

**DRUG ENFORCEMENT
AND POLICY CENTER**

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**The Role of Age and Race in
Moderating the Justice-Related Benefits
of Cannabis Reform**

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EXECUTIVE SUMMARY

This study sought to determine the impact of cannabis decriminalization and legalization on legal system referrals to treatment for cannabis use. Using staggered difference-in-difference analysis on data from the Treatment Episode Dataset-Admissions (TEDS-A) for the years 2007-2018, we found that decriminalization is associated with a decline in justice system cannabis treatment referrals for white adults, white juveniles, and Hispanic/Latino adults, but not for Black adults, Black juveniles, or Hispanic/Latino juveniles. This finding is consistent with prior research demonstrating that minority and youth populations are often excluded from the justice-related benefits of cannabis reform. Contrary to expectations, legalization was not associated with a decline in justice system cannabis treatment referrals for any population of study. One explanation is that declines in justice system referrals precipitated legalization. Taken together, these findings imply that law reform is not sufficient to end the causal association between cannabis use and legal involvement, and that a combination of additional legislative changes along with broader shifts in the legal system's attitude toward and treatment of cannabis use, as well as a state's social and political culture, may be necessary to fully dismantle the legacies of marijuana prohibition.

BACKGROUND

Despite the rapid advancement of cannabis reform in recent years, cannabis-related arrests still account for roughly a third of drug arrests nationwide.¹ Though fewer people are incarcerated solely for marijuana possession now than a decade ago, the justice system continues to surveil citizens for marijuana use through such mechanisms as probation, diversionary programs, and mandated drug treatment.² The criminal justice system remains the largest referral source to treatment for marijuana use, accounting for half (50.7%) of cannabis treatment referrals in 2018. Black and Hispanic/Latino individuals were overrepresented in cannabis treatment referrals, accounting for 33.7% and 18.9% of admissions respectively. For comparison, Black individuals comprised 19.5% and Hispanic/Latino individuals comprised 13.7% of total treatment referrals, suggesting greater overrepresentation in cannabis treatment compared to treatment for other drugs.³

The continuation of arrests, legal monitoring, and disparate enforcement for marijuana possession and use vitiates the promises of reform to end prohibition and the systemic inequities it propagates. This study examined the extent to which legal system surveillance for marijuana use continues after decriminalization and legalization by analyzing justice system referrals to treatment for cannabis use. Given that Black and Hispanic/Latino individuals are disproportionately subjected to legal system surveillance and that cannabis arrest disparities have persisted post-reform, we expect that any declines in justice system referrals to treatment for cannabis use due to decriminalization or legalization will be less significant for minority youth and adults.⁴

¹ Federal Bureau of Investigation. (2020). 2019 Crime in the United States, <https://bit.ly/34RPumF>

² Bureau of Justice Statistics. (2019). Arrest rates by offense and age group, 2019. Statistical Briefing Book, <https://bit.ly/376Zvk7>

³ Substance Abuse and Mental Health Services Administration. (2020). *Treatment Episode Data Set (TEDS) 2018 Admissions to and Discharges from Publicly Funded Substance Use Treatment*. Department of Health and Human Services.

⁴ Firth, C.L., et al. (2020). Implications of cannabis legalization on juvenile justice outcomes and racial disparities. *American Journal of Preventive Medicine*, 58(4), 562-569. Lilley, D.R., et al. (2019). Drug courts and arrest for substance possession: Was the African American community differentially impacted? *Crime & Delinquency*, 65(3), 352-374. Plunk, A.D., et al. (2019). Youth and adult arrests for cannabis possession after decriminalization and legalization of cannabis. *JAMA Pediatrics*, 173(8), 763-769. Sanchez, H.F., et al. (2020). Racial and gender inequities in the implementation of a cannabis criminal justice diversion program in a large and diverse metropolitan county of the USA. *Drug and Alcohol Dependence*, 216, 1-7.

METHODS

We analyzed data from the Treatment Episode Dataset-Admissions (TEDS-A), compiled by the Substance Abuse and Mental Health Services Administration (SAMHSA) for the period 2007-2018. TEDS-A provides information on admissions to publicly funded substance use treatment facilities and includes data on treatment referral source, primary substance for referral, and client demographics.

Our independent variables are state-level legalization and decriminalization of cannabis. Legalization is defined as the removal of all civil and criminal penalties for possession as well as the authorization of cannabis sales and/or individual home plant cultivation. Decriminalization is defined as removal of criminal penalties for possession of small amounts of cannabis. Policy change was operationalized as a dichotomous variable for each year, where “1” denotes legalization or decriminalization and “0” indicates no change.

Our main dependent variables are state-level rates of justice system referrals to treatment for cannabis as the primary substance of use. We calculated separate state-level justice system referral rates for Black, Hispanic/Latino, and white adults (18 and older) and for Black, Hispanic/Latino, and white juveniles (12- to 17-years old). Control variables are 1) percent white population; 2) rate of substance treatment facilities per 10,000 residents; 3) percent uninsured population; 4) government ideology; and 4) an index for socioeconomic disadvantage that includes measures for household poverty rate, percentage of female-led households with children, percentage of individuals with a bachelor’s degree or higher, and percentage of owner-occupied housings.

We used staggered difference-in-difference for analysis. Staggered difference-in-difference is used when a policy change is introduced at different points in time across the study period. We ran our analyses with and without control variables to better understand the sensitivity of our results. Each difference-in-difference model included fixed effects and standard errors were clustered at the state level.

RESULTS:

- The sample population is 49.5% white, 34.1% Black, and 20.2% Hispanic/Latino. Females comprise 20.4% of the sample and juveniles aged 12-17 account for 31.3% of the sample.
- For the study period (2007-2018), the average justice system referral rate for the total population was 2.92 per 10,000 residents. The average white referral rate was 2.02 per 10,000 residents. The Hispanic/Latino rate was 3.81 per 10,000 and the Black referral rate was 9.15 per 10,000 residents.
- Over the study period Black juveniles had the highest average referral rate (49.27 per 10,000), followed by Hispanic/Latino juveniles (28.78), Black adults (15.58), Hispanic/Latino adults (5.83), white adults (3.46), and white juveniles (1.80).
- The total number of justice system-referred cannabis treatment admissions declined from 100,575 in 2007 to 55,913 in 2018 and peaked in 2009 at 117,598.
- The disparity between the average Black referral rate and the total population referral rate decreased from 7.73 per 10,000 persons in 2007 to 4.04 in 2018.
- There was significant heterogeneity in justice system referral rates across the states, with the South generally having lower referral rates and the Mountain West and plains states having higher referral rates.
- For the total population, neither decriminalization nor legalization was associated with a significant decline in

rates of justice system cannabis treatment referrals.

- Decriminalization was significantly and negatively associated with referrals per 10,000 residents for white adults ($p < .01$) and white juveniles ($p < .05$).
- Decriminalization was significantly associated with a decline in referrals for Hispanic/Latino adults ($p < .05$) but not for Hispanic/Latino juveniles.
- Referral rates for Black adults and Black juveniles were unaffected by decriminalization.
- Legalization was not associated with a decline in referrals for any population included in the study.

DISCUSSION:

- Cannabis decriminalization is associated with a decline in justice system referrals to treatment for cannabis use for white adults, white juveniles, and Hispanic/Latino adults.
- The absence of an association between decriminalization and declines in referral rates for Black adults and for Black and Hispanic/Latino juveniles partially confirms our expectation that minority populations and youth are excluded from the justice-related benefits of decriminalization.
- These findings are consistent with prior research finding that Black and youth populations are less likely to benefit from cannabis reform. The continued higher rates of cannabis treatment referrals for these populations may reflect the persistently higher likelihood these populations have for legal system involvement and for being arrested for cannabis-related offenses post-reform. When arrested and charged with non-cannabis offenses, legal system actors may be more likely to require Black adults and minority youth to undergo legally mandated drug treatment as a condition of probation or deferred adjudication.
- The lack of association between legalization and declining justice system referral rates was surprising, especially since past research has found it to be associated with a decrease in cannabis arrests.
- It is possible that because legalization of cannabis sales and purchases is limited to individuals 21 and up, the 18-20 population, which is disproportionately likely to be involved with the legal system, remains more subject to legally mandated drug treatment than older adults.
- It is also possible that declines in justice system referrals precipitated legalization. This hypothesis is consistent with prior research finding that declines in cannabis possession arrests preceded legalization by three years.⁵ This phenomenon implies that broader shifts in the legal system's attitude toward and treatment of cannabis use, as well as a state's social and political culture, may impact criminal justice outcomes just as much as if not more than a specific policy change.

LIMITATIONS:

- The TEDS-A dataset is reliant on the quality of individual state reporting, which is highly variable. TEDS-A also only captures publicly funded treatment admissions.
- State-level analyses does not account for local policy change; for example, in some prohibitionist states the

⁵ Sheehan, B.E., Grucza, R.A., & Plunk, A.D. (2021). Association of racial disparity of cannabis possession arrests among adults and youths with statewide cannabis decriminalization and legalization. *JAMA Health Forum*, 2(10).

most populous jurisdictions have implemented de facto decriminalization policies that could affect state-level treatment referral trends.

- States have enacted marijuana reform in a variety of ways and it is not known how different combinations of reform, such as first decriminalizing possession and then legalizing sales vs. transitioning directly from prohibition to legalization, might yield different results.
- Due to the nature of this study, we were not able to control for factors relating to the discretion of legal system actors to mandate individuals to cannabis use treatment.

CONCLUSION

This study assessed the impact of decriminalization and legalization on the occurrence of justice system referrals to treatment for cannabis use. We found decriminalization to be associated with a decline in justice system referrals to treatment for white juveniles and adults and Hispanic/Latino adults but not for Hispanic/Latino juveniles or Black adults and juveniles. Legalization was not significantly associated with justice system referrals in any of the models.

Further specification of adult age categories into those 18-20 and those 21 and older may yield different results. But our initial findings showing a lack of significant decline in justice system treatment referrals following legalization and following decriminalization for Black adults and Black and Hispanic/Latino juveniles indicate that reforms so far have not been sufficient to end the causal association between cannabis use and legal involvement. Given the collateral consequences of legal involvement and the time and cost impositions of treatment itself, the continuation of justice system surveillance based on the pretext of cannabis use post-reform is concerning. Our initial finding that rates of justice system referrals for Black adults and Black and Hispanic/Latino juveniles are unaffected by policy change suggests these populations continue to be disproportionately impacted by cannabis control policies. While some observers may argue that higher rates of legally mandated treatment for Black and Hispanic/Latino youth reflects an effort to connect disadvantaged populations with helpful resources, the adverse impacts of criminal justice involvement for adolescents and young adults are too extensive to justify this form of intervention. Rather than using the legal system to identify individuals in need of treatment, policymakers may instead invest in community-based prevention, treatment, and social assistance programs that do not threaten life-altering collateral consequences for non-engagement.

Our inquiry into the relationship between treatment referrals for cannabis use and cannabis policy reform adds to a growing body of literature examining the potential ways in which prohibition endures through various avenues, from continued arrests to discrimination in employment for off-duty cannabis use to disparate opportunities in nascent cannabis markets. Identifying areas of policy and practice still affected by prohibition after reform is critical to inform policymakers about what additional steps are necessary to effectively dismantle prohibition and its related harms. The rapidly changing landscape of marijuana reform also presents an opportunity for research to inform practice in real time, providing lessons to late-adopting states about best practices and helping already-reformed states improve current policy.