

Models for the decriminalisation, depenalisation and diversion of illicit drug possession: An international realist review

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Abstract

Background: Faced with the high criminal justice, social, health and economic costs of criminalisation, many jurisdictions and countries are considering alternatives to criminal sanctions for simple drug possession. However, there remain limited tools to inform policy deliberations about the models that could be employed and the potential implications of each. This paper thus describes the development of the first empirically based set of models of alternative approaches.

Methods: Nine nations with 15 alternative approaches (1-3 per nation) were selected: Australia, Czech Republic, Denmark, England and Wales, Germany, Jamaica, the Netherlands, Portugal and the United States of America. Qualitative comparative analysis was used to extrapolate *across* countries and produce an empirically based typology of models. A rapid realist review of 158 documents was then conducted following the RAMESES protocol (Realist And Meta-narrative Evidence Syntheses: Evolving Standards), with advantages and disadvantages synthesised for each approach.

Results: Six models were derived: depenalisation, de facto police diversion, de jure police diversion, decriminalisation with civil penalties, decriminalisation with targeted health/social referrals and decriminalisation with no sanctions. Analysis shows each have different advantages and disadvantages. For example, depenalisation is the easiest reform to adopt, but it can lead to justice by geography/demography (limiting access to specific sub-groups). In contrast, decriminalisation with targeted health/social referrals requires more inputs (e.g. legal change and treatment supports), but it is associated with reductions in the burden on the criminal justice system as well as in drug-related health and social harms.

Conclusion: This review highlights a variety of options that could be adopted, whilst bringing to the fore important trade-offs and considerations about the objectives of any reform (e.g. non-intervention, minimal intervention or switching to a health or social response). We hope this will provide a basis for generating a shared understanding of the key features of different models; enable more robust and useful research; and contribute to more informed decision-making.

Key words: decriminalisation; diversion; depenalisation: illicit drugs.

Introduction

Illicit drug policy is a time of flux where faced with the high criminal justice, social, health and economic costs of criminalisation, many jurisdictions and countries are considering alternatives to criminal sanctions for simple drug possession. While most apparent regarding countries and nation states that have legalised and regulated cannabis, notably Uruguay, Canada and 12 US states (Cerdá and Kilmer 2017, Kilmer and Pacula 2017, Cox 2018, Decorte 2018), there remains a large and growing interest in other types of reforms that can be adopted for simple possession of cannabis and/or other illicit drugs. As of 2016 the UK organisation Release estimated that at least 30 countries that have undertaken some form of reform (Eastwood, Edward et al. 2016) and as of 2019 many other nations and nation states are debating alternatives, including Ghana, Ireland, Norway and New South Wales, Australia (Ane 2018, Marthinussen 2018, NSW Government 2019). Yet, there are limited tools to inform policy deliberations about the models that could be employed and the potential implications of each. This paper thus describes the development of the first empirically based set of models of alternative approaches.

The push for alternatives to arrest for simple possession is driven by many factors, including political leadership, global and domestic advocacy, and trends in public opinion. Two factors require special mention. The first is the role of research and increasing evidence of ineffectiveness and high costs from the status quo. Over the last century international drug control has centred around three conventions: the 1961 Single Convention on Narcotic Drugs, as amended by its 1972 protocol; the 1971 Convention on Psychotropic Substances; and the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances which prohibit and criminalise the production, supply and possession of illicit drugs including cannabis, heroin and cocaine. But evidence has shown that prohibition and criminalisation of drugs has had a high level of perverse or unintended impacts, particularly in regards to simple possession and use (Babor, Caulkins et al. 2018). For example, as summed up by Room and Reuter (2012): “the system’s emphasis on criminalisation of drug use has contributed to the spread of HIV, increased imprisonment for minor offences, encouraged nation states to adopt punitive policies (including executions, extra-judicial killings, imprisonment as a form of treatment, and widespread violations of UN-recognised human rights of drug users), and impaired the collection of data on the extent of use and harm of illicit drugs, all of which have caused harm to drug users and their families”. Specific concerns are that prohibition and criminalisation of drugs has: led to emphasis on policing and imprisoning of people who use drugs, rather than on health or social responses to drugs (LSE Expert Group on the Economics of Drug Policy 2014, Caulkins and Reuter 2016); contributed to the targeting of consumers (people who use drugs) not providers (drug traffickers) (Babor, Caulkins et al. 2010, Caulkins and Reuter 2016); encouraged high risk drug use practices such as rapid or unsafe injecting (Maher and Dixon 1999); increased barriers to the provision and use of harm-reduction and other HIV prevention services (Csete, Kamarulzaman et al. 2016); reduced employment prospects for many people who use drugs (Lenton, Bennett et al. 1999, Single, Christie et al. 1999); increased stigma and discrimination of people who use drugs (Lancaster, Seear et al. 2018); and damaged police-community relations, particularly with young people, GLBTI communities and ethnic minorities (Caulkins and Reuter 2016).

The second is the role of the United Nation. While member states, non-government organisations and advocacy bodies have often expressed frustration over the limited ‘room to manoeuvre’ afforded to member states under the Conventions, the last decade has seen important shifts by United Nations bodies against the requirements for criminalisation per se (Ritter, Hughes et al. 2016). Key examples here include the 2014 statement by the World Health Organisation in the context of the HIV response for decriminalisation, and 2017 joint statement by WHO, UNAIDS, UNDP, UNICEF to end discrimination in healthcare and review laws that criminalise possession. More notably, on 17 January 2019 the Chief Executives Board of the United Nations and representing 31 United Nations agencies including the United Nations Office on Drugs and Crime adopted a new common position on decriminalisation, which calls on member states “to promote alternatives to conviction and punishment in appropriate cases, including the decriminalisation of drug possession for personal use” (United Nations Chief Executives Board 2019).

Yet to date debates about alternatives to criminal sanctions have tended to focus on specific models and experiences, particularly the Portuguese decriminalisation. Portugal decriminalised the use and

possession of all illicit drugs in 2001, under the goal of treating drug use as a health and social issue - not a criminal issue. At the same time, it expanded investment in drug treatment, harm reduction and social reintegration. Eighteen years post reform the impacts have been clear: a reduced burden on the criminal justice system, reductions in problematic drug use, reductions in drug-related HIV and AIDS, reductions in drug-related deaths, increases in treatment access and reintegration services such as employment assistance and reduced social costs of responding to drugs (Hughes and Stevens 2010, Gonçalves, Lourenço et al. 2015, Hughes 2017). Portugal has also risen to fame in media and public discourse (Hughes and Stevens 2012), with media mentions continuing to rise year on year. While not denying the important lessons that can be drawn from this reform, there is increasing need for a theoretically and empirically driven set of options, that can be used to inform research and policy deliberations, and to make apparent trade-offs and core requirements, as has been done in relation to the legalisation of cannabis for recreational purposes by Caulkins et al. (2015).

Aim:

This paper sought to develop an empirically based set of alternative approaches to dealing with simple possession of drug offences. Specific aims are:

1. To put forward models for the decriminalisation, depenalisation and diversion of illicit drug possession;
2. To outline the program logic or theory and the advantages and disadvantages of each approach

Methods

A rapid realist review (RRR) was conducted of the international evidence on alternative approaches taken to simple possession. As outlined by Wong et al. (2013) a rapid realist review approach differs from a traditional narrative or systematic review, in that it uses systematic processes for searching the literature and extracting data from relevant documents. However, unlike a traditional systematic review or meta-analysis, the aim is not to aggregate effects across a range of studies from different contexts to provide an estimate of the general effect of an intervention. Instead, an RRR aims to inform policy makers of the mechanisms which produce both intended and unintended outcomes, in the aim of better informing decisions on policy transfer and implementation. In this case the project was conducted for the Irish Government, in conjunction with the Irish working group including members from the Department of Justice and Equality, Department of Health, An Garda Síochána, Office of the Director of Public Prosecutions, Probation Services, Health Research Board, Health and Safety Executive and others. Following the RAMESES protocol (Realist And Meta-narrative Evidence Syntheses: Evolving Standards) (Wong, Greenhalgh et al. 2013) the key steps included:

1. Development of project scope: This involved work between the researchers and policy advisors to clarify the aims and limits of the RRR and to select relevant country cases. Nine nations with alternative approaches to simple possession were selected based on their mix of reform types, salience and available research evidence: Australia, Czech Republic, Denmark, England and Wales, Germany, Jamaica, the Netherlands, Portugal and the United States of America. This gave rise to 15 alternative approaches: between one and three per country (see Appendix A for details).
2. Development of search parameters: This involved selection of terms to be used in the review of the literature, as well as inclusion and exclusion criteria and list of sources to be searched. The following search terms for the *per* country/state search were adopted:
 - [country OR state] AND (drug OR cannabis OR marijuana OR heroin OR cocaine) AND
 - (decriminali* OR depenal* OR liberal* OR diversion OR warning OR expiation OR civil OR infringement OR expiation OR law OR policy) AND (possess* OR use) AND (evaluat* OR effect* OR impact*) NOT (pharma* OR medic*)

Five sources were employed for the rapid review, covering both academic and grey literature:

- Three bibliographic databases (Web of Science, Scopus, Criminal Justice Abstract).
- Two grey literature bibliographies: one held by the International Society for the Study of Drug Policy [ISSDP] and the other being the drug law reform bibliography at UNSW's Drug Policy Modelling Program).
- Forward citation search of all cited documents (using Google Scholar).
- Cross-check of all identified material with country level experts (all members of the International Society for the Study of Drug Policy).

A number of inclusion and exclusion criteria were specified. Material on legalisation and regulation were excluded. Inclusion criteria for documents were:

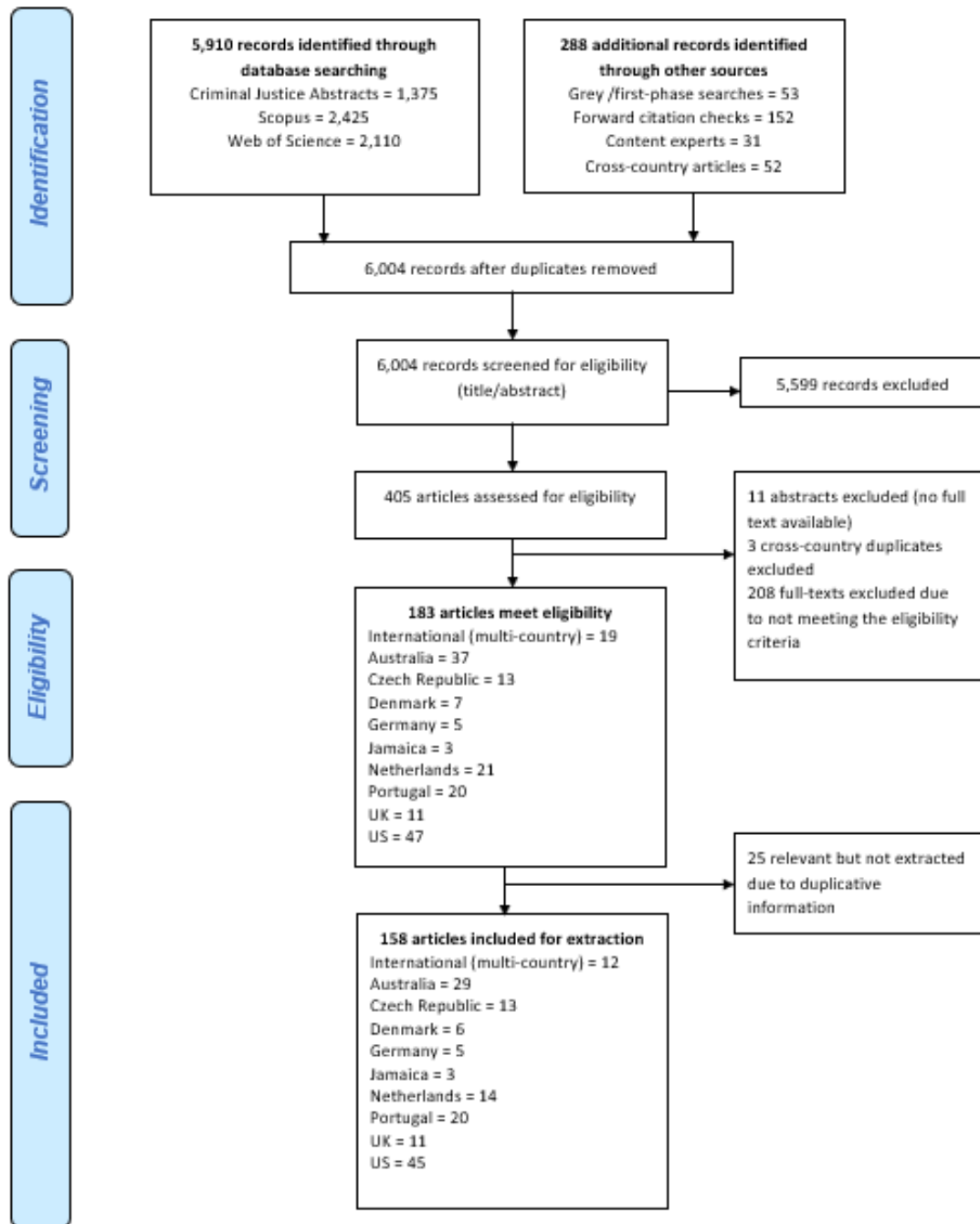
- Is written in English.
- Refers to drug policy in the modern era (i.e. since the UN Single Convention on Narcotic Drugs 1961)
- Is available via open access, through the libraries of University of Kent or UNSW Australia, or on request from the lead authors.
- Contains original data on the contexts, mechanisms and/or outcomes of some form of alternative to simple possession in the selected countries.

3. Search and identification of articles and documents for inclusion in the review. The search process occurred in teams of two, split by country (e.g. AU, PT, CZ, DK, NL vs UK, USA, JA, GR). Searches were conducted by one principal researcher and cross-checked by senior members of the team, with all exclusion criteria recorded.
4. Extraction of data from the literature: This involved work between the researchers and policy advisors to develop a coding schedule covering the context, mechanisms and outcomes of each approach (intended and unintended) on the individual, the family and society, the criminal justice system (CJS) and the health system. Data were then extracted, by country and by country alternative (where relevant).
5. Synthesis of the findings: The findings were synthesised in a number of ways, including using qualitative comparative analysis (QCA) to identify policy options to deal with simple possession offences and generating programme theories of the ways that mechanisms of decriminalisation combine with contexts to produce outcomes. For details see below.
6. Validation of findings with content experts: The program theories that were generated from data extraction were reviewed by senior researchers and members of the working group in order to check for quality and relevance of the emerging findings. Researchers attempted to fill any remaining gaps by further search of relevant documents and reports.

Search results

A total of 5910 records were initially identified via the database searches and 288 from other sources (total of 6198 records) (see Figure 1). 405 articles were accessed for eligibility, with 11 excluded due to full text not being available and a further 210 excluded primarily for lacking original information on the context, mechanisms or outcomes of decriminalisation policies in the countries of interest. A total of 183 articles met the eligibility criteria and 158 were included for extraction. The number of documents included for extraction ranged from three in Jamaica (the country with the most recent reform) to 45 in the USA.

Figure 1: PRISMA extraction of studies on alternative approaches to dealing with simple drug possession



Data analysis: qualitative comparative analysis

Elsewhere literature on the context, mechanisms and outcomes of the reforms was synthesised for each country (see Hughes, Stevens et al. in press). For this analysis qualitative comparative analysis (QCA) was used to produce a typology of alternative approaches to deal with simple possession offences, extrapolating *across* the nine countries. QCA is a theoretically driven method for testing sets of relationships between cases (Rihoux 2006, Schneider and Wagemann 2010), that is particularly well-suited for social phenomenon that have complex, multiple and contingent causes, such as the interrelationship between cannabis use and inequality (Stevens, 2016).

For this QCA three dimensions of comparison were chosen as they offered the most theoretically interesting and policy-relevant modes of comparison between alternatives. These dimensions are:

1. Whether the alternative is *de jure* (in law) rather than *de facto* (in practice).
2. Whether the alternative provides pathways to an intervention (e.g. education, treatment assessment or social services).
3. Whether the alternative provides for the imposition of a civil or administrative penalty (e.g. fine, suspension of licence).

The combination of dimensions 2 and 3 enables this comparison to identify a fourth, logically implicated dimension of whether the alternative provides any sanction at all (if the answer to both 2 and 3 is no, then there is no sanction provided for).

A matrix of 26 different alternatives found in these nine countries was created by scoring each alternative as either 0 (no) or 1 (yes) on each of these three dimensions. This matrix was then used to create a 'truth table', showing which combinations of the dimensions actually exist in these alternatives. Out of eight possible combinations of these dimensions, six were found to exist in practice. This is partly because there are two 'missing' combinations that are probably logically, legally impossible. These are the combinations of *de facto* change with the imposition of civil sanctions, either with or without diversionary measures. There would need to be a legal basis for such civil sanctions.

A truth table based on three dimensions of the targets of these alternatives, including whether the alternative targets cannabis only or includes other drugs, whether it is available for adults only (rather than including minors) and whether the alternative includes a threshold amount for the weight of drugs but no clear pattern emerged from this truth table, in terms of groups of alternatives. Instead it appears each of these factors (what could be classed as eligibility characteristics) can be utilised with each model as factors that may affect the reach or intensity of response in our assessment of outcomes.

As described by Wong et al. (2013) the goal of a realist review is to provide theor(ies) of why a social program/intervention generates particular outcomes in particular contexts. A program logic or program theory was thus devised for each approach to set out how each alternative triggers change and what needs to be delivered to achieve the desired outcomes (McLaughlin and Jordan 1999, McLaughlin and Jordan 2004) and make explicit the relationships between inputs, activities, outputs and outcomes (McLaughlin and Jordan 1999). Program logic has been found particularly useful in criminal justice settings where many programs have been introduced and achieved less than desired impacts or even counterproductive impacts (Welsh and Harris 2016). Finally, we used the RRR to summarise the outcomes, and advantages and disadvantages of each policy option.

Results

Typology of alternate approaches to dealing with simple possession drug offences

Six different approaches for dealing with simple possession drug offences were derived from the qualitative comparative analysis. The set of options took into account core differences in:

1. The legal basis: *de jure* = in law or *de facto* = in guidelines.
2. Whether or not the approach employs pathways to education/treatment/social services
3. Whether the approach utilises administrative or civil sanctions

The key features of each are summarised in Table 1 and applicable examples across the nine nations.

Table 1: Typology of alternate approaches to dealing with simple possession drug offences

<i>Type</i>	<i>Legal basis</i>	<i>Pathways to education / therapy / social services</i>	<i>Administrative/ civil sanction</i>	<i>Examples</i>
Depenalisation	<i>De facto</i>	No	No	Netherlands Gedoogbeleid 'tolerance policy' (cannabis only), US police 'deprioritisation', UK cannabis and khat warnings, Denmark warnings
Police diversion (<i>de facto</i>)	<i>De facto</i>	Yes	No	Police diversion schemes in most Australian states, Netherlands diversion (hard drugs only), English police diversion schemes in Durham, West Midlands and Avon, US LEAD program, Baltimore pre-booking scheme
Police diversion (<i>de jure</i>)	<i>De jure</i>	Yes	No	South Australian Police Drug Diversion Initiative and Queensland Police Drug Diversion Program
Decriminalisation with civil or administrative sanctions	<i>De jure</i>	No	Yes	Czech Republic, Jamaica, Cannabis Expiation Notice schemes in three Australian states (ACT, SA, NT), 11-16 US states (e.g. Ohio, Mississippi, Massachusetts, Rhode Island)
Decriminalisation with targeted diversion to health / social services	<i>De jure</i>	Yes	Yes	Portugal and several US states (Maryland, Connecticut & Nebraska)
Decriminalisation with no sanctions attached	<i>De jure</i>	No	No	Germany (by virtue of Constitutional ruling) and Vermont USA (since 2018)

Program logics and advantages and disadvantages

Herein we outline the program logics, and advantage and disadvantages of each approach. To aid comparison a summary of the advantages and disadvantages is provided at the end (Table 9).

Model 1: Depenalisation

The first approach – depenalisation – has been used in many parts of the world, including Denmark, the Netherlands, England and Wales and the USA. Under depenalisation the goal is to save police time and money to focus on more serious criminal activity (be that drug trafficking or other offences) and reduce the criminalisation of young people for simple possession offences alone (see Table 2). Implicit in this approach is the belief that traditional policing approaches have been ineffective and costly, and that people detected for drug possession do not warrant any other form of sanction. This reflects the theories of Stanley Cohen and the concerns that however well-intentioned, social control risks funnelling offenders into “different nets” or “deeper nets” (Cohen 1979). As such, “doing nothing” or “doing little” may be the best approach for people who possess drugs. That said, a noted difference to most of the other models is that depenalisation suggests there is no need to change the law on drug possession.

Table 2: Program logic – depenalisation

Program aim: To reduce the criminalisation of people for simple possession alone and to allow police more time to focus on more serious criminal activity.				
Problem statement	Inputs	Process	Outputs	Outcomes
Criminalising people for drug possession alone is unjust and an ineffective use of police time. But, any alternative system of responses is also potentially costly and ineffective.	New procedure (police or prosecutorial)	Police do little or nothing (e.g. they may issue warnings instead of arresting offenders for simple possession)	Offenders contact with the CJS is reduced	Reduce/avoid collateral consequences of convictions (e.g. on employment)
	Police training		Fewer people are convicted	Reduce burden on the CJS and cost
	No change in law			Increase policing of serious crime Increase voluntary treatment uptake

A key advantage of this model is that it is simple to implement, as depenalisation requires no changes in laws or establishment of alternative systems. There is evidence from Netherlands and Denmark that this approach can reduce demands on police, courts and prison. There is some evidence that this may also increase access to drug treatment and harm reduction services (albeit via voluntary means). Yet there are some disadvantages with this approach most notably risks of justice by geography and net-widening. Specially, in some US contexts depenalisation reduced cannabis arrests in specific areas, but led to increased targeting in other areas (DeAngelo, Gittings et al. 2018) and following the UK Lambeth experiment there was a 61% increase in recorded cannabis possessions, in spite of no other evidence of change in cannabis prevalence (Adda, McConnell, & Rasul, 2014). Such studies suggest that depenalisation can be shaped by the level of police support for reform and by police or government performance targets. The latter was particularly shown in the UK as net-widening reversed after the government stopped using targets for sanction detections to manage police performance (Shiner, 2015).

Model 2: Police diversion (*de facto*)

The second approach – *de facto* police diversion – has been used in Australia, England, the Netherlands and the USA and contends that drug use is often more of a health or social issue than a

criminal justice issue. Under this approach the goal is to reduce criminalisation and to capitalise on the role of police as gatekeepers by referring detected offenders to health or social services that they may not otherwise access (see Table 3). This can include alcohol and other drug education/treatment system or social systems (e.g. employment, training). This approach draws on three proven approaches to AOD dependence and offender management, namely the efficacy of drug treatment, therapeutic jurisprudence (Wexler 2011) and offender rehabilitation that targets risk, need and responsivity (Andrews, Zinger et al. 1990), and as such deems that referring people who possess drugs to the health or social services will increase knowledge and skills, address needs (e.g. treatment or employment) and/or reduce the likelihood of reoffending.

Table 3: Program logic – police diversion (*de facto*)

Program aim: To redirect people who use drugs away from the traditional criminal justice response and into health or social services, and thereby provide opportunities to intervene early, to build knowledge/skills and to reduce recidivism and drug-related harm				
Problem statement	Inputs	Process	Outputs	Outcomes
Drug use is more of a health or social issue than a criminal justice issue. But many people who use drugs never access health or social services.	New procedure (police or prosecutorial), including rules around eligibility e.g. drug types and TQs	Police switch to referring people instead of arresting for possession alone	Quicker police interactions for simple possession	Reduce/avoid collateral consequences of convictions (e.g. on employment)
	Police training		Fewer people are convicted	Reduce burden on CJS and cost
	AOD education/treatment or other social supports		More referrals to health or social services	Increase knowledge/skills amongst people who use drugs
	No change in law			Reduce drug-related harms

The evidence reviewed suggests *de facto* police diversion schemes lead to more offenders accessing treatment and/or other services (e.g. AIHW, 2014; Goetz and Mitchell, 2016), albeit the types of services accessed varied according to the specific mechanism. For example, the US LEAD program tended to lead to access to employment/training services (Collins et al., 2015b), whereas the Australian programs to treatment or education services. They also lead to increased knowledge acquisition and skills as well as reduction in drug-related harms, including reductions in intravenous use and high-frequency use. Clear reductions in recidivism were observed from most programs. For example, research conducted by the University of Washington in Seattle showed a 58% reduction in recidivism among LEAD participants when compared against a like group that went through the traditional CJS entry (Collins, Lonczak et al. 2015). Payne et al (2008) showed similar reductions in recidivism from police drug diversion in the Australian context: 53% to 63% reductions. Exceptions to this were the UK Turning Point program, where little difference in re-offending for participants was observed compared to treatment as usual (Lammy 2017). Reductions in demand on the CJS have also been observed from most programs. For example the English Turning Point program yielded 68% fewer court cases than those cases that were prosecuted in the usual way for all crimes (Lammy 2017). But, police diversion, even when *de facto*, requires establishing a new system of responding including referral pathways (will it be done by police or by offenders, and online or via telephone), as well as new service provision (e.g. drug treatment). Moreover, implementation and outcomes may be affected if services are not properly funded. This model also carries risks of justice by geography, due to the discretionary system, and can lead to specific groups of offenders missing out – particularly those of low SES or Indigenous status (Hughes et al., 2014; Hughes et al, in press).

Model 3: Police diversion (*de jure*)

A *de jure* model of police diversion has a similar program logic to Model 2, namely that drug use is often more of a health or social issue than a criminal justice issue and that police can play a critical early intervention role by referring people who possess drugs onto health or social services (see Table 4). The key difference to Model 2 is that this adopts a legislated approach to ensure that police are required to offer everyone police referral. This seeks to overcome some of the known challenges with Model 2 whereby police retain discretion, such as inconsistent application of the law. Implicit in this approach is thus the belief that *all* people who possess drugs should be given the same opportunity of a health/social response.

Table 4: Program logic – police diversion (*de jure*)

Program aim: To redirect people who use drugs away from the traditional criminal justice response and into drug health or social services, while ensuring that all offenders are given the same opportunity to build knowledge, reduce recidivism and reduce drug-related harm				
Problem statement	Inputs	Process	Outputs	Outcomes
Drug use is more of a health or social issue than a criminal justice issue. Hence people who use drugs should be directed to such services. But, <i>de facto</i> diversion, will lead to bias and inconsistent application.	New procedure (police or prosecutorial), including rules around eligibility e.g. drug types and TQs Police training AOD education/treatment	Police switch to referring people instead of arresting for possession alone	Quicker police interactions for simple possession Fewer people are convicted More referrals of offenders to health or social services	Reduce/avoid collateral consequences of convictions (e.g. on employment) Reduce burden on CJS and cost Increase offender's knowledge/skills Reduce drug-related harms.

De jure diversion has only been adopted in Australia (via the South Australian Police Drug Diversion Initiative, Queensland Police Diversion Program and the Western Australian Cannabis Intervention Requirement). The RRR indicates it leads to similar impacts to *de facto* diversion, albeit the key difference is the scale of impact, with *de jure* schemes leading to very high treatment referrals and compliance and evidence of reduction in drug-related harms (Hales, Mayne et al. 2004). For example, the Queensland Police Drug Diversion Program led to 10,623 referrals for education and assessment: the highest rate of referral for a program of its type in Australia (Hales, Mayne et al. 2004). Moreover, by removing discretion the risks of justice by geography and exclusion of particular groups are removed. But, it is also increasingly clear that even a *de jure* scheme will limit diversion access if the eligibility criteria are narrow (Hughes et al, in press).

Model 4: Decriminalisation with civil or administrative sanctions

Decriminalisation with civil or administrative sanctions operates in a number of countries including the Czech Republic, Australia, USA and Jamaica and deems that drug possession should not be a crime and thus it should be removed from the criminal law, but it should not just be ignored by society (see Table 5). Treating it as a lesser offence, similar to a driving / motor vehicle violation, thus provides the opportunity for the state to still sanction the behaviour, but without the risk of providing criminal convictions that may have adverse impacts on the future of people who use drugs. This model makes use of low-level sanctions rather than therapeutic interventions, under the theory that it is better in some circumstances to charge a civil fine or to restrict a license than to send a person to treatment: particularly for relatively low risk activities like cannabis use.

Table 5: Program logic – decriminalisation with civil/administrative sanctions

Program aim: To end the criminalisation of people who use drugs for simple possession alone and introduce a new system of response that sanctions drug possession as a lesser offence, similar to a driving / motor vehicle violation.				
Problem statement	Inputs	Process	Outputs	Outcomes
Drug possession should not be a crime, but there are risks if government fully condones the behaviour. Some form of government sanction is thus required.	Legislative change (new civil/administrative law) New system to response e.g. pay a fine online	Police switch to issuing civil/admin sanctions instead of arresting offenders	Quicker police interactions for simple possession	Reduce collateral consequences of convictions (e.g. on employment)
			No new people or fewer people are convicted (dependent upon model)	Reduce burden on CJS and cost Reduce stigma
			Offenders pay civil penalties	Increase harm reduction access Increase revenue

When well implemented decriminalisation with civil/administrative sanctions has been found to be faster for police and to lead to a reduced burden on the CJS. For example, demands on the Czech Republic CJS for possession have remained very low: and lower than other nation states with *de facto* police diversion alone (Belackova, Ritter et al. 2017). Decriminalisation with civil/administrative sanctions is also associated with social benefits for offenders from removal of convictions including employment prospects and housing stability (Ali et al, 1998; Shanahan et al, 2017). More generally, there is evidence that decriminalisation with civil/administrative sanctions can facilitate the provision of harm reduction and treatment services and reduce drug-related harms (albeit here the benefit is realised by the removal of stigma around service access as opposed to via direct referral as in some reforms, such as Models 2, 3 or 5). The benefits of reducing stigma for service access were particularly apparent in the natural experiments in Czech Republic where both harm reduction services and people who use drugs noted that the tightening of the reform reduced service access (Zábranský et al. 2001).

However, outcomes have been less positive in some contexts. For example, some recent US studies have noted increases in drug driving in states with decriminalisation with civil penalties. Examples of net widening have also been observed, particularly in the early years of the South Australian Cannabis Expiation Notice that resulted in a 2.5-fold increase in detections. (Similar experiences occurred in New York and Chicago). Barriers to access have also been observed amongst groups who have financial difficulty, for example as seen in the South Australian Cannabis Expiation Notice scheme where the scheme led to increased imprisonment of people who were unemployed due to non-compliance (Ali et al, 1998). This suggests that two requisite elements for effective implementation include allowing for different avenues to pay (e.g. via community service) and ensuring easy systems of payment (e.g. online).

Model 5: Decriminalisation with targeted diversion to health / social services

Decriminalisation with targeted diversion to health/social services has been adopted in Portugal and some US states (Maryland and Nebraska). This recognises that criminalising people for drug possession alone is harmful, costly and unjust, and that drug use may be a potentially harmful behaviour for some people who use drugs for which access to health/social supports may be beneficial. But, in contrast to the other therapeutic diversionary models, this model argues most people are non-problematic and hence will not need treatment/social services (see Table 6). It thus sees the benefit in a hybrid system where intensive responses are only be aimed at high-risk offenders.

Table 6: Program logic - decriminalisation with targeted diversion to health/social services

Program aim: To end the criminalisation of people who use drugs for simple possession while also recognising that drug use can be a potentially harmful behaviour and/or symptom of broader health or social problems, and thus introducing a new means to screen and address high-risk offender needs (be it treatment or other needs)				
Problem statement	Inputs	Process	Outputs	Outcomes
Criminalising people for drug possession alone is harmful, costly and unjust and exacerbates harms amongst the minority of people who are problematic drug users. But referring all offenders to the drug treatment system is also not required. A targeted response is thus required.	New law (civil or administrative)	Low risk offenders receive non-criminal response (civil penalties or suspended sanctions etc.)	Low risk offenders avoid convictions	Increase access to AOD/other services (if and when required)
	Screening and assessment procedures for high risk offenders	High-risk offenders are referred to AOD assessment and treatment	High risk offenders avoid convictions and have AOD needs met	Avoid collateral consequences of convictions (e.g. on employment)
	Alcohol and other drug (AOD) treatment		Agencies (e.g. AOD treatment agencies) are not burdened	Reduce AOD dependence and drug-related harms
	Other services as relevant through brokerage (e.g. employment services)			Improve social integration Reduce burden on CJS and cost

Studies have found that decriminalisation with targeted diversion to health/social services are associated with lower rates of regular or problematic drug use. For example, Grucza et al. (2018) showed that post reform both Maryland and Connecticut had lower rates of regular use, defined as 10 or more times in the past 30 days: 8.1% and 8.9% respectively, compared to 10.3% to 11.1% for decriminalisation states employing civil penalties alone. Moreover, the Portuguese decriminalisation was followed by reduced illicit drug use among problematic drug users and adolescents, as well as significant reductions in drug-related harms including opiate-related deaths and infectious diseases (Hughes and Stevens 2010, Hughes and Stevens 2015). The evaluation of the Portuguese model by Pombo and da costa (2016) showed that drug injection had decreased with heroin users smoking heroin rather than injecting it. HIV infection decreased, too from 28.0% to 19.6%.

Studies have also shown that such reforms tend to lead to a reduction in the burden on the CJS. For example, Grucza et al (2018) showed that post reform the arrest rate in Maryland fell 42% for youth (aged 18 and under) and 35% for adults. Connecticut also observed declines in arrest rates for cannabis possession, specifically a 51% reduction for youth and 70% for adults (Grucza, Vuolo et al. 2018). Moreover, Portugal saw significant reductions in burden of drug offenders on the CJS (Hughes and Stevens 2010). More generally, analysis of the Portuguese reform has shown increased access to specialised services for high-risk offenders, although most offenders are dealt with through more minor methods (suspended proceedings). For example, evaluation of the CDTs found that about a quarter of the participants were referred to specialised services in addictive behaviours, mainly treatment structures, and for half of them this was the first contact with these structures and a quarter were returning (Carapinha, Guerreiro et al. 2017). Importantly, taking into account the new services the approach also reduced social costs. For example, Gonçalves, Lourenço et al. (2015) found social cost of drugs reduced by 12% in the first 5 years and 18% reduction in the longer term (10 years).

But, some models have led to negative impacts. Of note, Nebraska has one of the highest marijuana arrest rates in the USA. This suggests that decriminalisation with targeted diversion will have limited capacity to reduce the burden on the CJS or increase offender access or reduce drug-related harm if it remains within a framework of coercive control.

Model 6: Decriminalisation with no sanctions attached

The final model, decriminalisation with no sanctions attached, deems that it is wrong to criminalise people for personal use, but that any alternative system is also potentially harmful and counterproductive. As such, under this model it is argued that the police and CJS should have *no* role in responding to people who possess drugs for personal use alone (see Table 7). This has clear similarities with Model 1 (depenalisation) albeit of importance this approach is legislated, in the aim of humanising the person and ensuring that people are not convicted or sanctioned in any way for that offence. The main such model is Germany, albeit Vermont, USA, has adopted a similar approach post their 2018 legalisation of possession of cannabis for personal use.

Table 7: Program logic – decriminalisation with no sanctions attached

Program aim: To send a signal that drug possession is not a crime and to ensure that people are not criminalised or sanctioned for simple possession alone				
Problem statement	Inputs	Process	Outputs	Outcomes
Criminalising people for drug possession alone is harmful, costly and unjust. Any alternative system of responses is also potentially costly and harmful, so the best response is to remove the offence from the law.	Legislative change (removal criminal penalties for possession)	Police cease arresting people for simple possession alone	Offenders contact with the CJS is ceased No new people are convicted Police attend to other crimes	Eliminate collateral consequences of convictions (e.g. on employment) Reduce burden on CJS and cost Increase policing of serious crime Reduce stigma Increase voluntary treatment uptake

Analysis of the German reform suggests this approach may lead to some benefits, including reductions in reliance on the CJS for simple possession offences, and reductions in drug-related harms such as overdose and problematic drug use. For example, the number of newly registered heroin users in Frankfurt declined significantly from 903 in 1992 to 557 in 1993 after a consistent increase in the previous years (Fischer 1995). More generally, Germany has lower rates of drug use, including problematic drug use, than many other European countries (Eastwood, Fox et al. 2016), as well as lower rates of HIV and drug-related overdose. These rates have causes other than drug laws, including systems of healthcare and social support.

Decriminalisation with no sanctions attached is arguably simpler to implement than other legislative reforms (Models 3-5). It also avoids the need for any new systems of referral or ongoing monitoring of offender compliance to be established. A key disadvantage is the possibility of legal intervention with high problematic drug users is not an option. Nevertheless, Germany has seen increased treatment access through stigma reduction. Best practice implementation may thus benefit from investment in harm reduction/treatment alongside reform. Moreover, to maximise the effect of this approach, policies to expunge past records for drug possession would appear paramount.

Table 8: Summary of advantages and disadvantage of different models

No.	Model	Start-up requirements	Prevalence of recent use	CJS burden	Treatment/harm reduction service access	Drug-related health harm	Social reintegration	Net-widening	Differential application
1	Depenalisation	Low	No change	↓	↑ ^(v)	No change	No change	High	High
2	Police diversion (<i>de facto</i>)	Moderate	No change	↓↓	↑↑↑↑	↓↓	↑↑	Low	High
3	Police diversion (<i>de jure</i>)	High	No change	↓↓	↑↑↑↑↑	↓↓↓	↑↑	??	Low
4	Decriminalisation with civil or administrative sanctions	Moderate	No change	↓↓↓	↑↑ ^(v)	↓	↑↑	High	Moderate
5	Decriminalisation with targeted diversion to health / social services	Very high	No change	↓↓↓↓	↑↑↑	↓↓↓	↑↑↑↑	Low	Low
6	Decriminalisation with no sanctions attached	Moderate	No change	↓↓↓↓	↑↑ ^(v)	↓↓	↑↑↑	Low	Low

V= voluntary access.

Discussion

This paper combined a rapid realist review of alternative approaches to simple possession in nine different countries (with 1-3 reforms per country) and qualitative comparative analysis to develop an empirically based set of alternative approaches to dealing with simple possession. Six different options were outlined: depenalisation, *de facto* police diversion, *de jure* police diversion, decriminalisation with civil penalties, decriminalisation with targeted health/social referrals and decriminalisation with no sanctions. Moreover, synthesising the outcomes from each showed that while there are some similarities across the models, each has a different set of advantages and disadvantages, such as in the extent and nature of start-up requirements, the likelihood of adverse effects being realised, and the likelihood of improving social reintegration of people who use drugs.

As with all studies there are some limitations with this analysis. The two most important are that it was inherently guided by the countries included in the analysis. A different set of countries and reforms may have led to other lessons being drawn. The review was also based only on English material. Extending the current typology to other countries and regions would thus be advised.

The analysis nevertheless raises a number of important contributions to research and policy. First, it shows that there are a raft of different options that can and are adopted as alternatives to criminalisation of simple possession, and how traditional discussions tend to focus on only some of these (particularly the Portuguese approach). The variety of options is good news given the broad array of health, social, criminal justice and economic harms that can occur from criminalisation of simple possession (Babor et al, 2018; Caulkins and Reuter, 2016), and the push for alternatives by the United Nations (2019), but also because it shows that some models have been less utilised to date that may offer particular advantages for would be reformers. Here we note decriminalisation with no sanctions. Second, the analysis shows that each model has different advantages and disadvantages. For example, depenalisation is the easiest reform to adopt, but it can lead to justice by geography/demography (limiting access to specific sub-groups). In contrast, decriminalisation with targeted health/social referrals requires more inputs (e.g. legal change and treatment supports), but it is associated with reductions in the burden on the criminal justice system as well as in drug-related health and social harms. This is important as it brings to the fore important trade-offs and considerations about the outcomes that may be of greater or lesser importance for would be adopters of reform. Third, it brings to light factors that may guide selection of one model over another, including worldviews (e.g. whether drug use is viewed as a health or social issue or a lesser offence like speeding while driving or a waste of police time) and the desired objectives of any reform (e.g. non-intervention, minimal intervention or switching to a health or social response). Also important are the legal systems and policing culture. This is exemplified by comparing depenalisation and decriminalisation with no sanctions. Given that law reform is paramount for decriminalisation with no sanctions, this may depenalisation more palatable in some legal contexts. That said this review also shows the importance of considering policing culture, as depenalisation runs a much higher risk of adverse effects such as justice by geography if there is police opposition to reform or performance targets. Finally, the analysis shows that irrespective of the model, most offer some benefits, such as reducing to some level the burden on the criminal justice system (the exceptions being those that had net-widening). This further reinforces the desirability of moving beyond debates on whether to adopt alternatives for simple possession to instead considering *how* and *what* type of model should be adopted.

In conclusion, this review highlights a variety of alternative approaches to simple possession drug offences that can be adopted, whilst bringing to the fore important trade-offs and considerations about the objectives of any reform (e.g. non-intervention, minimal intervention or switching to a health or social response). Any alternative approach to dealing with simple drug possession comes with risks. The research in this area is complex, incomplete and not capable of providing definitive answers about what the outcome of any given approach will be. The current approach also entails risk, including that costs and burdens are placed on citizens (taxpayers and people who use drugs) that are not justified by effects in reducing social and health harms. We hope this will provide a basis for generating a shared understanding of the key features of different models; enable more robust and useful research; and contribute to more informed decision-making.

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Table 1: Summary of alternative approaches taken to simple possession drug offences across the nine countries

Country	Legal basis	Reform type	Drug type
Australia	<i>De jure</i>	Decriminalisation with civil penalties	Cannabis
Australia	<i>De facto</i>	Police diversion (cannabis caution) with referral to education session	Cannabis
Australia	<i>De facto</i>	Police diversion to treatment (assessment and brief intervention)	Other illicit drugs
Czech Republic	<i>De jure</i>	Decriminalisation with administrative penalties (fine)	All illicit drugs
England and Wales	<i>De facto</i>	Depenalisation with on the street warnings	Cannabis and khat
England and Wales	<i>De facto</i>	Police diversion to structured interventions involving treatment and social services	All illicit drugs
Denmark	<i>De facto</i>	Depenalisation – guidelines from Attorney General to police to issue warnings for a first offence	All illicit drugs
Germany	<i>De jure</i>	Constitutional court decision for non-prosecution	All illicit drugs
Jamaica	<i>De jure</i>	Decriminalisation with civil penalties	Cannabis
Netherlands	<i>De facto</i>	Depenalisation ('tolerance policy')	Cannabis
Netherlands	<i>De facto</i>	Police diversion to treatment	Other illicit drugs
Portugal	<i>De jure</i>	Decriminalisation. Offence became an administrative offence, with referrals to dissuasion committee	All illicit drugs
USA	<i>De facto</i>	Depenalisation – police instructed to treat as “lowest priority”	Cannabis
USA	<i>De jure</i>	Decriminalisation with civil penalties	Cannabis
USA	<i>De facto</i>	Police diversion to education / treatment / social services	All illicit drugs

NB. This outlines the main approaches only. Some Australian states have *de jure* diversion programs e.g. Western Australia and some US states e.g. Maryland have decriminalisation *with* diversion to treatment.