



## How Federal Cannabis Legalization Can Restore Police Legitimacy and Enhance Public Safety

By Christi Smith and Jillian Snider

**As seen in the past with alcohol prohibition, cannabis prohibition and poorly constructed legalization strategies allow the illegal market, and its associated violence, to flourish.**

### Executive Summary

After 115 years of prohibition, the legal status of cannabis in the United States is at a tipping point. Significant advances in state-level cannabis legalization have been made in the past decade, and decriminalization efforts have increased in cities across the nation. More than 90 percent of Americans—on both sides of the political aisle—support legal adult use of medical or recreational cannabis.<sup>1</sup> Legalization is also increasingly supported by law enforcement, with two-thirds of police supporting medical or recreational cannabis.<sup>2</sup> Yet cannabis remains illegal at the federal level, and its possession and use are subject to the most severe criminal penalties under the Controlled Substances Act (CSA).<sup>3</sup>

1. Ted Van Green, “Americans overwhelmingly say marijuana should be legal for recreational or medical use,” Pew Research Center, April 16, 2021. <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use>.

2. Christopher Ingraham, “Marijuana is literally the least of the nation’s drug worries, the police have announced,” *The Washington Post*, Nov. 5, 2015. <https://www.washingtonpost.com/news/wonk/wp/2015/11/05/marijuana-is-literally-the-least-of-the-nations-drug-worries-the-police-have-announced>.

3. “Drug Scheduling,” United States Drug Enforcement Administration, last accessed May 26, 2022. <https://www.dea.gov/drug-information/drug-scheduling>.

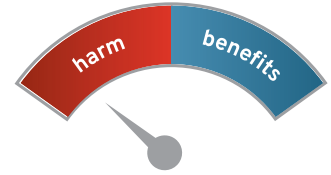
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The federal government has an opportunity to end America's longest war, the war on drugs. As evidenced by our experience with alcohol, national prohibition produces disastrous outcomes, including rising crime and violence, underground markets, unregulated products and continued demand for the substance. The general consensus among criminologists, criminal justice scholars and drug policy experts is that the war on drugs—described as a war on marijuana—has been a “resounding failure.”<sup>4</sup> Further, the harms associated with marijuana prohibition far exceed the benefits in nearly all ways that can be measured.<sup>5</sup>

Rather than continue the prohibition policies that have contributed to mass incarceration and the destruction of police-community relationships, we need smart federal legislation to legalize and properly regulate cannabis. This approach would significantly disrupt illegal drug markets, as marijuana is the most widely cultivated, trafficked and used illegal substance in the world.<sup>6</sup> Better legislation is also critical for reducing violence and enhancing public safety, as such efforts could contribute to fewer negative police-citizen interactions, improvements in police legitimacy, the restoration of police-community partnerships, and a reallocation of resources to help stem the recent surge in homicides. Regardless of personal or moral perspectives, the federal prohibition of cannabis is bad public policy.

**Marijuana Prohibition Impact**



## Introduction

**did you  
know?**

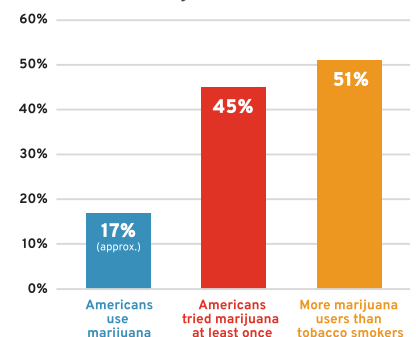
Although the terms cannabis and marijuana are often used interchangeably, cannabis refers to the whole plant, and marijuana refers to specific parts of the plants (i.e., the dried seeds, stems, flowers and leaves) that contain substantial amounts of tetrahydrocannabinol (THC)—the chemical responsible for the psychoactive “high” associated with use. This is an important distinction for legislation purposes because the plant is the sum total of all of its complex compounds, many of which have differing, opposing effects on individual users. For clarity, we primarily use the term “cannabis” in this report, but also use “marijuana” to discuss use, trends and existing research.

Sources: Zerrin Atakan, “Cannabis, a complex plant: different compounds and different effects on individuals,” *Therapeutic Advances in Psychopharmacology* 2:6 (December 2012), pp. 241-254; National Institute on Drug Abuse, “What is marijuana?,” National Institutes of Health, April 13, 2021. <https://nida.nih.gov/publications/research-reports/marijuana/what-marijuana>; National Institute on Drug Abuse, “Cannabis (Marijuana) Drug Facts,” National Institutes of Health, Dec. 24, 2019. <https://nida.nih.gov/publications/drugfacts/cannabis-marijuana>.

Cannabis is the most widely used illegal substance in the United States.<sup>7</sup> According to the National Center for Drug Abuse Statistics, 55 million Americans currently use marijuana, and 45 percent of the population has tried marijuana at least once.<sup>8</sup> There are nearly 51 percent more marijuana users than tobacco smokers, and usage rates have risen considerably in the past decade.<sup>9</sup>

The popularity of cannabis has prompted individual state legislatures to change the legal status of the substance. In 1996, California passed Proposition 215, also known as the Compassionate Use Act of 1996, to allow qualified patients to use medical marijuana.<sup>10</sup> Nearly two decades later, in 2013, state-led marijuana legalization efforts began to accelerate dramatically with Colorado and Washington passing the first state bills that allowed adult recreational use.<sup>11</sup> As of this writing,

**Marijuana Use**



4. Cody Jorgensen, “How marijuana legalization would benefit the criminal justice system,” *The Blue Review*, Jan. 13, 2020. <https://www.boisestate.edu/blureview/how-marijuana-legalization-would-benefit-the-criminal-justice-system>.

5. Ibid.

6. Alcohol, Drugs and Addictive Behaviours Unit, “Cannabis,” *The World Health Organization*, last accessed May 26, 2022. <https://www.who.int/teams/mental-health-and-substance-use/alcohol-drugs-and-addictive-behaviours/drugs-psychoactive/cannabis>.

7. National Institute on Drug Abuse, “Cannabis (Marijuana) Drug Facts,” National Institutes of Health, December 2019. <https://nida.nih.gov/publications/drugfacts/cannabis-marijuana>.

8. “Marijuana Addiction: Rates & Usage Statistics,” National Center for Drug Abuse Statistics, last accessed May 12, 2022. <https://drugabusestatistics.org/marijuana-addiction>.

9. Ibid.

10. Compassionate Use Act of 1996. Uniform Controlled Substances Act. ARTICLE 2. Cannabis [11357 - 11362.9], Initiative Proposition 215, section 1, 1996. [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=11362.5.&lawCode=HSC#:text=\(A\)%20To%20ensure%20that%20seriously,the%20treatment%20of%20cancer%2C%20anorexia%2C](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.5.&lawCode=HSC#:text=(A)%20To%20ensure%20that%20seriously,the%20treatment%20of%20cancer%2C%20anorexia%2C).

11. Michael Hartman, “Cannabis Overview,” National Conference of State Legislators, May 31, 2022. <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

19 states, the District of Columbia and two territories have enacted legislation to regulate recreational cannabis use, and medicinal use is now permitted in 37 states, the District of Columbia and three territories.<sup>12</sup> In addition, a host of jurisdictions have decriminalized the possession of small amounts of marijuana for personal use, and a number of states have passed or are in the process of considering legislation to expunge criminal convictions for marijuana-related offenses.<sup>13</sup>

Despite the expansion of state-level cannabis legislation in the past 25 years, cannabis remains a Schedule I prohibited substance at the federal level—including in the same category as heroin and LSD—thereby labeling it as more harmful and penalizing use more aggressively than cocaine. Schedule I controlled substances are viewed as having no medical utility and a high potential for abuse and dependence.<sup>14</sup> However, it is important to note that this is a legal distinction, not a scientific one. According to the National Institutes of Health, scientific analyses indicate that cannabis may be helpful in treating a variety of medical conditions, including epilepsy, chronic pain, multiple sclerosis, chemotherapy-related nausea/vomiting, lack of appetite associated with HIV/AIDS and opioid use disorder.<sup>15</sup> In addition, although cannabis use is not without risk, there have been no reported overdose fatalities related to cannabis use alone, and—other than arrest for possession or sale of the substance—it is not associated with significant crime.<sup>16</sup> Nearly 90 percent of all drug arrests are for simple possession.<sup>17</sup>

While not expressly supportive of cannabis legalization, the federal government has not intervened in state-based legalization since the passing of the 2014 Rohrabacher-Farr amendment, which prohibited the use of federal funds to intervene in state-led cannabis legislation.<sup>18</sup> In addition, since granting deference to the states per the amendment, efforts to change the legal status of cannabis on the federal level have begun to form. In the 117th congressional session (2021-2022), 159 federal bills were proposed to decriminalize, legalize and/or regulate medical and recreational marijuana, as well as to facilitate cannabis research, appropriate funds for business opportunities, expunge cannabis-related criminal records and address reparations for individuals adversely impacted by the war on drugs.<sup>19</sup> The newly proposed federal legislation indicates increased support for alternatives to federal cannabis prohibition, and this increased support is critical for providing clarity on the overall legal status of cannabis, as the current situation presents a quasi-legal conundrum: Cannabis may be legal in one state, decriminalized in another and still prohibited at the federal level, thereby subjecting those who use the substance to criminal penalty.

This lack of consistency in the legal status of cannabis is problematic because it results in extremely varied approaches to the types and quantities of cannabis that can be cultivated or consumed, differing standards for quality control, discrepancies in retail and consumer eligibility and related processes, widely varied taxation models and a lack of consensus on the superseding status of the substance that



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12. Hartman. <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>; “Deep Dive Marijuana,” National Conference of State Legislators, last accessed May 12, 2022. <https://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx>.

13. “Deep Dive Marijuana.” <https://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx>.

14. Diversion Control Division, “Controlled Substance Schedules,” Drug Enforcement Administration, last accessed May 12, 2022. <https://www.deadiversion.usdoj.gov/schedules/index.html#define>.

15. National Center for Complementary and Integrative Health, “Cannabis (Marijuana) and Cannabinoids: What You Need To Know,” National Institutes of Health, November 2019. <https://www.nccih.nih.gov/health/cannabis-marijuana-and-cannabinoids-what-you-need-to-know>.

16. “Marijuana Addiction: Rates & Usage Statistics.” <https://drugabusestatistics.org/marijuana-addiction>.

17. Ibid.

18. H.Amdt.332 to H.R.2578, Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, 114th Cong. <https://www.congress.gov/amendment/114th-congress/house-amendment/332>.

19. Congress.gov, 117th Congress (2021-2022), last accessed May 12, 2022. <https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22cannabis%22%7D>.



places all of the stakeholders, including criminal justice professionals, in a gray area of compliance.<sup>20</sup> These issues have contributed to cannabis' upsurge on the illegal market, which will continue unless federal legislation is passed that provides minimal, uniform standards for product, price, and taxation regulation; standard licensing and operating procedures for consumers and retailers; clearly articulated circumstances for criminal or civil penalties; and mechanisms for remediation of past penalties.<sup>21</sup> Furthermore, the federal enforcement of prohibition will only continue to divert police resources away from more substantial threats to public safety, increase police-citizen contacts (especially in already overpoliced communities), sweep otherwise law-abiding citizens into the criminal justice system (sometimes for unknowingly not complying with federal prohibition), and erode the police-community relationships that are integral to reducing more serious and violent crime.<sup>22</sup>

In this policy paper, we will demonstrate that cannabis was initially and continues to be prohibited based on nativism, not science.<sup>23</sup> We will explore the history of marijuana legislation, review the current status of U.S. marijuana laws and outline the negative consequences of overcriminalization. We will then provide a detailed discussion on the many benefits of a thoughtfully constructed, scientifically based federal cannabis legalization policy that addresses regulation concerns and public safety needs. Such legislation has the potential to improve police-community relationships, thereby reducing the potential for violent interactions between the police and the communities they serve and facilitating the reallocation of law enforcement resources needed to detect, prevent, respond to and resolve more serious and violent crime. Although individual lawmakers, the authors of this paper and criminal justice professionals may be personally or morally opposed to legalization, from a policy perspective, prohibition is not only no longer a tenable solution—it is contrary to the goals of public safety.

## History of Marijuana Legislation

In the early 1900s, the federal government had not yet criminalized the sale of narcotics such as cocaine, opioids and marijuana because they were being used primarily in a medical capacity.<sup>24</sup> State governments were responsible for maintaining their own health guidelines and imposing the scarcely enforced regulations. There was also little concern about marijuana use, specifically. Hemp was regularly used to produce various textiles, and marijuana was sold openly in pharmacies for medicinal purposes. But after the Mexican Revolution began in 1910, a surge in Mexican emigrants to the United States—many of whom recreationally used marijuana—generated racially motivated discomfort among the American people.<sup>25</sup>

Concerns regarding the recreational use of the drug were exacerbated after the Great Depression in the 1930s when unemployment rose and resentment toward the influx of Mexican immigrants grew. Mainstream media targeted the new

### Marijuana in America: At-a-Glance History

#### 1900s

*Marijuana, cocaine and opioids were not criminalized.*

#### 1910

*Mexican immigration surge places a spotlight on recreational marijuana use in the United States.*

#### 1930s

*Media targeted the new immigrants warning the public of violence and insanity caused by marijuana use.*

20. Rebecca Haffajee and Amanda Mauri, "Cannabis Liberalization in the US: The Policy Landscape," *Health Affairs* (July 2021), pp. 1-7. <https://www.healthaffairs.org/doi/10.1377/hpb20210518.36548/full/health-affairs-brief-cannabis-policy-haffajee.pdf>.

21. Amanda Chicago Lewis, "The Half-Legal Cannabis Trap," *Politico*, Feb. 9, 2021. <https://www.politico.com/news/magazine/2021/02/09/los-angeles-legalization-cannabis-criminalization-467572>.

22. Lewis. <https://www.politico.com/news/magazine/2021/02/09/los-angeles-legalization-cannabis-criminalization-467572>; Ingraham. <https://www.washingtonpost.com/news/wonk/wp/2015/11/05/marijuana-is-literally-the-least-of-the-nations-drug-worries-the-police-have-announced>.

23. Robert Solomon, "Racism and Its Effect on Cannabis Research," *Cannabis Cannabinoid Research* 5:1 (March 1, 2020), pp. 2-5. <https://pubmed.ncbi.nlm.nih.gov/32322671>.

24. National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* (National Academies Press [US], 2017). <https://www.ncbi.nlm.nih.gov/books/NBK425763>.

25. Larry Gaines and Janine Kremling, *Drugs, Crime and Justice: Contemporary Perspectives* (Waveland Press, Inc., 2014), p. 532. <https://www.waveland.com/browse.php?t=304>.

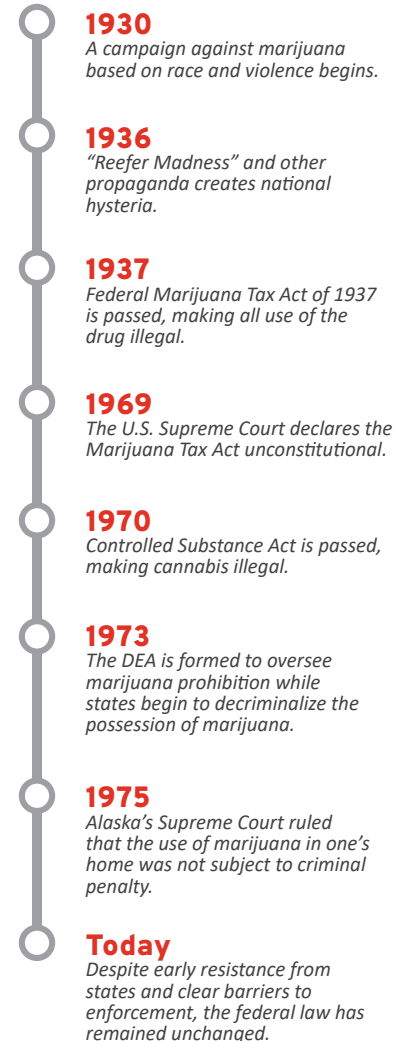
immigrants, and a steady stream of articles began to appear that warned the public of the violence and insanity caused by marijuana use.<sup>26</sup>

In 1930, Harry Anslinger, a relative of the Secretary of the Treasury, Andrew Mellon, was appointed as the first director of the Federal Bureau of Narcotics. Despite minimizing the dangers of cannabis before his appointment, once appointed, he began a campaign against the substance based on race and violence.<sup>27</sup> He popularized the use of the term “marijuana,” instead of cannabis, to connect the drug to anti-Mexican prejudice.<sup>28</sup> By 1936, “Reefer Madness” and other false propaganda of the time created national hysteria that resulted in the passage of the Federal Marijuana Tax Act of 1937, which made any use of the drug illegal.<sup>29</sup>

Decades later, after the U.S. Supreme Court declared the Marijuana Tax Act unconstitutional in *Leary v. United States* (1969), president Richard Nixon formed the Shafer Commission to highlight the dangers of cannabis.<sup>30</sup> Instead of relying on the available science demonstrating that marijuana was not as dangerous as perceived and recommending decriminalization, the administration sought to develop a federal prohibition strategy that targeted the primary consumers of marijuana: African Americans and the antiwar hippies.<sup>31</sup> Thus, the CSA of 1970 was born, and, in 1973, the federal Drug Enforcement Administration was created to oversee marijuana prohibition.<sup>32</sup>

The CSA, which is the federal cannabis law still in effect today, prohibits, regulates and assigns criminal penalties for substances along a five-schedule system based on their alleged accepted use in medicine, potential for abuse and likelihood of dependence.<sup>33</sup> Marijuana is a Schedule I substance, meaning it has been classified as having no medical use and a high potential for abuse and dependence. Other Schedule I substances include heroin, LSD, ecstasy, Quaaludes and peyote. Despite the availability (both in 1970 when the CSA was enacted and at present) of scientific evidence demonstrating that cannabis has several useful medical applications, little risk of abuse and a low risk of dependence, the substance remains classified as a drug that warrants the most severe criminal justice penalties.<sup>34</sup>

The CSA went into place in 1971, and between 1973 and 1977, 11 states decriminalized the possession of marijuana, while many others reduced the penalties to a fine or traffic-ticket-like citation.<sup>35</sup> In 1975, Alaska’s state Supreme Court ruled that the possession of marijuana for personal use in one’s own home was a privacy right and therefore not subject to criminal penalty, and, in 1977, the Department of Justice acknowledged that the federal government did not have the resources to enforce laws against small-scale possession, which continues to be the primary reason for marijuana-related drug arrests.<sup>36</sup> A subsequent analysis of marijuana policy in 1982 discussed alternatives to complete prohibition, as partial prohibition more closely aligned with the actual enforcement practices of the federal law, and, in 1985, the U.S. Food and Drug Administration (FDA) approved



26. Solomon, p. 2. <https://pubmed.ncbi.nlm.nih.gov/32322671>.

27. Ibid., p. 3.

28. Ibid.

29. Ibid.

30. *Leary v. United States*, 395 U.S. 6 (1969).

31. Solomon, p. 3. <https://pubmed.ncbi.nlm.nih.gov/32322671>.

32. “The Controlled Substances Act,” United States Drug Enforcement Administration, last accessed May 12, 2022. <https://www.dea.gov/drug-information/csa>.

33. Ibid.

34. David Downs, “The Science behind the DEA’s Long War on Marijuana,” *Scientific American*, April 19, 2016. <https://www.scientificamerican.com/article/the-science-behind-the-dea-s-long-war-on-marijuana/#>.

35. National Research Council (US) Committee on Substance Abuse and Habitual Behavior, *An Analysis of Marijuana Policy* (National Academies Press [US], 1982). <https://www.ncbi.nlm.nih.gov/books/NBK217606>.

36. Ibid.

the use of the synthetic cannabinoids dronabinol and nabilone, primarily for cancer-related nausea.<sup>37</sup>

However, despite early resistance from states and clear barriers to enforcement, the federal law has remained unchanged. Instead of amending the scheduling of the substance or removing it from the CSA altogether to reflect the will of the states and to address obvious enforcement issues, the federal government continues to double down on drug prohibition expenditures with each successive administration, allowing the illegal market to flourish and grow.<sup>38</sup>

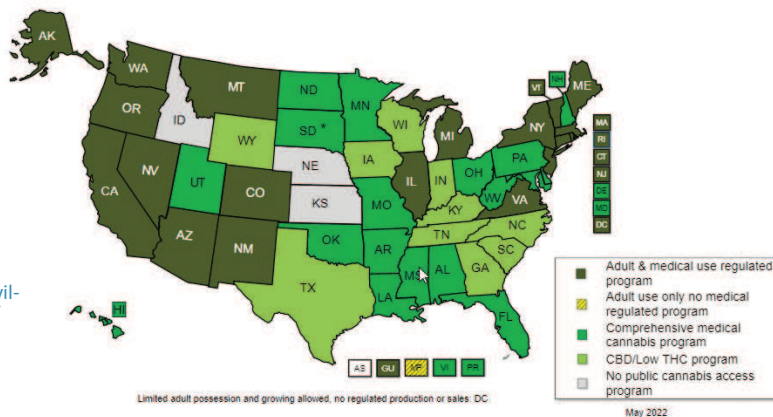
## Current Status of Marijuana Laws in the United States

California was the first state to legalize marijuana for medical purposes (in 1996), and Colorado and Washington were the first states to legalize recreational marijuana (in 2012).<sup>39</sup> As of May 25, 2022, 37 states, the District of Columbia and the territories of Guam, the U.S. Virgin Islands and Puerto Rico have laws permitting medical marijuana or cannabis, and 19 states, the District of Columbia and the territory of Guam have legalized recreational marijuana (Figure 1).<sup>40</sup>

The states or territories that authorize the use of medicinal marijuana/cannabis include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Guam, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, the U.S. Virgin Islands, Utah, Vermont, Virginia, Washington and West Virginia.<sup>41</sup> Recreational adult use of marijuana or cannabis is legal in Alaska, Arizona, California, Colorado, Connecticut, Guam, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington and Washington, D.C.<sup>42</sup> Only three states—Idaho, Nebraska and Kansas—lack public-access programs for cannabis.<sup>43</sup>

**Figure 1:  
State-  
Regulated  
Cannabis  
Programs**

Source: Michael Hartman, "Cannabis Overview," National Conference of State Legislators, July 6, 2021. <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.



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37. Kathleen Russell et al., "Medical Marijuana Guidelines for Practice: Health Policy Implications," *Journal of Pediatric Health Care* 33:6 (November/December 2019), p. 723. <https://www.ncsbn.org/MarijuanaGuidelines.pdf>.

38. Daniel Mejia and Joanne Csete, "The Economics of the Drug War: Unaccounted Costs, Lost Lives, Missed Opportunities," Open Society Foundations, 2016, pp. 1-20. [https://www.unodc.org/documents/ungass2016/Contributions/Civil/OpenSociety/The\\_Economics\\_of\\_the\\_Drug\\_War\\_-\\_Unaccounted\\_Costs\\_Lost\\_Lives\\_Missed\\_Opportunities.pdf](https://www.unodc.org/documents/ungass2016/Contributions/Civil/OpenSociety/The_Economics_of_the_Drug_War_-_Unaccounted_Costs_Lost_Lives_Missed_Opportunities.pdf).

39. Department of Cannabis Control, "California's cannabis laws," State of California, last accessed May 12, 2022. [https://cannabis.ca.gov/cannabis-laws/laws-and-regulations/#:~:text=California%20became%20the%20first%20state,and%20adult%20\(recreational\)%20use](https://cannabis.ca.gov/cannabis-laws/laws-and-regulations/#:~:text=California%20became%20the%20first%20state,and%20adult%20(recreational)%20use;); Claire Hansen et al., "Where Is Marijuana Legal? A Guide to Marijuana Legalization," *U.S. News and World Report*, April 20, 2022. <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization>.

40. Ibid.

41. "State Medical Cannabis Laws," *National Conference of State Legislatures*, April 19, 2022. <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

42. Hansen. <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization>.

43. "State medical Cannabis Laws." <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.



Each state has its own processes for regulating medical and recreational marijuana, including differing licensing and taxation laws, in addition to varying statutes that address the quantities one can possess, the ability to cultivate or grow marijuana and the conditions that trigger criminal penalties.<sup>44</sup> Twenty-one states have decriminalized marijuana, issuing citations for violations of the law as opposed to pursuing incarceration.<sup>45</sup>

## Consequences of Overcriminalization

Despite increasing public, police and legislative support for legalizing the medical and recreational use of cannabis in recent years, the enforcement of marijuana laws—at the federal and state levels—continues to distract from law enforcement priorities. For example, before 2016, marijuana arrests were on the decline.<sup>46</sup> After 2016, as more states legalized cannabis, annual marijuana arrests began to increase.<sup>47</sup> However, more disconcerting is the racially disparate manner in which cannabis possession, use and prohibition has been enforced.<sup>48</sup>

Overcriminalization, which is generally described as the process by which the criminal law is overused or misused to respond to social issues, has enormous fiscal, social and public safety costs.<sup>49</sup> For example, the overcriminalization and overpolicing of cannabis unnecessarily ensnares people in the criminal justice system and wastes taxpayer dollars that would be better invested in the community.<sup>50</sup> In addition, excessive law enforcement presence in impoverished communities of color erodes public trust and diminishes the police department's greatest source of critical information needed to prevent and respond to serious and violent crime: the people experiencing it.<sup>51</sup> Below, we discuss these and other negative consequences of overcriminalization in more detail.

## Clogged Courts and Correctional Facilities

When police resources are used as the solution to address quality-of-life and public health issues like cannabis use/misuse, not only is the front-end financial investment huge, but this approach also widens the net and sweeps people, en masse, into the legal system. Criminalizing behaviors that are well established in society and devoting resources to enforce prohibition results in a substantial increase in the number of individuals who are cited, arrested, charged and processed through the legal system. The disproportionate allocation of funds for law enforcement without corresponding concessions for district attorneys, public defenders, judges, jails and probation and parole departments results in an unsustainable imbalance among the major components of the criminal justice system.

For example, from 1982 to 2007, the number of drug arrests for possession tripled, police expenditures doubled and the number of sworn officers also significantly increased.<sup>52</sup> From 1993 to 2009, there were more than 30 million drug arrests and



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44. Hansen. <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization>.

45. Ibid.

46. Tom Angell, "Marijuana Arrests Increased Again Last Year Despite More States Legalizing, FBI Data Shows," *Forbes*, Oct. 1, 2019. <https://www.forbes.com/sites/tomangell/2019/10/01/marijuana-arrests-increased-again-last-year-despite-more-states-legalizing-fbi-data-shows/?sh=2cb0faf47e21>.

47. Ibid.

48. The American Civil Liberties Union, "The War on Marijuana in Black and White," ACLU Foundation, June 2013, pp. 1-190. [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf).

49. Jeremiah Mosteller, "The Criminalization of Everything," Stand Together Trust, Aug. 14, 2019. <https://standtogethertrust.org/stories/the-criminalization-of-everything>.

50. Ibid.

51. "In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence," Giffords Law Center, Sept. 9, 2021. <https://giffords.org/lawcenter/report/in-pursuit-of-peace-building-police-community-trust-to-break-the-cycle-of-violence>.

52. Betsy Pearl, "Ending the War on Drugs: By the Numbers," Center for American Progress, June 27, 2018. <https://www.americanprogress.org/article/ending-war-drugs-numbers>.

more than 3 million admissions to prison; the vast majority were for possession only, and the number of drug-related prison admissions exceeded those for violent crime.<sup>53</sup> In addition, the number of individuals being held as pre-trial detainees increased by 436 percent from 1970 to 2013.<sup>54</sup>

Jails and prisons could not keep up with the flood of inmates, which resulted in a phenomenon known as the “prison industrial complex.”<sup>55</sup> The term first appeared in 1977 and is defined as,



**the profit-driven relationship between the government, the private companies that build, manage, supply, and service prisons, and related groups (such as prison industry unions and lobbyists) regarded as the cause of increased incarceration rates especially of poor people and minorities and often for nonviolent crimes.**<sup>56</sup>

As a result of this influx, state and federal institutions were rapidly built in rural, economically depressed areas, and a large number of inmates of color were moved from their urban homes to the new institutions.<sup>57</sup> Inmates were isolated from their families due to distance and lack of access to affordable transportation, which created racial tensions between the primarily white guards and the frustrated inmates. Furthermore, when public facilities could not keep pace with the increase in inmates, private facilities were built, and these private facilities have been criticized for lacking oversight, offering inadequate rehabilitative programming and profiting from incarceration.<sup>58</sup> Equally concerning, both government-managed and privately run facilities have been accused of exploiting inmate labor to the degree that it is often viewed as “legalized slavery.”<sup>59</sup>



*Equally concerning, both government-managed and privately run facilities have been accused of exploiting inmate labor to the degree that it is often viewed as “legalized slavery.”*

## Increased Sentence Lengths

The “get tough on crime” movement of the 1980s and 1990s had a particularly profound effect on sentence lengths and system strains, especially with regard to nonviolent, drug-related convictions. The movement ushered in an era of mandatory sentences, habitual offender (i.e., three-strikes) laws and truth-in-sentencing legislation.

Sentence lengths increased under these new laws, which stripped judges of the flexibility to render more lenient sentences for minor law violations.<sup>60</sup> As a result, many individuals convicted of cannabis possession—with no violent crime convictions—are currently serving life without parole in state and federal penitentiaries.<sup>61</sup> More than 15 percent of state inmates and nearly 50 percent of federal inmates are serving time for a drug conviction.<sup>62</sup> In addition, more than two-thirds of federal inmates are serving life or virtual life sentences for nonviolent

53. “The Drug War, Mass Incarceration and Race,” Drug Policy Alliance, January 2018, p. 1. [https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race\\_01\\_18\\_0.pdf](https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf).

54. Jacob Kang-Brown and Ram Subramanian, “Out of Sight: The Growth of Jails in Rural America,” Vera Institute of Justice, June 2017, p. 7. <https://www.vera.org/downloads/publications/out-of-sight-growth-of-jails-rural-america.pdf>.

55. Eric Schlosser, “The Prison-Industrial Complex,” *The Atlantic*, December 1998. <https://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669>.

56. “Prison industrial complex,” Merriam-Webster, last accessed May 12, 2022. <https://www.merriam-webster.com/dictionary/prison%20industrial%20complex>.

57. Schlosser. <https://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669>.

58. Ronnie K. Stephens, “Explainer: The Prison Industrial Complex and Modern Slavery,” Interrogating Justice, May 8, 2021. <https://interrogatingjustice.org/prisons/explainer-the-prison-industrial-complex-and-modern-slavery>.

59. Whitney Bennis, “American Slavery, Reinvented,” *The Atlantic*, Sept. 21, 2015. <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177>.

60. “Mandatory Minimums and Sentencing Reform,” CJPf, last accessed May 12, 2022. <https://www.cjpf.org/mandatory-minimums#>.

61. Life Sentence for Marijuana Possession Upheld in Mississippi,” Equal Justice Initiative, May 2021. <https://eji.org/news/life-sentence-for-marijuana-possession-upheld-in-mississippi>.

62. Ashley Nellis, “Still Life: America’s Increasing Use of Life and Long-Term Sentences,” The Sentencing Project, May 3, 2017, p. 12. <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences>.



offenses (30 percent of which are drug offenses), and nearly half of those who are serving life without parole sentences have been convicted of a drug crime.<sup>63</sup> As a result, the U.S. prison population has swelled by more than 700 percent since 1970 and, since 2002, the United States has been the country with the highest incarceration rate in the world.<sup>64</sup>

### Diminishing Returns on the Drug War Investment

Mass incarceration, both with regard to the number of inmate admissions and sentence lengths, continued even as crime rates declined after the mid-1990s. This is troubling because longer sentences do not have the same deterrent impact as certainty of arrest, and being imprisoned can exacerbate recidivism.<sup>65</sup> The likelihood of getting caught is a better deterrent to criminal activity and, since 2013, the National Institute of Justice has recognized that increasing the severity of a penalty does little to deter crime.<sup>66</sup> Incarceration is the most costly response to cannabis prohibition with the worst return on investment. These resources would be more usefully allocated toward other, more important public safety goals.<sup>67</sup>

Trillions of taxpayer dollars have been wasted on a prohibition strategy to mitigate an issue that poses no risk to public safety.<sup>68</sup> Multiple studies have concluded that the stated goals of prohibition, namely reducing cannabis use, decreasing potency and eradicating the illegal-market demand and availability have not been realized.<sup>69</sup> Furthermore, the continued expense of incarcerating people who have aged out of crime or are considered geriatric is a tremendous misallocation of funds that would be better used to source violent crime interventions, education and public health. Drawing on the knowledge gleaned from the failures of alcohol prohibition and the 100 years of regulation that followed, it is time to divest from America's longest war: the war on drugs.

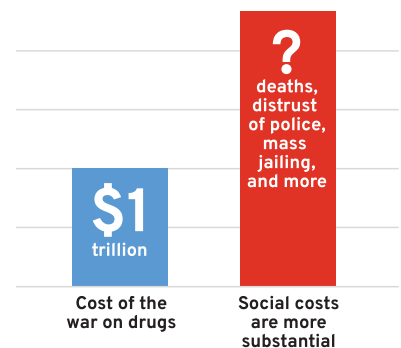
### Potential Benefits of Marijuana Legalization

The primary benefit of cannabis legalization is that the associated legislative policy will be informed by research and science rather than racism. Additional benefits include more appropriate use of tax dollars and better allocation of our police, court and correctional resources. The diversion of funds and potential revenue could then be better utilized to fund education, public health initiatives, violent crime interventions and cannabis use prevention and treatment programs.<sup>70</sup>

To date, the war on drugs has cost the federal government more than \$1 trillion.<sup>71</sup> But the social costs are even more substantial. Federal prohibition and its enforcement catalyzed racial disparities, generated an associated distrust of the police, clogged court dockets that expanded prosecutorial discretion and plea-bargaining, increased mass incarceration, devastated communities and families and proliferated an illegal drug market that became so violent that major cities struggled to contain it. The collateral consequences of conviction and incarceration



**The Cost of Marijuana Prohibition**



63. Ibid., p. 13.

64. "What is the Prison Industrial Complex?," Tufts University Prison Divestment, last accessed May 12, 2022. <https://sites.tufts.edu/prisondivestment/the-pic-and-mass-incarceration>.

65. National Institute of Justice, "Five Things About Deterrence," U.S. Department of Justice, May 2016, pp. 1-2. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

66. Ibid., p. 2.

67. Katherine Beckett and Steve Herbert, "The Consequences and Costs of Marijuana Prohibition," University of Washington, last accessed May 31, 2022. <https://faculty.washington.edu/kbeckett/The%20Consequences%20and%20Costs%20of%20Marijuana%20Prohibition.pdf>.

68. "Making Economic Sense," Drug Policy Alliance, last accessed May 12, 2022. <https://drugpolicy.org/issues/making-economic-sense>.

69. John Hudak, "Biden should end America's longest war: The War on Drugs," Brookings, Sept. 24, 2021. <https://www.brookings.edu/blog/how-we-rise/2021/09/24/biden-should-end-americas-longest-war-the-war-on-drugs>.

70. "Cannabis Tax Revenue in States that Regulate Cannabis for Adult Use," Marijuana Policy Project, April 5, 2022. <https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use>.

71. Pearl. <https://www.americanprogress.org/article/ending-war-drugs-numbers>.

are so pervasive that, on average, one in three Americans has a criminal record, and the associated lack of access to employment translates to an \$87 billion annual loss to the national economy.<sup>72</sup> Furthermore, the adverse childhood experience of having a parent incarcerated or of facing housing instability due to incarceration is extremely costly and predisposes the next generation to negative health, school, job and legal outcomes.<sup>73</sup>

While the legalization of marijuana alone cannot resolve all of the aforementioned issues, the potential benefits of a federal legalization policy would outweigh the established consequences of prohibition. Legislation that extricates police oversight to the greatest extent possible—as has been done with nicotine and alcohol regulation—and that regulates the sale of cannabis products responsibly has the potential to reduce existing illegal markets, decrease the number of negative police-citizen encounters and improve the police-community relationships that are critical to reducing the recent surge in violence. In addition, the reallocation of fiscal and personnel resources in police departments to address high-crime priorities more effectively would enhance police legitimacy, reduce potential physical injuries to law enforcement officers and better address the recent spike in homicide rates.

### Disruption of Illegal Drug Markets

As we saw when the 18th Amendment against alcohol prohibition was repealed, the legalization and regulation of cannabis has the ability to disrupt and dissolve illegal-market access to cannabis. The entire illegal-market availability of other prohibited substances would likely remain unaffected due to the demand of other substances. However, the reduced exposure to diverse, illegal drug portfolios by interested cannabis buyers could decrease their interest in trying other available substances. Legalization could also reduce the potential exposure to drug trade violence by novice cannabis consumers.

The degree to which cannabis legalization can reduce illegal market supply directly depends on the fiscal structure that regulates access. As states like California and Colorado have seen, if the product is legally offered at a higher price than the illegal alternative, the illegal market will continue to thrive.<sup>74</sup> Illegal markets and underground economies circumvent tax contributions for sales; compromise the quality, safety and purity of goods; and are often linked to crime and violence.<sup>75</sup> If licensing costs remain out of reach for mainstream retailers, and if product costs exceed those of existing illegal options, the demand driving the illegal market will continue to flourish. In California, for example, the manner in which the legal market was established—with significant licensing and taxation hurdles that made it extremely challenging to establish or profit through a legal enterprise—allowed the already-thriving illegal market that operated before legalization to expand to meet the higher demand for product after legalization.<sup>76</sup> In contrast, Oregon's legislature sought to squeeze out the illegal market by making legal access as easy and cost effective as possible, and, with an abundant supply of high-quality



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annual loss to the  
national economy.

72. Cherrie Bucknor and Alan Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic and Policy Research, June 2016, p. 1. <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5>.

73. "Fast Facts: Preventing Adverse Childhood Experiences," Centers for Disease Control and Prevention, April 6, 2022. <https://www.cdc.gov/violenceprevention/aces/fastfact.html>.

74. Joseph Detrano, "Cannabis Black Market Thrives Despite Legalization," Rutgers Center of Alcohol & Substance Use Studies, last accessed May 12, 2022. <https://alcoholstudies.rutgers.edu/cannabis-black-market-thrives-despite-legalization>.

75. "Confronting unintended consequences: Drug control and the criminal black market," *World Drug Report* (2009), pp. 163-166. [https://www.unodc.org/documents/wdr/WDR\\_2009/WDR2009\\_2.1.pdf](https://www.unodc.org/documents/wdr/WDR_2009/WDR2009_2.1.pdf).

76. Amanda Chicago Lewis, "California legalized weed five years ago. Why is the illicit market still thriving?" *The Guardian*, Nov. 2, 2021. <https://www.theguardian.com/us-news/2021/nov/02/california-legal-weed-cannabis-industry-economy>.

cannabis, the state's population has little reason to shop elsewhere.<sup>77</sup> Of note, neighboring states are not similarly legislated, and evidence suggests that a surplus of Oregon's supply is being illegally exported into Idaho.<sup>78</sup>

With each state creating their own piecemeal versions of legalization and decriminalization laws for a substance with a well-established, national demand, the ability to drive out the illegal market requires putting some time and attention toward setting standard product costs and business operations. The federal government is therefore best positioned to set minimum standards for the legalization and regulation of cannabis products. In such a scenario, although states would still be the primary authority over cannabis regulation, financial incentives, interstate regulation and federal land use would be influenced by federal policy, as it is with alcohol.<sup>79</sup>

Although it is impossible to predict the degree to which the illegal market would be disrupted or even eradicated by cannabis legalization at the state or federal level, evidence of the potential benefits of federal regulation are reflected in the 100 years of experience the nation has with the repeal of alcohol prohibition. In fact, federal legislation has been posited as the only solution for illegal market reliance on access to marijuana.<sup>80</sup>

### Fewer Negative Police-Citizen Encounters

When President Nixon declared the war on drugs, he proclaimed drugs to be public enemy No. 1 to circumvent the recent advances in the Civil Rights Movement and to silence the anti-Vietnam war establishment (as articulated by his aid, John Ehrlichman). In doing so, Nixon automatically cast the federal government and, by extension, the police, as enemy combatants with the communities they served.<sup>81</sup> Police officers became more militarized, and departments grew in scope and power in the years that followed.<sup>82</sup>

Marijuana prohibition inherently increases police-citizen contact, which has produced disastrous outcomes for community members and the police departments that serve them. The widespread use of marijuana in the United States and its distinct, lingering odor makes the substance especially useful for initiating police contact; suspicion of marijuana possession is, in fact, often used to uncover more serious contraband, like firearms. This subjective use of "detecting an odor of marijuana" has long been a reason police request consent to search a person and their property, eroding the protections of the Fourth Amendment and the search and seizure protections of the Bill of Rights.<sup>83</sup>

Of note, the rules that allow marijuana-based search and seizure are currently being tested in courts across the nation. The potential loss of this tool is troubling to some members of law enforcement who fear that, without it, more serious crime will go undetected.<sup>84</sup> Yet tools like this, which inherently facilitate more aggressive policing, have been linked to negative psychological and physical health



*Marijuana prohibition inherently increases police-citizen contact, which has produced disastrous outcomes for community members and the police departments that serve them.*

77. Natalie Fertig, "How Legal Marijuana Is Helping the Black Market," *Politico Magazine*, July 21, 2019. <https://www.politico.com/magazine/story/2019/07/21/legal-marijuana-black-market-227414>.

78. Ibid.

79. Alcohol Policy Information System, "About Alcohol Policy," National Institute on Alcohol Abuse and Alcoholism, last accessed May 12, 2022. <https://alcoholpolicy.niaaa.nih.gov/about-alcohol-policy>.

80. Matthew Walsh, "The State of the Marijuana Black Market," *Brown Political Review*, Jan. 8, 2020. <https://brownpoliticalreview.org/2020/01/the-state-of-the-marijuana-black-market>.

81. Jamila Hodge, "Fifty Years Ago Today, President Nixon Declared the War on Drugs," *Vera*, June 17, 2021. <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>.

82. Hannah L.F. Cooper, "War on Drugs Policing and Police Brutality," *Substance Use and Misuse* 50:8-9 (March 21, 2015), pp. 1188-1194. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4800748>.

83. Ibid.

84. Caren Chesler, "A whiff of pot alone no longer airtight probable cause for police to search cars in several states," *The Washington Post*, June 26, 2021. [https://www.washingtonpost.com/national-security/marijuana-police-probable-cause/2021/06/26/9d984f8e-d36c-11eb-a53a-3b5450fdca7a\\_story.html](https://www.washingtonpost.com/national-security/marijuana-police-probable-cause/2021/06/26/9d984f8e-d36c-11eb-a53a-3b5450fdca7a_story.html).



outcomes, increased risk of violence and death.<sup>85</sup> Contrary to the asserted goal of crime prevention or reduction, the practice may increase the likelihood of continued crime.<sup>86</sup> In addition, it unnecessarily sweeps more people into the criminal justice system, who then become labeled as criminals and have the trajectory of their lives permanently and negatively altered. This produces psychological stress that has been shown to predict future delinquency.<sup>87</sup>

As was the case with alcohol prohibition, the enforcement of cannabis (and other drug) prohibition exacerbates violence in our communities, necessitating increased police intervention in highly dangerous situations, the continued cycle of which elevates the frustrations of the police and the people they serve.<sup>88</sup> Thus, the legalization of cannabis has the potential to reduce negative police interactions, which benefits both parties and facilitates public safety.

### Improved Police-Community Relationships

Law enforcement emphasis on minor crimes on specific streets and in particular neighborhoods—often referred to as “broken windows” policing—is touted as being necessary to prevent serious crime from increasing.<sup>89</sup> However, a review of research suggests otherwise.<sup>90</sup> This aggressive tactic is associated with a lack of trust in local law enforcement that makes law-abiding citizens hesitant to report crime or serve as a witness.<sup>91</sup> In addition, a recent report found that this distrust can be a catalyst to officers being less informed and less effective, and, as violence escalates, can lead to street-level justice being preferred over police intervention.<sup>92</sup> When community members arm themselves so as to not become victims, both citizens and the police grow increasingly concerned about each other’s intentions, resulting in toxic stress and an increased likelihood of violent interactions between the two groups.<sup>93</sup> Both parties are more likely to pull the trigger, which fuels the cycle of violence in our communities.<sup>94</sup>

Even more troubling is the wealth of research that has found that communities of color have been the primary target for the enforcement of marijuana prohibition, despite similar usage rates among white and nonwhite individuals.<sup>95</sup> Black people are nearly four times more likely to be arrested for possession of marijuana than their white counterparts, and the disparity persists even in states that have decriminalized or legalized marijuana.<sup>96</sup>

Polls have shown that, when questioned about their level of trust in the police, Black people expressed 40 percent less confidence in law enforcement than white



*The legalization of cannabis has the potential to reduce negative police interactions, which benefits both parties and facilitates public safety.*

85. Michael Esposito et al., “Aggressive Policing, Health, and Health Equity,” *Health Affairs* (April 2021), pp. 1-6. <https://www.healthaffairs.org/doi/10.1377/hpb20210412.997570/full/health-affairs-brief-aggressive-policing-health-equity-esposito.pdf>.

86. Juan Del Toro et al., “The criminogenic and psychological effects of police stops on adolescent black and Latino boys,” *Proceedings of the National Academy of Sciences* 116:17 (April 23, 2019), pp. 8261-8268. <https://www.pnas.org/doi/pdf/10.1073/pnas.1808976116>.

87. *Ibid.*, p. 8265.

88. Scott Jacques and Andrea Allen, “Drug Market Violence: Virtual Anarchy, Police Pressure, Predation, and Retaliation,” *Criminal Justice Review* 40 (June 7, 2020), pp. 187-199. <https://scottjacques.pubpub.org/pub/drugmarketviolence/release/2>.

89. Greg St. Martin, “Do More Broken Windows Mean More Crime?” *News@Northeastern*, May 15, 2019. <https://news.northeastern.edu/2019/05/15/northeastern-university-researchers-find-little-evidence-for-broken-windows-theory-say-neighborhood-disorder-doesnt-cause-crime>.

90. *Ibid.*

91. *Ibid.*

92. “Policing and Community Trust: The Corrosive Cycle of Distrust and Violence,” Giffords Law Center, September 2021, pp. 1-3. <https://giffords.org/wp-content/uploads/2021/09/Giffords-Law-Center-Policing-and-Community-Trust-Factsheet-1.pdf>.

93. *Ibid.*

94. *Ibid.*

95. John Hudak, “Marijuana’s racist history shows the needs for comprehensive drug reform,” *Brookings*, June 23, 2020. <https://www.brookings.edu/blog/how-we-rise/2020/06/23/marijuanas-racist-history-shows-the-need-for-comprehensive-drug-reform>.

96. *Ibid.*

people.<sup>97</sup> Black males continue to be stopped—both in cars and on the street—at rates higher than their white counterparts, and, although police-initiated contact as a whole decreased between 2011 and 2015, white people were less likely than persons of color to experience police-initiated contact.<sup>98</sup> Of note, the overall reduced rate of police-initiated contact may be correlated with data indicating that reports of violent crime, including rape, robbery and assault, have declined by 10 percentage points over the past 10 years.<sup>99</sup>

Given the disparate treatment received by people of color and the aggressive enforcement of marijuana laws in major urban areas, it is hard to imagine a scenario in which police-community relationships could be improved without cannabis legalization and reparations for the more than five decades of concerted effort to arrest, convict and incarcerate entire Black communities.

### Improved Police Legitimacy

It is unlikely that any currently active police officers were directly impacted by the cannabis legislation of the 1970s, nor may their views align with those of their predecessors, but the institution of policing, its role within the larger community, its establishment of priorities, the dedicated budgetary resources and the increased militarization of the police were invariably shaped by efforts to prohibit cannabis use, particularly in poor communities and communities of color. The enforcement efforts for so-called “victimless crimes” and the extent to which they distract from more serious crimes in the same communities jeopardize police legitimacy.

Police legitimacy refers to the public’s support for their officers’ authority to manage and resolve conflicts in their communities.<sup>100</sup> The primary tenet of this mutual relationship is that the people have trust and confidence that the officers are honest and working diligently to keep them safe. If the police have the support of the public in this capacity, citizens are more willing to defer to the authority of the police and believe that their actions are “morally justified and appropriate to the circumstance.”<sup>101</sup>

The war on drugs and its disparate impact on racial minorities and urban communities has eviscerated community confidence in the police: A 2020 poll found that, for the first time in 27 years, the majority of Americans do not trust the police.<sup>102</sup> In addition, the gap between white and Black Americans’ perceived confidence in law enforcement has never been greater, reflecting a divide in the overall distrust of the criminal justice system.<sup>103</sup>

From the lens of individuals, families and communities in overpoliced areas, it is not hard to understand the reticence to partner with the police. They have endured cannabis prohibition-related procedural injustices, including but not limited to Fourth Amendment search and seizure violations; civil asset forfeiture; pressure to become confidential informants; repeated stops, frisks, and “no knock” warrants; excessive use of force; and reports of crime that either go unaddressed or that result in the victim’s/complainant’s arrest.<sup>104</sup>

4x

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50+  
percent

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97. “Policing by the Numbers,” Council on Criminal Justice, last accessed May 12, 2022. <https://counciloncj.fole.com/policing/assessing-the-evidence/policing-by-the-numbers>.

98. Ibid.

99. Ibid.

100. Commission on Peace Officer Standards and Training, “Procedural Justice and Police Legitimacy,” CA.gov, Oct. 22, 2020. <https://post.ca.gov/procedural-justice-and-police-legitimacy>.

101. Ibid.

102. Aimee Ortiz, “Confidence in Police Is at Record Low, Gallup Survey Finds,” *The New York Times*, Aug. 12, 2020. <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>.

103. Ibid.

104. Cooper. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4800748>.

When individual citizens lack faith that the police departments—and the criminal justice agencies that serve them—have an ability to protect and keep them safe, forms of vigilante justice emerge. As previously mentioned, a cycle of escalating distrust between the two groups, hypervigilance and quick trigger fingers further erode public safety.<sup>105</sup> In communities where shootings and homicide are a common occurrence, these events often go unreported, owing in part to the belief that the police either do not care or are not capable of doing anything.<sup>106</sup>

The legalization of cannabis could also increase police legitimacy from a financial perspective. Each year, police departments spend an estimated \$3.6 billion to enforce marijuana laws.<sup>107</sup> In fact, data from the Federal Bureau of Investigation (FBI) revealed that, in 2019, more people were arrested for cannabis violations than for all violent crimes combined.<sup>108</sup> By redirecting these funds and overhauling police departments, more resources could be devoted to addressing gun and other violent crime. For example, in historically violence-ridden areas of New Jersey—Newark and Camden—community collaboration has restored police legitimacy and public safety, and similar promising outcomes have been seen in Seattle.<sup>109</sup> Violent crimes, specifically homicides, have been reduced, as have police use-of-force complaints. Both reflect a safer environment for officers and citizens.<sup>110</sup>

In order to restore public safety and rebuild trust between the two groups, police administrators must communicate directly with their constituents and acknowledge the harms of cannabis enforcement and the injustices that it causes in the community.<sup>111</sup> Although individual officers or specific organizations may not be directly accountable, reconciliation depends on accepting responsibility. In this case, an open conversation about the institution of policing and its 50-year role in cannabis prohibition enforcement could have a reparative impact. In addition to confronting the past, police authorities can make a public commitment to procedural justice and the diversion of cannabis enforcement resources to serious and violent crime prevention and response, all of which would serve to reestablish legitimacy.

### Safer Work Environment for Police

As highlighted above, the war on cannabis was not only ineffective in reducing cannabis use and sales, but the emphasis on street-level enforcement has contributed to an increase in negative police-citizen interactions, poor police-community relationships and decreased police legitimacy. These issues, in turn, have created an environment in which police officers, too, have new fears. In the largest national sample study to date, 93 percent of the 8,000 officers surveyed reported feeling worried about their personal safety in the wake of protests against officer-involved fatalities.<sup>112</sup> Although these survey results are clearly influenced by these recent events, they are also a byproduct of five decades' worth of disparate

**\$3.6 billion  
spent to enforce  
marijuana laws**

*In 2019, more people were arrested for cannabis violations than for all violent crimes combined.*

105. Ibid.

106. Ibid.

107. Walk Hickey and Kelly McLaughlin, "Despite legalizing simple possession, marijuana arrests still inflict tens of billions of dollars in economic damage on Americans annually," *The Insider*, June 25, 2019. [https://www.insider.com/marijuana-arrests-are-costing-the-us-billions-2019-6?utm\\_source=copy-link&utm\\_medium=referral&utm\\_content=topbar](https://www.insider.com/marijuana-arrests-are-costing-the-us-billions-2019-6?utm_source=copy-link&utm_medium=referral&utm_content=topbar).

108. Emily Earlenbaugh, "More People Were Arrested For Cannabis Last Year Than For All Violent Crimes Put Together, According To FBI Data," *Forbes*, Oct. 6, 2020. <https://www.forbes.com/sites/emilyearlenbaugh/2020/10/06/more-people-were-arrested-for-cannabis-last-year-than-for-all-violent-crimes-put-together-according-to-fbi-data>.

109. "Policing and Community Trust." <https://giffords.org/wp-content/uploads/2021/09/Giffords-Law-Center-Policing-and-Community-Trust-Factsheet-1.pdf>.

110. Ibid.

111. Thomas C. O'Brien and Tom R. Tyler, "Rebuilding trust between police & communities through procedural justice & reconciliation," *Behavioral Science & Policy* 5:1 (2019), pp. 35-50. <https://behavioralpolicy.org/wp-content/uploads/2020/01/Rebuilding-trust-between-police-communities-through-procedural-justice-reconciliation.pdf>.

112. Rich Morin et al., "Behind the Badge," Pew Research Center, Jan. 11, 2017, pp. 1-97. <https://www.pewresearch.org/social-trends/2017/01/11/police-views-public-views>.



treatment and aggressive enforcement of cannabis and other drug prohibition. In addition to contributing to physical and psychological health issues, the aggressive policing styles that were adopted to address the crack-cocaine epidemic in the 1990s also produced a high rate of involuntary contact between police and citizens, further putting police in direct contact with potentially violent offenders.<sup>113</sup>

In addition to adopting aggressive police practices in the 1990s, habitual offender and three-strikes laws signaled a shift toward targeting known drug offenders in an effort to secure multiple convictions. Three or more drug convictions warranted extensive incarceration, taking nuisance drug offenders off the streets. In an analysis of marijuana offenders at every stage of the judicial process from 1990 to 2002, researchers concluded that, since at least 1990, the primary focus of the drug war had shifted to low-level marijuana offenses.<sup>114</sup> This is an important factor to appreciate with regard to the goal of reducing potential police injury because a review of the situational characteristics of officer injury found that officers were more likely to be injured when interacting with persons with prior convictions and those under the influence of drugs or alcohol.<sup>115</sup> The law enforcement emphasis on low-level, repeat marijuana arrests since the 1990s, coupled with the increased likelihood that these individuals might be under the influence of cannabis, escalates the likelihood of officer injury.

Changing the manner in which police interact with the community can also reduce the likelihood of officer injury. The importance of police-community partnerships resurfaced following the death of Michael Brown and related political unrest in 2014.<sup>116</sup> To repair the damage of aggressive police practices and mass incarceration, as discussed above, community-oriented policing (COP) reemerged as a tool to reduce crime and increase public safety, including the safety of the police.<sup>117</sup> COP emphasizes the use of positive, non-enforcement-related contacts between police and citizens to build trust and enhance police legitimacy.<sup>118</sup> When police and the communities they serve collaborate, citizens are more willing to cooperate in efforts to prevent and respond to crime, and the changed dynamic of the police-community interactions enhances the safety of all involved.

As an example, to reclaim their drug, gang and crime-ridden communities from the vestiges of the failed war on drugs and aggressive policing practices, several police departments in major cities have successfully implemented new, overhauled approaches to public safety. In Camden, New Jersey—the 2013 murder capital of the country—the city police department disbanded, fired every officer and rebranded as the Camden County Metro Police Department.<sup>119</sup> Under new leadership, the department implemented a revised mission that prioritized citizen assistance and community policing. As of the summer of 2020, Camden boasted a 70 percent decrease in homicide and a 46 percent reduction in violent crime.<sup>120</sup> The city also avoided the recent surge in homicide that many other jurisdictions have experienced.<sup>121</sup>



*Changing the manner in which police interact with the community has the potential to reduce the negative perceptions of the police, which can reduce the likelihood of officer injury.*

113. Esposito. <https://www.healthaffairs.org/doi/10.1377/hpb20210412.997570/full/health-affairs-brief-aggressive-policing-health-equity-esposito.pdf>.

114. Ryan S. King and Marc Mauer, "The war on marijuana: The transformation of the war on drugs in the 1990s," *Harm Reduction Journal* 3:6 (Feb. 9, 2006), pp. 1-17. <https://harmreductionjournal.biomedcentral.com/track/pdf/10.1186/1477-7517-3-6.pdf>.

115. Ibid.

116. Kyle Peyton et al., "A field experiment on community policing and police legitimacy," *Proceedings of the National Academy of Sciences (PNAS)* 116:40 (Oct. 1, 2019), pp. 19894-19898. <https://www.pnas.org/doi/pdf/10.1073/pnas.1910157116>.

117. Ibid, p. 19894.

118. Ibid.

119. Dan Lampariello, "In Camden, N.J., crime plummeted after police was 'disbanded,'" Fox 45 News, June 15, 2020. <https://foxbaltimore.com/news/local/a-nj-citys-police-reform-methods-could-be-a-model-for-cities-like-baltimore>.

120. Ibid.

121. Jim Walsh, "Murders increase across the nation, but not in Camden," *Cherry Hill Courier-Post*, Sept. 29, 2021. <https://www.courierpostonline.com/story/news/2021/09/29/camden-murders-violent-crime-fbi/5894164001>.

Similar promising outcomes were achieved in Newark, New Jersey, and Oakland, California. Since 2015, Newark has seen annual decreases in violent crime resulting in a 50 percent decrease in 2020.<sup>122</sup> Most notably, there was not a single firearm discharge from police in 2020 in what was once the most dangerous city in America.<sup>123</sup> In Oakland, partnerships with community advocacy groups led to a 50 percent reduction in homicide and homicide clearance rates that increased from 29 percent to 70 percent.<sup>124</sup>

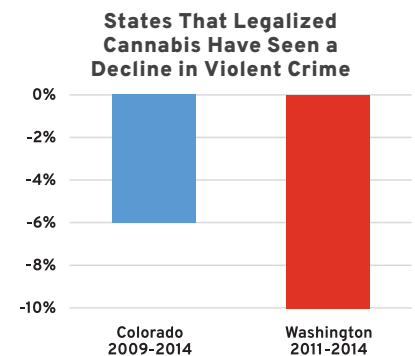
Thus, enhanced community collaboration, less homicide and fewer violent crimes in any given jurisdiction can potentially decrease opportunities for potential harm to police. The value of these partnerships cannot be understated. In order to disrupt the cycles of violence that threaten police and the citizens they serve, law enforcement must have the full participation of members of the public who can act as key partners in preventing gun violence.<sup>125</sup> Police departments must therefore diligently engage in efforts to repair their relationships with the communities they serve. Prioritizing violent crime reduction in lieu of the existing emphasis on low-level cannabis enforcement is key to enhancing public safety.

### Reallocation of Resources to Enhance Public Safety

On Sept. 20, 2021, official FBI statistics confirmed what the citizens of major metropolitan areas already suspected: An unprecedented spike in violence occurred in 2020. Murder rates climbed by more than 30 percent, and 77 percent involved a firearm.<sup>126</sup> These numbers reflect the greatest single-year increase since data collection began in the 1960s.<sup>127</sup> In addition, violent crime as a whole increased by 5 percent.<sup>128</sup> As emphasized above, reimagining the role of law enforcement, deemphasizing cannabis enforcement and establishing robust community partnerships is vital to reducing violent crime, including homicide.

States that have legalized cannabis have seen declines in violent crime. Colorado saw a 6 percent decrease in violent crime from 2009 to 2014, Washington saw a 10 percent decline from 2011 to 2014 and crime rates dropped in Portland, Oregon, as well.<sup>129</sup> In addition, studies indicate that well-regulated cannabis industries reduce the reliance on the illegal market that is inherently associated with violence and homicide.<sup>130</sup> A comprehensive review of the impact of cannabis legalization found that legalization can reduce homicide and assault rates.<sup>131</sup>

To the extent that the spike in homicides is correlated with the illegal drug market, as evidenced by geocoding, a legalized, well-regulated cannabis industry can reduce homicide by taking the most used illegal substance out of the drug-dealing portfolio.<sup>132</sup> Similarly, the legalization of cannabis has the potential to divert



122. Mark Remillard and Aaron Ferrer, "Gun violence in America: Newark," ABC News, July 30, 2021. <https://abcnews.go.com/US/gun-violence-america-newark/story?id=79148257>.

123. Ibid.

124. "Policing and Community Trust." <https://giffords.org/wp-content/uploads/2021/09/Giffords-Law-Center-Policing-and-Community-Trust-Factsheet-1.pdf>.

125. "In Pursuit of Peace: Building Police-Community." <https://giffords.org/lawcenter/report/in-pursuit-of-peace-building-police-community-trust-to-break-the-cycle-of-violence>.

126. Ryan Lucas, "FBI Data Shows An Unprecedented Spike In Murders Nationwide In 2020," NPR, Sept. 27, 2021. <https://www.npr.org/2021/09/27/1040904770/fbi-data-murder-increase-2020>.

127. Ibid.

128. Ibid.

129. Brian Heuberger, "Despite claims, data show legalized marijuana has not increased crime rates," Colorado Politics, March 22, 2017. [https://www.coloradopolitics.com/news/despite-claims-data-show-legalized-marijuana-has-not-increased-crime-rates/article\\_64dd25c9-bcb1-5896-8c62-735e953da28a.html](https://www.coloradopolitics.com/news/despite-claims-data-show-legalized-marijuana-has-not-increased-crime-rates/article_64dd25c9-bcb1-5896-8c62-735e953da28a.html).

130. Ibid.

131. Robert G. Morris et al., "The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006," *PLoS One* 9:3 (March 26, 2014). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3966811>.

132. Nicole J. Johnson and Caterina G. Roman, "Community correlates of change: A mixed-effects assessment of shooting dynamics during COVID-19," *PLoS One* 17:2 (Feb. 23, 2022). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8865680>.

substantial police resources, formerly dedicated to prohibition enforcement, to the recent surge in homicide.

The relatively recent advent of state-level legal cannabis and the even more recent homicide spike make it difficult to accurately predict the degree to which federal cannabis legalization would allow for reallocated police resources that could help address the increased murder rates. However, an analysis of the time spent on cannabis prohibition supports the assertion that legalization would increase the availability of resources that could be devoted to serious crime prevention and intervention. A considerable body of research indicates that resource availability is highly correlated with violent crime clearance.<sup>133</sup> Immediately following cannabis legalization in Washington and Colorado, the previously declining crime clearance rate sloped upward.<sup>134</sup> These results are notable in that violent crime clearance rates did not improve nationally in the same time period.<sup>135</sup> And while national clearance rates for burglary and motor vehicle theft remained flat, both Colorado and Washington saw dramatic increases in clearance by arrest.<sup>136</sup> A subsequent report confirmed the net positive impact of reallocated police resources—from cannabis enforcement to serious crime—and increased rates of crime clearance.<sup>137</sup>

While the outcomes of existing research are promising, they are limited in part by the federal scheduling of cannabis, which restricts the ability to conduct research on the substance. Additionally, the spike in homicide is too recent to concretely conclude the extent to which federal cannabis legalization could disrupt the violence associated with the illegal drug market. However, as was the case with alcohol, prohibition is not an effective policy approach. Similar to the policy approaches used for alcohol and nicotine, federal cannabis legalization is the only foreseeable way to eradicate the illegal cannabis market and reduce the violence that accompanies prohibition.

## Conclusion

Cannabis has been prohibited by the federal government for 115 years, and that prohibition was grounded in racism/nativism. Scientific evidence—both historical and recent—has demonstrated that the substance has useful medical applications, with a low risk of dependence and abuse.<sup>138</sup> Failing to recognize this reality on a federal level by legalizing cannabis has resulted in the overcriminalization of marijuana use, which has a host of negative consequences such as overloading the criminal justice system and socially disadvantaging specific groups across generations. It has also led to a missed opportunity in realizing the benefits of legalization such as disrupting dangerous illegal markets, reducing the number of negative citizen-police encounters, improving police legitimacy, and more. It is therefore critical that legislators reconsider the appropriateness of the designation of cannabis as a Schedule I substance on the CSA and construct sound federal legalization policy. Continuing to demonize cannabis and classify it with other drugs that clearly have a high risk of dependence and no legitimate medical use



*While the outcomes of the existing research are promising, they are limited in part by the federal scheduling of cannabis, which restricts the ability to conduct research on the substance.*

133. David A. Makin et al., “Marijuana Legalization and Crime Clearance Rates: Testing Proponent Assertions in Colorado and Washington State,” *Police Quarterly* 22:1 (July 4, 2018), pp. 31-55. <https://journals.sagepub.com/doi/full/10.1177/1098611118786255>.

134. Ibid., p. 41.

135. Ibid., p. 41.

136. Ibid., p. 42.

137. Mary K. Stohr et al., “Effects of Marijuana Legalization on Law Enforcement and Crime: Executive Summary,” National Institute of Justice, June 30, 2020, pp. 1-24. <https://www.ojp.gov/pdffiles1/nij/grants/255061.pdf>.

138. Downs. <https://www.scientificamerican.com/article/the-science-behind-the-dea-s-long-war-on-marijuana/#>; See, e.g., Penny F. Whiting et al., “Cannabinoids for Medical Use: A Systematic Review and Meta-analysis,” *Journal of the American Medical Association* 313:24 (June 23/30, 2015), p. 2468. <https://jamanetwork.com/journals/jama/fullarticle/2338251>; Mary Barna Bridgeman and Daniel T. Abazia, “Medicinal Cannabis: History, Pharmacology, And Implications for the Acute Care Setting,” *Pharmacy and Therapeutics* 42:3 (March 2017), pp. 180-188. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5312634>; Russell et al., pp. 722-726. <https://www.ncsbn.org/MarijuanaGuidelines.pdf>.



is not the way to decrease violent crime in our communities. Importantly, policy determinations and the enforcement of such should not be clouded by personal, moral or religious judgments, which has been the case with regard to federal cannabis legislation for too many years.

As seen in the past with alcohol prohibition, cannabis prohibition and poorly constructed legalization strategies allow the illegal market, and its associated violence, to flourish. To solve this issue, the public needs to respect the law, and the systems that enforce that law need to act with integrity, transparency and accountability.<sup>139</sup> Given that 91 percent of U.S. adults support medical or recreational use of marijuana, we must accept that we are in a situation where most individuals on both sides of the political aisle no longer respect the federal laws prohibiting cannabis.<sup>140</sup> Equally problematic is the public's lack of confidence in law enforcement's ability to act with integrity, transparency and accountability, given the underlying reason for the drug war, the scheduling of cannabis and the associated enforcement activities of the past five decades. In order to enhance public safety and rebuild trust between the police and the communities they serve, it is imperative that federal cannabis prohibition be replaced with a legalization and regulation strategy that eliminates continued reliance on the illegal drug market.

To match existing public opinion about cannabis and prioritize public safety, focusing on anything other than violent crime is a distraction of law enforcement priorities. Therefore, smart, thoughtful cannabis legalization that is attuned to the demands of the market and the needs of the people has the capacity to revolutionize our communities and their interactions with law enforcement. But federal legislation can only succeed if it is structured in such a way that underground market availability is no longer needed or desired. Once that is accomplished, law enforcement departments can focus their efforts where they are needed most; our police-community relationships can and will be repaired; and all parties can work together to restore peace and safety in our cities.

**91  
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139. Jeremy Waldron, "The Rule of Law," *The Stanford Encyclopedia of Philosophy* (Summer 2020). <https://plato.stanford.edu/archives/sum2020/entries/rule-of-law>.

140. Van Green. <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use>.

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