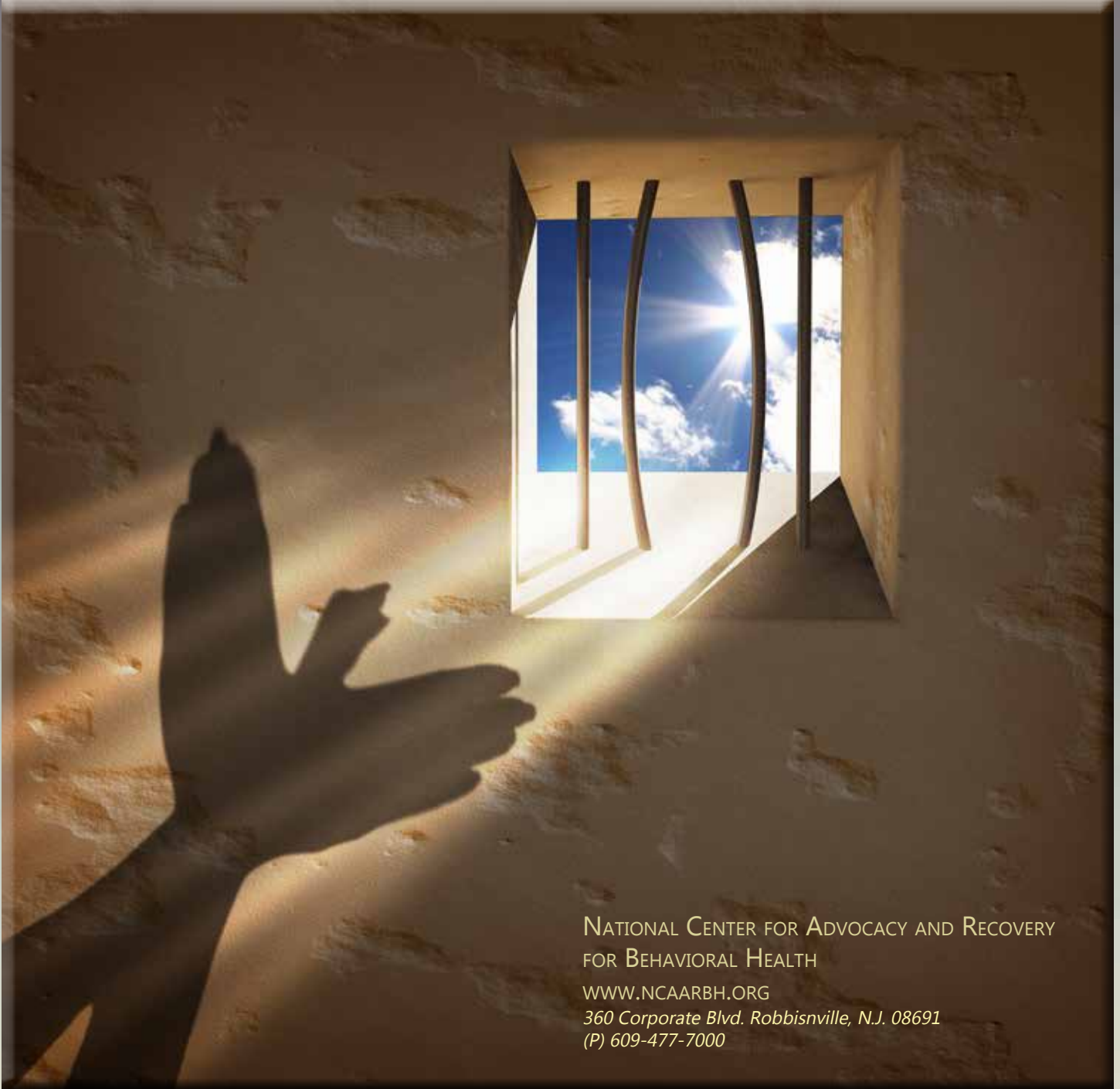


DECRIMINALIZATION IN NJ - RECOVERY, NOT PUNISHMENT



NATIONAL CENTER FOR ADVOCACY AND RECOVERY
FOR BEHAVIORAL HEALTH

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NCAAR-BH believes that behavioral health disorders are a public health concern that are both preventable and treatable, and that recovery can and does happen.

DECRIMINALIZATION IN NJ

Recovery, NOT Punishment

NCAAR-BH holds a position that supports decriminalization of possession of illicit substances for personal use. The stance is a carefully considered middle ground between the extremes of criminalization and legalization.

It is the position of NCAAR-BH that addiction is a chronic disease and that the most appropriate and effective way to prevent and treat this disease is with an approach rooted in public health, not criminal justice. NCAAR-BH further believes that the criminalization of addiction and the collateral sanctions that the criminal justice system attaches to convictions for drug offenses (such as drivers license suspensions, bars from receiving student loans, exclusions from certain professions and prohibitions against living in public housing) have often made it more difficult for recovering individuals to rejoin mainstream society. For these reasons, NCAAR-BH supports the decriminalization of the possession of illicit substances for personal use, and specifically a public health approach that consists of decriminalization, drug education, evaluation and referral to treatment if necessary. Our purpose and mission have a history dating back to the inception of the National Council on Alcoholism in 1944. Mrs. Marty Mann, the founder of that organization, from the beginning stated that there were three basic NCA concepts:

1. Alcoholism is a disease and the alcoholic is a sick person....
2. The alcoholic can be helped and is worth helping....
3. This is a public health problem and therefore public responsibility....

NCAAR-BH still strongly believes in those three concepts and they inform the mission and the policy positions that the organization takes on various issues pertaining to all addictive substances. In recent times, issues pertaining to the legalization of medical marijuana, or the general legalization of marijuana, have become increasingly debated. Over 40 states plus Washington, DC, have legalized medical marijuana and many states, including NJ have legalized the sale of marijuana as a recreational substance. This movement towards the legalization of marijuana has made it imperative that NCAAR-BH make clear its position on the criminalization of addictive behaviors so as not to confuse our support of decriminalization with that of total legalization. This movement towards legalization has polarized public opinion, making it important to stake out a position that is neither for the total criminalization of all addiction-related behaviors and activities on one hand, and the total legalization of all illicit drugs on the other.



Mrs. Marty Mann, Founder NCA

De-criminalization-(verb)

Removing criminal penalties
for drug use and possession.¹

-Drug Policy Alliance

The “War on Drugs,” initiated in the 1970s, has resulted in the criminalization of behaviors related to addictive symptoms or a possible Substance Use Disorder (SUD). It has gone beyond legal penalties for the sale and distribution of illicit substances. The mere possession and personal use of illicit substances has also been made a criminal offense. Recognizing that addiction is a chronic disease and a public health problem, NCAAR-BH cannot support the criminalization of SUD.

The reliance on criminal and collateral sanctions to punish addiction-related symptoms is counterproductive. This does not mean that other crimes related to addictive symptoms, or the sale and distribution of illicit substances, should not have criminal sanctions. That said, it must be noted that relatively small amounts of illicit drugs have led to distribution charges. **Behaviors limited to individual use should be considered part of the nature of addictive illness and should therefore be met primarily with public health, as opposed to a criminal justice response.**

Central to our mission is promoting recovery from an SUD. Sentencing laws have meant that individuals continue to be hampered by criminal records and collateral sanctions stemming solely from the possession and use of the substance to which they were addicted. This has had serious consequences for their ability to move forward and is a severe barrier to recovery and wellness. It has been shown that the ability to be engaged in productive employment is a major factor in successful recovery. Individuals with criminal records based solely on their actions while in active SUD face major barriers in obtaining employment and therefore have a more difficult time finding stable recovery. It is ironic that the “War on Drugs,” which was meant to end the drug problem, actually perpetuates it by introducing obstacles that make recovery less likely, and recidivism and continued use of illicit drugs more likely.

NCAAR-BH views the need for education, screening and referral for treatment if deemed clinically appropriate as a necessary part of any public health approach. In addition, a Recovery Oriented System of Care is believed to maximize long term recovery for those who suffer from an addictive illness.

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As of 2020, 29 countries/ jurisdictions have adopted 49 models with either statutory or de facto decriminalization of drugs.²

District Attorneys in Baltimore and San Francisco, for example, have announced they will no longer prosecute low-level drug use cases. California has passed legislation to downgrade felony drug possession convictions to misdemeanors.

Inspired by a model operating in Portugal, Oregon has enacted a decriminalization law that “defelonizes” its drug possession statutes. This was due to a public referendum rather than a legislative effort. Depending upon the amount in use, the individual is charged with a misdemeanor and assessed a \$100 fine. However, in lieu of a fine, the person may complete a health evaluation at an Addiction Recovery Center. Upon completion of a telephone assessment, the fine would be waived. If, after assessment, the client indicates a desire to address some, or all, of the underlying addiction issues they are facing, they shall be assisted in securing drug detox, and/or, treatment. Additionally, anyone given a summons for a drug possession disorderly conduct charge, shall be issued a written list of hotlines and other available social services, along with their availability. Incarceration shall not be imposed for either a failure to pay a fine, or for unsuccessfully completing a treatment program.

According to the NJ Department of Corrections, up to eleven percent of its present population has been jailed for drug use and/or possession. A decriminalization policy implementation would assist some people in jail or prison, as well as, many on probation, parole, or those no longer involved in the criminal justice system.



Additionally, it is expected that decriminalization will greatly reduce the costs of policing, arresting, adjudicating, and incarcerating drug users.

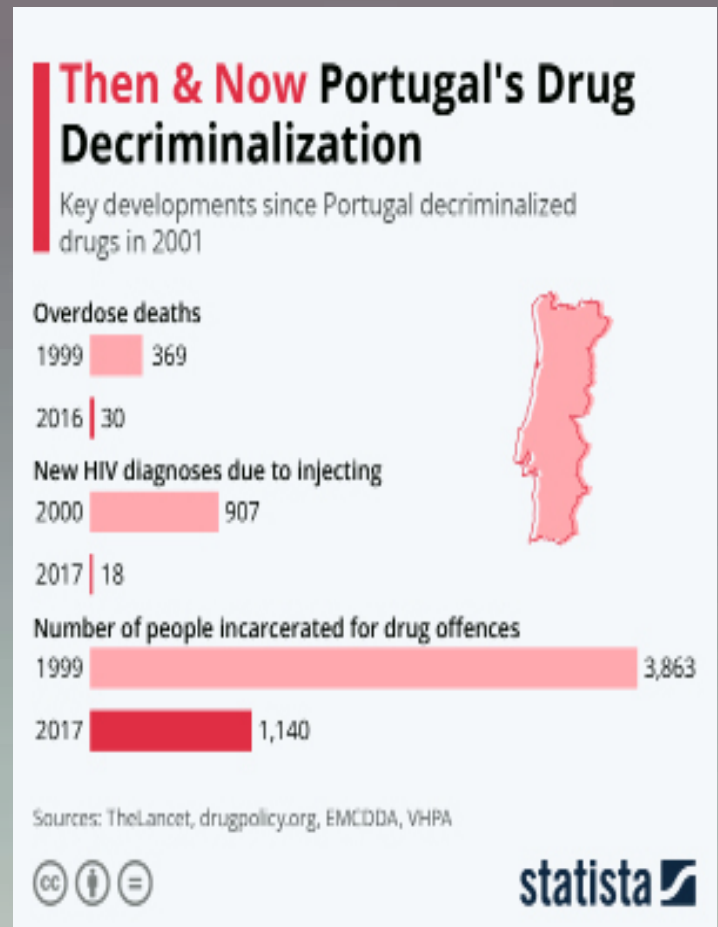
Criminalization of drug use has created many barriers to recovery. It is not enough to simply remove harsh criminal sanctions at a date to be determined. There is an obligation to repair some of the damage with expungement reform, along with diverting monies saved through the implementation of decriminalization to individuals, families, and communities injured by the failed War on Drugs.

In 2020, The New Jersey Governor and Legislature decriminalized adult possession of small amounts of psilocybin, 17 grams of hashish, and up to six ounces of marijuana. Decriminalizing the possession of all illicit drugs, and instead, devoting Garden State resources to those policies that promote the attainment and maintenance of long-term recovery from substance use disorder is the next logical step.

Decriminalization in Portugal: 20 years later

In 2001, Portugal adopted decriminalization policies. Over the past 20 years the occurrence of HIV, Hepatitis B and C are markedly down. "Drug use in schoolchildren has been consistently below the European average for the past twenty years."³

The social cost of the consumption of narcotic drugs and psychotropic substances decreased 18% since the adoption of the decriminalization policy, resulting in considerable savings for a country with notorious economic problems.⁴



Data demonstrates that criminalizing drug possession does not address the public health issue that is presented to us and does not seem to change the prevalence of use.⁵

DECRIMINALIZATION IN NJ

Recovery, NOT Punishment

Halfway to The 100 Years War - Criminalizing SUD is not Sustainable

There were 19,410 arrests for substances
OTHER than marijuana in 2016⁶

The cost of incarcerating one adult in NJ is
over \$61,000 per year⁷

**NJ Spent 5.1 billion to arrest and
4.3 billion to incarcerate people for
drug related offenses over the past
decade⁸**



Every 25 seconds, someone in America is arrested
for drug possession

The number of Americans arrested for possession
has TRIPLED since 1980

1.3 million arrests in 2015-six times the number of
arrests for drug sales⁹

The War on Drugs has cost the US an estimated
\$1 trillion since 1971

In 2015, \$9.2 million was spent incarcerating those
with drug-related offenses¹⁰

Over 900,000 adults that were on probation in the US had a drug charge as their most serious offense in 2018¹²

There were 3046 Drug Overdoses in NJ during the year 2020¹¹

Criminalizing addictive behaviors does not help solve addiction. The National Library of Medicine found, "changes in hard drug arrests did not predict changes in intravenous drug use population rates. These results are inconsistent with criminal deterrence theory and raise questions about whether arresting people for hard drug use contributes to public health." ¹⁴

In fact, not only is criminalizing illicit substances ineffective at winning the drug war, it actually causes an epidemic among those released from prison. The incidence of drug overdoses from newly released incarcerated individuals is partly due to the lack of Medication Assisted Treatment (MAT) options while in prison. As with most tragic overdoses, the unregulated use of fentanyl and other potentially deadly compounds is a major contributor to this ongoing epidemic.

" Upon release, the risk of overdose death for the previously incarcerated is approximately 130 times greater than the general public" ¹³

World Health Organization.

DECRIMINALIZATION IN NJ

Recovery, NOT Punishment

A Life Sentence: Rory's True Story

I walked up to the window at the county jail and asked if my son could use his knee brace in the jail. The guard answered with absolutely no emotion, "WE TAKE EVERYTHING!" I walked away thinking, no truer words have ever been spoken. My son turned himself in and all the way home all I could think of was the guard's words and the nightmare of a journey we had been on.

My son's involvement with criminal justice began a week after his 18th birthday. He was charged with 3rd degree possession that led to years of probation violations for positive drug tests and more non-violent possession charges for his personal use. He was trapped in a punitive system that did far more damage than good. Years of the same mandatory treatment for substance use never addressed the underlying issues that ultimately lead him to self-medicating.

In the beginning, like many families, I had hoped that accountability and forced treatment would result in recovery. What happened was the opposite. He became an outcast in our community and most of the family was angry because his struggle to find recovery affected how they were judged in the community. Every failure to get well was criminalized which made him cope the only way he knew how, more substances.

He was diagnosed with ADHD and bi-polar disorder in his teens, but the only treatment focus was on his substance use. No one discussed medications with him or re-evaluated him while on medications in his 11 years in the system. Addressing trauma from jail and prison and the 40 friends and acquaintances he lost was never part of any treatment plan. No one talked about his multiple overdoses and asked him if he ever wished he would die to escape the pain.

At 29 years old, he was not permitted to leave the state since he became an adult. No vacations, no job opportunities in other areas, missing grandparents' funerals, etc.

No one discussed medications with him or re-evaluated him while on medications in the 11 years he was in the system.

He wanted to be a commercial fisherman since he was 6 years old, but it is a field that can be high risk for individuals with substance use disorder, so it was not allowed. Instead of treating the underlying issues and using his passion as a motivator to stay well he was denied the only thing he ever cared about, leading to debilitating depression and punishment for being unable to function and meet court requirements. Non-compliance was a violation, punished by MORE treatment or prison.

Mental health symptoms got worse over the years, despite going to approximately 20 treatment programs. His hopelessness and overwhelming grief for the life he dreamed of since he was a young boy fills me with sadness. The system imprisoned him for the last 17 years!

And now it has taken him from me. My dynamic and hysterically funny son, with a generous heart, recently lost his battle with mental health and substance use disorders. When Rory sought help for his disease, he instead received punishment. Rather than criminalizing his illness, a more refined and caring treatment response might have helped our family avoid this unspeakably tragic loss.



**THERE IS NO JUSTICE
WITHOUT US**



DECRIMINALIZATION IN NJ

Recovery, NOT Punishment



Recovery can be difficult even under optimal conditions. Overcoming initial withdrawal, then ongoing post-acute withdrawal syndrome, while starting to rebuild the aspects of life that were affected by active addiction is a daunting task. To those entering recovery with a criminal record due to the criminalization of substances, setting new goals is even more challenging. Charges can disqualify people from many things. We asked our Advocates with substance-related charges: The people quoted have achieved long term recovery and rebuilt their lives. Yet the issue of their low level, non-violent drug charges, most over 10 years old, continually create barriers and keep them from becoming the people they want to be. These unnecessary hurdles prevent people from improving their lives and thriving in recovery. If we continue to treat a medical disorder as a criminal justice issue, we will perpetuate more addiction, more violence, more trauma. Substance Use Disorder is not a crime. Why are we continually punishing people for a treatable medical condition?

Decriminalization will give people the opportunity to concentrate on the process of their chosen recovery path and wellness instead of carrying the albatross of their illness for the rest of their lives.

Conclusion- Long term sustainable solutions to criminalization lie in a Recovery Oriented System of Care (ROSC) approach. This is a comprehensive and cost effective system that examines each individual and their needs on a continuum and supports multiple pathways to recovery. Additional information will be available in our subsequent publication.

What is a recovery oriented system of care?

A network of formal and informal services developed and mobilized to sustain long-term recovery for individuals and families impacted by severe substance use disorders

The system in ROSC is not a treatment agency but a macro level organization of a community, a state or a nation

What have you lost out on because of a criminal record related to the “War on Drugs”?

“Housing, It doesn’t matter that I have been in recovery for years, they see the charge and say no.”

“Professional licensure in the addiction recovery field. I wanted to help other people get well like I have, but there’s only so far I can go without the license. It makes no sense.”

“Becoming a girl scout troop leader. My daughter was heartbroken.”

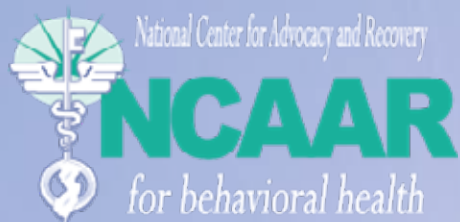
“Coaching my son’s soccer team. I have a charge from 37 years ago that still shows up. I’m a completely different person today; it’s really not fair.”

“Travel, I can’t just go where I want.”

“My dream of going to medical school to become a psychiatrist. The charges mean I can’t prescribe medication.”

“Volunteer positions. I was trying to get experience in the recovery field, but my record prevents me from doing it.”

“Jobs, I’m ready to move to Canada for better employment.”



ENDNOTES

- 1 <https://drugpolicy.org/issues/drug-decriminalization>
- 2 <https://www.talkingdrugs.org/decriminalisation>
- 3 <https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight>
- 4 (Gonçalves et al., 2015). <https://journals.sagepub.com/doi/10.1177/2050324516683640>
- 5 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3020200>
- 6 <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/>
- 7 ibid
- 8 <https://www.njpp.org/publications/report/a-war-on-us-how-much-new-jersey-spends-enforcing-the-war-on-drugs>
- 9 <https://www.americanprogress.org/issues/criminal-justice/reports/2018/06/27/452819/ending-war-drugs-numbers/>
- 10 ibid
- 11 <https://www.insidernj.com/press-release/governor-murphy-releases-report-new-jerseys-response-opioid-over-dose-epidemic-covid-19-public-health-emergency-2020>
- 12 <https://www.drugpolicyfacts.org/node/2646>
- 13 https://www.njreentry.org/application/files/4815/5924/0678/Published_9_24.pdf
- 14 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3020200/>