control communities (which underwent no changes in marijuana penalties) indicated that marijuana use was not affected by the changes in law.

A second study involving a control group is a secondary analysis of four national surveys conducted in the U.S. between 1972 and 1977 (15). It was found that first, levels of use tended to be higher in the “decriminalization” states both before and after the changes in law. Second, as seen in Figure 1, states which moderated penalties after 1974 (essentially a group of “decriminalization” states⁴) did indeed experience an increase in rates of marijuana use, among both adolescents (age 12–17) and adults (age 18 or older). This corroborates the four state-wide evaluations noted above. However, the increase in marijuana use was even greater in other states and the largest proportionate increase occurred in those states with the most severe penalties.

The third controlled study involves the annual national surveys of high

FIGURE 1



school seniors conducted since 1975. Johnston (16) oversampled seniors in the “decriminalization” states and arrived at the following conclusion regarding the impact of the changes in law:

Decriminalization has had virtually no effect either on the marijuana use or on related attitudes and beliefs about marijuana use among American young people in this age group. (17:27, italics in original)

A follow-up study confirmed the lack of evidence of any impact of “decriminalization” on attitudes and beliefs (18:130).

There was only impressionistic evidence concerning the impact of “decriminalization” measures on use in public. The National Governors’ Conference evaluation of marijuana policy in eight states, five of which had “decriminalized” marijuana, concluded: “There is also concern that increased public display and use may occur as a result of decriminalization. Our interviews have indicated that this has not occurred to any substantial extent” (19:1).

The effect of “decriminalization” on the health care system was to rearrange priorities within the treatment system, with fewer resources allocated for marijuana treatment and more resources available for the treatment of addiction to heroin and/or other so-called “hard” drugs (1).

There was virtually no evidence concerning impact on the incidence of driving under the influence of marijuana.

In sum, the early evidence regarding the harmful effects of "decriminalization" was far from conclusive, but it appeared that there was no increase in marijuana use which could be attributed to "decriminalization." Unfortunately, a comparison in rates of use between "decriminalized" and "non-decriminalized" states up to the present time is not readily available. However, there is no additional evidence which has emerged which would cause a reevaluation of the conclusion that "decriminalization" has had little impact on rates of use. Indeed, recent studies tend, if anything, to substantiate this conclusion.

During the 1980s there has been, if anything, a shift away from marijuana use and attitudes have become less accepting, particularly among young persons, in both "decriminalized" and "non-decriminalized" states. An annual survey of students in California, a "decriminalization" state, has found a trend toward less accepting attitudes toward marijuana use (20). Only 22% of American college freshmen supported legalization of marijuana in 1985, compared with 53% in 1977 (21).

The decreased use of marijuana (18), particularly among young persons, appears to be more strongly connected with changing perceptions of health risks rather than any changes in the legal status of the drug. In 1986, 71% of high school seniors thought that there is great risk of harming oneself from smoking marijuana regularly, compared with only 35% in 1978. Adult rates of use have also declined. For example, it was noted earlier that adult rates of use in California increased from 28% in 1975 to 35% in 1976 when a "decriminalization" law was enacted. In 1979 adult use in the past year was only 17% and in 1983 it decreased further to 12% (22)⁵. Given the findings of controlled studies cited earlier, it is doubtful that the initial increase was due to the "decriminalization" measure; even if there were an impact on rates of use, it was clearly transitory.

THE POSITIVE EFFECTS OF "DECRIMINALIZATION"

The possibility of increased use and increased costs to the health care system must be considered in light of the beneficial consequences of "decriminalization." These benefits have been mainly savings realized in the costs of enforcement and prosecution of marijuana offenses. In all of

the "decriminalization" states, there were reductions in the number and nature of marijuana cases processed through the law enforcement system. In California, marijuana possession arrests declined by 36%, from 38,878 in the first half of 1975 to 23,588 in the first half of 1976 when "decriminalization" was in effect. These comparatively low rates of arrest continued in the 1980s (23). More serious marijuana charges (possession with intent to sell, trafficking, etc.) did not decline, as indicated by an increase in felony arrests. There were similar decreases in marijuana possession arrests in other "decriminalization" states immediately following the change in law. In Minnesota possession arrests declined by 43%; in Columbus, Ohio, the corresponding figure was 36%; in Denver, Colorado, 41% (19).

There is some evidence that law enforcement officers in "decriminalization" states redirected efforts toward the detection and arrest of offenses concerning other illicit drugs. As a result of the new laws, there was a sharp decline in the incarceration of offenders and an increase in revenues from fines. In part due to the redirection of priorities toward the "hard drugs" and partly due to increasing use of fines, the total cost of marijuana enforcement declined substantially. For example, in California the total cost of marijuana enforcement declined from \$17 million in the first half of 1975 to under \$4.4 million in the first half of 1976 (2).

However, "decriminalization" has not eliminated all of the social costs associated with marijuana policy, by any means. Even though possession is no longer subject to incarceration in the "decriminalization" states, it remains against the law to possess the drug. Financial expenditures on possession cases has decreased, but the broad police powers of search and seizure still apply and must necessarily be broadly used as long as possession remains an offence. Further, as long as it is an offence, certain adverse individual consequences are inevitable, particularly those negative consequences that flow from the creation of a criminal record.

In sum, "decriminalization" laws in the U.S. were much less radical than their name implies. They merely involved the elimination of jail terms for first offenders, which had already been an unusual sentence for most cases. The so-called "decriminalization" of marijuana does not appear to have had a major impact on rates of use, as many feared that it might have. On the other hand, it has resulted in substantial savings to drug enforcement with resources generally redirected toward the enforcement of laws regarding other drugs. Although it cannot be claimed that "decriminalization" has eliminated the social costs and adverse indi-

vidual consequences associated with marijuana prohibition, it would appear that "decriminalization" has succeeded in reducing the costs without increasing the health and safety hazards associated with use.

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NOTES

1. One additional state enacted a "decriminalization" measure in this time period, but later rescinded it. South Dakota reduced the maximum penalty for possession of less than 1 oz. of marijuana to a \$20 fine in April 1977, but this law was subsequently repealed.

2. In 1981 a preliminary examination of this issue was undertaken (1). In this paper, the evidence regarding the impact of "decriminalization" is summarized and updated.

3. In Alaska it is not against the law to possess marijuana in the privacy of one's residence due to a court ruling (*Raven vs. Alaska*, 537, p. 2d 494, 1975), but it is still illegal to possess marijuana anywhere else. In six of the "decriminalization" states (Alaska, Maine, Minnesota, Mississippi, Nebraska and Oregon), possession of small amounts is treated as a "civil violation" rather than a crime, much like minor traffic offenses. In three states (California, New York and North Carolina), possession of small amounts is deemed a misdemeanour, in Ohio it is a "minor misdemeanour," and in Colorado it is a "petty offense." These distinctions may have important symbolic implications, but in practical terms they are less important than the fact that the behavior is still against the law and subject to penalties. In Canada, marijuana legislation is solely under the jurisdiction of the federal government, which has no established precedent for noncriminal violations. The maximum penalty for possession of small amounts (usually 1 oz.) in the "decriminalization" states is a \$100 fine in all jurisdictions except Mississippi (\$250) and Nebraska (\$200).

4. The reader is cautioned that the "decriminalization" states in Figure 1 is largely a subset of the eleven "decriminalization" states. In Saveland and Bray's reanalysis, this category was referred to as states which had "moderated penalties." It includes only five states: California, Maine, Minnesota, Ohio and Rhode Island. The first four are all "decriminalization" states, but tiny Rhode Island is not. In Rhode Island, penalties were reduced, but still included the possibility of imprisonment. Nonetheless, the population of Rhode Island is so small that its inclusion is not likely to affect the results.

5. These figures are not strictly comparable in that the earlier surveys asked whether respondents had "ever used" marijuana, while the later studies asked about use in the past year. Nonetheless, the findings do indicate that it is highly likely that there was a decline in rates of use in the 1980s in California, thus corroborating the findings from national surveys reported by Johnston and his colleagues (18).

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ABSTRACT

The available evidence indicates that the "decriminalization" of marijuana possession had little or no impact on rates of use. Although rates of marijuana use increased in those U.S. states which reduced maximum penalties for possession to a fine, the prevalence of use increased at similar or higher rates in those states which retained more severe penalties. There were also no discernable impacts on the health care systems. On the other hand, the so-called "decriminalization" measures did result in substantial savings in the criminal justice system.