

REPORT OF THE BOARD OF TRUSTEES

B of T Report 17-A-24

Subject: Drug Policy Reform

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Referred to: Reference Committee B

1 INTRODUCTION

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3 At the 2023 Annual Meeting of the American Medical Association (AMA) House of Delegates (HOD),
4 Resolution 203 entitled, “Drug Policy Reform,” was introduced by the Medical Student Section and
5 called on the AMA to:

- 6
7 • Advocate for federal and state reclassification of drug possession offenses as civil
8 infractions and the corresponding reduction of sentences and penalties for individuals
9 currently incarcerated, monitored, or penalized for previous drug-related felonies;
- 10 • Support federal and state efforts to expunge criminal records for drug possession
11 upon completion of a sentence or penalty at no cost to the individual; and
- 12 • Support federal and state efforts to eliminate incarceration-based penalties for
13 persons under parole, probation, pre-trial, or other criminal supervision for drug
14 possession.

15
16 Ultimately, Resolution 203 was referred to the Board of Trustees for study. Some of the primary reasons
17 for referral included the need for more background information on criminal penalties for drug possession;
18 the need to review the role of expungement for those convicted of drug-related crimes for drug
19 possession; and the need to identify the AMA’s unique role concerning other issues relating to drug
20 possession. This report also provides background information; discusses relevant policy and public health
21 considerations; presents AMA policy; and makes recommendations.

22 23 BACKGROUND

24
25 The National Center for Drug Abuse Statistics (NCDAS) reports that, “1.16 million Americans are
26 arrested annually for drug related offenses” and that, “227,655 Americans are arrested annually for the
27 possession of heroin, cocaine, and derivative products.” At the same time, NCDAS reports that, “40,446
28 Americans are arrested annually for the possession of synthetic drugs.”¹ A 2022 report from the Pew
29 Charitable Trusts found that between 2009-2019, “87 percent [of] drug arrests were for possession; the
30 rest were for sale or manufacturing.”² In the federal prison system, more than 44 percent of individuals
31 were incarcerated because of a drug-related offense.³

32
33 Incarceration rates for drug-related offenses, however, are decreasing. While the figures vary by state,
34 between 2009-2019, “The prison population in the 39 states with available data dropped by approximately
35 117,000 individuals from 2009 to 2019. The decrease in the number of people in prison for drug offenses
36 accounted for 61% of this total decline. Similarly, prison admissions fell by more than 131,000 from
37 2009 to 2019, with the drop in drug-related admissions accounting for 38 percent of the total.”⁴
38 There are significant racial disparities for those incarcerated for a drug-related offense. While use and
39 dependence rates between groups only vary by 1-2 percent, Black people are far more likely to be arrested

1 and incarcerated.⁵ These disparities have existed for decades,⁶ and they unfortunately continue. Research
2 from 2000 showed that Black individuals made up more than 60 percent of those sent to state prisons for
3 a drug-related offense⁷. The same study reported that, “Nationwide, black men are sent to state prison on
4 drug charges at 13 times the rate of white men.” More recent data show that, “prison admissions for Black
5 individuals for drug offenses decreased by 59 percent between 2009 and 2019, accounting for a quarter
6 (26 percent) of the total drop in admissions over that span.”⁸ Despite these decreases, disparities remain.
7 According to the Pew Charitable Trusts, “Black people made up 28 percent of admissions and 36 percent
8 of the population in prison for drug convictions in 2019, which are two and three times, respectively, their
9 share of the general population.”

10
11 The data also show differences in the prison population when race and gender are both considered.
12 Between 2009-2019, there was a “4 percent increase in admissions of White individuals for drug
13 offenses...[and] a 32 percent increase in the number of White females entering prison with drug
14 convictions. By comparison, admissions for drug offenses fell 71 percent for Black females and 4 percent
15 for White males.”⁹

16
17 Regarding youth-related drug offenses, between 2011-2020, there were an estimated 42,280 juvenile
18 arrests.¹⁰ Juvenile arrests for drug offenses decreased 72 percent between 2016-2020.¹¹ According to the
19 U.S. Office of Juvenile Justice and Delinquency Prevention, “the peak year for juvenile drug abuse
20 violation arrest rates was 1997 ... [and] overall from 1980 to 2020, the drug abuse violation arrest rate for
21 youth ages 15-17 decreased 64 percent , compared with a 21 percent decrease for young adults ages
22 18-20 and a 7 percent increase for young adults ages 21-24.”¹²

23 24 *Civil Infractions, Misdemeanors, and Felonies*

25
26 It is beyond the scope of this report to go into extensive detail about the wide variability and extensive
27 nuances in federal or state criminal codes concerning drug possession.¹³ A brief overview, however, may
28 be useful to underscore that the AMA’s unique role for this report is to focus on public health rather than
29 criminal law.

30
31 In general, a misdemeanor means any crime that does not amount to a felony.¹⁴ Misdemeanors generally
32 are those criminal offenses that carry punishments by incarceration of a year or less.¹⁵ A felony typically
33 denotes a crime more serious than a misdemeanor that subjects an individual to incarceration.¹⁶
34 Punishments for a felony typically are incarceration for periods of one year or more.¹⁷ An “infraction” can
35 have different meanings depending on the state, but it generally refers to a criminal act that is less serious
36 and carries less severe penalties than a misdemeanor, such a speeding ticket or parking meter violation.¹⁸
37 Criminal codes also distinguish “simple possession”¹⁹ from possession with intent to sell or distribute.²⁰

38
39 To prove a statutory crime, it is required to show both that an individual committed a criminal act, and in
40 so doing, acted with the state of mind requisite to constitute the crime in question.²¹ For simple drug
41 possession, the prosecutor must prove, generally, that the illicit substance was knowingly and/or
42 intentionally in the accused individual’s possession. Simple possession crimes differ from those with
43 intent to sell, manufacture or deliver in that simple possession typically is limited to personal use or
44 control whereas the crime of possession with intent to sell, manufacture or deliver requires proving both
45 possession/control of an illicit substance and that the individual had the intent to sell, manufacture or
46 deliver the substance. To prove intent to sell, manufacture or deliver, additional facts would be required,
47 which could come from undercover law enforcement or other witness testimony, exchange of money,
48 possession of manufacturing equipment, video surveillance, customer lists or other factual elements that
49 show more than just an intent limited to personal use or control.

50 There are a limited number of states that have decriminalized certain drug-related offenses. In 2020,
51 Oregon voters passed Ballot Measure 110, which among other things, effectively decriminalized
52 possession of certain amounts of Schedule I Controlled Substances, including cocaine, heroin, psilocybin,

1 and methamphetamine. Possession of amounts greater than the law authorized, as well as possession for
2 non-prescribed Schedule II-IV Controlled Substances, would subject an individual to a “Class E”
3 violation. Violators would be subject to a fine or agree to undertake a screening in lieu of a fine.²² Since
4 the measure went into effect, more than 7,600 individuals have received a Class E violation with
5 methamphetamine (55 percent) and Schedule II Controlled Substances (26 percent) the top reasons for
6 violations.²³ In response to multiple factors, including considerable public concern about reported
7 increases in public drug use, mortality and crime, the Oregon Legislature effectively ended
8 decriminalization of illegal drugs for personal use with passage of House Bill 4002, which the governor
9 said she will sign.²⁴ HB 4002 passed with wide, bipartisan margins in both the Oregon House and
10 Senate.²⁵

11
12 Additional state actions have occurred regarding psychedelics and other substances. For example,
13 legislative efforts surrounding Schedule I psychedelics are increasing. More than two dozen states have
14 considered or enacted measures to further study psychedelics, regulate their use, and establish pilot
15 treatment programs. For example, certain psychedelics were decriminalized in Washington, D.C. in
16 2021²⁶ and Colorado in 2022.²⁷ In 2021, drug possession was decriminalized in Washington state as a
17 result of a state supreme court decision in *State v. Blake*, which found the state’s drug possession statute
18 unconstitutional because it lacked an intent requirement.²⁸ The Washington Legislature re-criminalized
19 drug possession (as a misdemeanor) several months later in a special session.²⁹ The Washington law also
20 included provisions for diversion programs as an alternative to incarceration. The 2024 state legislative
21 sessions are actively considering many similar proposals.³⁰

22 23 *Expungement*

24
25 The Board of Trustees explained in [Board of Trustees Report 17-A-22](#) that it is important to recognize
26 that expungement, destruction, and sealing are legal processes.³¹ An expungement process may involve
27 multiple steps where the result is to remove a record of arrest and/or conviction from the official state or
28 federal record. The idea is that post-expungement, the record never existed. While an expungement may
29 “erase” a record, “sealing” hides the record from public view. More specifically, when “sealed,” the
30 record can be accessed under certain circumstances.³² Finally, “destruction” of a record generally means
31 to physically destroy it. When a record is “destroyed,” there is no record remaining whatsoever.³³ It is
32 important to note that specific definitions may vary by state.

33
34 Under federal law, the record of a conviction for drug possession may be able to be expunged depending
35 on the circumstances. An individual must qualify for expungement and undertake the process to formally
36 seek expungement. There are different requirements for those 21 years of age and older and those
37 younger than 21. The record of the underlying expungement also offers protection against future adverse
38 use, but it is retained by the U.S. Department of Justice.³⁴

39
40 At the state level, eligibility, and procedures for expungement of drug possession crimes vary
41 considerably.³⁵ State laws often are non-specific to controlled substances. In other words, eligibility and
42 procedures would be dependent on multiple factors, including whether a drug possession crime was a
43 misdemeanor or felony, and whether there were additional circumstances, including whether there were
44 other crimes committed and whether they were violent or nonviolent. Other states have waiting periods
45 after a sentence has been served, but these also are dependent on other factors that may be present,
46 including whether the drug possession crime was a first offense. States typically have different processes
47 and qualifications for minors.³⁶ In contrast, 24 states have specific procedures when the state has
48 decriminalized cannabis for medical and/or adult use.³⁷

1 DISCUSSION

2
3 *Reclassification of Drug Possession Offenses as Civil Infractions*
4

5 Proponents of decriminalizing drug possession cite multiple potential benefits, including saving money
6 from incarceration, focusing resources on treatment and social services, and other benefits such as
7 reducing the stigma surrounding drug use and having a substance use disorder.³⁸ Being incarcerated does
8 not often lead to treatment for a substance use disorder. The Pew Charitable Trusts reported data showing
9 that “1.1 million people with past-year illicit drug dependence or misuse reported being arrested and
10 booked in the past year...[but] 1 in 13—85,199—reported receiving drug treatment while in jail or prison.
11 Further, the drug- or alcohol-related mortality rate in jails increased from 9 in 100,000 in 2009 to 26 in
12 100,000 in 2019.”³⁹ Proponents also point to collateral consequences of having a criminal record for drug
13 possession, including denial of public benefits, losing custody of children, loss of voting rights, inability
14 to secure loans or financial aid, to name a few negative effects.⁴⁰ A meta-analysis of drug
15 decriminalization policies in 2020 focused on “evaluating effects of drug decriminalization or legal
16 regulation on drug availability, use or related health and social harms globally.”⁴¹ The analysis concluded
17 there was “a need for a broadening of the metrics used to assess the impacts of drug decriminalization and
18 legal regulation.”
19

20 Except for cannabis, there are few tangible examples in the United States on which to evaluate the
21 potential public health and collateral benefits of reclassifying drug possession offenses as civil infractions.
22 The Board of Trustees notes that our AMA Council on Science and Public Health has issued two previous
23 reports detailing the continued public health dangers associated with cannabis. Oregon, Colorado, and
24 Washington, D.C. are the only states to specifically decriminalize illicit substances, while multiple others
25 have enacted measures to direct law enforcement to treat possession of, for example, certain psychedelics,
26 as a “low priority.”⁴² In Oregon, the language of Ballot Measure 110 based part of its argument on the
27 premise that, “People suffering from addiction are more effectively treated with health care services than
28 with criminal punishments. A health care approach includes a health assessment to figure out the needs of
29 people who are suffering from addiction, and it includes connecting them to the services they need.” The
30 reality of Ballot Measure 110’s effects, however, demonstrate widespread challenges with connecting
31 individuals to screening, treatment, or recovery.
32

33 Three main studies of the effects of Oregon Ballot Measure 110 show that it generally failed to reduce
34 overdose-related fatality, and that it did not connect individuals to screening, treatment, or recovery. One
35 study found that Ballot Measure 110 “caused 182 additional unintentional drug overdose deaths to occur
36 in Oregon in 2021. This represents a 23 percent increase over the number of unintentional drug overdose
37 deaths predicted if Oregon had not decriminalized drugs.”⁴³ A separate study, however, found that there
38 was no significant change in death rates.⁴⁴ Perhaps most concerning is that Ballot Measure 110’s promise
39 of increased connections to treatment and increased access to evidence-based care has not been realized.
40 A state audit of Ballot Measure 110 discussed the widespread hopes for the ballot measure to improve
41 access to care for substance use disorders, reduce health inequities, and other laudable goals. The reality,
42 unfortunately, has been hampered by widespread challenges, including inefficient “program governance,”
43 “silos and fragmentation in the delivery of mental health and substance use disorder treatment,” poor
44 “stakeholder collaboration,” poor data collection and reporting structures, and a lack of coordination
45 between public health, public safety, and other agencies.⁴⁵
46

47 The Board of Trustees understands that the original intent of Oregon Ballot Measure 110 included an
48 effort to increase access to treatment, but there is a clear lack of evidence demonstrating public health
49 benefits or increases in access to evidence-based mental health or substance use disorder services in the
50 state. The available research, furthermore, does not clearly demonstrate tangible benefits on a wider scale.
51 The Board of Trustees observes that drug-related overdoses in Oregon have increased from 1,147 deaths
52 reported for the 12-month period between October 2020 and October 2021 to 1,683 deaths reported for

1 the 12-month period between October 2022 and October 2023.⁴⁶ The Board of Trustees believes that it is
2 premature to recommend decriminalizing drug possession offenses as a public health benefit in the
3 absence of evidence demonstrating public health benefits.

4
5 *Expungement of Criminal Records for Drug Possession upon Completion of a Sentence*

6
7 As noted above, there are ongoing collateral consequences experienced by individuals convicted of drug
8 possession (or other) crimes. The Board of Trustees emphasized these consequences as part of Board of
9 Trustees Report 17-A-22, “Expungement, Destruction, And Sealing Of Criminal Records For Legal
10 Offenses Related To Cannabis Use Or Possession.” That report recommended support for expungement
11 of cannabis-related offenses when those offenses were no longer illegal (because of newly enacted state
12 laws). As the Board stated in BOT Report 17-A-22,

13
14 Even if a record is expunged or sealed, however, that may not address collateral
15 consequences of the arrest or conviction, e.g., potential professional licensing sanctions,
16 adverse employment actions, and qualification for government benefits, including loans
17 and housing. These collateral consequences can also suppress the local tax base by
18 locking people into unemployment or lower paying jobs and increase taxpayer costs due
19 to increasing likelihood of further involvement in the criminal legal system.⁴⁷

20
21 The Board of Trustees supports reducing barriers to address these social determinants of health, including
22 supporting federal and state efforts to expunge criminal records for drug possession upon completion of a
23 sentence or penalty. Given that individuals released from jail or prison may have limited financial means,
24 we also support that the expungement process consider an individual’s financial hardship.

25
26 *Incarceration-based Penalties for Persons under Parole, Probation, Pre-trial, or other Criminal*
27 *Supervision for Drug Possession.*

28
29 As with different state laws and policies concerning what constitutes a drug possession felony or
30 misdemeanor, there is likely even greater state variation in what constitutes a violation of parole,
31 probation, pre-trial, or other supervisory agreement with an individual charged or convicted of drug
32 possession. While drug possession while on parole might trigger an automatic revocation in some
33 jurisdictions, in others there would be discretion. This is why some commentators argue for the “need to
34 critically examine the revocation process for probationers and parolees who transgress the terms and
35 conditions of their community supervision.”⁴⁸ Other commentators cite drug use or drug possession as a
36 common reason for parole, probation or other supervisory violations.⁴⁹ The Board of Trustees notes that
37 AMA advocacy and policy focus primarily on helping ensure individuals involved with the justice system
38 have access to evidence-based care. We certainly encourage discretion by court officers but do not believe
39 that the AMA has the unique expertise or experience to make categorical determinations about judicial
40 discretion.

41
42 Your Board – in a separate board report under consideration at this meeting, Board of Trustees Report 16
43 – explains why diversion programs should not automatically exclude individuals because they may have
44 previously used illicit substances. Similarly, we argue that individuals should not be removed from a
45 diversion program solely because they used an illicit substance. The National Institute of Drug Abuse
46 explains that “The chronic nature of addiction means that for some people relapse, or a return to drug use
47 after an attempt to stop, can be part of the process, but newer treatments are designed to help with relapse
48 prevention. Relapse rates for drug use are similar to rates for other chronic medical illnesses. If people
49 stop following their medical treatment plan, they are likely to relapse.”⁵⁰ AMA support for individuals
50 being able to continue parole or probation even if they engaged in illegal drug use is a natural extension
51 of AMA policy to not punish people because they have a substance use disorder.

1 AMA POLICY

2
3 AMA policy includes “support [for] legislation that promotes the use of non-financial release options for
4 individuals charged with nonviolent crimes.” (Policy H-80-993, “Ending Money Bail to Decrease Burden
5 on Lower Income Communities”). AMA policy also supports a broad range of elements for individuals
6 who are incarcerated, including, “...(a) linkage of those incarcerated to community clinics upon release in
7 order to accelerate access to comprehensive health care, including mental health and substance use
8 disorder services, and improve health outcomes among this vulnerable patient population, as well as
9 adequate funding; (b) the collaboration of correctional health workers and community health care
10 providers for those transitioning from a correctional institution to the community; (c) the provision of
11 longitudinal care from state supported social workers, to perform foundational check-ins that not only
12 assess mental health but also develop lifestyle plans with newly released people; and (d) collaboration
13 with community-based organizations and integrated models of care that support formerly incarcerated
14 people with regard to their health care, safety, and social determinant of health needs, including
15 employment, education, and housing.” (Policy H-430-986, “Health Care While Incarcerated”). Whether
16 these elements could be achieved through decriminalization of drug possession crimes is not clear,
17 however, which is why your Board supports additional research to inform future decision making.

18
19 AMA policy also supports “automatic expungement, sealing, and similar efforts regarding an arrest or
20 conviction for a cannabis-related offense for use or possession that would be legal or decriminalized
21 under subsequent state legalization or decriminalization of adult use or medicinal cannabis.”
22 (Policy H-95.910, “Expungement, Destruction, and Sealing of Criminal Records for Legal Offenses
23 Related to Cannabis Use or Possession”). AMA’s cannabis-related expungement policy also extends to
24 protections for minors and for “ending conditions such as parole, probation, or other court-required
25 supervision because of a cannabis-related offense for use or possession that would be legal or
26 decriminalized under subsequent state legalization or decriminalization of adult use or medicinal
27 cannabis.” (Policy H-430.986, “Health Care While Incarcerated”). Finally, AMA policy also calls for
28 “fairness in the expungement and sealing of records.” (Policy H-60.916, “Youth Incarceration in Adult
29 Facilities”). These policies highlight issues of fairness with respect to expungement as well as support for
30 the principle that drug use or possession—by itself—should not be a cause for additional criminal
31 penalty.

32
33 RECOMMENDATIONS

34
35 The Board of Trustees recommends that the following recommendations be adopted in lieu of Resolution
36 203 and the remainder of the report be filed:

- 37
38 1. That the American Medical Association (AMA) will continue to monitor the legal and public
39 health effects of state and federal policies to reclassify criminal offenses for drug possession for
40 personal use; (New HOD Policy)
- 41 2. That the AMA will support federal and state efforts to expunge, at no cost to the individual,
42 criminal records for drug possession for personal use upon completion of a sentence or penalty;
43 (New HOD Policy) and
- 44 3. That the AMA support programs that provide comprehensive substance use disorder treatment
45 and social support to people who use or possess illicit drugs for personal use as an alternative to
46 incarceration-based penalties for persons under parole, probation, pre-trial, or other civic,
47 criminal, or judicial supervision. (New HOD Policy)

Fiscal Note: Less than \$500.

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