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UNITED STATES PENAL SYSTEM:
APPROACHES TO REHABILITATING MINOR DRUG
OFFENDERS AND THE EFFORTS OF GOVERNMENTS TO
REDUCE THE NUMBER OF INCARCERATED INDIVIDUALS

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ABSTRACT

The War on Drugs drastically changed the criminal treatment of illicit drug users in the United States. Changes in the 1980s brought about stricter sentencing laws for simple possession of unlawful substances. While the intent of the legislature was to prevent repeat offenders through the imposition of harsher penalties, these sterner consequences have forced countless individuals into a vicious cycle of incarceration without being offered the rehabilitative services needed to address substance abuse or addiction.

Historically, the legal system has treated minor drug offenders in the same regard as those committing violent crimes. Inmates leaving American prisons often find themselves back in prison within several years. Despite high recidivism rates that do not appear to be on the decline, little has been done to address these issues since the 1980s. Although the passing of the First Step Act in December of 2018 addressed many of the obstacles that minor drug offenders face, much more can be done to improve recidivism rates in the United States.

Part I provides a historical background on drug offenses in the United States and current approaches to rehabilitation. Particularly, it addresses how the criminal justice system operates separately and independently without communication from the medical community in rehabilitating minor drug offenders into society. Part II examines alternative approaches implemented by other countries around the world and their successes or failures. Part III provides an analysis of how the United States could implement varying approaches and programs to support its current rehabilitative measures. Part IV highlights the main points with suggestions for how the United States should alter its rehabilitative measures moving forward.

INTRODUCTION

The number of incarcerated individuals in the United States accounts for one fourth of the total prison population worldwide.¹ If every state in the United States was an independent nation, twenty-three states would rank ahead of every other country in the world, including the average across the entire United States, for number of incarcerated individuals.² The prison

¹ Zeeshan Aleem, *Sweden's Remarkable Prison System Has Done What the U.S. Won't Even Consider*, MIC (Jan. 27, 2015), <https://www.mic.com/articles/109138/sweden-has-done-for-its-prisoners-what-the-u-s-won-t>.

² Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POL'Y INITIATIVE (June 2018), <https://www.prisonpolicy.org/global/2018.html>.

population grew exponentially as a result of the War on Drugs in the 1980s.³ Prior to that period, drug offenses only accounted for a small percentage of the incarcerated population of the United States.⁴ By 2010, the drug offense incarceration rate had multiplied by a factor of ten, as 143 per 100,000 people were imprisoned as a result of drug possession or trafficking.⁵ As of 2019, of the 1.5 million people incarcerated in the United States at any given time in prisons or jails, more than one-fifth of them are imprisoned for drug charges.⁶

The United States government took the first important measure in criminal justice reform by enacting the First Step Act (“FSA”) in December 2018.⁷ The FSA addresses many of the issues that the United States’ penal system has struggled to resolve over the last several decades.⁸ Some of the major changes implemented by the FSA were granting judges more discretion in mandating minimum sentences and a restructured program for inmates to accrue good conduct time.⁹ This program is designed to incentivize incarcerated individuals through the participation and completion of programs aimed at reducing the recidivism rate.¹⁰ This is important due to the unusually high recidivism rate of prisoners in the United States; the development of this program specifically targeting individuals at an increased risk of reentry into prison will ultimately reduce government spending on incarceration.¹¹ While Congress passed the FSA with several categories of criminal offenses in mind, minor drug offenses appear to be a primary focal point of the legislation.

Despite the enactment of the FSA, much can be done to address the deficiencies of the United States’ penal system, particularly as it pertains to minor drug offenses and the recidivism rate associated with such offenses. Given the outdated minimum sentencing laws that courts have followed for the last several decades, an immeasurable number of minor drug offenders have continued to serve time for crimes not considered harmful or violent in nature.¹²

³ NAT’L RSCH. COUNCIL ET AL., *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 3 (Jeremy Travis, Bruce Western & Steve Redburn eds., 2014).

⁴ *See id.* at 47.

⁵ *Id.* at 47.

⁶ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL’Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

⁷ *See* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.

⁸ NATHAN JAMES, CONG. RSCH. SERV., R45558, *THE FIRST STEP ACT OF 2018: AN OVERVIEW* (2019), <https://crsreports.congress.gov/product/pdf/R/R45558>.

⁹ *Overview of the First Step Act*, FED. BUREAU OF PRISONS, https://www.bop.gov/inmates/fsa/overview.jsp#sentencing_reforms (last visited Oct. 18, 2020).

¹⁰ *Id.*

¹¹ *See* JAMES, *supra* note 8, at 4.

¹² *See, e.g.*, James Cullen, *Sentencing Laws and How They Contribute to Mass Incarceration*, BRENNAN CTR. FOR JUST. (Oct. 5, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration> (“Mandatory minimums often apply to nonviolent drug

The United States should model its criminal justice system and rehabilitation programs to follow aspects of other countries' rehabilitation programs for minor drug offenders to place more emphasis on customized treatment of the individual and increase collaboration between the penal and medical fields throughout the process of rehabilitation.

**I. The Historical Background of Drug Rehabilitation and the U.S.
Criminal Justice System Indicates that Changes Are Necessary and
Inevitable**

The criminal justice system in the United States massively changed in response to the War on Drugs in the 1980s.¹³ With the federal government enacting laws that mandated minimum prison sentences of up to twenty-five years in length, state legislatures followed suit for drug offenses and violent crimes.¹⁴ The Federal Sentencing Guidelines of 1986 made the sentencing periods for minor drug offenses far more punitive than they ever had been in American history.¹⁵

A. The Traditional Drug Sentencing Laws in the United States Are Outdated and Unfair to Many Categories of Criminal Offenses, Particularly as They Pertain to Minor Drug Offenders

A main issue with drug sentencing laws is that some of them are more drastic than minimum sentences for violent crimes such as rape, aggravated assault, or robbery.¹⁶ This violates retributive standards of proportionality as the American public tends to view violent crimes with more disdain than drug use or trafficking.¹⁷ Building upon these sentencing minimums were "three strike" policies, which were laws that required repeat offenders to serve extensive sentences without the possibility of parole.¹⁸ With the three strike laws also came truth-in-sentencing statutes, which required those convicted of qualified offenses to serve at least eighty-five percent of the sentence handed down from the courts.¹⁹

As a direct result of law enforcement emphasis on illegal drugs and the expansion of prison sentences from both the federal government and state legislatures, the United States witnessed an eighty-nine percent increase in

offenders, forcing judges to harshly punish those who pose the least physical danger to communities.").

¹³ NAT'L RSCH. COUNCIL ET AL., *supra* note 3.

¹⁴ *Id.* at 152.

¹⁵ *Id.*

¹⁶ *Id.* at 88.

¹⁷ *Id.*

¹⁸ *Id.* at 3.

¹⁹ *Id.*

the arrest rate for drug possession and drug use offenses during the 1980s.²⁰ In 2006, arrests for drug-related offenses reached an all-time high.²¹ As of 2017, there were six times as many drug possession arrests as there were drug sale arrests in the United States, and more than one million drug possession arrests are made on an annual basis.²² Today, the United States arrests 4.7 people per 1,000 population every year for drug-related crimes; surprisingly, the only country that averages more drug-related arrests is Spain, a country that recently decriminalized drug possession.²³

Some of the most significant challenges to those dealing with substance abuse issues are obtaining proper transportation, medical care, housing, employment, and a reunification with family and friends.²⁴ This reinforces the idea that government funding is being utilized in the wrong channels to support rehabilitative efforts of minor drug offenders.²⁵ Reallocating funding towards housing, employment, and customized treatment would likely lead to a reduction in recidivism for minor drug offenders. Studies show that three out of five drug offenders remain unemployed a full year following their release.²⁶ Additionally, about one out of five drug offenders released from incarceration immediately move into homeless shelters following their release.²⁷ Unemployed former inmates are three times more likely to be reincarcerated than a former inmate with a job.²⁸ While employers are hesitant to hire drug offenders due to public safety and employer image concerns, the decision not to hire may also lead to increased public safety concerns due

²⁰ *Id.* at 49.

²¹ *Id.* at 49–50 (noting that, in 2006, the arrest rate for drug-related offenses was 162% higher than in 1980).

²² See Betsy Pearl, *Ending the War on Drugs: By the Numbers*, CTR. FOR AM. PROGRESS (June 27, 2018), <https://www.americanprogress.org/issues/criminal-justice/reports/2018/06/27/452819/ending-war-drugs-numbers/>.

²³ Keri Blakinger, *What countries party hardest? Here's a look at drug use and drinking in America v. Europe*, N.Y. DAILY NEWS (Sept. 17, 2015), <https://www.nydailynews.com/news/national/drug-drinking-u-s-europe-article-1.2364210> (“Spain, a drug-smuggling hotspot according to Recovery Brands, led the pack with 8.3 arrests per 1,000 population while the U.S. trailed with a little over half that at 4.7 per 1,000.”); *Spain: Country Drug Report 2019*, EUR. MONITORING CTR. FOR DRUGS AND DRUG ADDICTION (2019), https://www.emcdda.europa.eu/countries/drug-reports/2019/spain/drug-laws-and-drug-law-offences_en (noting Spain decriminalized drug possession).

²⁴ NAT’L RSCH. COUNCIL ET AL., *supra* note 3, at 195; *see also id.* at 196 (“[R]isk-need-responsivity or RNR...has been successful in reducing recidivism when (1) prisoners at medium to high risk of recidivating are targeted, (2) they are assessed to determine their ‘criminogenic needs’ (individual issues known to be associated with future criminal behavior), and (3) they are placed in rehabilitative programs designed to address those needs in a manner consistent with their learning styles to ensure their responsivity.”).

²⁵ BENNETT W. FLETCHER ET AL., NAT’L INST. ON DRUG ABUSE, *PRINCIPLES OF DRUG ABUSE TREATMENT FOR CRIMINAL JUSTICE POPULATIONS* 26–27 (2014), https://www.drugabuse.gov/sites/default/files/txcriminaljustice_0.pdf.

²⁶ H.R. REP. NO. 110-140, at 2 (2007).

²⁷ *Id.*

²⁸ Lisa A. Rich, *A Federal Certification of Rehabilitation Program: Providing Federal Ex-Offenders More Opportunity for Successful Reentry*, 7 ALA. C.R. & C.L. L. REV. 249, 282 (2016).

to the lack of employment opportunities available; this choice not to provide a second chance indirectly leads to repeated offenses.²⁹

B. The Current Rehabilitative Programs in the United States Are Headed in the Right Direction, but Measures Should be Taken to Further Advance Drug Sentencing and Treatment Reform

When it comes to the availability of substance abuse centers in America, the United States ranks lower than other countries who provide substance abuse treatment centers.³⁰ Countries like Iran and New Zealand treat the most people for drug abuse.³¹ This reinforces the idea that northern European nations prioritize the wellbeing and advancement of drug users and abusers more so than the American system does.³² While the United States comparatively does not rank first for all categories of drug use, the United States is in a category of its own for how many individuals are in treatment at any given time. As of 2018, the United States maintained 14,809 rehabilitation facilities for substance abuse; this number is up from 13,623 in 2003.³³ This is likely due in large part to the opioid epidemic affecting the United States.³⁴ The opioid epidemic is responsible for 41 percent of all individuals seeking drug treatment in the United States.³⁵ Although this is alarming, it also demonstrates that more people are seeking help than in other nations.³⁶

Another main issue with the infrastructure of American rehabilitation programs is cost. A study conducted in 2008 weighed the overall cost of treatment of an individual against the cost of incarceration.³⁷ It found that on average, the cost of drug treatment for an individual was \$4,700, whereas the

²⁹ MICHELLE NATIVIDAD RODRIGUEZ & MAURICE EMMELM, NAT'L EMP. L. PROJECT, 65 MILLION NEED NOT APPLY: THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS 3 (2011), https://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf.

³⁰ See Sarah Griffiths, *Drug map reveals the substances YOUR country is addicted to: Scotland is hooked on cocaine, Iceland smokes the most cannabis and opiates are rife in the US*, DAILY MAIL ONLINE (Nov. 30, 2015), <https://www.dailymail.co.uk/sciencetech/article-3333877/Drug-map-reveals-substances-country-addicted-Scotland-hooked-cocaine-Iceland-smokes-cannabis-opiates-rife-US.html>.

³¹ See *id.*

³² See generally *id.*

³³ John Elflein, *Number of substance abuse treatment facilities in the U.S. 2003-2019*, STATISTA (Oct. 5, 2020), <https://www.statista.com/statistics/450281/total-number-of-substance-abuse-treatment-facilities-in-the-us/>.

³⁴ See Pearl, *supra* note 22. As of 2016, more people in America died of opioid overdoses than in car crashes. Americans consume 80% of the world's opioids. *Id.*

³⁵ See Griffiths, *supra* note 30.

³⁶ See *id.* Opioid abuse is a far greater problem in the United States in comparison with other nations. Despite government attempts to address dependencies with rehabilitation programs like medical assistance, supervised detox, and maintenance programs, American citizens have continued to struggle with the issue of opioid dependency. *Id.* Further, the United States ranks second in the world for cannabis consumption according to the United Nations Office on Drugs and Crime. *Id.*

³⁷ See FLETCHER ET AL., *supra* note 25.

average cost of incarceration of an individual was around \$24,000.³⁸ Most individuals do not benefit from the large expenditures of the system which makes it difficult to identify areas for reform.³⁹ For example, as of May 2018, over 415,000 people were employed nationwide as correctional officers; this statistic does not take into account other prison staffers that are needed to operate the daily functions of America's prisons.⁴⁰ When considering expenses, the National Drug Intelligence Center ("NDIC") estimated in 2011 that criminal justice system costs, as it pertained to drug-related crime, were an estimated \$113 billion every year.⁴¹ However, of that total, only \$14.6 billion was spent on the treatment of drug abuse.⁴² To put that in perspective, the NDIC estimated that the *total* drug abuse cost to society was \$193 billion.⁴³ Proponents of allocating increased funding towards the treatment of drug abuse claim that it results in reduced costs associated with crime, lost productivity, and the overall cost of the incarceration process.⁴⁴

II. Successful Approaches to Treatment and Rehabilitation of Drug Offenders Emphasize A Personalized Behavioral and Environmental Approach

Although much has been written on the issue of the shortcomings of treatment programs for minor drug offenders in the United States, other countries have experienced recent success in implementing progressive rehabilitative reform.⁴⁵ Nations choose to implement one of three primary models of drug policy enforcement: the punishment model (the most severe); the depenalization model; or the decriminalization model (the most lenient).⁴⁶

A. *A. The Current U.S. System for Rehabilitation of Minor Drug Offenders Should be Reexamined and Restructured to Consider Behavioral and Environmental Factors*

Estimates show that roughly two thirds of all prisoners in the United States deal with substance abuse or dependence.⁴⁷ Further research shows that the

³⁸ *Id.*

³⁹ *See generally id.*

⁴⁰ *See Occupational Employment and Wages, May 2018: 33-3012 Correctional Officers and Jailers*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/oes/current/oes333012.htm> (last modified Apr. 3, 2019).

⁴¹ FLETCHER ET AL., *supra* note 25.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See generally* Kristina Ackermann et al., *How Other Countries Deal with Addiction and Treatment*, DESERT HOPE AM. ADDICTION CTRS., <https://deserthopetreatment.com/addiction-guide/drug-industry-trends/other-countries-addiction-treatment/> (last updated Feb. 27, 2020).

⁴⁶ *Id.*

⁴⁷ Wendy Sawyer, *BJS report: Drug abuse and addiction at the root of 21% of crimes*, PRISON POL'Y

combination of treatment that begins in prison and continues through the community upon release exponentially reduces the recidivism rate for drug-related crime and relapse.⁴⁸ There is no noticeable difference in success rate for those individuals voluntarily pursuing treatment as opposed to mandated treatment as a component of probation.⁴⁹ The main differentiator in success rates is how the criminal justice and medical fields communicate and work with one another.⁵⁰ When devising a treatment plan for abusers through screening, monitoring, and supervision, coordinating the goals of a tailored plan from incarceration to rehabilitation has proven successful.⁵¹

Traditionally, rehabilitation efforts in the United States have primarily focused on the examination of physical and psychological motivators for drug dependent individuals.⁵² Research conducted jointly by the United Nations Office on Drugs and Crime and the World Health Organization has found that ten dollars can be saved on crime costs, social costs, and future health for every dollar that is spent on drug use prevention.⁵³ Despite the success other countries have experienced in the reduction of drug abuse, the United States still conducts or funds over eighty-five percent of drug treatment research worldwide.⁵⁴ However, the penal systems in other countries do not incarcerate drug crimes to the extent that the United States does.⁵⁵

The passage of the First Step Act (FSA) symbolizes the first meaningful progress in American criminal justice reform in decades.⁵⁶ Recently, the United States implemented new assessment programs to identify individuals who are at high risk of recidivism.⁵⁷ Correctional procedures and outdated sentencing laws are being reexamined to minimize the number of

INITIATIVE (June 28, 2017), <https://www.prisonpolicy.org/blog/2017/06/28/drugs/>.

⁴⁸ *What role can the criminal justice system play in addressing drug addiction?*, NAT'L INST. ON DRUG ABUSE (Jan. 2018), <https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/what-role-can-criminal-justice-system-play-in-addressing>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Steven Belenko et al., *Treating Substance Use Disorders in the Criminal Justice System*, 15 CURRENT PSYCH. REP., no. 414, 2013, at 1–2, <https://link.springer.com/article/10.1007%2Fs11920-013-0414-z>.

⁵³ *UNODC/WHO International Standards on Drug Use Prevention*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/prevention/prevention-standards.html> (last updated Sept. 29, 2020).

⁵⁴ Ackermann et al., *supra* note 45.

⁵⁵ *See* PENAL REFORM INT'L, GLOBAL PRISON TRENDS 2015, at 3 (2015), <https://cdn.penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf>. The United States ranks second only to Thailand for percentage of incarcerated individuals whose primary offense is either drug possession or sale of illegal drugs. *Id.*

⁵⁶ *See* Dartunorro Clark & Janell Ross, *The First Step Act promised widespread reform. What has the criminal justice overhaul achieved so far?*, NBC NEWS (Nov. 24, 2019), <https://www.nbcnews.com/politics/news/first-step-act-promised-widespread-reform-what-has-criminal-justice-n1079771>.

⁵⁷ *See* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.

incarcerated individuals.⁵⁸ Despite these amendments and the level of oversight emphasized through the FSA, it is only the first step in reducing the number of incarcerated individuals in the United States.⁵⁹ Fortunately, there are programs that have been experimented with over the last several decades in similar western cultures that demonstrate the plausibility of less penal methods.⁶⁰ Should the United States government elect to implement these programs, there is real promise for individuals that have traditionally been incarcerated for minor drug offenses.⁶¹ The opportunity to combine the evidentiary scientific research conducted in the United States as it pertains to substance abuse treatment and the behavioral correctional methods in Europe may be the next best step in reforming minor drug offenses.⁶²

B. The Behavioral, Personalized Approach Utilized in European Countries Leads to Intangible Benefits that the U.S. System Fails to Account for in Minor Drug Offender Rehabilitation

European governments tend to be far more progressive in their handling of rehabilitative drug reform.⁶³ Not only are penal systems in Europe forward-thinking in their handling of minor drug offenders, but the European prison infrastructure model is generally innovative in its handling of first-time criminal offenders.⁶⁴ In addition to prison reform, several countries across Europe have witnessed success from decriminalizing drugs across the board.⁶⁵ Governments in Europe tend to follow the depenalization model, the decriminalization model, or a mixture of the two systems.⁶⁶

The success of the Portuguese model over the last two decades indicates that personalized, custom approaches to treatment leads to a higher rehabilitation rate than traditional measures.⁶⁷ When Portugal decriminalized all drugs in 2001, the government viewed the epidemic as a medical issue; it was not perceived as something that could be resolved through the penal system.⁶⁸

⁵⁸ *See id.*

⁵⁹ *See* Kanya Bennett, *The First Step Act was Exactly that, a First Step. What Comes Next?*, ACLU (Oct. 25, 2019), <https://www.aclu.org/news/smart-justice/the-first-step-act-was-exactly-that-a-first-step-what-comes-next>.

⁶⁰ *See* Christopher Moraff, *Can Europe Offer the U.S. a Model for Prison Reform?*, NEXT CITY (June 19, 2014), <https://nextcity.org/daily/entry/notorious-housing-projects-cabrini-green-queensbridge-bosquets>.

⁶¹ *See* Aleem, *supra* note 1.

⁶² *Id.*; Ackermann et al., *supra* note 45.

⁶³ Aleem, *supra* note 1.

⁶⁴ RAM SUBRAMANIAN & ALISON SHAMES, VERA INST. OF JUST., SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS: IMPLICATIONS FOR THE UNITED STATES 7 (2013), <https://www.prisonpolicy.org/scans/vera/european-american-prison-report-v3.pdf>.

⁶⁵ Ackermann et al., *supra* note 45.

⁶⁶ *See* Blakinger, *supra* note 23; *see also* Aleem, *supra* note 1; Ackermann et al., *supra* note 45.

⁶⁷ *See* Ackermann et al., *supra* note 45.

⁶⁸ *Id.*

Rather than being forced into jailtime, those found with drugs would be assigned to a panel consisting of a legal advisor, social worker, and psychologist.⁶⁹ After individuals met with their treatment team for the first time, the panel would create a customized plan and implement treatment for those struggling with drug dependency.⁷⁰ The Portuguese government theorized that those with abuse issues hide their addiction due to fear of incarceration; therefore, the result of decriminalizing drugs would hypothetically encourage addicts to seek help for their issues.⁷¹ This explanation justified moving to a more medically-focused approach to rehabilitation. Further, taxpayers would only be paying for the treatment of drug abuse as opposed to both treatment and incarceration.⁷²

Despite the skepticism that this move first generated from both domestic and worldwide critics, a report by the Cato Institute in Washington, D.C. revealed in 2009 that the number of people in Portugal seeking treatment for abuse more than doubled from 2001 and rates of illegal drug use and HIV infections in teenagers significantly dropped.⁷³ Another benefit resulting from the change in policy was that law enforcement resources and manpower were redirected towards drug smuggling and distribution rather than minor possession offenses.⁷⁴ Although Spain and Portugal both decriminalized possession of all drugs, Portugal has experienced a much stronger positive response to the change in policy.⁷⁵ The concentration on user treatment and civil fines has particularly decreased hard drug use in Portugal, whereas Spain has not experienced that same success.⁷⁶ This may be a result of the decentralization of government in Spain and the susceptibility of Spanish borders to drug smuggling from Northern Africa.⁷⁷

While Portugal's success may provide a blueprint for reform in some countries, it likely would not work in the United States.⁷⁸ Portugal is home to fewer people than the population of Ohio and government infrastructures are immeasurably different.⁷⁹ Some experts have also theorized that the success

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *See id.*

⁷⁶ *Id.*

⁷⁷ *See* Anabel Hernandez, *Southern Spain: The European drugs gateway*, DW (Nov. 22, 2019), <https://www.dw.com/en/southern-spain-the-european-drugs-gateway/a-51377098>; *see also* Quino Petit, *How Spain is losing the war against the drug trade in the south*, EL PAÍSEL PAÍS (July 28, 2017), https://english.elpais.com/elpais/2017/07/26/inenglish/1501081876_679236.html?rel=mas.

⁷⁸ Ackermann et al., *supra* note 45.

⁷⁹ *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/OH> (last visited Oct. 10, 2020);

is more a result of the timing of their change in policy at the turn of the century rather than the actual implementation of policy.⁸⁰ This is due to the cyclical nature of drug epidemics.⁸¹ Regardless, nearly every European country has a lower recidivism rate than that in the United States.⁸²

C. The Punitive Model in Several Asian Countries Exacerbates the Dehumanizing Elements of the Flawed American System and Leaves No Room for Restorative Rehabilitative Measures

Countries in the Eastern hemisphere tend to treat drug offenders more harshly than Westernized societies.⁸³ Although the statistics on percentage of incarcerated individuals are not as easily accessible as in the United States, prisoners that endure time in these Asian countries' prisons willingly share their experiences.⁸⁴ As is true in European prisons, prisoners are not differentiated by the severity of the crime.⁸⁵ However, penal systems in Asian nations typically follow the punishment model.⁸⁶ Although some of these countries boast lower recidivism rates as a result of their harrowing prison programs, this can likely be attributed to the longevity of sentences and the willingness of former inmates to leave the jurisdiction after release.⁸⁷

In several southeastern Asian countries, drug offenders are often forced to pay excessive fines, serve life sentences, or even face the death penalty.⁸⁸ In Malaysia, those who test positive for illicit substances are sentenced to a mandatory minimum of a year of treatment and traffickers are sentenced to death.⁸⁹ Singapore is similarly severe in its drug policy.⁹⁰ Possessing even minor amounts of drugs can lead to fines of \$10,000 or more in addition to a prison sentence of ten years; comparable to Malaysia, those found with

Portugal Population, WORLDOMETER, <https://www.worldometers.info/world-population/portugal-population/> (last visited Oct. 10, 2020).

⁸⁰ See Ackermann et al., *supra* note 45.

⁸¹ *Id.*

⁸² See Aleem, *supra* note 1.

⁸³ See, e.g., *Penalties for Drug-Related Crime in Asia*, CNN (May 5, 2009), <http://edition.cnn.com/2009/WORLD/asiapcf/05/05/asia.drug.offence.penalties/>.

⁸⁴ *How Inmates in Chinese Prisons are Forced to Make the World's Christmas Decorations*, INDEPENDENT (Dec. 22, 2018), https://www.independent.co.uk/news/long_reads/china-prisons-christmas-decorations-supply-chain-forced-labour-torture-a8692776.html [hereinafter *Inmates in Chinese Prisons*].

⁸⁵ See *id.*

⁸⁶ See Ackermann et al., *supra* note 45.

⁸⁷ See CAROLYN W. DEADY, PELL CTR. FOR INT'L RELS. & PUB. POL'Y, *INCARCERATION AND RECIDIVISM: LESSONS FROM ABROAD* 1–2 (2014), http://www.antonio-casella.eu/nume/Deady_march2014.pdf.

⁸⁸ Ackermann et al., *supra* note 45.

⁸⁹ *Id.*

⁹⁰ See *id.*

higher amounts of drugs are also subject to the death penalty.⁹¹ Vietnam is notoriously strict in its rehabilitative measures. When an individual is caught taking drugs in Vietnam, they are often sent into forced labor at rehabilitation centers.⁹² Their government's version of treatment would be considered torture by much of Western society. Those found with narcotics could also be handed a death sentence.⁹³

In China, prisons are used to house convicted murderers on death row or petty criminals, and even those that are arbitrarily detained without trial for crimes described as "civil disobedience."⁹⁴ Once inside a Chinese prison, incarcerated individuals are forced into labor and torture to produce a majority of the Christmas lights, Christmas cards, holiday decorations, and other Western products that are later sold and provided to brands in the United States and Europe.⁹⁵

A man named Stuart Foster, a sociology professor from South Carolina, was detained for nine months in the Baiyun Detention Center.⁹⁶ He was detained without trial when he was accused of fraud and confined to a room with thirty other prisoners with nothing to sleep on other than the concrete floor.⁹⁷ His roommates' charges spanned from minor drug charges and pick-pocketing to major crimes like murder and rape.⁹⁸ He and his cellmates would work for ten hours a day creating festive holiday decorations that would be sent out around the world.⁹⁹ He recalls when guards found a prisoner not working hard enough, they would: (1) deny the prisoner food or (2) chain the prisoner to the floor for hours or days at a time.¹⁰⁰ Foster believes that there would be no forced labor in Chinese prisons without the continuation of American consumers purchasing Christmas lights and decorations year after year.¹⁰¹

Japanese prisons are equally stringent in their policies.¹⁰² One such example is Fuchu Prison, a penitentiary in a Tokyo suburb that is notorious for housing foreign offenders from over forty countries in addition to members

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Inmates in Chinese Prisons*, *supra* note 84.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Brutal Realities of Prison in Japan*, GAIJINASS, <https://gaijinass.com/2017/03/30/brutal-realities-of-prison-in-japan/> (last visited Oct. 5, 2020).

of the infamous Yakuza gang.¹⁰³ When prisoners arrive at Fuchu Prison, they are sorted into specialized programs customized to their individual needs for rehabilitation and live in cells that house anywhere between six and twelve inmates.¹⁰⁴ Inmates are beaten and strangled for failing to march in a manner mandated by the correctional officers.¹⁰⁵ Those who are not following orders are punished by: having their food reduced for a week; being subjected to minor solitary confinement over a period of two months (minor solitary confinement consists of being told to sit for twelve hours a day without moving, stretching, or having routine bathroom breaks); or major solitary confinement for a period of up to seven days (major solitary confinement being when prisoners are kept in complete darkness and absolute silence without bedding for days at a time).¹⁰⁶

These harsher approaches to rehabilitation in Asian countries are questionable methods for humanitarian and psychological reasons.¹⁰⁷ While Japan's recidivism rate remains lower than the United States' (forty-three percent and fifty-two percent respectively),¹⁰⁸ the more punishing form of imprisonment affects the individual on a deeper level than would initially be perceived.¹⁰⁹ Subjecting someone to intense physical punishment over a long period of time, as incarcerated individuals often are in these countries, leads to psychological trauma after release.¹¹⁰ Further, the exposure to beatings and other physical abuse inflicted on prisoners may lead to a higher propensity for violent behavior after being released.¹¹¹

III. The United States Should Amend its Restorative Programs for Minor Drug Offenders to Incorporate Customized Behavioral Measures

In the United States, roughly two of every three individuals released from prison are rearrested within three years and that number increases to three of every four within a five-year period.¹¹² Out of all the prisoners that are

¹⁰³ See, e.g., *id.*

¹⁰⁴ See *id.*

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*

¹⁰⁷ See generally *Prison Conditions in Asia*, H.R. WATCH, <https://www.hrw.org/legacy/advocacy/prisons/asia.htm> (last visited Oct. 5, 2020) (noting poor conditions and degrading treatment in Asian penitentiary systems lead to an international investigation into Asian prison systems).

¹⁰⁸ See DEADY, *supra* note 87.

¹⁰⁹ Liji Thomas, *Prisoner Post Traumatic Stress*, NEWS-MEDICAL (Feb. 27, 2019), <https://www.news-medical.net/health/Prisoner-Post-Traumatic-Stress.aspx>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² MATTHEW R. DUROSE ET AL., BUREAU OF JUST. STAT., NCJ244205, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010, at 1

released from American prisons every year, almost two-thirds return.¹¹³ This is a result of employment discrimination and lack of acceptable housing for inmates who are released from both state and federal prisons.¹¹⁴ The current approach for rehabilitating drug offenders in the United States is flawed and impractical. It should be restructured to focus on a collaborative approach between the criminal justice and medical fields with attention to the psychological and environmental factors of addiction.

A. *A. The Current Approach to Rehabilitation of Drug Offenders in the United States Lacks the Necessary Collaborative Approach Between the Criminal Justice System and Medical Field*

Research consistently demonstrates that minor drug convictions fail to help prevent drug abuse.¹¹⁵ A possible theory on why doing time in the penal system fails to reduce drug use is that simply subjecting an individual with an issue to confinement without access to rehabilitative support does not actually address the physical or psychological dependence on the substance.¹¹⁶ Furthermore, the punishment often does not fit the crime. Because of outdated sentencing laws, time served for minor drug offenses is often disproportionate, inefficient, and ineffective.¹¹⁷ For example, the average time served for drug offenses increased from 1.6 years in 1981 to 1.9 years in 2000.¹¹⁸ The increased funds spent on the American criminal justice system often results in a reduction in money spent on educating users or potential users of the effects and repercussions of drug abuse.¹¹⁹ Research has found that those who entered drug treatment programs either beginning in prison or after release were twenty-four percent less likely to become repeat criminal offenders.¹²⁰

Another theory why the incarceration of drug users fails to reduce drug use is that the individual is only being temporarily restrained from access of the supplier; this is a result of there being a larger illicit drug market than what the American penal system can contain as users return to old habits

(2014), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986%20>.

¹¹³ Aleem, *supra* note 1.

¹¹⁴ *Id.*

¹¹⁵ See Adam Gelb et al., *More Imprisonment Does Not Reduce State Drug Problems*, PEW CHARITABLE TRS. (Mar. 8, 2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.

¹¹⁶ See Nicolas Clark et al., *Public health alternatives to incarceration for drug offenders*, 23 E. MEDITERRANEAN HEALTH J. 222, 223 (2017).

¹¹⁷ *See id.*

¹¹⁸ See NAT'L RSCH. COUNCIL ET AL., *supra* note 3, at 53, 152 (noting that sentences became more punitive largely because of the implementation of Federal Sentencing Guidelines in 1986).

¹¹⁹ See Clark et al., *supra* note 116.

¹²⁰ *See id.* at 224.

upon release from prison.¹²¹ More than half of all individuals incarcerated for drug-related offenses will return to prison at some point whereas only thirty-one percent of inmates imprisoned for other crimes are reincarcerated.¹²² At least thirty countries have changed their laws to decriminalize some or all drugs.¹²³ In most cases, this has resulted in the reduction of incarcerated individuals, a redirection of policing resources to more serious crimes, and a reduction of racial disparity in incarceration rates.¹²⁴ Although unquantifiable, it also has led to better relationships between communities and local law enforcement.¹²⁵ This is likely because the decriminalization of drugs fosters a community in which people are less afraid of accessing treatment rather than fear exclusion from their families and social circles.¹²⁶

B. Rehabilitative Programs Implemented by the Criminal Justice System in the United States Do Not Consider Psychological and Environmental Effects of Addiction

Of those incarcerated for drug-related crimes in the United States, over half of them fall within the criteria established by the Diagnostic and Statistical Manual of Mental Disorders IV for drug abuse or dependence.¹²⁷ In other words, prisoners brought in for these crimes are four times more likely than men and almost five times more likely than women to have drug abuse or dependence issues than in standard communities around the United States. When an individual is convicted for a drug-related offense, a judge typically sentences them to one or more of the following: a fine; community service; incarceration in local (state) prison for a year or less on misdemeanors, or probation.¹²⁸ If an individual ends up not serving the full sentence in prison, they are often released to parole supervision for the remainder of their sentence.¹²⁹ Because many repeat offenders are uneducated with underlying mental health issues and deal with unresolved traumas, prisoners develop a sense of hopelessness.¹³⁰ One prisoner describes the phenomenon as such:

¹²¹ See NAT'L RSCH. COUNCIL ET AL., *supra* note 3, at 146, 227.

¹²² Clark et al., *supra* note 116; see also NAT'L RSCH. COUNCIL ET AL., *supra* note 3, at 206 ("Simply incarcerating someone does not constitute effective treatment; without medical treatment, individuals are prone to relapse to drug use and too often to criminal behavior that results in reincarceration.")

¹²³ See Clark et al., *supra* note 116, at 224.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Belenko et al., *supra* note 52.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ ROGER H. PETERS & HARRY K. WEXLER, U.S. DEP'T OF HEALTH & HUM. SERVS., SUBSTANCE ABUSE TREATMENT FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM: A TREATMENT IMPROVEMENT PROTOCOL TIP 44, at 191 (2005), <https://www.ncbi.nlm.nih.gov/books/NBK64137/>.

We internalize the separation and removal, the assumed less-than status, and hold up the idiotic and vainglorious pride we pretend to, like clowns' make-up, hide our shame. Some of us profess to be immune to the battering we endure; many of us deny it happening in spite of the obvious bruises. In the end, the vast majority of us become exactly who we are told we are: violent, irrational, and incapable of conducting ourselves like conscious adults. It is a tragic opera with an obvious outcome.¹³¹

There are significant challenges with providing treatment to incarcerated individuals.¹³² Due to short length of stay for a good portion of prisoners and a high turnover rate, the most readily available and applicable form of rehabilitation is referral to treatment after being released from prison.¹³³ Unfortunately, most of those referred to a treatment program upon release likely never follow up with the recommendation.¹³⁴ Another issue with repeat drug offenders is the fact that they already have some type of dependency that is either formed prior to arriving in prison or after getting to prison.¹³⁵ It has been found that fewer than ten percent of individuals incarcerated in America have access to treatment services for substance abuse issues at any given time.¹³⁶ Perhaps the greatest measures to rehabilitate those with addiction issues can be taken through medical treatment with an emphasis on continued care.¹³⁷

Another challenge that the system faces is that certain drugs, particularly stimulants, have psychopharmacological effects on users that significantly increase the propensity for violent crime.¹³⁸ Due to the wide-ranging severity of the effects of all types of drugs, it would make sense to implement a uniform, consistent system to address all types of drug users no matter the level

¹³¹ LARSON DORAN, *FOURTH CITY: ESSAYS FROM THE PRISON IN AMERICA* 184 (2014).

¹³² PETERS & WEXLER, *supra* note 130, at 4.

¹³³ See Clark et al., *supra* note 116, at 226–27.

¹³⁴ See *id.* at 226.

¹³⁵ See NAT'L RSCH. COUNCIL ET AL., *supra* note 3, at 204, 206. In 2004, seventeen percent of state prisoners and eighteen percent of federal inmates reported that “they committed their current offense to obtain money for drugs,” and in 2006, fifty-three percent of state prison inmates had a drug dependency or abuse issue and forty-five percent of federal prison inmates had a drug dependency or abuse issue. *Id.*

¹³⁶ See *id.* at 218. “Drug treatment administered by the criminal justice system has taken several approaches: assignment to interventions within the community, referral to drug courts where treatment is merged with judicial oversight, treatment while incarcerated within prisons and jails, and/or participation in reentry programs when prisoners transition from prison back to the community...Drug treatment is most effective through proper routine screening, diagnosis of the type of substance use disorder and matching patients to appropriate evidence-based practice that continues beyond incarceration into the community.” *Id.*

¹³⁷ See *id.* at 197. “Available research indicates that, when carried out properly, certain forms of cognitive-behavioral therapy, drug treatment, academic programs, and vocational training appear to reduce recidivism. Fewer studies have demonstrated positive outcomes for prison work programs (such as correctional industries) and ‘life skills’ programs.” *Id.*

¹³⁸ Belenko et al., *supra* note 52.

of dependency; this would lead to a lower recidivism rate for minor drug offenses and a higher rehabilitation success rate.¹³⁹ Under the risk-needs-responsivity system, research has demonstrated that effective treatment incorporates four main factors: offering a realistic assessment of risk with recurring evaluation; prioritizing resources for drug abusers with a higher risk; prioritizing interventions for those prone to criminal behavior and poor decision-making judgment; and offering a customized treatment plan based on motivational factors, temperament, gender, and culture.¹⁴⁰

C. Rehabilitative Programs in European Countries that Focus Generally on Criminal Behavior Can Provide a Blueprint for How to Address Minor Drug Offenders in the United States

In Sweden, the recidivism rate is around forty percent.¹⁴¹ In Norway, the recidivism rate is only an astounding twenty percent.¹⁴² Criminal justice experts believe this is due in part to prisoners in closed European prisons having access to things like pool tables, table tennis, and aquariums in prisons of Scandinavian nations.¹⁴³ The greatest differentiator from American prisons is that correctional officers serve in a rehabilitative capacity in addition to a more traditional, correctional only role.¹⁴⁴ Every prisoner has a relationship with a “contact officer” that helps monitor progress for the prisoner’s return to society.¹⁴⁵ In addition to this being beneficial for inmates’ progress, this also helps to avoid job-related hazards that corrections officers in the United States frequently encounter.¹⁴⁶ Due to stress, hypertension, alcoholism, suicide, and other factors, the average life expectancy of an American corrections officer is only fifty-nine years old.¹⁴⁷ The rehabilitative purpose endowed on contact officers in European systems lends more purpose and fulfillment to what it means to be a correctional officer.¹⁴⁸

Another noticeable difference is that these prisons prioritize behavioral regulation. Whereas prisons in the United States have infrastructures that

¹³⁹ *Id.* at 1–3.

¹⁴⁰ *Id.* at 3–4.

¹⁴¹ Aleem, *supra* note 1.

¹⁴² DEADY, *supra* note 87, at 3.

¹⁴³ Aleem, *supra* note 1.

¹⁴⁴ *Id.*

¹⁴⁵ See Doran Larson, *Why Scandinavian Prisons are Superior*, THE ATLANTIC (Sept. 24, 2013), <https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/>.

¹⁴⁶ *See id.*

¹⁴⁷ *Id.*

¹⁴⁸ *See How Norway Turns Criminals Into Good Neighbours*, BBC (July 6, 2019), <https://www.bbc.com/news/stories-48885846> (describing how officers participate in activities with inmates and view themselves as role models and mentors).

seemingly dehumanize incarcerated individuals, prisoners in Europe are often provided with rooms akin to college dormitories.¹⁴⁹ The closed prisons in Scandinavian countries operate with humanist ideals that are not present in American penitentiaries, prioritizing open space and collaborative environments over seclusion and an individualist mentality.¹⁵⁰ While there are plenty of critics that believe this system of punishment is naïve in the assumption that incarcerated individuals are capable of change and improvement, crime rates remain lower than those in the United States while committing prisoners to shorter sentences than one would be expected to serve in America for the same crime.¹⁵¹

One intangible difference from European systems is the psychological effects that open prisons have on the prisoners.¹⁵² “Open prisons” are setup in a way that allow the prisoner to maintain a role in society; they are free to visit with friends and family, maintain a job, and live out of a home.¹⁵³ A regular citizen would not be able to identify these prisoners while going about their regular routine.¹⁵⁴ Whether an individual is incarcerated for a first-time violent crime or for a drug offense, prisoners in open European prisons identify the privilege of visiting with family and friends.¹⁵⁵ The recognition that these dormitory-style “cells” are not their home reinforces the fact that they are only one misstep away from a real jail cell in a traditional, closed prison setup.¹⁵⁶ While certain communities in the United States have a tangential approach to this system with half-way houses, these programs only offer retributive opportunities to those dealing with abuse issues or previously incarcerated individuals.¹⁵⁷ The implementation of open prison systems in the United States could be an opportunity to give those indicted for minor drug offenses a second chance.

CONCLUSION

While the First Steps Act that passed through Congress in December 2018 was a necessary and evolving piece of legislation for the American criminal

¹⁴⁹ Aleem, *supra* note 1.

¹⁵⁰ See Larson, *supra* note 145.

¹⁵¹ Aleem, *supra* note 1.

¹⁵² See Larson, *supra* note 145 (discussing the rehabilitative role of Nordic prison officers and explaining the profound effect this has on prisoners' progress toward returning to the real world).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Aleem, *supra* note 1.

¹⁵⁶ Larson, *supra* note 145.

¹⁵⁷ See Chris Elkins, *Halfway Houses*, ADVANCED RECOVERY SYS. (Feb. 27, 2020), <https://www.drugrehab.com/recovery/sober-living-homes/halfway-houses> (discussing halfway houses emphasis on people reentering society, as opposed to the European model which focuses on maintaining a role in society).

justice system, it is only the first of several amendments that should be made as it pertains to minor drug offenses. The traditional drug sentencing laws in the United States are outdated and unfair to several categories of criminal offenses, particularly as they pertain to minor drug offenders.¹⁵⁸ Current rehabilitative programs in the United States are moving in the right direction for how incarcerated individuals are reintegrated into society, but measures need to be taken to further advance drug sentencing and treatment reform.¹⁵⁹ While the current system for rehabilitating those convicted of minor drug offenses works to some extent, it needs to be reexamined to consider behavioral factors with a more personalized approach to treatment.¹⁶⁰ This type of approach has been implemented in several European nations and incorporates several intangible benefits that the American system does not experience or account for when treating minor drug offenders.¹⁶¹ The primarily punitive model that several other countries in the eastern hemisphere follow intensifies the dehumanizing elements of the flawed American system and does not consider more promising restorative measures.¹⁶²

The current approach to rehabilitation of drug offenders in the United States omits any meaningful connection between the efforts of the criminal justice field in the penal system and the medical field once reintroduced to society.¹⁶³ Additionally, those same programs need to further develop an understanding as it pertains to the psychological and environmental effects of addiction.¹⁶⁴ While rehabilitative programs and the criminal justice system do not focus exclusively on drug users and abusers, their approach to rehabilitation could be used as an outline for possible changes in how minor drug offenders and those battling substance issues are dealt with in the United States.¹⁶⁵

Given the success of varying forms of drug treatment and rehabilitation within criminal justice systems around the world, the United States Federal Bureau of Prisons would benefit from implementing a trial program for minor drug offenses similar to the open prison systems effected across Northern

¹⁵⁸ See Clark et al., *supra* note 116.

¹⁵⁹ See Elflein, *supra* note 33 (showing an increase in the number of facilities over time).

¹⁶⁰ See NAT'L INST. ON DRUG ABUSE, PRINCIPLES OF DRUG ADDICTION TREATMENT: A RESEARCH BASED GUIDE 16–17 (3d ed. 2018), <https://www.drugabuse.gov/download/675/principles-drug-addiction-treatment-research-based-guide-third-edition.pdf?v=74dad603627bab89b93193918330c223>.

¹⁶¹ DEADY, *supra* note 87, at 3.

¹⁶² See Ackermann et al., *supra* note 45.

¹⁶³ See SUBSTANCE ABUSE MENTAL HEALTH SERV. ADMIN., REENTRY RESOURCES FOR INDIVIDUALS, PROVIDERS, COMMUNITIES, AND STATES 1 (2016), https://www.samhsa.gov/sites/default/files/topics/criminal_juvenile_justice/reentry-resources-for-consumers-providers-communities-states.pdf.

¹⁶⁴ See Ingrid A. Binswanger et al., *Return to drug use and overdose after release from prison: a qualitative study of risk and protective factors*, ADDICTION SCI. & CLINICAL PRAC., Mar. 2012, at 6–7.

¹⁶⁵ See NAT'L RSCH. COUNCIL ET AL., *supra* note 3, at 9.

European nations. By redefining the traditional role of the correctional officer in American penitentiaries to incorporate a restorative function, American society can begin to reintegrate those with substance abuse issues into society with a higher probability of success and a lower recidivism rate.

As a result of recent policy changes in several jurisdictions across the United States, it appears that marijuana will be legalized or at the minimum decriminalized federally at some point over the next ten years.¹⁶⁶ This will likely result in thousands of American citizens seeking retribution for prior marijuana possession convictions, including those that will be incarcerated for marijuana-related crimes at the time of decriminalization.¹⁶⁷ The handling of this impending situation will be of interest, as no other country in the world has decriminalized marijuana with as large a population as the United States.¹⁶⁸ While there is the possibility that the government will elect to not retroactively pardon marijuana possession charges, it will likely be a main point of contention and a relevant topic to explore further as American policy changes.¹⁶⁹

¹⁶⁶ See, e.g., Tyler Clifford, *Canopy Growth CEO expects weed will be legalized federally by 2022*, CNBC MAD MONEY (June 16, 2020), <https://www.cnbc.com/2020/06/16/canopy-growth-ceo-expects-weed-will-be-legalized-federally-by-2022.html> (“The CEO of a Canadian cannabis company is expecting that the United States is headed for cannabis legalization in the next two years.”).

¹⁶⁷ See, e.g., Sophie Quinton, *In These States, Past Marijuana Crimes Can Go Away*, PEW CHARITABLE TRS. (Nov. 20, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/11/20/in-these-states-past-marijuana-crimes-can-go-away> (discussing efforts to reduce or eliminate marijuana possession charges in California after legalization.).

¹⁶⁸ See Aisha Hassan, *All the places in the world you can (legally) smoke weed*, QUARTZ (Oct. 17, 2018), <https://qz.com/1427177/where-is-marijuana-legal-around-the-world/> (stating Canada is currently the largest country to legalize marijuana).

¹⁶⁹ See Mike Adams, *Not All Marijuana Offenses Are Pardonable As Cannabis Reform Proceeds*, FRESH TOAST (Mar. 19, 2020), <https://thefreshtoast.com/cannabis/not-all-marijuana-offenses-are-pardonable-as-cannabis-reform-proceeds/>.