

Marijuana Decriminalization: What does it mean in the United States?

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Current U.S. policy on marijuana is under the spotlight of the popular press.

A number of recent news articles have discussed the rise in marijuana possession arrests that has occurred despite stable use rates.

- Critics interpret this as evidence of a federal crack-down on non-violent drug offenders (Thomas, 1998; Gettman, 2000).**

Significant media attention is being given to crack-downs on medical marijuana users and their suppliers.

Recent policy experiments in Canada and Europe cause many Americans to question the desirability of our own policy.

General notion in the public: marijuana decriminalization has not increased its use.

Initial studies found no effect or an increase that was small and temporary.

(Maloff, 1981; Johnston, O'Malley and Bachman, 1981, Single, 1989)

Subsequent findings using cross-state variation show either no effect

(DiNardo & Lemieux, 1992; Thies & Register, 1993; Pacula, 1998)

or a positive effect.

(Model, 1993; Chaloupka et al, 1999; Saffer and Chaloupka, 1999).

The U.S. experiment

Eleven (11) states decriminalized during the 1970s

1973: OR

1975: CO, AK, OH

1976: CA, ME, MN

1977: MS, NY, NC (SD)

1978: NE

What are the common elements of these laws that make them unique and to what extent do they really differ from non-decriminalized states?

Our own examination of state laws

Laws in effect as of Dec 31 of each year from 1990-1999 as well as the 11 original statutes.

Examined statutory penalties imposed for 1st and 2nd time offenders in terms of the following:

- Severity of the offense (felony, misdemeanor, other)
- Min/max jail time
- Min/max fines
- Diversion provisions (drug educ, treatment, drug testing, probation, community service, other)
- Conditional discharge provisions
- Expungement provisions

Defining Decriminalization

Shaffer Commission defined decriminalization as those policies in which possession of marijuana for personal use was not to be considered a crime. State laws that retained the level of offense corresponding to a crime, but simply lowered the severity of penalties were not technically decriminalized.

Table 1: A look at the eleven original decriminalization statutes

Two of the original statutes retain marijuana possession offense as a criminal offense (CA and NC). [MN & OH explicitly state these petty/minor misdemeanors are not to be viewed as criminal offenses].

Definitions of what constitute a small amount varies considerably.

Many of the statutes only apply to first time offenders, not repeat offenders.

Fines are still imposed in all but two states (NC & OH).

Common denominator: no minimum jail time specified.

Tables 2 & 3: Decriminalization in 1999

Is it an indication of criminal status? No.

Four (4) of the decriminalized states retain the offense as a crime (AK, AZ, CA, and NC).

Seven (7) nondecriminalized states have lowered the offenses status to a non-criminal offense (CT, LA, MA, NJ, VT, WI, and WV).

Is it an issue of a criminal record? No.

Two decriminalized states with offense categories = crime DO NOT allow for expungement (AK, AZ).

Fifteen non-decriminalized states with status offenses = crime DO allow for expungement.

Table 4: Decriminalization in 1990

Criminal status:

Seven (7) non-decriminalized states had already lowered their criminal status of the offense.

One decriminalized state (AK) retained its criminal offense status and did not allow for expungement.

Conclusion: As early as 1990, we can not uniquely identify decrim states on the basis of criminal status of the offense.

Tables 5 & 6: Alternative definition of decriminalization: Reduced penalties.

Table 5 shows mean values for minimum & maximum jail times and minimum & maximum fines by decriminalization status.

The only statistically significant difference in mean statutory jail and fine penalties occurs for maximum jail terms.

Table 6 confirms that those states that specify a minimum jail time also have conditional discharge / diversion provisions, providing offenders the chance to avoid jail.

Summary from overview of state laws

Decriminalized states cannot be uniquely identified *statutorily* from either (a) criminal status of marijuana possession offenses, or (b) reduced penalties.

It is therefore not surprising then that findings of the effect of decriminalization are inconsistent.

How do we interpret this variable in recent analyses that show a significant positive effect?

Investigating the effect of decriminalization in the NELS:88

Data: nationally representative sample of 19,602 10th grade students from the 1990 National Education Longitudinal Study: 1988 (NELS:88).

Although the focus of NELS:88 is to track educational performance and outcomes, information on lifetime, annual and thirty-day MJ prevalence is included in the 1990 & 1992 student self-administered questionnaire.

Advantages of NELS:88: (1) includes respondents in all 50 states, (2) includes information on school alcohol & drug policies, and (3) it's readily available.

Descriptive statistics are in Table A1 in appendix.

Estimation strategy

Probit specifications are used to predict the likelihood of reporting use in the past year and past thirty days.

$$\Pr (MJ > 0) = bX_{is} + g Z_s + e_i$$

X_{is} = Individual-level factors related to demand and the price of MJ, alcohol and cigarettes (included in all models).

Z_s = State-level statutory penalty information for possession offenses for any positive amount (vary from model to model).

All regressions are weighted and standard errors are adjusted for clustering of observations at the state level.

Main Findings and Conclusions

- Marijuana decriminalization does not mean what everyone thinks it means. Non-decrim states have (a) reduced the criminality, and/or (b) reduced the penalties associated with marijuana possession offenses.
- Marijuana decriminalization appears to mean something, perhaps (a) an advertising of the reduced sanctions, (b) greater knowledge of the reduced sanctions, (c) greater social acceptance of MJ use, or (d) differences in enforcement.
- New studies need to be conducted examining the impact of depenalization on the use of marijuana to better inform the current policy debate. Prior studies did not accurately capture state differences in policy.

Limitations

- This analysis examines statutory law, which may or may not accurately reflect the policy being enforced within each state.
- The empirical analysis examines demand among youth. Youths may not know what the statutory laws are within their state and specific statutory laws may not apply to minors.

Future analysis should examine the impact of these statutory policies on adult populations and also consider how the policies are enforced.