



# Criminal Legal System Policy Priority Brief

## Decriminalization

### What Is Decriminalization?

**Decriminalization** in the South, as in other regions, is designed to address substance abuse as a public health issue rather than a criminal justice problem. This approach aims to reduce the harms of drug misuse, improve public safety and health, and redirect resources from criminal justice to health systems. It also seeks to diminish unjust racial disparities in drug law enforcement and sentencing, incarceration, and related health outcomes.

### Decriminalization in the South

In 2021, the United States Sentencing Commission reported that drug offenses accounted for a significant portion of federal sentences in southern states. Mississippi had the harshest penalties, with an average of 121 months, South Carolina, with 115 months, and Louisiana with 105.

### How Decriminalization Can Advance Equity in the South

The decriminalization of certain drug offenses in the Southern United States could lead to numerous positive changes, including reduced incarceration rates, economic benefits, and improve public health outcomes. However, the success of such initiatives would depend on careful implementation, sufficient support for treatment and prevention programs, and efforts to address public concerns and misconceptions. Decriminalization improves equity in the South by reducing the disproportionate arrest rate of African Americans, alleviate over-policing, remove barriers to employment, increase public health and eliminate the cycle of poverty and violence.

Metrics of success include:

1. **Reduction in Arrests and Incarcerations:** Decrease in the number of arrests and incarcerations for drug possession.
2. **Improved Public Health Outcomes:** Reduced rates of overdose deaths, increased access to treatment, and lower rates of diseases associated with drug use.
3. **Social Equity:** Reduced racial disparities in drug law enforcement and sentencing.

## Legislative Efforts Related to Decriminalization

The ACLU estimates that Black people are 3.6 times more likely than white people to be arrested for marijuana possession. In recent years, we've seen more movement on both a state and federal level related to the decriminalization of marijuana and the legalization of its use for both recreational and medicinal purposes. Several Southern state legislatures considered additional measures toward legalization during the 2024 legislative session, including the following:

1. **North Carolina:** House Bill 626 would legalize the possession and sale of cannabis, citing the potential economic benefits of doing so on the state and the creation of legal jobs and tax revenue for its residents. Of note in the preamble of the legislation is a declaration that “[C]annabis prohibition, like alcohol prohibition before it, has been a wasteful and destructive failure.” The bill is still in the House.
2. **South Carolina:** Senate Bill 423, which would permit medical marijuana use, passed in the Senate in February but has not seen any additional movement in the House as of the date of this brief. South Carolina’s House of Representatives was also presented with House Bill 3561 which seeks to decriminalize the possession of 28 grams (1 ounce) or less of marijuana or ten grams or less of hashish, allowing for the issuance of a citation instead of arrest. The bill also seeks to decrease penalties for a first offense possession of less than one gram of methamphetamine or cocaine base and require completion of a drug treatment or rehabilitation program as part of sentencing. Unfortunately, this bill (brought by a Republican member of the legislature) failed in committee in a 6-3 vote down party lines.
3. **West Virginia:** Senate Bill 386 and House Bill 4873 sought to legalize and regulate cannabis for adults in West Virginia through the creation of ballot measures by county on the question of legalization in their respective jurisdictions. If approved, counties could begin to legalize cannabis and charge a 5% sales tax on its purchase. Neither measure gained final passage before adjournment of the 2024 legislative session.