THE DRUG PROBLEM IN THE AMERICAS: STUDIES
LEGAL AND REGULATORY ALTERNATIVES
THE DRUG PROBLEM IN THE AMERICAS: STUDIES

LEGAL AND REGULATORY ALTERNATIVES

Organization of American States
TABLE OF CONTENTS

Legal and Regulatory Alternatives........................................................................................................5

FINDINGS ...............................................................................................................................................5

PART 1 SCOPE OF ANALYSIS ........................................................................................................7

Background........................................................................................................................................7

Terminology.........................................................................................................................................8

International Conventions..............................................................................................................9

Making and Evaluating Drug Control Policies..............................................................................12

PART 2 VARIATIONS IN LEGAL REGIMES .............................................................................15

Laws Regarding Availability ...........................................................................................................15

Laws on Use and Possession for Personal Use ...........................................................................17

  The Situation in the Hemisphere.................................................................................................17

Table 1...............................................................................................................................................21

Decriminalization and Depenalization in Europe .........................................................................25

Evidence on the Effects of Decriminalization and Depenalization............................................25

PART 3 LEGAL AVAILABILITY .....................................................................................................29

Models of Legal Availability ..........................................................................................................29

Potential Positive Outcomes of Legal Availability ....................................................................35

Potential Negative Outcomes of Legal Availability ....................................................................38

The Evidence Base for Projections .................................................................................................40
Legal and Regulatory Alternatives

FINDINGS

- Over the past two years, the hemispheric drug policy debate has become much more active and intense. Marijuana legalization initiatives in Uruguay and two western U.S. states are drawing broad attention in the hemisphere.

- About a dozen OAS member states have non-criminal or reduced penalties or no penalty at all for possession of a personal amount of controlled substances, including Argentina, Brazil, and Mexico.

- Decriminalization of marijuana for personal use is common in many states of the United States, in practice or by law.

- The available evidence suggests that reducing penalties for possession of small quantities has little effect on the number of users.

- Legalization of controlled substances, especially if commercialized, could complicate prevention efforts, decrease prices, and thus expand use and addiction, with all the negative consequences that accompany these trends.

- Assuming well-functioning regulatory structures, legalization could reduce many of the negative consequences with which society is most concerned, including violence, corruption, and public disorder surrounding drug distribution; the transmission of blood-borne diseases associated with shared needles; and the incarceration of hundreds of thousands of low-level drug offenders.

- There is limited evidence available to accurately measure tradeoffs, and it is difficult to predict exactly to what extent legalization would reduce violence and other harms or increase the prevalence of addiction and use. The results would vary by country, by drug, and by the nature of the legalization regime adopted. No country has legalized any of these drugs, and neither historical analogies (such as to the period when cocaine was legal in many Western countries) nor comparisons to alcohol prohibition provide much insight.
PART 1
SCOPE OF ANALYSIS

Background

Psychoactive drugs have become an important public policy issue in the hemisphere because their use and abuse can damage health, generate accidents and crimes, and lead to drug dependency. Legal controls and other policies can reduce the damage from drug abuse by limiting the number of people who use the substances and mitigating the adverse consequences of use. Such policies can take a variety of forms:

- Legal rules: Regulations as to who can use, when and where, as well as what forms can be produced or sold. This includes prohibitions on particular substances.
- Taxes, if the substance is legal.
- Enforcement of taxation, regulation, and prohibition provisions, since none work well without some enforcement of the rules.
- Drug abuse prevention measures, including education, community programs, and mass media campaigns.
- Treatment of drug abuse disorders and related health problems, including programs that aim to lower the harmfulness of continued drug use, such as needle exchange programs.
- Broader measures of social integration and economic development, even though they are not explicitly targeted at drugs.
- Broader measures of institutional strengthening, including health care and criminal justice system reform.

However, legal controls can also generate damage. They encourage large-scale illicit enterprise and lead to increases in adulterated drugs, enforcement costs, disorder, violence, incarceration, and corruption. Many of these phenomena are present in OAS member countries.

This chapter will focus on the effects of potential changes in legal rules. Programmatic changes that can have major effects on consumption—such as improving prevention, treatment, enforcement, and interdiction—are dealt with in other chapters. The OAS Hemispheric Drug Strategy of 2010 and its Plan of Action of 2011-2015 also lay out a set of options for programs and policies that respect human rights, promote reductions in drug consumption, and recognize drug dependency as a public health problem that requires an integrated response.
Though alcohol and tobacco are referenced in this chapter, the term “drugs” will be reserved for those substances that are currently controlled, primarily cocaine, heroin, marijuana, and methamphetamine. This chapter does not deal with abuse of psychoactive drugs available through prescription. Such abuse has become an important problem in some countries, particularly Canada and the United States. These drugs are covered by the same conventions but because of their medical uses and the controls associated with them, present quite a different set of problems.

**Terminology**

*Prohibition* is a set of laws and regulations that ban the production, sale and use of certain substances except under very limited circumstances such as research and clinically defined medicinal use. Changes in such laws in the direction of freeing mere users from criminal sanctions are referred to as *decriminalization*. This is often thought of as simply a lesser version of legal availability for sale, but the gains, losses, and policy-design questions are entirely different.

Decriminalization does little to reduce the harms relating to illicit commerce, but the evidence discussed below suggests that its impact on consumption levels is modest. Decriminalization can dramatically change the number of arrests for drug-law violations, avoiding substantial burdens on those arrested. Furthermore, such a legal change would reduce the burden on the judicial and prison systems from prosecuting and incarcerating low-level offenders. Decriminalization includes non-criminal penalties such as fines, or interventions designed to dissuade users from continuing to consume illicit drugs.

The term *depenalization* is now widely used in discussion of alternative legal regimes. This refers to a reduction from current levels in the formal penalties of any kind for possession of a drug for personal use.

*Legalization* refers to a regime in which both production and consumption are legal. There may be legal restrictions on both sides of the market, even with criminal penalties for violations. For example, it might be a criminal offense to sell marijuana to anyone under 21 or to have more than a certain level of the substance in one’s body when driving. However, legalization means that it is possible for a large class of individuals to obtain the drug without penalty and for the drug to be produced and distributed without penalty by some entities. Repeal of the Eighteenth Amendment in the United States in 1933 was an instance of legalization, in this case of alcohol, even though there were initially tight restrictions in some states on who could sell alcoholic beverages.

---

1 For example, cocaine is used as a topical anesthetic for certain surgical procedures.
2 At a meeting in the Caribbean, high-level judicial and law enforcement officials and other national experts concluded that such a policy would alleviate the current court backlog of criminal drug cases involving low-level and repeat offenders. Caribbean Outreach Meeting for the Study of the Drug Problem in the Americas, Port of Spain, Trinidad and Tobago, January 16-17, 2013.
One dimension that fits between possession and supply is *cultivation for personal use*, at least for marijuana, which is readily grown in small quantities. A regime that might prevent the dangers of market expansion associated with commercialization would allow individuals to produce for their own use and perhaps for gifts to others or shared in a small collective. Even within the context of prohibition, cultivation for personal use might be separated out; Australian states that have decriminalized marijuana possession have also decriminalized cultivation of a small number of marijuana plants. In this case the goal is to reduce the extent of drug trafficking and perhaps the revenues of organized crime.

Particularly in the Western Hemisphere, it is worth noting that the conventions allow signatory countries to make reservations to the convention to allow for traditional indigenous use of a controlled substance.

**International Conventions**

National drug policy choices are made in the context of a set of longstanding international drug treaties. The first international drug laws focused on regulation of substances such as opium (Hague Convention 1912). However, in the early years of international drug policy, very little progress was made regarding how to organize or consolidate international policy.

The United Nations attempted to address this problem through the 1961 Single Convention on Narcotic Drugs, which was aimed at consolidating enforcement treaties into one global accord. This treaty introduced the system of “scheduling” of drugs, which is still in use today.

Over the next 30 years, international drug policy evolved gradually. The 1961 Single Convention on Narcotic Drugs focused on controlling the most notable plant-based drugs such as opium, cannabis, and cocaine. Ten years later, increased use of these drugs gave rise to the United Nations Convention on Psychotropic Substances (1971), which expanded international policies to include synthetic substances such as amphetamines, benzodiazepines, barbiturates, and psychedelics. In the late 1980s, the United Nations broadened its approach to include many facets of drug trafficking. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) regulated precursor chemicals and required signatory

---


4 Mexico made a reservation, as allowed by Article 32, Paragraph 4, of the Convention on Psychotropic Substances of 1971, to permit traditional use of certain substances for indigenous ethnic groups in its territory. The recent case of Bolivia and indigenous use of the coca leaf, explained in the chapter on Production and Supply of Drugs of this report, is complicated by the fact that Bolivia did not make a reservation to the Single Convention on Narcotic Drugs of 1961 upon signing or ratifying. Therefore, in June 2011 it denounced and re-accessed to the treaty with a reservation regarding coca. With only a handful of the required 62 objections to re-accession filed by January 10, 2013, Bolivia successfully rejoined the convention with a reservation.

nations to enact laws against money laundering and other offenses related to drugs.

Many narcotic, plant-based, and psychotropic substances are covered by these international drug control treaties. The vast majority of governments are signatories to these treaties, which render the use, sale, trafficking, and production of drugs like heroin, cocaine, and cannabis illegal. However, when signing, ratifying, or acceding to an agreement, a state may sign with a reservation that seeks to exclude or modify the legal effect of certain provisions of the treaty as they apply to that state.6

Within the context of the conventions, countries around the world have liberalized certain aspects of their control policies, almost exclusively on the demand side. Within some countries there is variability among subnational jurisdictions, as demonstrated by the diverse ways states and localities in Australia and the United States treat cannabis under the law. Though nations vary in the aggressiveness of their enforcement on the supply side, there has been minimal experimentation in terms of the limits of the UN conventions. The conventions do not mandate or define enforcement (except against the cultivation of illicit drugs), and thus different countries interpret certain parts of the treaties in different ways.7

Indeed, drug policies vary around the world—from use of the death penalty for drug crimes in some Middle Eastern countries to heroin injection rooms in Canada, Switzerland, and other parts of Western Europe. Several countries (such as the Czech Republic, Italy, Mexico, Spain, and Azerbaijan) have removed criminal or reduced penalties for the personal use and possession of all illicit drugs; others have limited decriminalization to marijuana.

Progress and challenges related to drug control and treaty obligations are discussed at the Commission on Narcotic Drugs (CND), a 53-member United Nations body that meets annually. The CND offers opportunities to advocate for specific approaches to drug control, such as health-oriented measures and supply reduction. The latter policy is often debated at length at CND, and has traditionally been heavily emphasized within international drug policy discussions. However, recently there have been an increasing number of resolutions agreed to by all countries that address health-related issues.

Still, countries generally understand that the full-scale legalization of any drug under the conventions would violate international law, and this can constrain national drug policy. For example, it is widely believed that the government of the Netherlands has at times considered legalization of marijuana, but held back because of the international treaties to which it is a signatory. The International Narcotics Control Board—the quasi-judicial body of 13 representatives meant to set production levels for analgesics listed under

---

6 For example, when signing the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Peru expressed its reservation to Paragraph 1 (a) (ii) of Article 3, concerning offenses and sanctions regarding cultivation, because the convention did not clearly distinguish between licit and illicit cultivation.
various schedules of the conventions and to enforce the conventions—can recommend embargoes against the lawful production of drugs for medical purposes in a country if it determines that the country is violating international drug treaties. This enforcement power has never been used.8

Changes to the international conventions, including their schedules and lists, are possible by means of modification or amendment. Modification includes adding, changing, or removing substances from a schedule by a simple majority in the CND, in consultation with the World Health Organization, for substances controlled by either the UN Single Convention on Narcotic Drugs or the UN Convention on Psychotropic Substances. The International Narcotics Control Board, again by majority, may make recommendations to the CND regarding modification of precursors listed in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The amendment process involves a formal alteration of the provisions of the treaties. Any party may propose an amendment to any one of the treaties. If no party objects to the amendment within 18 or 24 months after circulation, depending on the treaty subject to the proposed amendment, then the amendment is accepted and enters into force.9

The WHO Expert Committee on Drug Dependence drafts reports on the substance under review based on the following criteria: similarity to known substances and effects on the central nervous system; dependence potential; actual abuse and/or evidence of likelihood of abuse; and therapeutic usefulness. The WHO governing body uses these reports to issue recommendations to the CND on modification of the schedules or on whether a substance should be controlled internationally and by what treaty and schedule.

A state may request a change to the schedule. The WHO Expert Committee would study the matter and draft a report; the WHO governing body would then issue a recommendation to the CND. Under the 1961 Convention, the CND does not have to accept the recommendation, but its decision must be notified to the UN Economic and Social Council, which can confirm, alter, or reverse it. Under the 1971 Convention, the CND must accept WHO scientific and medical findings as determinative, but the CND may also bear in mind other "economic, social, legal, administrative and other factors" and reject a recommendation where it sees fit.

---

8 Ibid.
Box 1 CRITIQUES OF THE INTERNATIONAL DRUG CONTROL SYSTEM

Many observers suggest that the current system of international control of narcotic drugs and psychotropic substances mandated by the United Nations conventions should be more flexible and allow parties to explore alternative policy options. Proponents of this viewpoint argue that restricting the production, trade, and use of drugs to the fields of medicine and science produces unwanted effects that do not take into account the complexity of the drug problem; they claim that prohibition is an oversimplified and limited policy in dealing with the drug phenomenon. According to critics, the current policies have prevented the evolution of a more differentiated response to the drug phenomenon by limiting such individual behaviors as the traditional use of coca or the supervised use of injection drugs.

Implementation of the current regime is complicated by the many institutional differences in countries. Institutional weaknesses mean many states are unable to tackle complex problems in a comprehensive fashion. The illegal nature of trafficking has increased insecurity. States, unable to adequately confront drug consumption, have overcrowded prisons with marginalized drug offenders and drug users, providing at times little treatment support to dependent individuals.

Making and Evaluating Drug Control Policies

Policy measures with explicit drug control goals can never be fully detached from underlying social values; to some degree, they reflect society’s disapproval of certain substances. That said, the primary purpose of this analysis is to evaluate these policies in terms of how effective they actually are in different dimensions. These include:

- Protecting individuals and communities from drug-related damages, including substance abuse disorders (“dependency”) and use itself;
- Mitigating damages to users’ health (e.g. overdoses);
- Reducing negative consequences to users and others from intoxication-related accidents and drug-related crimes; and
- Preventing problems in the family, the neighborhood, the school, and the workplace.

Prohibition aims to accomplish those goals. By driving up the price for drugs and hampering easy access, these policies should result in less drug use than would occur in a society with drugs that are easier and cheaper to obtain.

---

10 See R. Room and S. MacKay, Roadmaps to Reforming the UN Drug Conventions (Beckley Foundation Report, 2012); Room et al., Cannabis Policy: Moving Beyond Stalemate (Beckley Foundation Report, 2008; Oxford, UK: Beckley Foundation Press and Oxford University Press, 2010).

At the same time, these drug control policies risk causing damages of their own:

- Higher prices for drugs, a consequence of enforced prohibition, can lead impoverished drug users to commit crime for money to support their drug purchases.

- Taxes, regulations, and prohibitions all create opportunities for profitable circumvention and thus the creation of organized criminal enterprise, with attendant risks to citizen security.

- Enforcement of prohibitions can substantially damage the lives of minor participants in the drug market, contribute to mass incarceration and social isolation, and generate human rights abuses.

- In addition, drug enforcement draws resources away from enforcement of other types of violent and property crimes.

Thus, any set of drug policies reflects tradeoffs among competing evils: damage due to drug abuse, damage due to drug trafficking, damage due to enforcement efforts, and the direct budgetary costs of control measures themselves. Willingness to acknowledge those tradeoffs explicitly—in particular, the potential adverse consequences of drug control—can contribute clarity to an otherwise confusing discourse.

The world does not divide itself so neatly that every public action can be easily identified as within or outside the range of drug control policies. A more effective school, a better-designed neighborhood, improved parenting programs, and courts that hand out speedier and fairer justice can all reduce drug use. By the same token, reduced drug abuse contributes to gains in education, housing, and crime control.
PART 2
VARIATIONS IN LEGAL REGIMES

Laws Regarding Availability

Though this report’s mandate is to review policies on drugs that are currently prohibited, a great deal can be learned from how societies have handled other psychoactive substances. Both alcohol and tobacco are addictive drugs that cause considerable damage to health and society. The negative effects of alcohol very much mirror those of cocaine in that they are physiological and behavioral, as well as both acute and long-term. Tobacco is different; its negative effects are purely health-related and long-term.

Under current law throughout the hemisphere, alcohol and tobacco are made more or less freely available as articles of commerce, in unregulated quantity, for consumption by any adult. Alcohol and tobacco are the targets of special taxation and regulation of sales—in particular, a ban on sales to minors. Consumers of those drugs are also subject to rules designed, for example, to prevent automobile accidents or prevent exposure to secondhand smoke. In the case of tobacco but not of alcohol, reducing the number of consumers, especially new users, is an acknowledged policy goal in much of the region.

One—though by no means the only—major alternative to current policies toward controlled drugs such as cocaine, heroin, marijuana, and methamphetamine would involve making one or more of them legally available for sale in some form other than for medical use. The variations among the rules that currently apply to tobacco and alcohol illustrate the range of possible policies that could apply to regulated markets in currently illicit drugs. For example, at various times and places, alcohol and tobacco (as well as opium) have been state monopolies, potentially a very different regime from one in which any licensed business can produce or distribute the substance. So although “legalization” is often referred to as if it specified a particular policy, there are many different possible approaches to making a drug legal, some of the options far more restrictive than others. Alcohol is subject to extensive regulation in some countries but minimal regulation in many others. There is extensive research evidence indicating that many types of interventions affect drinking and alcohol-related consequences. For example, higher taxes, fewer sales outlets, more limited drinking hours, and restraints on advertising all reduce both total consumption and alcohol-related damages.12


The Drug Problem in the Americas: Studies
The consequences of legal availability—for good and ill—depend on the drug or drugs to be made available, the details of the legal regime, and the institutional capacities of governmental and nongovernmental institutions to regulate supply, moderate demand, and deal with both substance abuse disorders and intoxicated misbehavior. The greater the capacity to deal with the consequences of drug use and abuse, the smaller the damage from the increase in use and abuse likely to result if prohibitions on production, sale, and use are reduced or eliminated. But those regulatory measures consume resources, just as enforcing prohibition consumes resources. And some of those measures—such as laws against intoxicated driving—also require additional enforcement efforts.

For states considering a shift away from prohibition, the options also depend on the consequences of existing laws denying legal availability, including the following elements:

**The extent of the illicit market:** In some countries, drug sales have become an important economic activity, with many adverse social, political, and economic consequences, such as corruption and a reduction of state power. Shifting to legalization might help by curtailing these markets, a specific gain not experienced by the other countries. On the other hand, legalizing cultivation would substantially reduce farmer incomes, since they would no longer be compensated for taking the risks of illegal production. Of course, legalization in consumer countries might accomplish the same results. Production could shift to the consuming country, eliminating the need for production and transit in foreign countries.

**Linkages between drugs and violence:** For some countries, the transnational illicit drug trade has become a major source of violence; for others, it is quite minor. Those where drug-related violence is high, particularly due to illicit marketplace dealing, are more likely to see a gain from legalization than those in which the violence is minor. Any potential decline in violence in countries that serve as transshipment routes is hard to gauge. Declines in violence may be limited given the entrenched nature of violence in many countries and potential efforts by transnational organized crime groups to replace drugs with other sources of income.

**Threats to public authority and governance:** Insurgency and corruption, both fueled by organized crime, pose increasing challenges to states with weak institutions and young democracies. In some cases and in some locations, criminal actors supplant the role of the state.

**The number of drug users and problem users, the crimes they commit, and the health and social damage they suffer and cause.** Those countries with small populations of dependent users may be more adversely affected by legalization.

No system of legal availability will eliminate total drug-related damage any more than any system of bans and enforcement efforts can. So the question is always a comparative one: What mix of policies works best?
A further complication is that the answer to that question will probably not be the same for every drug, every country, or every historical moment. While the difference between prohibition and legal availability seems at first blush to be a sharp one, in fact there are important gradations. A sufficiently high tax, for example, can act as an effective prohibition on legal commerce, leading to a practical result virtually identical to formal prohibition. At levels of taxation low enough to generate some legal sales but close to prices in existing illicit markets, parallel distribution channels—licit and illicit—could emerge, as they have in many countries with heavy taxes on cigarettes.

A virtually unregulated market with only modest taxation might largely eliminate illicit dealing and the violence, corruption, property crime, public disorder, enforcement expenditure, and incarceration that come with the illegal market. It would also provide consumers of the newly available drugs with cheaper, higher-quality, and more reliable products—less subject to unknown dilution or adulteration—than are available illicitly. That would tend to make any given level of drug-taking less harmful to the user and to other people. By the same token, it would also tend to expand the volume of use, including problem use. And there are certainly negative consequences from drugs themselves that do not result from the regime in which they are produced, as in the case of pharmaceuticals. Crafting a system of legal availability requires consideration of those two sets of effects. In general, tighter regulation will reduce the volume of consumption, at some risk of creating illicit transactions.

### Laws on Use and Possession for Personal Use

#### The Situation in the Hemisphere

As described earlier in this chapter, signatories to the international drug conventions have some leeway with regard to their drug policies. While the conventions prohibit the consumption and sale of certain drugs, there is considerable variation in how nations implement these requirements, particularly laws related to possession for personal ends.

The countries have applied a variety of legal regimes—from criminalization to depenalization to decriminalization\(^{13}\)—but no country freely permits personal possession or use of otherwise banned substances. Contraband is still seized even if the individual is not sanctioned for possession. Nevertheless, the evidence below suggests that a trend is emerging in the Western Hemisphere characterized by many countries and by states in the United States attempting to reduce penalties for possession of drugs and to do more than that with respect to marijuana. Some specific examples of changes are detailed herein, followed by a list of countries in the Americas that apply variations in applying laws to possession of substances for consumption.

---

\(^{13}\) CICAD Internal Working Paper reviewing laws and regulations within the Western Hemisphere. Draft, October 2012.
• Argentina—Decriminalized: The Supreme Court of Argentina unanimously found paragraph 2 of Article 14 of the National Drug Law (Law No. 23.737 of 1989) to be unconstitutional for violating Article 19 of the Constitution which protects the private actions that do not harm others. The law’s provision had punished possession of drugs for personal use with deprivation of liberty, subject to substitution with educational measures or treatment. The finding of unconstitutionality of the law by the Supreme Court addresses application of the following provision of the law: “The penalty shall be a prison term of one month to two years when the limited amount and other circumstances strongly suggest that possession is for personal use.” The Argentine legislature is currently rewriting the law to comply with the Supreme Court ruling and to expand it to cover other substances besides cannabis.

• Mexico—Decriminalized: Mexican reforms aim to reduce sanctions for consumers in possession of minimal quantities. Articles 477 to 480 of the General Health Law, as amended in 2009, state that the Office of the Public Prosecutor (Ministerio Público) will not prosecute the consumer for the unauthorized possession of substances in quantities deemed to be for personal use, though the arrestee can be held pre-trial. The government authority is required to inform the individual of treatment and prevention facilities available as well as record the incident and provide information to the health facilities. Quantities determined for personal use are established in Article 479: 5 grams of cannabis, 2 grams of opium, 0.5 grams of cocaine, 50 milligrams of heroin, .015 milligrams of LSD, or 40 milligrams of methamphetamine. Some observers believe that some of these limits, especially for heroin, are set unrealistically low.

• Chile—Decriminalized: Under Article 4 of Law 20.000 of 2005, the unauthorized possession of a small amount of substances destined for personal use is not punished. The unauthorized public use of substances is considered an infraction under Article 50, and punished with fines, community service, or attendance at drug abuse prevention programs. Whether the quantity in a specific case is for personal use is determined by the court.

All these changes are so recent that there is barely any evaluation of their consequences, for example in terms of changes in the prevalence of use.

In the United States, in the 1970s, 13 states removed criminal penalties for possession of a small amount of marijuana, typically 1 ounce; use in public sight usually remained a misdemeanor offense. The decriminalization movement

14 Ibid.
came to an end in 1978; the next state to make that change was Massachusetts 30 years later, in 2008.

In the last 15 years, efforts in the United States to soften the effects of cannabis prohibitions have focused on allowing the use of cannabis as medicine. Currently, 18 U.S. states and the District of Columbia allow marijuana to be available as a medicine. This is a more extensive step than simple decriminalization because it involves the state’s sanctioning of selling for medicinal purposes. However, it is much more restrictive than legalization, as in Colorado and Washington, since only a specific class of customers can gain access.

Four states (California, Washington, Colorado, and Oregon) have considered initiatives to make marijuana legally available. On November 6, 2012, voters in two of them (Colorado and Washington) approved new laws to regulate and tax marijuana. A detailed description of the two initiatives is provided in Box 3.

---

**Box 2 Decriminalization in Brazil?**

Brazil’s drug law changed in 2006 in an effort to reduce penalties for drug users and increase those for drug dealers. In effect, use and personal possession was depenalized. Under Article 28 of Law 11.343 of 2006, the unauthorized possession (including acquisition and transport) of substances for personal consumption is considered a criminal offense. However, it is not penalized with deprivation of liberty but rather with drug abuse education, community service, and/or obligatory attendance in drug abuse programs for up to five months for a first offense. The court may apply verbal warnings and fines to ensure attendance. Quantities determined for personal use are at the discretion of the court.

There has been concern regarding the application of the statute by law enforcement and the courts. Some assert that the statute and its application have a net-widening effect of applying indiscriminately to users as well as small retailers. There are concerns regarding the repressive implementation of the country’s drug control laws and its effect on incarceration rates and individual liberties. One study analyzing the application of the 2006 law concluded that it lacks a clear legal distinction between possession for personal use and micro-trafficking, which has led to an increase in the prison population, especially of those convicted of trafficking. Brazil’s Ministry of Justice and members of Congress are now proposing to reform the current drug law.

---

Table 1 below analyzes the current statutes of OAS member states with respect to variations in penalizing unauthorized possession of a controlled substance for personal, private use by an adult. Use by minors is treated differently and generally involves state welfare agencies, though typically it is not a criminal offense. The 13 countries in the following table are divided into three categories: those that apply non-criminal penalties, those that require no penalties, and those that permit judicial discretion or alternatives when sanctioning. Table 1 demonstrates that legal variations with regard to the personal possession of controlled substances is not a new trend; nor is it exclusive to Western Europe or states within the United States that have decriminalized marijuana.

Some countries distinguish statutorily between a drug-dependent user and an experimental or casual user, applying curative measures to the former (such as treatment and rehabilitation) and sometimes nominal penalties to the latter. Ecuador, which is not included in this table, criminally penalizes possession of a controlled substance for personal use, but constitutionally establishes that drug addiction is a public health problem and prohibits criminalizing a drug-dependent user or revoking his or her constitutional rights.

It is equally important to mention that most countries included in the table do not limit decriminalization or depenalization to cannabis, in contrast to the U.S. states that have decriminalized use and possession of marijuana only.

As illustrated by the preceding example of Brazil, the application and enforcement of a statute may differ from the letter or spirit of the law. Table 1 is limited in its analysis to codified written law and not its application. Law enforcement could harass unwitting individuals, for example, or individuals deemed undesirable. Though this sometimes is not a direct effect of a country’s drug law but of its institutions, it nonetheless may lead to violations or pressures on human rights and individual liberties. Sentencing guidelines or security directives were not analyzed. In this regard it is possible for a country to criminally penalize drug possession for personal use in its drug statute but not apply the sanction as prescribed by the law. The distinction between laws on the books and laws as applied is a well-known one; recent studies of marijuana enforcement in the United States show this.
### Table 1

<table>
<thead>
<tr>
<th>Country</th>
<th>Status</th>
<th>Law</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bolivia</strong></td>
<td>Legalized for coca leaves Decriminalized for all other controlled substances</td>
<td>Law 1.008 Articles 4, 49 (1988), Decree 2099, Article 26</td>
<td>There is no punishment for the consumption of coca leaves in their natural state or in products when they have not been chemically processed to isolate the cocaine alkaloid. Dependent and non-dependent offender is sent to a treatment center until he/she is deemed to be rehabilitated. Quantity for personal and immediate use is equivalent to 48 hours of use.</td>
</tr>
<tr>
<td><strong>Brazil</strong></td>
<td>Depenalization</td>
<td>Law 11.343 Article 28 Article 28 (2006)</td>
<td>Statute does not establish minimum quantities; it is up to the judge’s discretion. Safety measures include: I – Verbal warning against the effects of drugs; II –Mandated community service; III –Mandated attendance in a drug awareness course. Measures listed as level II and II apply for a maximum period of five months, ten months for recidivism.</td>
</tr>
<tr>
<td><strong>Mexico</strong></td>
<td>Decriminalized</td>
<td>Ley de Narcomenudeo (reforms the Health Code), Articles 477 to 481 (2009)</td>
<td>Drug possession for immediate and personal consumption is not punishable when quantities do not exceed 2 grams of opium, 50 mg of heroin, 5 grams of marijuana, 0.5 grams of cocaine, 0.015 grams of LSD, and between 40 mg and 200 mg of MDMA or other methamphetamines. Certain forms of rehabilitation and treatment can be obligatory if deemed necessary.</td>
</tr>
<tr>
<td><strong>Argentina</strong></td>
<td>In transition to decriminalization Statutorily, the use or possession of a substance for personal use, with the exception of marijuana or</td>
<td>Law 23.737, Articles 14 and 15 (1989), establishes punishments for the use or possession of drugs for personal use. However, the article was ruled unconstitutional by the Supreme Court in 2009 (Fallo Arriola).</td>
<td>The Supreme Court decriminalized the use and possession of marijuana in August of 2009. However, the arguments used by the court apply to any substance. Currently the legislature is in the process of drafting a new article to comply with the court’s ruling and will decriminalize possession of substances.</td>
</tr>
<tr>
<td>Country</td>
<td>Status</td>
<td>Law</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>-----</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Chile</td>
<td>Decriminalized</td>
<td>Law No. 20,000, Articles 4 and 50 (2005)</td>
<td>The statute does not establish minimum quantities; it is up to the judge’s discretion. However, under the statute, it is understood that the requirements defining personal use or consumption in the near or immediate future is not met when the quality or purity of the drug that is possessed, transported, held, or on one’s person is not rationally destined for use or consumption or when the circumstances of possession, transport, holding, or carrying indicates the purpose of trafficking. Consumption or possession in public places (streets, piazas, stadiums, etc.) is sanctioned with a fine, mandatory prevention education programs for 60 to 80 days, or community service.</td>
</tr>
<tr>
<td>Colombia</td>
<td>Decriminalized</td>
<td>Law 30 Article 2i(j) (1986)</td>
<td>Personal use is defined in Article 2 (J), which defines no more than 20 grams of marijuana, 5 grams of hashish, 1 gram of cocaine, and 2 grams of methaqualone. Recent court rulings allow for non-application of sanctions when amounts are within or slightly above amounts determined for personal use.</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Decriminalized</td>
<td>Law 8204, Article 79 (2001)</td>
<td>The statute does not indicate penalties for personal use of controlled substances. Amounts described for personal use are not defined in the statute.</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Decriminalized</td>
<td>Law No. 1,340, Articles 29 and 30 (1988)</td>
<td>In the case of marijuana, the amount cannot surpass 10 grams, in the case of cocaine, heroin, or other opiates the quantity cannot surpass 2 grams.</td>
</tr>
</tbody>
</table>
| Peru       | Decriminalized | Legislative Decree 635, Penal Code, Article 299 modified by Article 1 of Law 28002, (2003), and Article 56 of Legislative Decree 22095 | Quantities established in the Penal Code include no more than 5 grams of cocaine HCL, 8 grams of marijuana or 2 grams of its derivatives, 1 gram of opium latex or 200 mg of its derivatives. However, the combination of more than one type of drug, even below the legal
Uruguay

Possession for a reasonable amount is exempt from punishment.


Quantities of “reasonable” personal use are entirely left to the judge’s discretion.

Panama

Criminalized (alternative)

Security measures apply to dependent drug offender, found to be in possession of a small quantity.

Penal Code, Article 320; Security Measures, Title VI (2007)

Penalties for possession of a personal amount include a fine, weekend incarceration, or community service (alternative). Defining personal quantities is left to the court’s discretion aided by medical experts.

Jamaica

Criminalized (alternative)

Possession of controlled substances listed in the Dangerous Drugs Act is a criminal offense. However, possession for personal use may be sanctioned with rehabilitation if mandated by the court.

Dangerous Drugs Act Sections 7C, 7D and 8B (1994)

The Drug Court (Treatment and Rehabilitation of Offenders) Act Sections 5 through 9 (2001)

Possession not established as distribution is defined by the Dangerous Drugs Act Section 22 (7) as possession of no more than one-tenth of an ounce of heroin, one-tenth of an ounce of cocaine, one-tenth of an ounce of morphine, one ounce of opium, and eight ounces of marijuana.

The Drug Court (Treatment and Rehabilitation of Offenders) Act establishes local drug courts to examine cases of minor possession as defined above and addiction. Though possession is still illegal, in essence, drug courts review each case to determine if the user or individual could benefit from mandated treatment and rehabilitation programs instead of prison.

In application, typically persons charged with simple possession pay a small fine ordered by the magistrate. There is no issue of incarceration and in essence drug possession is decriminalized.

Venezuela

Depenalized (Partial)

Ley Orgánica de Drogas, Articles 128 to 148 (2010)

The judge, using rational and scientific judgment, determines the quantity needed for personal consumption, aided by forensic experts.
| Possession of an amount for personal consumption is not penalized; safety measures are imposed. | Amounts of up to 2 grams of cocaine and its derivatives, 20 grams of marijuana, and 1 gram of poppy are criminally sanctioned if not destined for personal use. The judge, with medical advice and previous experience, can consider whether the substances are for personal use. Nonetheless, any amount that theoretically can be considered for more than personal use cannot be treated as possession for personal ends. Safety measures include social reintegration, judicial supervision, and community service. An individual found to be using or in possession of controlled substances for personal use is remanded to the Ministerio Publico (Public Prosecutor’s Office), which will advise the court to submit the user to obligatory treatment and rehabilitation until he or she is psychologically and medically evaluated. |
Decriminalization and Depenalization in Europe

Efforts to reform drug laws in Europe can also inform the policy debate now emerging in the Western Hemisphere. An exhaustive review of all European reforms is not possible here, but there are many publications available. For purposes of demonstrating a range of policy changes, four countries’ policies are reviewed.

- **Italy** and **Spain** decriminalized drug possession for personal use decades ago. Drug use is still illegal but sanctions are administrative, including for example loss of passport or driving license. Quantity thresholds are established by law but with limited interpretive flexibility by the courts.

- **Portugal** decriminalized illicit drugs in July 2001, removing criminal sanctions for personal use, possession, and the purchase of any drug. The removal of criminal sanctions meant that possession for personal use was to be considered an administrative offense; individuals arrested by the police for simple possession or use would be referred to a Commission for the Dissuasion of Drug Addiction (CDT) as a public health approach.

- **The Netherlands** is the country most often analyzed with regard to the relationship between its tolerance toward cannabis and drug use. Cannabis possession and distribution are often viewed as being legalized, but they are in fact illegal. The Netherlands’ policy has been described as being *de facto* legalization because it is accepted as being legal for practical purposes, but remains illegal as required by international conventions.

Evidence on the Effects of Decriminalization and Depenalization

There are many studies on the removal of criminal sanctions for marijuana possession in U.S. states and a few on the effects of making marijuana available for medical purposes. At least in the case of decriminalization, initial

---

22 Studies have found that residents of states that have legalized marijuana for medical use have significantly higher rates of annual use, as well as of abuse and dependence, and that perceived riskiness of marijuana use is significantly lower. However, the reason behind this is not entirely understood; possibilities include community norms that are supportive of marijuana use, differences in community attitudes about the riskiness of marijuana use, whether users consider these laws to give “medical” endorsements to marijuana, and increased availability. See M. Cerdá, M. Wall, K.M. Keyes, S. Galea, and D. Hasin, “Medical marijuana laws in 50 states: investigating the relationship between state legalization of medical marijuana and marijuana use, abuse and dependence,” *Drug and Alcohol Dependence*, (2012), 120:22-27. See also M.M.
studies generally found that the legal change had very small, if any, effects on prevalence.\textsuperscript{23} More recent studies of the differences between U.S. states that had decriminalized and those that had not have used more rigorous models, and have found some statistically significant differences between the two groups of states; however, the differences in prevalence are small.\textsuperscript{24} The Australian experience has provided much of the other research, since the legal changes have occurred at the level of individual jurisdictions within a federal system, allowing for comparisons among those jurisdictions. Again the research has generally found either no effect or very small increases in prevalence from decriminalization, even when that covers home cultivation for own use and gifts to others.\textsuperscript{25} There are a small number of discrepant studies, which do find more substantial effects of decriminalization. For example, one study found that emergency-room mentions for marijuana problems rose in states that decriminalized marijuana in the 1970s.\textsuperscript{26}

It is more difficult to analyze the effects of these legal changes for Europe because they tend to be carried out at the national level. Thus the only assessments of the legal changes in Portugal have involved changes over time in that country compared to changes over the same period in other countries, an inherently weak evaluation design.\textsuperscript{27} For Portugal, it appears that the result of removing criminal penalties was no sharp increase in prevalence or in drug-related harms, though there has been a good deal of controversy on interpretation of the indicators.\textsuperscript{28} There is no evidence that Portugal became a preferred drug tourism destination as some had feared before the change.

The Dutch experience with coffee shops has been the subject of considerable controversy. There is some evidence that commercialization of distribution did lead to an increase in Dutch drug use in the 1980s that was not paralleled elsewhere in Europe.\textsuperscript{29} More importantly, though, the Netherlands now—after about 30 years of ready access for adults—has a rate of marijuana use that puts it in the middle of the European league.\textsuperscript{30} The number of coffee

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
Hughes and Stevens (2010).
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}
shops has been cut by half in the last decade by local governments, which have primary oversight responsibility under general guidelines from the national Ministry of Justice. Reasons for this reduction include, most prominently, concerns about attracting foreign tourists to buy marijuana in the Netherlands, particularly in the south, but also public nuisance in general and breaches of the provisions of the public prosecutor’s guidelines for the coffee shops. The former conservative government and the more liberal one installed in September 2012 have talked about how high THC level (over 15 percent) is a problem for Dutch youth.

Figure 1 demonstrates the lack of any conclusive relationship between prevalence and the penalties associated with use and possession of cannabis in a selection of European countries that have changed their criminal laws. Why has decriminalization of marijuana not led to large increases in prevalence of use? One possible explanation is that it does not much change the risks faced by marijuana users. Even in a country like the United States, where marijuana possession is one of the three leading arrest offenses for both adults and juveniles, the probability of someone being arrested for marijuana possession, assuming that person has used the drug at least once in the previous year, is only 1 in 30. The probability of being arrested on any given marijuana-use

occasion may be as little as 1 in 5,000. Few arrests for possession lead to more than a minor financial penalty or probation. This is also the case for many other rich nations such as Australia and Germany. Thus, removal of criminal penalties may not strike marijuana users or potential users as making much difference. That change also holds true for Portugal, for drugs more generally; decriminalization may not have made much difference to the legal risks of use for any drug. However, comparing the Dutch and Portuguese cases suggests that permitting dealing or sales will attract drug tourism, but reducing punishment or allowing use alone will not cause any increase in this activity.

The important changes in possession laws in Latin America are so recent that few evaluation studies have been conducted. However, it appears that the effort to move cases involving personal possession out of the penitentiary system in Brazil is correlated with an increase in incarceration of minor traffickers and retailers. “Net widening”—the expansion of criminal justice intrusion into the lives of more individuals—has been observed in Australia as well, in that case when it became easier for police to make arrests that did not have criminal consequences.

In sum, a review of the available studies shows a limited amount of evidence on the effects of legal change. All the legal variation has been on the demand side, so the empirical research cannot inform decisions about supply side laws. Quite substantial relaxations of prohibitions on possession or consumption seem to have small consequences for prevalence. Thus, a review of selected case studies finds that the evidence is not sufficiently robust to inform the policy debate about the potential impact liberalization of drug policy might have on violence. Of course, a large reduction in the number of arrests and other criminal justice costs may be considered an important gain, particularly in terms of human rights.

---

33 “Systems Overload: Drug Laws and Prisons in Latin America,” TNI/WOLA.
35 MacCoun and Reuter (2001); Room et al. (2008), Chapter 5.
PART 3
LEGAL AVAILABILITY

Models of Legal Availability

Currently there is a great deal of interest in understanding the effects of the legalization of drugs; it has become a staple of drug policy discussions in the Western Hemisphere. There are a limited number of models that could be of use to further the analysis regarding alternatives to current prohibitionist policies and their potential consequences. Actual models do vary by drug and by country. The most well-known model is that of the coffee shops in the Netherlands, which is generally regarded as de facto legalization.

Another model of interest is that of the social clubs, perhaps the best example being the private cultivation and use of cannabis in Spain. These clubs exist in a legal grey area, but after a series of Supreme Court rulings they have been more or less permitted since 2002 under Spanish law. The clubs are non-commercial social groups that cultivate and distribute cannabis to satisfy the personal consumption needs of its members. Under international conventions, criminalization of cultivation and possession for personal use of substances are subject to constitutional limitations, and in Spain’s case the law does not penalize private use of a drug or the collective cultivation of cannabis so long as it is not destined for illicit trafficking. Membership is typically limited to a certain number of registered, paying adults who can use cannabis on the premises. Each club seemingly can establish its own membership requirements, and internal prices. Again, these are non-commercial operations that seek to meet the needs of members, which has the inherent advantage of preventing commercialization and price competition while also restricting supply. According to one news article profiling a well-known club, prices are about half those of the illicit market.

The club model has been expanded to other countries; it is included in the recently passed referendum in Colorado and is part of the bill in Uruguay. This model does not require a state party to withdraw and re-accede with a reservation to the international conventions, as required under a Dutch coffee-shop model, but only requires changes in national legislation.

Despite the paucity of convincing evidence on the effects of change, there is no doubt about the existence of a hemisphere-wide call for a dialogue to

---

review the current approach and consider alternative policies as potential vehicles to reduce violence, strengthen economies, and improve national security.

Indeed, many nations in the region are increasingly vocal about the need for a hemispheric dialogue on drug policy options. Colombia’s President Juan Manuel Santos has stated in the international press that he is in favor of such a discussion. Bogota’s Mayor Gustavo Petro has proposed constructing centers where drug addicts can consume drugs, an innovation tried in a small number of countries outside the hemisphere and in Vancouver, Canada; the addicts would also receive treatment as part of a crime-reduction strategy. Statements by other leaders in Mexico and Central America mirror those of President Santos. Furthermore, the Caribbean Community (CARICOM) Secretariat has received inquiries by member states asking it to examine decriminalization of drug possession and use.

The most expansive and perhaps ambitious actions have come from the states of Colorado and Washington and Uruguay. The examples of Washington and Colorado are discussed in Box 3. The Uruguayan government has recently proposed a legal change to create a government-regulated commercial market for the production, processing, and distribution of marijuana. See Box 4 for more information.

Box 3 CONSEQUENCES OF CANNABIS LEGALIZATION IN COLORADO AND WASHINGTON

On November 6, 2012, voters in the states of Colorado and Washington approved ballot initiatives that legalized the regulated production and sale of marijuana as well as consumption of the drug. There is a great deal of interest in what consequences this may have both in the United States and in Mexico, which has been the principal source of marijuana consumed in the United States.

What do the laws say?

As far as state law is concerned, in both states adults may possess limited amounts of marijuana, effective immediately. In both states, there are to be licensed, taxed growers and sellers, under rules to take effect in December 2013. Sales to, and possession by, minors (under 21) remain forbidden.

Washington state requires that production, distribution, and sale be controlled by the State Liquor Control Board. Marijuana retail stores will not sell liquor. There will be a 25 percent tax imposed at each of three levels of transaction: production, wholesale, and retail; in addition, the final sale will be subject to state sales tax. The Colorado scheme for commercial production and distribution was not specified in the ballot initiative. There is one specific tax, 15 percent, administered at the wholesale level.

In Colorado, but not in Washington, state law also permits (effective immediately) any person over the age of 21 to grow up to six marijuana plants (no more than three of them in the flowering stage) in any “enclosed, locked space,” and to store the marijuana so produced at the growing location. That marijuana can be given away (up to an ounce at a time), but not sold.

The Federal Response

Federal law still prohibits, subject to criminal penalties, the possession, production, and sale of marijuana. Four months after passage of the Washington and Colorado initiatives, the Department of Justice has still not stated whether it will attempt to block implementation of the new state laws. It has many powers, ranging from prosecuting marijuana businesses to denying them the deduction of purchases from wholesalers for tax purposes, since the purchases are of an illegal commodity.

What impact will the laws have on drug use and abuse?

It is possible that removing the state-level legal liability for possession and use of marijuana will increase demand, but there is little historical evidence that reducing user penalties affects consumption patterns to an appreciable extent. Furthermore, neither state will forbid private employers from conducting employee drug testing; thus, many adults may be subject to random testing as a result of their jobs.

In contrast, legal production, marketing, and sale may well have a substantial effect on consumption, in at least four ways: by making drugs easier to get, making them cheaper, improving quality and reliability as perceived by consumers, and changing attitudes—both consumer attitudes toward the drugs and the attitudes of others about those who use drugs.

Washington’s legislation might keep the price of legally sold marijuana about the same as the current price of illegal marijuana. Colorado’s system—one 15 percent excise tax at the wholesale level, rather than a cascade of three 25 percent excise taxes as marijuana passes from grower to processor to retailer to buyer—might allow for substantially lower prices. That could have a significant impact on consumption, especially among very heavy users and users with limited disposable income: the poor and the young.

What effect will the laws have on drug trafficking?

If the laws affect Mexican drug trafficking organizations at all, the impact will be to deprive them of some, but not the bulk, of their revenues. Transnational drug trafficking organizations currently profiting from smuggling marijuana into the United States or organizing its production in the United States clearly would not gain from increased competition. The open question is how much, if any, revenue they would lose from either falling prices or reduced market share. For more information, see the Study on Economics of Drug Trafficking.
What do the international conventions require?

The 1961 and 1971 conventions provide that the penal obligations of each member country are subject to that country’s constitutional limitations, a principle sometimes known as the “safeguard clause.” However, the 1988 convention in article 3 limits the application of that safeguard clause to personal use and other minor offenses and also limits the exercise of discretionary legal powers. All signatory States are required “to take such legislative and administrative measures as may be necessary” to give effect to and carry out the provisions of this Convention within their own territories. The INCB in its 2011 report noted the following:

The international drug control treaties must be implemented by States parties, including States with federal structures, regardless of their internal legislation, on their entire territory. While all States have different legal systems and legal traditions, the Board wishes to remind the States parties of the basic principles of international law enshrined in the provisions of articles 27 (on the irrelevance of internal law) and 29 (on the application of the treaty on the entire territory of the party) of the 1969 Vienna Convention on the Law of Treaties.

Box 4 PROPOSAL FOR A LEGAL AND REGULATED CANNABIS MARKET IN URUGUAY

In June 2012, President José Mujica announced that his government would send a bill to Parliament that would legalize and regulate the supply of cannabis. Two months later, on August 8, the government officially submitted the bill, which included a sole article, which said that “the state shall assume control and regulation of the activities of importation, production, acquisition in whatever capacity, storage, commercialization, and distribution of marijuana or its derivatives in the terms and conditions specified in the regulations.” The bill maintained prohibition of sales of marijuana among private citizens and cultivation for personal use. In effect, it called for a state monopoly on the production, processing, and distribution of marijuana.

Through months of parliamentary negotiations, the bill underwent considerable modifications. Though the final legal and regulatory details were still being drafted as this report was being prepared, media sources and those close to the government have detailed some of the changes. The new bill calls for a government-regulated commercial market for the production, processing, and distribution of marijuana.

On December 18, 2012, President Mujica announced that the proposal would be tabled, citing the need to better explain the initiative due to lack of public support; this followed publication of a public opinion poll reporting that 64 percent of the Uruguayan public opposed marijuana legalization. He asked his party and those supporting the bill to hold off on passing anything until the initiative met with broader public approval. His administration clarified that this step does not represent a withdrawal of the bill and that the government will continue to discuss openly the proposal to create a legalized
market for cannabis, perhaps starting with a pilot project for medical marijuana.

**What does the proposed bill say?**

The objective of the new bill circulating in Parliament cites in its first article the general interest to “protect, promote and improve the public health of the population through a policy designed to minimize the risks and reduce the harms of cannabis use.” The state would control and regulate the import, export, cultivation, harvest, production, acquisition, storage, commercialization, and distribution of cannabis and its derivatives.

The proposed bill creates a National Cannabis Institute (INCA) to oversee and regulate this activity. The proposal modifies existing national drug law to permit the licensed, registered, and regulated production and processing of cannabis. It would also allow up to six plants for domestic cultivation, and possession of up to 480 grams of harvested material from at-home cultivation would be permitted. The bill would also permit the creation of authorized, registered, and regulated cannabis clubs or collectives—similar to those in Spain—each with up to 15 members, 90 plants, and a maximum annual harvest of 7.2 kilograms.

The proposal also establishes, for the first time, a strict quantity threshold for the legal possession of marijuana for personal use at 40 grams, excluding amounts established for at-home cultivation. Currently, quantities deemed as eligible for consideration as personal possession are left to judges’ discretion.

Public health and awareness of harms is a principal concern of the bill. The proposal cites the need for the National Integrated Health System to prevent problematic use and to offer counseling, guidance, and treatment to problem users of cannabis. Promotion and advertisement of cannabis products in any form would be prohibited. Smoke-free zones established by existing laws on cigarettes would apply to cannabis use as well. INCA would be required to reduce harms associated with problematic cannabis use, in accordance with policies established by the National Drug Board.

**Potential Impacts of the Law**

It is difficult to predict what impacts the law will have on drug consumption and drug-related problems in Uruguay. The impetus for this proposal stems largely from concerns over increased use and problems associated with cocaine base paste. Following the Dutch rationale of splitting the markets, the government of Uruguay is seeking to avert initiation of use of harder drugs. However, nothing in the proposed bill seeks to maintain currently illicit prices of cannabis, something the Dutch have been able to accomplish by maintaining supply prohibitions, and something the Washington measure might potentially do through imposing taxes and limiting supply by prohibiting at-home cultivation. A dramatic decrease in prices might lead to greater use.

Regulatory mechanisms such as taxes or supply limits are not explicitly mentioned in the Uruguay bill. INCA is charged with designing further regulations, so a full evaluation of the potential impacts of the law cannot be undertaken at this time.

**What do the international conventions require?**

The conventions require that parties prohibit the production, distribution and use of scheduled drugs including cannabis. Criminalization of drug possession and cultivation
for personal use are also required, subject to a state’s constitutional principles and the basic concepts of its legal system. Already, the United Nations Office on Drugs and Crime has publicly expressed the view that this initiative, if carried out as envisioned, would represent a violation of the 1961 UN Single Convention on Narcotic Drugs. 

How does the proposal in Uruguay differ from the referendums in the U.S. states of Colorado and Washington?

The Uruguayan government has discussed measures, though they do not appear in the current bill, to prevent drug tourism and diversion. These would include limiting supply to 40 grams of cannabis a month to registered consumers. Given that neither Colorado nor Washington requires consumers to register, the potential for diversion, bundling of transactions, and exporting are potential concerns with those initiatives.

After having considered the (possible) effects of legal availability of cannabis above, below follows an assessment of the possible consequences of legalization of other more harmful substances. The methodology employed seeks to minimize the sources of variation across different drugs by assuming the same regime in each case, which would consist of a version of the alcohol control system that prevails in many countries. Under these assumptions, the substance itself is legal but may be sold only by specifically licensed stores that are subject to a modest amount of regulation and may not be sold to anyone under a certain age, typically minors. Use is permitted for adults, but there are limitations on use in specific circumstances, such as driving a car or in certain workplaces. This is not the only model (as illustrated by the Spanish social clubs for marijuana) but it does have the advantage of familiarity.

Under this scenario, drug prices are likely to fall substantially. One 2010 study analyzed the consequences for prices of legalization of marijuana in California; it found that production costs are so low that the legal price without taxation would be no more than 20 percent of current illegal market prices—roughly $2 per gram, compared to the price of about $12 per gram for high-potency illicit marijuana.

To restore the price to its current illicit level would require imposing a tax of about $300 per ounce. This would invite a great deal of tax evasion, judging by the precedent of tobacco, which has drawn substantial tax-evasive behavior with taxes at far lower values of some $10 per ounce.

Lower prices would likely spur higher consumption. For cocaine and heroin, the material and production costs are also trivial compared to the current retail

---


43 For a review of the variety of possible models of legalization, see S. Rolles, After the War on Drugs: Blueprint for Regulation (Transform Drug Policy Foundation, 2009).

price. The government would have to impose a huge tax per gram to raise prices to levels near those prevailing currently, again providing strong incentives for tax evasion.

**Potential Positive Outcomes of Legal Availability**

In weighing the potential outcomes of legal availability, the evaluation that follows does not specify every net effect of an action but overall results and trends. As an example of an overall outcome, increased drug use under legalization may lead to an increase in child neglect; a subsidiary effect of the change in legal status, which is not taken into account, could be the decline in child neglect that comes from reduced incarceration of parents, both mothers and fathers. Focusing on primary trends enables a clearer comparison of the two classes of effects.
Table 2 Consequences of Various Policies

Who bears the consequences

<table>
<thead>
<tr>
<th>Category</th>
<th>Negative Consequences</th>
<th>Users</th>
<th>Dealers</th>
<th>Intimates</th>
<th>Employers</th>
<th>Neighborhood</th>
<th>Society</th>
<th>Primary source of consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health</td>
<td>Public health care costs (drug treatment, other)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Use</td>
</tr>
<tr>
<td></td>
<td>Suffering due to mental illness (acute, chronic)</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Use</td>
</tr>
<tr>
<td></td>
<td>HIV/other disease transmission</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Use, illegal status</td>
</tr>
<tr>
<td>Social and economic functioning</td>
<td>Damage to employability associated with use</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Use, illegal status</td>
</tr>
<tr>
<td>Safety and Public Order</td>
<td>Property/acquisitive crime victimization</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>Use, enforcement</td>
</tr>
<tr>
<td></td>
<td>Reduced property values near markets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>Enforcement</td>
</tr>
<tr>
<td>Criminal Justice</td>
<td>Increased police costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>Enforcement</td>
</tr>
<tr>
<td></td>
<td>Corruption of legal authorities</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Enforcement</td>
</tr>
</tbody>
</table>

Table 2 shows some of the broad variety of negative consequences associated with drugs and drug control. The entries are judgments, not the conclusions of specific scientific studies, but they have garnered general support since initial publication of the full and lengthy table in 2001. The table also identifies the principal source of each negative consequence, distinguishing among those that are the consequence of the drugs themselves (use) and those that result from prohibition itself or from the enforcement of prohibitions.

The potential positive consequences of legalization are largely captured by declines in the adverse consequences driven by illegal status or by enforcement. Thus, legalization could substantially reduce the criminal justice

---

costs of enforcement of prohibitions, which has dominated estimates of total spending on drug control in countries as different as the United States and the Netherlands. The costs of crime itself, generated primarily by illegal status and enforcement, dominate estimates of the social costs of drugs. Enforcement costs, however, would not disappear entirely. Ensuring that sellers comply with regulatory restrictions, for example of not selling to youth, requires law enforcement efforts, though these costs are likely to be smaller than amounts currently spent in many countries on drug enforcement.

Morbidity and mortality could also decline for legalized drugs. The illegal status of the drugs is a primary cause of overdoses, both because it creates uncertainty about the purity of what is being purchased and because it encourages use of adulterants that can themselves have dangerous effects. In a regulated legal regime, the drugs sold would be of known purity and its ingredients would be listed on the label. HIV, long associated with heroin injecting, might be substantially reduced if heroin users no longer had to conceal their habits and share needles. Increased use and dependence would cut into these gains, as these drugs still present health risks even when purity is known and use does not have to be clandestine.

Additional consequences of legalization could include reductions in market-related disorder and criminal violence, as well as reductions in corruption of the criminal justice system and of political authority more generally. This assumes that countries are capable of putting into place and implementing effective regulatory regimes that do not result in a large parallel black market for drugs. The complex relationship between drugs and violence is explored at greater depth in the security chapter, which notes the linkage of violence in many countries in the region to weak institutions subject to penetration by drug trafficking organizations. That chapter also notes the diversification in violence associated with different economic predatory crimes (such as human trafficking, migrant smuggling, kidnapping, extortion, arms trafficking, and bootlegging), which might not decline and could even increase in the event of a legalized drug environment.

The differences in the scale and scope of organized crime (and each country’s relative effectiveness in the application of the United Nations Convention against Transnational Organized Crime) will also help determine the nature of the effects of legalization on regulatory capacities and enforcement. Countries whose regulatory authorities are heavily infiltrated by diversified criminal enterprises involved in human, arms, and drug trafficking and other rackete may see no significant effects of legalization on reducing the current public corruption levels, unless judicial, economic, and social preventive controls are greatly enhanced.

---

Perhaps the best historical evidence comes from examining the effects of alcohol prohibition and its repeal in the United States since these are prominent and the subject of much research, though also controversy. It is not a perfect analogy for many reasons. For example, the public could compare prohibition with legal availability, since alcohol had been readily available before 1919. Enforcement was never very tough: New York State in 1921 managed no more than 20 convictions for violations of its prohibition law, which in any case it repealed in 1923. It appears that U.S. alcohol prohibition led to a substantial reduction, perhaps up to one third, in alcohol consumption in the early stages, but that it became less effective over time as the corruption of police undermined its enforcement and moral authority. One study concludes that prohibition reduced both alcohol consumption and alcohol-related harms to their lowest level in decades.\textsuperscript{49} There was a large increase in homicides during the prohibition era that has been attributed by many scholars to the struggle over the bootleggers’ markets.\textsuperscript{50} Repeal was followed by a substantial decline in homicide rates and evidence of fairly modest increases in drinking.

### Potential Negative Outcomes of Legal Availability

Price and density of sales have been demonstrated to be important determinants of consumption for legal drugs such as alcohol.\textsuperscript{51} Even with relatively restrictive regulation, the result of legalization is likely to be expanded use and dependency.

Legal availability, even without lower price, will encourage experimentation. Some of those new experimenters will go on to become dependent users. There is likely to be an increase in the number of people who need drug treatment, even if the adverse consequences of dependency will be less if the drugs are legal.

As noted in Table 2 the results of increased use and dependency are many; dependent users include poorer parents, students, workers, and neighbors. Thus the increase in dependency may lead to more child neglect and abuse, more children dropping out of school, increased absenteeism, and less community spirit in populations that had not been much affected previously by drug dependence.

The distribution of these problems across society is also likely to change. At present, in many countries in the hemisphere, drug dependency and related problems are more concentrated among the poor and vulnerable than the middle class; that concentration could diminish with legalization.

When it comes to stimulants, other factors come into play. Stimulants generate violent behavior; indeed, it was violence against their doctors by patients who were prescribed cocaine that helped turned the medical

\textsuperscript{49} G. Edwards et al., Alcohol Policy and the Public Good (Oxford: Oxford University Press, 1994).

\textsuperscript{50} Emily Owens challenges this; see “Are Underground Markets Really That Violent? Evidence from Early 20th Century America,” The American Law and Economics Review (2011), 13(1) 1–44.

\textsuperscript{51} Edwards et al. (1994).
profession against legal cocaine in the early 20th century in the United States.\textsuperscript{52} Expanded use of stimulants, especially in combination with alcohol, could generate more drug user violence.

The Evidence Base for Projections

In considering the tradeoffs among the potential positive and negative effects of drug legalization outlined above, a major problem arises from the lack of solid quantitative estimates. Would the number of heroin addicts in a liberalized drug environment rise by 50 percent or 500 percent? Both figures are plausible. The low estimate assumes that governments could prevent commercial promotion of the drug that “forbidden fruit” effects are important, and that prevention campaigns would be successful; the high figure assumes that none of this is true.

Different projections of increases in drug consumption in a liberalized environment have very different policy consequences. For heroin, even in the country with the most serious heroin problem in the Americas, the United States, a five-fold increase would still lead to perhaps as many as 5 million heroin addicts. While this figure would represent a small fraction of the number of people who are alcohol-dependent, the burden on treatment infrastructure and budgets could be substantial.

It would be equally difficult to estimate the crime consequences of legalized stimulants. While there may be fewer crimes generated by the need to earn money to buy the expensive illegal drug or by risky market transactions, these could be offset by more violent crimes induced by the disinhibiting effects of stimulants, particularly cocaine and methamphetamine, especially if consumed in conjunction with alcohol.

Moreover, the outcomes of legal changes are clearly dependent on many additional factors. Societies vary greatly in their historical susceptibility to drug use, and the impacts of changes in drug marketing are extremely difficult to gauge. The fact that throughout the 1990s Mexico was the principal source of heroin, marijuana, and methamphetamine for the U.S. market, as well as the principal transshipment country for cocaine, without having high rates of use of these drugs is indicative of that variable susceptibility. Numerous social as well as cultural factors will influence how serious a problem a specific drug might be if made legal.

A country’s capacity to implement effective institutional controls on distribution, promotion, and possession by youth will also influence the outcome of legalization. While significant institutional progress has been made in the past two decades, many nations in the Western Hemisphere remain concerned about the ability of their respective institutions to effectively manage a regulated market in drugs. The counterpart to this concern is the continuing challenges faced by these same countries in enforcing the current legal regime in an effective and responsible fashion.