

POLICY BRIEF

**RECOMMENDATIONS
FOR THE NEW
ADMINISTRATION**

Drug Policy Priority Issues for Biden Administration

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This brief is part of a series of policy recommendations for President-elect Joe Biden's incoming administration. Focusing on a range of important issues facing the country, the briefs are intended to provide decision-makers with relevant and effective ideas for addressing domestic and foreign policy priorities. View the entire series at www.bakerinstitute.org/recommendations-2021.

INTRODUCTION

Drug addiction and drug policy continue to wreak havoc on the lives of millions of Americans. For over two decades, the U.S. has been grappling with an overdose epidemic.¹ This crisis, which has occurred alongside the drug war, is perhaps the clearest indictment yet of the failure of prohibition to curb drug use. COVID-19 has worsened the overdose epidemic, and 2020 will likely be another record-breaking year for drug-related deaths.

Effective drug policy requires acceptance that, for better or worse, licit and illicit drug use is part of our world. The public response to drug use should work to minimize its harmful effects rather than simply ignore or condemn it. The war on drugs ignores the complex causes of drug use; it fails to provide effective treatment for addiction; it is unable to stop the steady flow of drugs into communities across the U.S.; it is exceedingly expensive; it contributes to mass incarceration and violence on our Southern border; and it inflicts immeasurable harm on people who use drugs and on minority communities writ large.

There are several steps the federal government can take to facilitate more pragmatic and effective drug policy at all levels of government. We recommend the following as policy priorities:

FACILITATE EXPANSION OF HARM REDUCTION AND EVIDENCE-BASED DRUG TREATMENT SERVICES

Though federal funding for evidence-based treatment, such as medication-assisted treatment (MAT) for opioid use disorder, has increased in recent years, there has been no corresponding support for harm reduction services. Current policies ban federal funding for syringe service programs and prohibit localities from establishing safe consumption sites. In addition, rules regulating MAT programs and the use of federal funds to treat substance use disorders (SUDs) are overly restrictive, creating high barriers to care. Low-barrier treatment programs are more likely to attract and retain people with SUDs, and abundant evidence demonstrates the efficacy and cost-effectiveness of harm reduction services that can pair with more traditional treatment services. The following



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recommendations should be prioritized to develop a more effective system of care for substance use disorders.

1. Work with Congress to remove the federal funding ban on syringe service programs and authorize localities to establish safe consumption sites.²
2. Encourage states and localities to provide comprehensive harm reduction services that include supportive housing, safe consumption sites, and syringe and drug testing services by providing grants for these purposes.³
3. Make permanent the lower barriers to MAT access that are in place temporarily due to the COVID-19 pandemic.⁴
4. Provide funding for MAT to state prisons and local jails to include all three FDA-approved medications.⁵
5. Authorize pilot programs for heroin-assisted treatment.
6. Enforce parity laws requiring insurers to provide equal coverage for mental health and substance use disorder treatment.⁶

REMOVE CANNABIS FROM SCHEDULE I OF THE CONTROLLED SUBSTANCES ACT

As cannabis regulation works itself out from state to state, advocates and opponents of decriminalization and legalization of cannabis for adult and/or medical use generally agree that more scientific research is needed. This has long been hampered by the placement of cannabis by the Drug Enforcement Administration (DEA) and Food and Drug Administration (FDA) in Schedule I of the Controlled Substances Act, which deems it to have “a high potential for abuse” and “no currently accepted medical use in treatment in the United States.” The first assertion is exaggerated; the second is simply false. A growing body of scientific research and extensive practical experience with cannabis by people dealing with myriad afflictions make clear that its medical use is quite widely accepted, even if federal authorities insist on denying that fact.

Unfortunately, scientific research on the potential benefits of cannabis is extremely difficult to conduct, especially since the only legal source of the plant that can be used in studies that can clear most Institutional Review Boards, receive government and most other grants, and be published in mainstream professional journals is a government marijuana farm on the campus of the University of Mississippi, and under tight control of the National Institute on Drug Abuse (NIDA). The American Medical Association, the American College of Physicians, the Institute of Medicine, the National Cancer Institute, and a host of other medical and scientific groups in this country and internationally have called for more research on the therapeutic benefits of cannabis. NIDA has consistently declined to participate.

A team of medical cannabis researchers has petitioned the U.S. Ninth Circuit Court of Appeals to legally require the DEA to permit cannabis research. The courts are expected to issue a ruling in 2021; a decision in the petitioners’ favor would mark a significant advancement in the pursuit of rigorous cannabis research. To further facilitate such research, we offer the following recommendations:

1. Push DEA and Congress to remove cannabis from Schedule I so that research to determine the utility and risks of cannabis can proceed without hindrance.
2. Permit researchers to conduct their studies with strains and strengths of cannabis that their subjects actually use, especially when legally obtainable in their states.

EXAMINE OPTIONS FOR DECRIMINALIZING OTHER CURRENTLY ILLEGAL DRUGS

In various ways, states and cities are moving toward decriminalizing use of some drugs, most often cannabis, by such measures as reducing the status of the offense, declining to prosecute minor drug use, and officially instructing police to regard enforcement against low-level possession as their lowest priority. In the 2020 election, Oregon became the first state in the nation to decriminalize the possession and personal use of all drugs, offering an option of paying a modest \$100 fine or completing a health assessment.⁷

While new in the United States, several countries, including Portugal, the Netherlands, and Switzerland, have decriminalized possession of small amounts of “hard” drugs for some time. The key pioneer of this trend is Portugal, which began its new national strategy in 2001, but more than two dozen other countries have moved in this direction.⁸

We urge the Biden administration to examine and assess various options for decriminalizing the use of a wide range of currently illegal drugs.

ADDRESS THE DAMAGES OF THE WAR ON DRUGS

The Summer 2020 protests against police violence and systemic racism bring into sharp focus the need for structural change to the American justice system, of which drug reform is one piece. The drug war contributes to police violence by normalizing aggressive policing and increasing the frequency of interactions between citizens and law enforcement that have the potential to turn violent.⁹ Decades of unequal enforcement of drug laws against people and communities of color have resulted in collateral consequences that extend beyond isolated incidents of arrest or violence to include long-term damage to family structures, economic opportunity, mental well-being, and overall quality of life. To begin the process of repairing the harms of the drug war, we recommend the following:

1. Restructure grants to law enforcement agencies so that funds are not based on arrest volume, but instead incentivize development of arrest alternatives, such as pre-arrest diversion programs and crisis intervention response teams.¹⁰
2. Work with Congress to pass the Community Reinvestment Grant Program (part of the MORE Act) to fund services for communities impacted by the drug war.
3. Bar discrimination and denial of benefits in areas including but not limited to employment, health care, housing, and education based on prior convictions for low-level drug possession. Work with Congress to amend the Drug-Free Workplace Act so that it applies only to people whose work involves hazards to physical safety.
4. Work with Congress to amend or repeal provisions of the Child Abuse Prevention Treatment Act and the Adoption and Safe Families Act that require and incentivize states to remove children from their homes and terminate parental rights on the basis of substance use alone. Redirect funds to community-based treatment and family services.¹¹
5. Improve nationwide data collection on race and ethnicity of people involved in stops, arrests, and use of force incidents related to drug use and possession.

CONCLUSION

If followed, these recommendations would be a significant but sensible pivot away from the failed policies of prohibition toward a realistic approach to drug use. By taking the lead on research and communication with the public about policy alternatives, the White House could provide political cover to legislators and encourage bipartisan solutions at all levels of government.

ENDNOTES

1. For more information on the precise nature of this epidemic, see Katharine Neill Harris, *The drug overdose epidemic: Not just about opioids*, Baker Institute for Public Policy, November 1, 2018, <https://www.bakerinstitute.org/media/files/files/dc464f15/bi-brief-110118-drug-overdoseepidemic.pdf>.
2. For more information on syringe service programs, see William Martin, *Syringe Exchange: Sound Science, Proven Policy*, Baker Institute for Public Policy, March 9, 2017, <https://www.bakerinstitute.org/media/files/files/3f4e6675/BI-Brief-030917-DRUG-SyringeExch.pdf>.
3. Housing is a key component of curbing harmful drug use. In November 2020, Oregon voters approved a measure that will use tax dollars from legal cannabis sales to fund comprehensive treatment and harm reduction services, including supportive housing. See Oregon Measure 110, Estimate of Financial Impact, <https://bit.ly/2WcUSvP>; British Columbia, which opened the first safe consumption site in North America, has started to offer residents safer alternatives to street drugs to help reduce overdoses. See <https://www.theguardian.com/world/2020/sep/16/british-columbia-opioids-safer-supply-drugs-canada>; for information on efficacy of safe consumption sites, see Jennifer Ng, et al., “Does evidence support supervised injection sites?” *Canadian Family Physician* 63 (November 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5685449/>; for information on efficacy of drug testing services, see Nicholas Peiper, “Fentanyl test strips as overdose prevention strategy,” *International Journal of Drug Policy* 63 (January 2019), <https://www.sciencedirect.com/science/article/pii/S0955395918302135>.
4. DEA and SAMHSA relaxed rules regulating prescribing methadone and buprenorphine in response to the COVID-19 pandemic; these changes have the added benefit of increasing treatment access for people who live in rural locations or are without transportation. See “FAQs: Provision of methadone and buprenorphine for the treatment of Opioid Use Disorder in the COVID-19 emergency,” <https://www.samhsa.gov/sites/default/files/faqs-for-oud-prescribing-and-dispensing.pdf>.
5. The Department of Justice funds MAT for prisons, but there is a strong preference for the opioid antagonist Vivitrol over methadone and buprenorphine, the other two FDA-approved medications to treat OUD. Best practices recommend that all three be made available to fit patients’ individualized needs. Rhode Island was the first state to offer all three MATs in its correctional system; for an evaluation of that program see Traci Green, et al., “Postincarceration fatal overdoses after implementing medications for addiction treatment in a statewide correctional system,” *JAMA Psychiatry*, April 2018, <https://pubmed.ncbi.nlm.nih.gov/29450443/>.
6. Several high-quality studies have shown that heroin-assisted treatment for chronic opioid users who do not respond well to other forms of MAT can result in higher rates of treatment retention, reduced spread of blood borne viruses, reduced criminal activity, and lower risk of incarceration. See M. Ferri, et al., “Heroin maintenance for chronic heroin-dependent individuals,” *Cochrane Database of Systematic Reviews*, 2011, <https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD003410.pub4/full> and Jens Reimer, et al., “Physical and mental health in severe opioid-dependent patients within a randomized controlled maintenance treatment trial,” *Addiction*, 2011, <https://pubmed.ncbi.nlm.nih.gov/21489005/>.
7. Oregon Measure 110, Estimate of Financial Impact, <https://bit.ly/2WcUSvP>
8. For Portugal drug policy, see Transform Drug Policy Foundation, “Drug decriminalisation in Portugal: setting the record straight,” <https://bit.ly/3ncK50z>; other countries decriminalize many drugs, see Release-Drugs, the Law & Human Rights, “A Quiet Revolution: Drug Decriminalisation the Globe,” <https://bit.ly/379CpQD>.
9. For more information, see Katharine Neill Harris, “End the War on Drugs to Help Fix American Policing,” June 8, 2020, <http://blog.bakerinstitute.org/2020/06/08/fixing-american-policing-also-requires-an-end-to-the-war-on-drugs/>.

10. For discussion of pre-arrest diversion and the need for federal funding, see Jay Jenkins and Katharine Neill Harris, “Leading the way to sensible policy on drug use,” *The Houston Chronicle*, August 19, 2017, <https://www.houstonchronicle.com/opinion/outlook/article/Jenkins-Harris-11944671.php#photo-13862165>. For discussion on alternative models of policing, see Stuart Butler and Nehath Sheriff, *Innovative solutions to address the mental health crisis: Shifting away from police as first responders*, Brookings Institution, November 23, 2020, <https://www.brookings.edu/research/innovative-solutions-to-address-the-mental-health-crisis-shifting-away-from-police-as-first-responders/>.

11. For a comprehensive review of the relationship between the drug war and the foster care system, see Lisa Sangoi, *How the foster system has become ground zero for the U.S. drug war*, Movement for Family Power, 2020, <https://www.movementforfamilypower.org/ground-zero>.

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