

FAQ

MMA Policy on Decriminalization of Drug Possession



MINNESOTA
MEDICAL
ASSOCIATION

In December 2022, the Minnesota Medical Association (MMA) adopted policy titled, “Decriminalization of Simple Possession of Illicit Drugs” (click [here](#) to view the full policy). This FAQ document is designed to provide additional background and context on the policy.

What does it mean to “decriminalize” the simple possession of illicit drugs?

For purposes of this MMA policy, to decriminalize the simple possession of illicit drugs means the removal of criminal, but not civil, penalties for the possession of a small quantity of illicit drug that is intended for personal use. It does not include the government regulation of drug production, supply, or sales of illicit drugs. For the purposes of this MMA policy, illicit drugs are substances for which use, possession, sales, and/or production are prohibited under law, including non-medical use of narcotics and other prescription medications.

What does the MMA consider to be a “small quantity” of illicit drug intended for personal use?

The MMA policy does not explicitly define the quantity of illicit drugs that an individual could possess for personal use without criminal penalty. The MMA acknowledges the need for such definition to be included in law, likely on a drug-specific basis. MMA leadership believes that the policy’s emphasis on personal use adequately articulates an intended possession limit that can guide specific definitions to be developed by legislators and subject-matter experts.

How is decriminalization different from legalization?

Legalization is the removal of both criminal and civil penalties and often includes government regulation of drug production, supply, and sales. The MMA policy, “Decriminalization of Simple Possession of Illicit Drugs,” which was adopted in December 2022, does not address legalization.

Does the MMA have a policy on illicit drug legalization?

Separate MMA policy, “530.999 Recreational Cannabis,” which was adopted in November 2019, affirms that the MMA does not explicitly support, nor oppose, the legalization of cannabis and “urges policymakers to understand and balance the public health and social impacts of legalizing cannabis for recreational use.”¹ The MMA does not have policy on the legalization of other illicit drugs.

Why is the MMA concerning itself with decriminalization?

The mission of the MMA is “to be the leading voice of medicine to make Minnesota the healthiest state and the best place to practice.” It is common for the MMA to take positions on issues outside the scope of clinical medicine that affect population

health and health equity. MMA leadership has determined that decriminalization is one such issue.

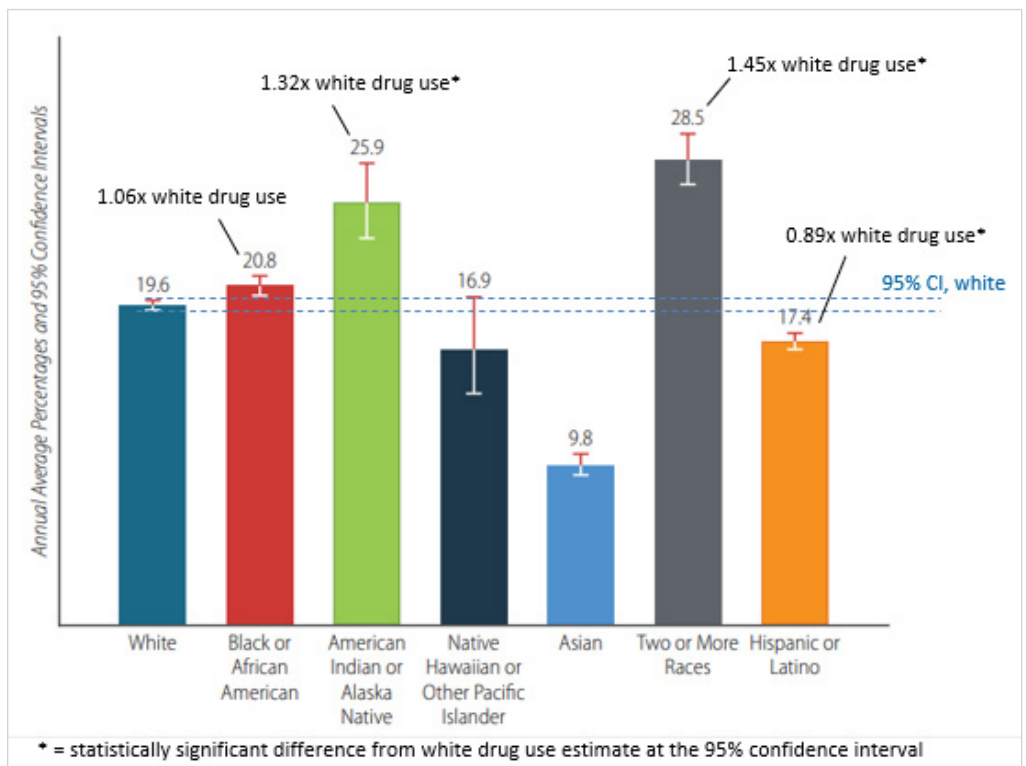
Don’t criminal penalties for simple possession improve population health by deterring illicit drug use?

Most likely not. Current evidence suggests that the effects of criminal penalties on drug use are weak and insignificant.² The National Research Council has concluded that “existing research seems to indicate that there is little apparent relationship between severity of sanctions prescribed for drug use and prevalence or frequency of use.”³ Moreover, the rate of imprisonment for simple possession is not correlated with drug use or overdose death rates.⁴

This evidence is consistent with the reality of substance use disorder. Not all people living with a substance use disorder can weigh the risks and rewards of drug use and simply choose not to use drugs.⁵

This evidence is also consistent with the reality that, among people who can weigh the risks and rewards of drug use, most are unaware of maximum criminal penalties for simple possession and perceive a low likelihood of being caught.⁶

FIGURE 1: Illicit Drug Use in the Past Year among People Aged 12 or Older, by Race/Ethnicity: 2015-2019, Annual Averages



From SAMHSA, 2021, p. 13

Do criminal penalties for simple possession harm population health?

Yes. Criminal penalties for simple possession pose numerous harms to population health through arrests, convictions, incarcerations, and criminal records.

In 2019, 12,417 Minnesotans were arrested for drug possession.⁷ Research shows a lasting, negative association between having been arrested and self-reported mental health, controlling for potential confounders including ultimate conviction.⁸ Additionally, research shows that childhood witness to the arrest of a family member is negatively associated with child mental health and positively associated with child emotional and behavioral issues, controlling for potential confounders including exposure to other potentially traumatic events.⁹

In 2019, 4,389 Minnesotans were convicted for simple possession or marijuana sales, which are reported together by the state.¹⁰ Research shows a lasting, negative association between having been convicted and self-reported mental and physical health, controlling for potential confounders including jail or prison time served.¹¹

In 2019, of the Minnesotans convicted for simple possession or marijuana sales, 3,680 were convicted of offenses which can carry jail or prison time.¹² A large volume of research shows that individuals who are incarcerated have significantly higher prevalence of infectious disease, chronic disease, mental health issues, substance use disorder, and self-harm and violence exposure compared to the general population.¹³

In 2018, 1,075,500 Minnesotans had criminal records.¹⁴ Criminal records serve as barriers to a variety of social drivers of health, including employment, housing, and public benefit eligibility (e.g., food support).

Do criminal penalties for simple possession pose health equity concerns?

Yes. As shown in Figure 1, national data suggest that Indigenous Americans use drugs at 1.3 times the rate of white Americans.¹⁵ However, in 2019, Indigenous Minnesotans were arrested for drug possession at 5.4 times the rate of white Minnesotans (see Figure 2).¹⁶ Additionally, in 2019, Indigenous Minnesotans were convicted for drug possession or marijuana sales (i.e., drug crime in the fifth degree) at 9.0 times the rate of white Minnesotans (see Figure 3).¹⁷

National data suggest that Black Americans use drugs at 1.1 times the rate of white Americans (see Figure 1).¹⁸ However, in 2019, Black Minnesotans were arrested for

drug possession at 3.9 times the rate of white Minnesotans (see Figure 2).¹⁹ Additionally, in 2019, Black Minnesotans were convicted for drug possession or marijuana sales (i.e., drug crime in the fifth degree) at 3.1 times the rate of white Minnesotans (see Figure 3).²⁰

National data suggest that Hispanic Americans use drugs at 0.9 times the rate of white Americans (see Figure 1).²¹ However, in 2019, Hispanic Minnesotans were convicted for drug possession or marijuana sales (i.e., drug crime in the fifth degree) at 1.2 times the rate of white Minnesotans (see Figure 3).²²

Note: All reported risk-ratios for Minnesotans in this answer are population-adjusted by race, using the racial distribution of the adult Minnesota population reported by the Minnesota Sentencing Guidelines Commission.²³

Won't the decriminalization of simple possession of illicit drugs lead to an increase in drug-related morbidity and mortality?

Evidence from Portugal suggests that decriminalization does not increase drug-related morbidity and mortality if done correctly. In 2001, Portugal (a) removed criminal penalties for simple possession,

(b) created administrative panels to refer simple possession offenders to treatment, and (c) invested in expanded access to illicit drug harm reduction and treatment programs. Seven years after these actions, data showed significant decreases in drug-related morbidity and mortality, as well as a significant increase in the number of drug users in treatment.²⁴

The policy adopted by the MMA is supportive of decriminalization only if it is coupled with (a) the creation of administrative panels which may render treatment referrals and civil penalties to offenders of simple possession and (b) an increased investment in statewide harm reduction and medication for opioid use disorder (MOUD) programs.

Isn't the MMA concerned that the results of decriminalization in Portugal may not be generalizable to Minnesota?

The MMA acknowledges that results of decriminalization in Portugal may not be generalizable to Minnesota. However, as stated earlier, a mass of data suggests that criminal penalties for simple possession do not deter drug use in the United States.

FIGURE 2: Likelihood of being arrested for drug possession compared to white Minnesotans, 2019

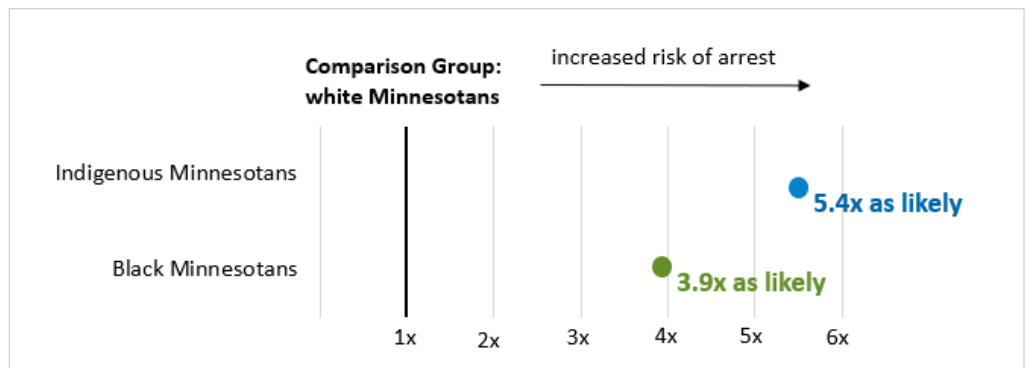
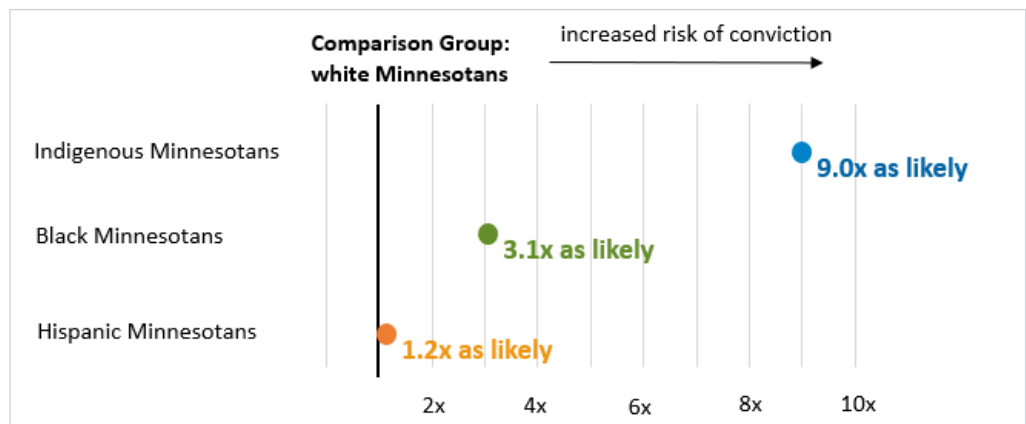


FIGURE 3: Likelihood of being convicted for drug possession or marijuana sales compared to white Minnesotans, 2019



Additionally, we won't know how successful decriminalization will be in the United States until an American jurisdiction attempts it. Given the health harms associated with the status quo of criminalization, the MMA is comfortable supporting a decriminalization model similar to Portugal's and monitoring the implementation for adverse effects.

Didn't Oregon recently decriminalize the simple possession of illicit drugs and experience poor outcomes?

In November 2020, Oregon voters passed Measure 110, which decriminalized the simple possession of illicit drugs effective February 1, 2021.²⁵ Opponents of Measure 110 say it was a failure, citing that drug overdose deaths rose 41% in 2021 and that 73% of people cited for simple possession have not yet paid fines nor appeared in court.²⁶ There are two reasons to read these figures with caution.

First, Oregon did not approach decriminalization in a manner consistent with Portugal's approach or MMA policy. While Oregon coupled the removal of criminal penalties for simple possession with a \$300 million investment in drug treatment and harm reduction services between 2021 and 2022, only 10% had been spent by September 2022.²⁷ Had Oregon made a more timely and substantive investment in services, drug overdose deaths may have been lower. Additionally, unlike Portugal, Oregon does not pressure offenders to appear before extrajudicial administrative panels for assessment and referral to treatment (e.g., through criminal penalties for non-appearance, through possession of personal property if fines are unpaid).

Second, increases in drug overdoses cannot be attributed to Measure 110 alone. In 2020, the year before Measure 110 took effect, drug overdose deaths rose 34.3% in Oregon.²⁸ Additionally, while Oregon experienced a 41% increase in drug overdoses in 2021, it also experienced a 73% increase in alcohol-related deaths that same year.²⁹ There are many variables affecting behavioral health and drug use in Oregon beyond decriminalization, particularly in the wake of the COVID-19 pandemic and inflation.

Why doesn't the MMA take a more moderate approach to reducing the harms of criminal penalties of simple possession, like expanding the use of drug courts?

Drug courts are courts that "work closely with prosecutors, public defenders, probation officers, social workers, and other justice

system partners to develop a strategy that will pressure an offender into completing a treatment program and abstaining from repeating the behaviors that brought them to court."³⁰ There are 42 operational, county-run drug court programs in Minnesota, each with their own eligibility and criteria.³¹

The MMA supports decriminalization over the expansion of drug courts because the former is likely to produce a greater benefit to population health for several reasons. First, most offenders of simple possession, who typically receive gross misdemeanor convictions, are ineligible for drug courts, which only serve offenders with felony convictions (e.g., repeat simple possession offenders, drug sales offenders). Second, data suggest that 61% of drug court participants in Minnesota enter drug courts post-plea, which means that graduates are often marked with criminal records.³² Third, a 2010 evaluation of Minnesota drug courts found that, three-and-one-half years after drug court start dates, a drug court cohort had a recidivism rate that was only nine percentage points lower than the comparison (i.e., non-drug-court) cohort.³³ Fourth, when drug court participants relapse, they are often temporarily or permanently pulled from drug treatment services and face harsher punishment.³⁴ Finally, there is no research to support that incarceration sanctions improve substance use disorder treatment outcomes.³⁵ The MMA's approach to decriminalization, alternatively, allows simple possession offenders to remain in their communities, without harmful criminal records and with expanded access to evidence-based harm reduction and drug treatment services.

Drugs courts are also somewhat contradictory in their design. Drug courts simultaneously acknowledge offenders as both (a) living with diseases associated with compulsive drug use and (b) rational people who will moderate their drug use and adhere to treatment when threatened with criminal sanctions. As a physician association, the MMA seeks to treat, not criminalize, patients with disease.

Who can I contact for further information on this policy and/or this FAQ document?

For more information, contact Adrian Uphoff, Health Policy Analyst, at auphoff@mnmed.org.

ENDNOTES

- [1 Minnesota Medical Association Policy Compendium, 2022, p. 132](#)
- [2 Braithwaite et al., 2008, pp. 367-395](#)
- [3 National Research Council, 2001, p. 193](#)
- [4 Pew Charitable Trusts, 2018, pp. 5-6](#)
- [5 United Nations Office on Drugs and Crime & World Health Organization, 2019, p. 2](#)
- [6 MacCoun et al., 2009, p. 5; Cece, 2012, p.3](#)
- [7 Minnesota Dept of Public Safety, 2020, p. 58](#)
- [8 Fernandes, 2020; Sugie & Turney, 2017](#)
- [9 Roberts et al., 2014, p. 1](#)
- [10 Minnesota Sentencing Guidelines Commission, 2021, p. 8; Note: sum the values for "Gr. Misd. Trace" and "5th"](#)
- [11 Fernandes, 2020](#)
- [12 Minnesota Sentencing Guidelines Commission, 2021, p. 8; Note: Only count the value for "5th"](#)
- [13 American Association of Family Physicians, 2021](#)
- [14 Bureau of Justice Statistics, United States Department of Justice, p. 34 Table 1](#)
- [15 Substance Abuse and Mental Health Services Administration, 2021, p.13](#)
- [16 Minnesota Department of Public Safety, 2020, p. 58](#)
- [17 Minnesota Sentencing Guidelines Commission, 2021, p. 11](#)
- [18 Substance Abuse and Mental Health Services Administration, 2021, p.13](#)
- [19 Minnesota Department of Public Safety, 2020, p. 58](#)
- [20 Minnesota Sentencing Guidelines Commission, 2021, p. 11](#)
- [21 Substance Abuse and Mental Health Services Administration, 2021, p.13](#)
- [22 Minnesota Sentencing Guidelines Commission, 2021, p. 11](#)
- [23 Ibid.](#)
- [24 Hughes & Stevens, 2010](#)
- [25 Oregon Health Authority, 2022](#)
- [26 Sabatier, 2022; Oregon Judicial Department, 2022](#)
- [27 Sabatier, 2022](#)
- [28 Miron & Winter, 2022](#)
- [29 Sabatier, 2022](#)
- [30 Minnesota Judicial Branch, 2022](#)
- [31 Ibid.](#)
- [32 Minnesota Judicial Branch, 2012, p. 32](#)
- [33 Minnesota Judicial Branch, 2014](#)
- [34 Drug Policy Alliance, 2011, p. 11](#)
- [35 Ibid, p. 11](#)