Drug Decriminalization in Portugal

Learning from a Health and Human-Centered Approach

Prepared By:

Drug Policy Alliance
131 West 33rd Street
15th Floor
New York, NY 10001

drugpolicy.org

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Portugal has received global attention for its groundbreaking and comprehensive drug decriminalization program launched in 2001 in response to a public health crisis. In 1999, Portugal had the highest rate of drug-related AIDS in the European Union, the second highest prevalence of HIV among people who inject drugs, and drug overdose deaths were rapidly increasing.

Since Portugal ceased criminalizing drug use, the results have been dramatic.[1] The number of people voluntarily entering treatment has increased significantly, while overdose deaths, HIV infections, problematic drug use, and incarceration for drug-related offenses have plummeted.

Drug decriminalization is defined as the elimination of criminal penalties for drug use and possession of drugs for personal use, as well as the elimination of criminal penalties for the possession of equipment used for the purpose of introducing drugs into the human body, such as syringes.

While several other countries have had successful experiences with decriminalization – including the Czech Republic, Spain and the Netherlands – Portugal provides the most comprehensive and well-documented example. The success of Portugal's policy has opened the door for other countries to rethink the practice of criminalizing people who use drugs. Canada, France, Georgia, Ghana, Ireland and Norway are all currently discussing ways to end criminalization of personal drug use.

In March 2018, the Drug Policy Alliance (DPA) led a delegation of 70 U.S. advocates to Portugal to learn from its health and human centered approach to drug use. This diverse group included many individuals and groups representing those hit hardest by the drug war – from those who have been incarcerated for drug offenses to those who have lost loved ones to an overdose. They live in communities across the U.S., including New Orleans; Mississippi; Durham, North Carolina; San Juan, Puerto Rico; Chicago; Los Angeles; New York and San Francisco, and represent more than 35 advocacy and community organizations working on racial justice, criminal justice reform and harm reduction.

In the United States, the dominant approach to drug use is criminalization and harsh enforcement, with 1.4 million arrests per year for drug possession for personal use. Disproportionately, those arrested are people of color: black people are three times as likely as white people to be arrested for drug possession for personal use.[2] The impact of these arrests and convictions goes well beyond possible incarceration, to include a range of barriers to access to housing, education and employment.

The ripple effect throughout families and communities is devastating. Given how intensely criminalization targets black and brown people in the U.S., it amounts to a form of systemic oppression.

Meanwhile, criminalization means that few resources have been devoted to providing treatment, access to health services, and support to those who need it. For low-income people of color, such services and support are often non-existent.

By visiting Portugal and learning from a different approach, DPA's delegation sought to explore ways the U.S. could also move toward dismantling the drug war and replacing it with a drug policy that focuses on health and puts human beings at its center.

Over three days, the delegation met with João Goulão, the Portuguese General Director for Intervention on Addictive Behaviors and Dependencies and chief architect of the Portuguese model. They also met with experts from the Ministry of Public Health, NGO leaders, people who use drugs, and people who had been incarcerated for their drug use. The group visited the largest drug treatment center in Lisbon and toured methadone maintenance vans located throughout the city. They also shadowed harm reduction street teams that do direct intervention with people who inject drugs, including immigrants, chronically homeless people and sex workers.

Advocates also observed a "Dissuasion Commission" session, where people who are found possessing small amounts of drugs are referred.

The DPA delegation set out to learn how Portugal achieved a dramatic drop in HIV infections related to syringe-sharing and overdose fatalities, as well as the impact of decriminalization on the criminal justice system. With the U.S. in the midst of an overdose crisis that is killing tens of thousands of people a year, increasingly in communities of color such as the South Bronx[3] – and with policymakers ramping up draconian policies such as drug-induced homicide prosecutions[4] – learning from Portugal's accomplishments is especially urgent. The trip to Portugal provided an opportunity for drug policy reform advocates from the U.S. to appreciate how effective a dramatically different approach to drugs can be.

"What I've seen here is that Portugal's drug policy encourages humanism and pragmatism with a focus on the individual."

– Denise Cullen, Executive Director, Broken No More

The Move to Decriminalize

In the 1990s, Portugal faced one of the highest prevalence rates for overdose deaths and problematic drug use in Europe, with people who inject heroin comprising 60 percent of the HIV-positive population in the country.[5] The Portuguese public ranked drug-related issues as the main social problem in 1997,[6] prompted by fears of rising drug use and the prevalence of open and visible use in public spaces.

In response, the government appointed a committee of experts – including doctors, lawyers, psychologists and social activists – to study the problem and make recommendations for a national response. The committee recommended ending the criminalization of people who use drugs, regardless of what drug they are using.

Additionally, they recommended having an honest discussion on prevention and education; providing access to evidence-based, voluntary treatment programs; adopting harm reduction practices; and investing in the social reintegration of people with drug dependence.

The recommendations were accompanied by a new philosophy concerning drugs and drug use based on the following assumptions:[7]

- drugs and drug use are not inherently evil;
- a drug-free society is unattainable;
- people use drugs for a number of reasons; and
- punitive policies are unethical and ineffectual.

"What struck me the most is their approach to solving a problem instead of compounding it…the humane, logical approach to helping its citizens. Being there, seeing it and understanding it, and then looking at what we do in the U.S., made me think of our approach and policies as almost barbaric.

I said that at a meeting once here and everyone's heads turned like it was a cuss word…The response to drug use here is more harmful than the drug use itself. Come on U.S., we can do better!"

– Susan Burton, Executive Director, A New Way of Life

The Portuguese Decriminalization Model

The Portuguese national government adopted the majority of the committee's recommendations, passed an accompanying law (Law no. 30/2000) in 2000, and began to set up Commissions for the Dissuasion of Drug Abuse, under the Ministry of Health.

Under the policy, when police come across people who are using or possessing drugs, they confiscate their substances and refer them to a Dissuasion Commission. This Commission is comprised of one official from the legal arena and two from the health or social service arenas who determine whether and to what extent the person demonstrates dependency on drugs.

These Commissions – which operate independently from the criminal justice system – make decisions on a case-by-case basis. If the committee believes the person's use of drugs is not a problem, they can simply dismiss the case and the application of sanctions altogether. Alternatively, they can impose administrative sanctions that range from fines to social work or group therapy.

The majority of people who appear before the Commissions are deemed to be using drugs non-problematically and receive no sanction or intervention, but rather a provisional suspension of the proceedings. If they are not found in the possession of drugs again within six months, the matter is completely dropped.

For people who appear to use drugs frequently and problematically, the Commissions will make referrals to treatment, which is always voluntary and never mandated. If people with substance use disorder opt not to enter treatment, administrative sanctions – such as the revocation of a driving license or community service – can be applied, but rarely are.

The Dissuasion Commissions aim to provide accurate information about drugs, the potential risks of drug use, and harm reduction strategies, in a non-judgmental way. The goal is for people who use drugs to become better informed and develop healthier relationships with drugs. Thus, people who use drugs can do so without risking punishment or incarceration. When the Portuguese ended criminal penalties for drug use and possession, they made a commitment not to incarcerate someone for failing to enter treatment, failing a drug test or continuing to use drugs.

Law no. 30/2000 stipulates the threshold quantities of illegal substances defined as possession for personal use. These amounts are generally derived from estimations of the average quantity required for an individual for 10 days.

However, these thresholds mostly serve as a baseline from which the police and prosecutors exercise their discretion to decide whether the person's possession of the drug is for personal consumption or if the person is involved in trafficking.

In cases of possession of amounts beyond the thresholds, the court decides whether to send the person to a Dissuasion Commission, apply the same type of sanctions meted out in the Commissions, or charge the person with trafficking. Activists in Portugal raised concerns about how discretion can lead to disparate treatment of comparably placed people based on race, ethnicity, immigration status or socioeconomic factors.

In Portugal, drug trafficking can incur a sentence of one to 12 years in prison, depending on the type of substance, the quantity, cooperation with authorities, and whether the person is selling drugs to finance their addiction (this incurs a more lenient maximum sentence of three years). In "aggravating circumstances," which include trafficking as part of a criminal organization and if the offense causes death or serious bodily harm, drug trafficking sentences can increase to 25 years.[8]

Treatment and Harm Reduction

What architects of the Portuguese model emphasize is that ending criminalization alone did not cause the impressive improvements in the lives of people who use drugs. One of the most striking elements of the Portuguese approach is the focus on the individual person using drugs and their well-being. Drug treatment in Portugal is based on a holistic understanding and assessment of a person's socioeconomic situation.

The DPA delegation's first site visit was to Centro das Taipas, Lisbon's largest treatment center. There, the director of the center described how during the intake process, the social worker first assesses the person's housing and family situation, economic security, access to education, and other social supports. Only after they have assessed these critical issues do they turn their focus to the person's use of drugs and the problems it has caused. This underscores the dramatic change from stigmatizing and criminalizing people who use drugs to promoting their well-being and treating them with dignity.

Harm reduction is a set of ideas and interventions that seek to reduce the harms associated with both drug use and ineffective drug policies. It is based on acknowledging the dignity and humanity of people who use drugs and bringing them into a community of care in order to minimize negative consequences and promote optimal health and social inclusion. This can include ending the discrimination against drug users, reducing drug overdoses, providing supervised consumption services for people who use drugs, and immunity from arrest for witnesses to an overdose.

Harm reduction strategies have also been critical to Portugal's success. In addition to its treatment centers, the government funds social work agencies that engage with people who use drugs in the street by distributing sterile syringes, hygiene materials, and condoms, while offering information about treatment and harm reduction services. Portugal offers syringe access programs, as well as methadone and doctor-prescribed buprenorphine, in addition to prison-based opioid substitution therapy.

However, in some ways, Portugal's harm reduction practices lag behind those of other European countries, indicating a potential stagnancy in innovation since it adopted its decriminalization model. Portugal does not have take-home naloxone programs, supervised consumption services, heroin-assisted treatment, or prison-based syringe exchanges. Medical or adult-use marijuana is also not available in Portugal.

Portugal has made major efforts to scale up the availability, accessibility and quality of treatment, and the training of medical staff. All doctors, psychologists and nurses in Portugal receive education about drugs and addiction as part of their formal medical training. Treatment options available to people who use drugs include detoxification, psychotherapy and methadone. Methadone is given free of charge, available seven days a week, and is often distributed via mobile van units.

The number of people entering treatment has increased significantly since decriminalization.[9] Treatment centers also coordinate with social reintegration teams, which offer advice and support on finding a job or returning to higher education, though Portugal has significantly scaled back this work since the economic recession of 2009. There is also limited housing available to people undergoing or leaving treatment, usually offered on a short-term basis, from six months to a year.

Effects of Decriminalization on Health Outcomes

Portugal went from having one of the highest rates of problematic drug use in Europe before decriminalization, to having a rate of overall drug consumption that is low in comparison with that of other European countries. Aside from marijuana and new psychoactive substances, drug use for all other drugs has fallen below 2001 levels.

Overdose deaths and new cases of HIV and AIDS among people who use drugs have both plummeted since 2001 – a remarkable benefit of Portugal's decriminalization model. In 2000, people who used drugs accounted for 52 percent of new HIV/AIDS diagnoses (1,430 out of 2,758 cases).[10] In 2015, it decreased to a low of 6 percent (77 out of 1,228).[11] Since 2001, HIV-related deaths among people who use drugs have consistently fallen.

Overdose deaths decreased by over 80 percent after decriminalization.[12] In 1999, 369 drug overdose deaths were recorded in Portugal (36.2 per million)[13]; by 2015 that number had fallen to 54 (5.2 per million).[14] Portugal's drug-induced mortality rate was 5.8 deaths per million in 2015, which is far lower than the European average of 20.3 deaths per million.[15] Portugal's decriminalization model has not led to increases in overall drug use, while it has decisively lowered problematic drug use and improved health outcomes.

In 2017, there were more than 72,000 overdose deaths in the U.S. If the U.S. overdose death rate were on par with Portugal's, there would have been fewer than 800 overdose deaths that year.[16]

What Happened in Portugal After Decriminalization
Overdose deaths decreased by over 80%
Prevalence rate of people who use drugs that account for new HIV/AIDS diagnoses fell from 52% to 6%
Incarceration for drug offenses decreased by over 40%

"The trip confirmed there is nothing in our history or culture that inevitably dooms the U.S. to repeat the mistakes of our own drug policies.

That was the most significant lesson that I brought home from Portugal: Fear-based rhetoric and appeals to discriminatory bias lose their power when a solution-oriented response is available to a pressing society-wide problem."

-Andy Ko, Executive Director, Partnership for Safety and Justice

Criminal Justice After Decriminalization

Even before decriminalization, Portugal never experienced the level of mass criminalization that the war on drugs has fueled in the United States. Though Portugal criminalized drug possession for personal use before 2001, it did not widely enforce criminalization, and of the 3,863 people incarcerated for drug law offenses in 1999, only one percent was for drug use or possession for personal use.[17]

In contrast, the criminalization of drug possession is by far the largest driver of arrests in the United States. Each year, U.S. law enforcement makes approximately 1.6 million drug arrests. The overwhelming majority – more than 85 percent – are for possession only. In 2017, of the 1.63 million drug arrests, nearly 40 percent (599,282) were for marijuana possession, and over 48 percent (795,232) were for possession of drugs other than marijuana.

Racial bias compounds the harm and suffering caused by arresting and prosecuting people solely for drug possession. People of color bear the brunt of the costs of drug law enforcement, which causes irreparable harm to the individuals who are arrested, their families and their communities. Black people are three times as likely as white people to be arrested for possession of drugs for

personal use,[18] even though black and white people use drugs at similar rates.[19] Meanwhile, police have used the enforcement of criminal laws on drug possession as an excuse for targeting communities of color, and over-policing them in ways that have translated into not only arrests but also increased surveillance, law enforcement interactions, and killings.

The racial disparities also exist in terms of access to treatment. If white people suffer from a substance use disorder, they are more likely to access treatment programs and then return to their lives without suffering the myriad, long lasting consequences of criminalization. In the context of the existing overdose crisis in the U.S., white middle-class communities such as Staten Island have enjoyed an increase in access to treatment and other health supports, whereas black communities such as the South Bronx – which have experienced an explosion of overdoses – have not received similar support.

After decriminalization in Portugal, incarceration for all drug offenses fell, including for trafficking and related crimes. The number of people incarcerated for drug offenses has fallen by 43 percent since decriminalization, from 3,863 in 1999 to 2,208 in 2016.[20]

People incarcerated in Portuguese prisons continue to have access to harm reduction services, albeit limited. The national healthcare service covers medication-assisted treatment (predominantly methadone) in prisons. In 2007, a pilot syringe exchange program was initiated in two prisons but was discontinued after six months because of low participation, allegedly due to fear of reprisal from prison staff.[21]

It is important to bear in mind that, while decriminalization could have a dramatic impact on health, and on the sheer numbers of people—overwhelmingly black and brown in the U.—who bear the burden of criminalization, it does not mean that racial or ethnic bias in the criminal justice system will disappear. Although Portugal does not collect data on race among the prison population, it does provide demographic information on gender and citizenship. Overall, foreign nationals are incarcerated for drug offenses at higher rates than Portuguese nationals, raising questions around biased enforcement. According to statistics compiled by the Ministry of Justice, foreign nationals are incarcerated at higher rates than Portuguese people for drug trafficking, while the reverse is true for minor trafficking and trafficking to support individual consumption charges.[22]

"The US remains entrenched in a retributive stance on drug use, which is a major obstacle, although we do see some progress. With greater understanding of the need for harm reduction strategies because of the opioid overdose crisis, there is a little more room for opening minds to ending the war on drugs and major drug policy reform."

– Gretchen Burns Bergman, Co-Founder and Executive Director, A New Path

Taking Lessons from Portugal Back to the U.S.

In discussions following the visit, members of the DPA delegation discussed the critical importance of having a clear vision of a different way of addressing drug use that has been proven to save lives and reduce suffering.

The delegates agreed on the need to radically re-think how drug use is framed and that only focusing on reform of the criminal justice system is not enough. The delegation spoke extensively about moving the conversation from a criminal justice frame to a public health and health policy frame, while not discounting the need for structural criminal justice reform.

One concrete step the delegation discussed is the need to engage doctors and other health professionals in drug policy reform work. Based on the Portuguese example, advocates also identified access to safe and affordable housing as crucial to maximizing the health benefits of ending criminalization. Further, the group talked about

how, in the U.S., in the absence of a strong public health system and universal access to comprehensive healthcare, people suffering from mental illness, living in poverty, and/or with substance use disorders have been actively stigmatized and criminalized.

"I really would love to see the public health community step up and really demand that the criminal justice system separate themselves. They need to divest from each other. Addiction should be handled as a public health issue. Drug use should be handled as a public health issue. The criminal justice system needs to let go."

– Deon Haywood, Executive Director, Women With A Vision

The delegation also noted the challenges that could emerge in the U.S. given the lack of access to affordable healthcare, and what that would mean for providing treatment and harm reduction services post-decriminalization. Fully achieving Portugal's gains might require significant advocacy around a stronger social safety net, and access to health care and evidence-based treatment programs.

Despite the concerns about the shortcomings of the U.S. healthcare system, there was unanimous agreement that ending criminalization would mean that people who use drugs would avoid the harms of being criminalized or incarcerated and all the negative individual and social consequences arising from that, including barriers to housing, education and employment.

The delegation overwhelmingly felt that it was transformative to learn about a government-supported drug policy that was firmly founded on respecting the dignity of people who use drugs and focusing on their well-being.

"One thing that I didn't expect to speak to me so loudly was the importance of universal healthcare here because, again, if we're talking about health and the drug problem, we need a system to provide adequate services. If we stop mass incarceration, we then need to really take a hard look at our health systems."

– Rafael Torruella, Executive Director, Intercambios Puerto Rico

To transform the U.S. government's punitive, failed drug policies, the delegates agreed that people who have suffered the most serious consequences of these policies must have their voices lifted up. They agreed that one way to do that is to support voting rights and end the practice of disenfranchising people convicted of drug offenses. The group committed to supporting the engagement and leadership of people who have been incarcerated for drug offenses in drug policy reform work.

The group discussed a range of current initiatives by DPA and its partners that may serve as incremental steps toward decriminalization, by moving the government's response from a criminal justice framework to a health and human-centered one that begins to repair the harms of the drug war, including:

- adoption of comprehensive harm reduction policies and practices such as syringe access programs, Good Samaritan laws, over-the-counter access to naloxone, and authorization of supervised consumption services;
- increasing access to treatment on demand for those who request it (never mandated), including those in detention;
- engaging a wide range of actors in the fields of medicine and healthcare and educating them on harm reduction and medication-assisted treatment;
- securing agreements with the police to make enforcement of drug possession laws a low priority;
- encouraging district attorneys to decline to prosecute drug possession for personal use;

- establishing and funding more diversion programs such as Law Enforcement Assisted Diversion (LEAD);
- challenging the stigmatization of people who use drugs and developing narratives of understanding;
- legalizing marijuana for adult use, accompanied by strong racial and reparative justice measures such as reinvestment in impacted communities and record expungement;
- as an interim measure, reducing drug possession and use from a felony to a misdemeanor; and
- repealing laws that criminalize possession of drug paraphernalia.

The above initiatives are consistent with promoting drug policies that provide care and support for people who use drugs. They begin to move away from the mass criminalization of people who use drugs, especially those from communities that have been over-policed and profoundly harmed by the war on drugs.

But there is more work to be done. DPA and its partners are in the process of identifying jurisdictions where it may be possible to end criminalization of drug use and possession within the next two to five years.

In addition to scoping out these opportunities, DPA and its partners have also defined what reforms are critical for maximizing the benefits of ending criminalization.

The delegation agreed that advocates should seek to make the following available in each U.S. state:

- comprehensive and widely accessible harm reduction services;
- community-based treatment on demand, including in prisons, jails and other forms of detention;
- the elimination of barriers to housing, employment, education and training programs for people who use drugs and those that have been arrested for drug use and low-level possession; and
- accurate drug education to empower people to make safer decisions around drug use.

All of this must be accompanied by work to destigmatize drug use and people who use drugs, while supporting the leadership of people who have been punished for their drug use.

Additionally, the group agreed that given the racial disparities and the decades-long harms to communities of color caused by the war on drugs, there must be investment in the most impacted communities aimed at repairing the harms. Such initiatives could be similar to the racial and reparative justice efforts that are accompanying current campaigns to legalize marijuana in New York[23], New Jersey[24] and New Mexico[25].

Finally, the group identified five principles that should serve as the foundation for all work on positive drug policy reform:

- an unwavering commitment to upholding the dignity of people who use drugs;
- a commitment to reforming the criminal justice system to prevent it from being used as a tool of racism, sexism or xenophobia;
- a commitment to creating environments that foster safer drug use;
- a commitment to addressing the root causes of problematic drug use; and
- a commitment to ensuring that individuals, families and communities that have borne the brunt of the war on drugs are given the opportunity to tell their stories and to seek restitution.

Watch DPA's video chronicling its Portugal visit at www.drugpolicy.org/portugal

2018 Drug Policy Alliance Partners Gathering

March 19-22, 2018

Participating DPA Partners

- Alyssa Aguilera, Co-Executive Director, VOCAL-NY
- Maria "Alex" Alexander, Executive Director, Center for Living and Learning
- Daryl Atkinson, Founder and Executive Director, Forward Justice
- Dean Becker, Producer and Host, The Drug Truth Network
- Mona Bennett, Associate Director and Co-Founder, Atlanta Harm Reduction Coalition
- Gretchen Bergman, Executive Director and Co-Founder, A New P.A.T.H. (Parents for Addition Treatment & Healing)
- David Borden, Founder and Executive Director, StoptheDrugWar.org
- Shaquita Borden, Director of Program Development, Women with a Vision, Inc.
- Susan Burton, Founder, A New Way of Life Reentry Project
- Miss Ian Callaghan, Harm Reduction Specialist, San Francisco Drug Users Union
- Michele Calvo, Deputy Director, Drug Policy and Criminal Justice Reform, New York Academy of Medicine
- Juan Cartagena, President and General Counsel, LatinoJustice PRLDEF
- Robert Childs, Executive Director, North Carolina Harm Reduction Coalition
- Rev. Dr. Art Cribbs, Executive Director of Interfaith Movement, Human Integrity
- Denise Cullen, Executive Director, Broken No More
- Deon Haywood, Executive Director, Women with a Vision
- Teresa Hurst, Policy Coordinator, Colorado Criminal Justice Reform Coalition
- Shilo Jama, Executive Director, The People's Harm Reduction Alliance
- Kathleen Kane-Willis, Director, Policy and Advocacy, Chicago Urban League
- Andrew Ko, Executive Director, Partnership for Safety and Justice
- Nsombi Lambright, Executive Director, Mississippi OneVoice
- Khary Lazarre-White, Executive Director and Co-Founder, Brotherhood/Sister Sol
- Nikos Leverenz, Policy Consultant and Board Member, Drug Policy Forum of Hawai'i
- Julia Negron, Founder, Suncoast Harm Reduction Project
- Dorsey Nunn, Co-Founder, All of Us Or None, and Executive Director of Legal Services, Prisoners with Children
- G. Rosaline Preudhomme, Assistant to the President and Key Organizer, Institute of the Black World 21st Century
- Nestor Rios, Senior Research Analyst and Director of Operations, Justice Strategies
- Michelle Ross, Executive Director and Co-Founder, IMPACT Network
- Philip Smith, Editor, AlterNet
- Patricia Sully, Staff Attorney, Public Defender Association/VOCAL-WA
- Rafael Torruella, Executive Director, Intercambios Puerto Rico
- Troy Vaughn, Executive Director and Co-Founder, Los Angeles Regional Reentry Partnership
- Pete White, Founder and Executive Director, Los Angeles Community Action Network
- Annajane Yolken, Executive Director, Protect Families First

Participating DPA Allies

- Lumumba Akinwole-Bandele, Senior Community Organizer, NAACP Legal Defense and Educational Fund Criminal Justice Project
- Monifa Akinwole-Bandele, Vice President, MomsRising.org
- Chloe Cockburn, Program Officer, Criminal Justice Reform, Open Philanthropy Project
- William Cordery, Program Officer, Racial Justice, Wellspring Philanthropic Fund
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