

Summary

Drug use is associated with risks that can lead to health problems and premature death. By criminalizing drug use in 1988 and subsequently increasing the penalties for such offences in 1993, the Swedish legislature sought to reduce the incidence of drug-related harms. In this report, we evaluate whether the goals set out by the government were achieved. Is criminalization followed by:

- a reduction in drug use and/or the number of occasions on which drug use occurs?
- reduced negative consequences of problematic drug use, such as health problems and drug-related mortality?
- increased enforcement costs?

Two important prerequisites for the analysis should be clarified at the outset. First, it is difficult to evaluate the consequences of criminalization given that we lack a counterfactual situation where Sweden did not criminalize drug use in 1988. There is also a lack of long time series, which makes the analysis of the drug situation before and after the reforms less comprehensive than would be desirable. The report is based on available indicators and comparisons with other countries.

Second, it is essential to understand the difference between legalization and decriminalization of personal use and possession of small amounts of drugs. Legalization makes it legal to buy, sell, possess and use drugs. With decriminalization, it is no longer a crime to use or possess small amounts of drugs. However, other forms of sanctions can be activated and other forms of handling drugs remain illegal. In this report we analyse the effects of criminalization and decriminalization of use, not legalization.

The development towards criminalization

In the 1960s, drugs went from being a private and medical problem to a public and social problem. Initially, the response to drugs consisted of a strong increase in penalties for the more serious drug crimes. Users were perceived as victims of the drugs, and the question in the 1970s was whether treatment should be voluntary or coercive. From the end of the 1970s, focus was increasingly shifted to the user, and the new direction of drug policy was formulated in a budget bill (1983/84:100), envisioning Sweden as a "drug-free society". The user had come to be perceived as the only irreplaceable link in the drug chain. According to this view, drug crime can only be stopped by decisive action against the user.

The consumption of drugs was criminalized in 1988, and in 1993, imprisonment was made a possible penalty, allowing the police to forcibly take samples of bodily fluid. Criminalization and increased penalties were justified by the importance of demonstrating firmness and consistency. It was also deemed that a no-punishment zone could reduce confidence in the justice system. The threat of punishment was seen as psychologically important for those at risk, and the need for early intervention and treatment was also a factor. The number of compulsory tests increased significantly after 1993, and in the early 2010s prosecutions for drug offenses overtook prosecutions for theft, which historically had been the most common prosecuted crime.

Were the objectives of criminalization achieved?

Since the criminalization of drug use in Sweden, availability has remained high, and the so-called street price of the most common drugs has decreased significantly. Based on calculations by the police, there is no indication that the number of places where open drug use and sales take place has decreased. A review of available studies of the self-reported use of drugs by young people and adults leads to the conclusion that the criminalization in 1988 and the increase in penalties in 1993 can hardly be said to have influenced drug use in the intended direction or made drugs more difficult to obtain.

For several years, Sweden has led the EU in terms of reported cases (per capita) of drug-related mortality. However, it is well known that interpreting differences between countries is difficult. If only developments in Sweden are considered, there is no evidence that drug-related mortality has decreased; on the contrary, most evidence suggests that it has increased significantly since the 1970s. A similar negative trend is apparent in the various estimates of problematic use. Subject to varying calculation principles, the tendency is that the later estimates show considerably higher levels of problematic use than those estimated in the 1990s.

The analysis concludes that the criminalization of personal use of drugs in 1988 and the increase in penalties in 1993 have not achieved their intended objectives. The results from Sweden show that the availability of drugs has not been reduced. Neither have the number of open drug scenes, consumption in the population or the number of people with problematic drug use. The need for care has not decreased, nor have rehabilitation efforts been stepped up. We also cannot see a decrease in the number of drug-related deaths. In fact, most of these indicators have developed in an undesirable direction. A cautious interpretation is therefore that criminalization of personal use has an insignificant role in drug supply and demand and that problematic use has not been contained.

Enforcement costs

All policies involve a trade-off between expected benefits and costs. The punitive drug policy that Sweden has chosen has costs that need to be taken into account. The review shows that police control of drug use takes up large resources. The sharp increase in police interventions and coercive testing results in increased prosecutions for drug offenses, especially minor offenses. Legal principles have been challenged by the criminalization of individuals' own legal sphere, a sharp increase in the number of criminalized acts and discriminatory application of the law. For users, consumption has led to a criminal record, and the criminalization is claimed by many to contribute to stigmatization and marginalization.

Drug policy in the Nordic countries

From a Nordic perspective, Sweden has chosen the most intrusive and least harm-reducing approach. Sweden is the only country that carries out forced testing of bodily fluids on a large scale to establish use. The development of use in the Nordic countries, as far as it is possible to compare, cannot be explained by differences in legislation. The development of acquisitive crime measured by theft is remarkably similar between the countries, despite the stricter drug legislation in Sweden. In terms of drug-related mortality, which is certainly complex to compare, available indicators suggest that Sweden has performed worse than Norway and Denmark since the mid-1990s.

The process of decriminalization in other countries

There is an international process towards both decriminalization and legalization where different countries have changed their drug policies after finding them costly, ineffective, and harmful. Our review, which focuses on the effects of decriminalization, shows that decriminalization does not seem to increase cannabis use. Nor do property crime and violent crime appear to be affected by such a change. In the report, we examine the Portuguese example more closely. Portugal's drug policy is obviously not a perfect model. The reform seems to have lost momentum in recent years due to underfunding, but it is an example that suggests that it is possible to deal with the drug problem in a more humane and largely more effective way.

Conclusion

Our analysis and review of research has led us to the conclusion that an official commission of inquiry should be appointed with the aim of decriminalizing personal use and minor possession of drugs in Sweden. We would like to highlight three factors that should be given special consideration:

- The main task of such an investigation should be to identify a model for decriminalization that is adapted to Swedish

conditions and that, in accordance with the government's objective of a public health-based drug policy, will promote a transition from punishment to care and prevention. It is essential that the new model reduces the harmful effects of drug control caused by the current policy and removes the barriers to adequate harm-reducing measures caused by the criminalization policy. This was also mentioned by the government's own report (SOU 2023:62).

- In Norway and Denmark, it has become more common to differentiate between recreational users who should be punished and problematic users who should be treated. It is both commendable and reasonable that problem drug users are offered care and treatment measures to reduce the harm caused by their use. For those whose use is not problematic, it should be investigated how to design a response that does not risk leading to reduced life chances in the form of stigmatization and marginalization. This applies in particular to young adults and the adverse effects of a criminal record.
- Decriminalization should result in a transfer of resources from the judicial system to care and prevention efforts. However, most people who try drugs will not need any care or treatment, which is why an investigation should ensure that health care resources are used effectively under the chosen model for decriminalization.