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Justin Danziger

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Justin Danziger ⚡ Mar 21 5 min read

Highlighting the Drug Policy Reform Act:

Should the United States push for drug decriminalization at the federal level?

In the early 1970s, President Nixon initiated an “all-out offensive”[1] on drug abuse, leading to decades of exponentially-growing mass incarceration that persists to this day. While Nixon coined this initiative the “war on drugs,” it is evident that Nixon began a war on drug users. Masked as a calculated, fact-driven policy aimed at ending widespread drug use and drug-related crimes, the war on drugs was, in fact, a deliberate and targeted attack on minority communities, especially Black communities.[2] In acknowledging the war on drugs’ true end-goals, former Nixon aid John Ehrlichman once stated,

“[w]e knew we couldn’t make it illegal to be either against the war or blacks, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”[3]

Despite Ehrlichman’s shocking confession, the US continues to incarcerate minorities for drug possession/use at a significantly higher rate than white people; black people are six times more likely to face incarceration for drug-related offenses.[4] More specifically, “[f]ederal sentences for Black men are approximately 20% longer than those of whites convicted of similar crimes.”[5]

Nixon’s offensive on drug use has cost the US approximately \$1 trillion since 1971.[6] With such exorbitant spending and efforts directed at this “war,” one would reasonably expect results showing decreases in drug use before and after incarceration. However, since many drug users are victims of health issues (and not hardened criminals), many individuals return to drug use post-incarceration, and very few voluntarily attend drug treatment services.[7]

These statistics, and many others, suggest that it may be time for a sweeping overhaul of federal drug policy focused on treating drug use as a health issue, rather than a criminal issue. Several countries, and notably Portugal, have implemented drug policies that treat drug use with proper treatment and harm reduction services, as opposed to incarceration; while results are mixed, we can learn a lot from seeing what has worked in countries like Portugal and what has not worked.[8] After decriminalizing drug possession, “the number of people who use

drugs diagnosed with HIV significantly decreased from 907 new cases in 2000 to only 79 in 2012.”[9] Additionally, drug overdose deaths decreased more than 80 percent from 369 drug overdoses in 1999 to 54 in 2015.[10] While the US can certainly learn from Portugal’s methods in decreasing drug-related illness and death, it must be noted that societal and cultural differences may make applying Portugal’s policy difficult in the US. Yet, since approximately 83% of Americans believe the war on drugs has failed [11] politicians in the US have begun to brainstorm.

In June 2021, Representatives Cori Bush (M.O. 1) and Bonnie Watson Coleman (N.J. 12) introduced H.R. 4020, titled the Drug Policy Reform Act (“DPRA”). The DPRA would “end criminal penalties for drug possession at the federal level” and “shift regulatory authority from the Justice Department to the Department of Health and Human Services.”[12] As a general statement summarizing the Act’s goals, section 3(1) of the Act suggests that the US should “refocus its strategies for addressing substance use disorder and dangerous drug use from strategies focused on controlling and punishing unauthorized drug possession to a system that is health focused, evidence-based, and respectful of self-determination.”[13] The DPRA would use federal funds to bolster harm reduction services, treatment services, and educational programs.[14] However, despite the need for a re-examination of federal drug policy, in April 2021, Vice President Harris acknowledged that the administration was “too busy” to address federal cannabis decriminalization.[15] This implies that the DPRA has a long road ahead before it will be up for vote; that is, assuming it even makes it that far.

While, recently, several media outlets incorrectly reported that the Biden administration planned on funding the distribution of “safe smoking kits,” the idea was met with stark opposition.[16] Thus, one can reasonably assume that an extreme, sweeping overhaul of federal drug policy, like the DPRA, would be a highly contentious point of debate. This assumption is further supported by the DPRA’s potential intrusion of state sovereignty. As Cato Institute fellow Jeffrey A. Singer wrote, “[a] few features of the bill, such as the ones restoring voting rights to those who served time for drug crimes and the insurance that ex-cons can gain access to drivers’ licenses raise federalism concerns as they intrude on state sovereignty.”[17] Due to the lack of substantial data on drug decriminalization’s effectiveness in the US, many Americans, and specifically politicians, are misinformed and improperly educated on functional, health-based approaches to drug policy. The decades-long ban on scientific research of Schedule I drugs, like marijuana[18], is evidence of the misguided public opinion on drug use. Hypothetically, if the DPRA was passed today, it would certainly be met with a flurry of litigation challenges. Since states like Oregon and Washington have already begun experimenting with drug decriminalization laws, it may be wise to take a “wait and see” approach. A benefit of federalism and the United States’ governmental structure is the ability to allow states to experiment with new laws and policies. Similar to how the federal government and other states are learning from Colorado’s years of cannabis legalization, perhaps

the federal government should allow states to experiment, and subsequently utilize the data results to craft a more statistics-based federal drug policy that garners support on both sides of the aisle.

Even if the DPRA isn't the answer to ending the war on drugs, it appears to be a promising step in the right direction. The US must address its debilitating approach to drug policy because it is fighting a 50-year war where no one wins.

[1] Richard Nixon Foundation, *Public Enemy Number One: A Pragmatic Approach to America's Drug Problem*, Richard Nixon Foundation (2016).

[2] Mark J. Perry, *The Shocking Story Behind Nixon's Declaration of a 'War on Drugs' On this Day in 1971 that Targeted Blacks and Anti-War Activists*, Am. Enter. Inst. (2021).

[3] *Id.*

[4] Kate Orlin, *The War on Drugs & Racial Health Disparities in Incarceration*, HPHR (2021).

[5] *Id.*

[6] Betsy Pearl, *Ending the War on Drugs: By the Numbers*, Ctr. for Am. Progress (2018).

[7] Marc Mauer & Ryan S. King, *A 25-Year Quagmire: The War on Drugs and Its Impact on American Society*, The Sentencing Project (2007).

[8] Drug Policy Alliance, *Drug Decriminalization in Portugal: Learning from a Health and Human-Centered Approach*, Drug Pol'y Alliance.

https://drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach_o.pdf

[9] Marie Noguier, *The Portuguese Model for Decriminalizing Drug Use*, Int'l Drug Pol'y Consortium.
http://fileserv.idpc.net/library/IA12_Portuguese-decriminalisation_EN.pdf

[10] *Id.*

[11] Danny Franklin, *Overwhelming Majority Say War on Drugs Has Failed, Support New Approach*, Bully Pulpit Interactive (2021).

https://drugpolicy.org/sites/default/files/bpi-aclu_wod_public_release_memo_060221_updated_002_002.pdf

[12] Press Release, Representative Cori Bush, Reps. Cori Bush and Bonnie Watson Coleman Introduce Federal Bill to Decriminalize Drug Possession, Replace with Health-Centered Approach (June 15, 2021).

<https://bush.house.gov/media/press-releases/reps-cori-bush-and-bonnie-watson-coleman-introduce-federal-bill-decriminalize>

[13] H.R. 2021. 117th Cong. §2 (2021).

[14] Jeffrey A. Singer, *On The Eve of The 50th Anniversary of President Nixon Declaring War on Drugs, Two Members of Congress Propose an Armistice*, Cato Institute (June 17, 2021).

<https://www.cato.org/blog/eve-50th-anniversary-president-nixons-declaration-war-drugs-two-members-congress-propose>

[15] Lisa Newcomb, *Why the Drug Policy Reform Act Introduced in Congress Faces a Long Road Ahead*, Green Entrepreneur (June 28, 2021).

<https://www.greenentrepreneur.com/article/375686>

[16] Richard Alonso-Zaldivar & Beatrice Dupuy, *No Money for Drug Pipes: Feds Douse Social Media Firestorm*,

Associated Press (Feb. 9, 2022).

<https://www.usnews.com/news/health-news/articles/2022-02-09/feds-say-no-taxpayer-money-for-safer-drug-smoking-pipes>

[17] Singer, *supra* note 14.

[18] Drug Policy Alliance, *The DEA: Four Decades of Impeding And Rejecting Science*, Drug Pol'y Alliance.