

Medical Cannabis: Decriminalizing Sick Utahns



SUMMARY

Utah is one of the leading states for opiate overdose fatalities in the nation, and legislators struggle to find ways that this epidemic can be abated to save lives.

Yet at the same time, legislators refuse to legalize a plant that shows promise in reducing that overdose rate and providing relief to thousands more Utahns for whom cannabis shows a high potential, whether by alleviating pain, managing symptoms, or even reversing or altogether mitigating an underlying condition.

Throughout the state, sick and suffering individuals secretly consume cannabis for health reasons, yet do so at great personal risk, jeopardizing their employment, risking having police officers serve a no-knock warrant on their home, forfeiting their right to keep and bear arms, and giving the state a reason to potentially take their children away.

Utah's drug laws must be amended to allow peaceful people to use cannabis for legitimate medicinal purposes.

No Utahn should be threatened with fines, jail, and losing their children merely for trying to be healthy.

By any reasonable measure, the so-called “war on drugs” has been an abysmal failure. Over \$50 billion is spent annually by federal, state, and local governments punishing people for consuming controlled substances.

But the true costs of this war are not found merely in taxpayers’ pockets, but in prisons and cemeteries; almost 1.5 million Americans are arrested annually for drug law violations, tens of thousands of Mexicans have been killed in cartel turf wars, and American citizens are harmed and killed by agents of their own government enforcing prohibition laws.

Why Criminalize Cannabis?

Cannabis has been used as a medicine for millennia.¹ At the turn of the 20th century, it was found in most tinctures and medicines readily available in America. This era saw heavy immigration by Mexicans, many of whom used the same plant, also for medical reasons, calling it “marihuana.”

Racially charged media campaigns (as happened decades earlier with the Chinese) began to attack “marihuana” and the “disruptive Mexicans” who used it. Americans were told that this scary substance would cause

which ranked substances based on their danger and addiction potential. Cannabis was listed at the highest level alongside heroin and LSD, despite no documented death ever occurring due to cannabis use.

Disregarding thousands of years of examples to the contrary, this classification asserts that there exists “no currently accepted medical use” of cannabis.

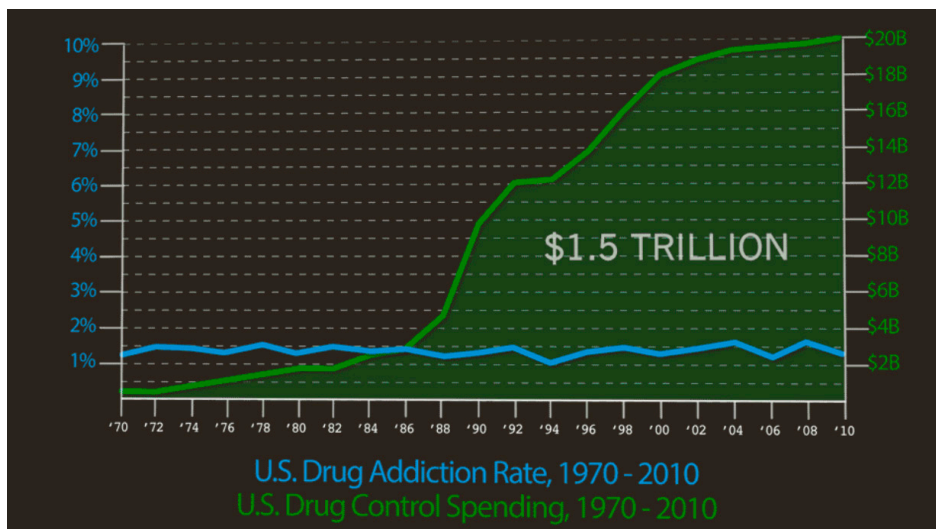
Utah’s Criminalization

During the prohibition era, there was widespread recognition that the federal government lacked authority to ban consumption of alcohol—thus the proposal was not to pass a new law, but to amend the Constitution.

In the case of cannabis and other drugs, the effort to ban them likewise conceded this position and therefore focused on state-level reform. The American Pharmaceutical Association compiled a list of drugs it sought to bring under regulation, and this list—or variants thereof—was included in bans imposed by several states beginning in 1913.

Utah was early among the states to impose a ban on cannabis and other drugs. Possession and use were banned, and yet, in the very same statute that introduced the first state-level prohibition on a defined list of substances, Utah legislators explicitly legalized the medicinal use of every single drug they were banning so long as the individual obtained a “written order or prescription of a physician” authorizing the possession and use of the substance.

Medical cannabis, then, is not a matter of legalization in Utah—but rather *re*-legalization.



Every war has collateral damage—innocent individuals caught in the crossfire. In the case of the “war on drugs,” patients find themselves considered as criminals for desiring to medically use a prohibited product that might help alleviate, or even cure, their condition. Either the individual forgoes the potential remedy to remain a citizen in good standing, or else he or she is placed in significant jeopardy, seeking improved health while suddenly standing in the middle of a battlefield.

violence and sexual abuse of their women by drug-fueled foreigners.²

Few realized that the very plant being demonized, in an effort to oppose the influx of immigration, was the same stored in most of their medicine cabinets.

The Marihuana Tax Act of 1937 effectively banned the sale and use of cannabis but was ruled unconstitutional three decades later. A few years later, Congress replaced it with the Controlled Substances Act,

Going Around the Feds

Removal of cannabis from Schedule I has been repeatedly proposed since 1972, with no success. Petitions to the Drug Enforcement Administration have been consistently denied, even when they are appealed in court.

Given the unlikelihood of federal reform, those seeking to use cannabis have circumvented federal decrees entirely by getting states to adopt laws that explicitly legalize the possession and medicinal use of cannabis.

California voters led out on the issue with Proposition 215 in 1996, a ballot initiative that passed with 55.6% of the vote. The new law legalized medical cannabis cultivation and use for patients with a physician's recommendation. In a 1998 lawsuit and subsequent appeal, the federal government's authority to defeat states' rights by virtue of the Controlled Substances Act of 1970 was upheld by the Supreme Court, notwithstanding the state statute purporting to grant legal authority.³

Notwithstanding this legal battle, many other states have followed in California's footsteps. To date, 29 states have legalized the possession and use of cannabis for medical purposes upon recommendation of a physician. The federal government, in light of this surge in legal opposition to its criminalization of cannabis, has opted generally to focus on organized drug crime rather than interfere with state programs that provide access to patients. This disengagement from federal enforcement has emboldened an increasing number of states to reform their laws in favor of patient access.

An Opiate Crisis

While cannabis is used by many to manage pain and alleviate symptoms of various ailments, its Schedule I status means that physicians cannot prescribe it, and it is not available in dispensaries. Further, medical literature generally ignores its historical medicinal use, and thus physicians are trained to see it as an "illicit drug," as it has been politically—not scientifically—classified.

Without this alternative, doctors have relied upon opiate-based medications to manage pain. And the availability of these medications has created a substantial increase in

addicts" but find themselves addicted as a result of traditional medical practice. Maline Hairup, a Utah resident, provides a painful example. After prescribing painkillers for over a decade, her doctor cut her off. "She eventually ended up getting some heroin," Maline's sister said, "because she couldn't get any more pills. My sister used heroin one time and she died." Maline died of an overdose in 2014 at age 38.⁶

According to the Utah Department of Health Behavioral Risk Factor Surveillance System, 32% of adults in the state were prescribed opioid pain medication in 2014. This abundance of access has created a firestorm of risk, leading to unnecessary death.

According to the Department of Health, Utah has the 7th highest opiate overdose rate in the entire nation.

deaths in recent decades, whether due to use by drug addicts or accidental overdoses by those using their prescriptions as directed.

In Utah, 409 people died from an opiate overdose in 2015. In 2016, the number stood at 392.⁴ Both numbers are a significant increase since 2000, when only 139 reported cases occurred. Even accounting for population growth, there has been a clear increase in the overdose rate; in terms of overdoses per 100,000 people, the number has ballooned from 9.1 in 2000 to 19.6 in 2015.⁵

In many instances, those who become dependent upon opiate medications are not typical "drug

In response, Utah lawmakers have enacted new laws attempting to address this problematic trend, which makes our state the seventh highest in opiate overdoses in the entire nation. Among the recent reforms are limits on how long an opiate may be prescribed, requirements for physicians to check a drug prescription database before signing off on a new prescription, training physicians to recognize opiate abuse, and insurance program modifications.

These efforts to minimize opiate abuse should be applauded, but the potential benefits of substituting medical cannabis for harmful opiates should also be considered.

Will Ads Help?

The Utah Department of Health spent over \$600,000 in taxpayer money during 2016 and 2017 to create an ad campaign called “Stop the Opidemic,” designed to raise awareness of the opiate overdose problem. The campaign included billboards, TV commercials, online ads, and other marketing material.

It is unlikely that this campaign will have any effect on lowering the overdose rate. What would have a demonstrable and positive impact on that rate is legal access to medical cannabis.

This claim is based on a study published in the *Journal of the American Medical Association*, which examined “the implementation of state medical marijuana laws and opioid analgesic overdose deaths in the United States between 1999 and 2010.” The study’s authors found that states with medical cannabis programs had “a 24.8 percent lower average annual opioid overdose death rate compared to states without such laws.”⁷

Should the same trend hold true in Utah, the availability of medical cannabis as a legal alternative would result in the lives of eight or more Utahns being saved *each month*.

A Call for CBD

In 2013, Dr. Sanjay Gupta produced a documentary titled “Weed,” which explored some of the medical benefits of cannabis and challenged viewers to reconsider their position on whether this plant should be legally banned.

One of the compelling stories featured in that documentary was that of



Utah taxpayers were forced to pay over \$600,000 to support an ad campaign designed to discourage opiate abuse but are denied the freedom to use cannabis as an alternative.

Charlotte Figi, who began suffering from seizures when she was only three months old. Over the next few months, Charlotte had frequent seizures lasting two to four hours, and she was hospitalized repeatedly.

Doctors struggled to diagnose her condition, and once they knew what was wrong, her medical team tried all sorts of drugs and treatments, each of which carried significant side effects.

Charlotte was having 300 “grand mal” seizures a week, and had lost the ability to walk, talk, and eat. Doctors had nothing else to offer, and the family prepared for her death. That’s when her mom, who had consistently voted against marijuana legalization efforts, decided to try some cannabis oil.

It worked. “When she didn’t have those three, four seizures that first hour, that was the first sign,” Charlotte’s mom said. “And I thought well, ‘Let’s go another hour, this has got to be a fluke.’”⁸

It wasn’t. Today, Charlotte has only two or three seizures in an entire

month, and while sleeping. Her condition has improved substantially.

After the release of the documentary sharing her story, Libertas Institute searched for families with a similar situation in Utah, and profiled the case of Stockton May, a young boy with Dravet syndrome just like Charlotte. The interview with his mother, Jennifer, resulted in overwhelming media coverage of the family’s plight, and launched their advocacy for the same oil Charlotte had used with great success.

This oil is non-psychoactive and contains a derivative of cannabis known as cannabidiol, or CBD. Representative Gage Froerer sponsored a bill in the 2014 legislative session to legalize the use of this oil for those with neurological conditions whom it appeared to benefit. The bill was watered down heavily, chiefly due to opposition from lawmakers concerned about legalizing access to an “untested drug.” In the end, only those with intractable epilepsy who had undergone other failed treatments were allowed to legally obtain and use CBD oil.

Failed Legislative Efforts

Hoping to build on the momentum of CBD legalization, Senator Mark Madsen sponsored legislation in 2015 to enact a comprehensive program allowing Utahns of varying conditions to obtain and use the full cannabis profile—not just a single, non-psychoactive cannabinoid.

Madsen's interest was philosophical, but it was also personal—he had momentarily died years earlier after a fentanyl patch he was wearing accidentally burst. This opiate medication is over 50 times more potent than morphine, and when the slow-release patch burst, the gel soaked his skin, administering a fatal dose.

Fortunately, his daughter noticed he was not responding and alerted his wife, who performed CPR and called authorities. Unlike many other Utahns who die in similar circumstances, Madsen's life was saved.

In light of this experience, he understood the opiate crisis better than any of his colleagues, and was determined to provide a path for a legal alternative to address the problem.

Madsen's first attempt, in 2015, was a failure; the bill died in the Senate by a single vote. A second attempt during the 2016 legislative session, after the bill had undergone substantial revision to address concerns, passed the Senate 17-12.

From there, the bill was assigned to the House Health and Human Services Committee, where Madsen expected it to fail, given the committee's membership. Following a hearing, the bill was defeated on a 4-8 vote.

Organizational Opposition

The legislative proposal Senator Madsen had developed would have created one of the most tightly controlled medical cannabis programs in the country, replete with oversight, controls, database tracking, and more. Notwithstanding these good faith efforts to craft a program that would permit legal access to patients in need while enacting strong regulatory oversight, several groups—including the Utah Medical Association, The Church of Jesus Christ of Latter-day Saints, Sutherland Institute, and law enforcement groups—have successfully ensured that a minority of legislators could stand in the way of legal reform.

The primary arguments these opponents use are that: 1) cannabis is not FDA-approved; 2) legalization of cannabis can lead to a “slippery slope” toward legal recreational use; 3) more research is needed before allowing physicians to recommend it; and 4) the psychoactive THC in cannabis is concerning and should be regulated or prohibited.

It is true that cannabis is not FDA-approved. Unfortunately, this is

a result of the DEA having listed cannabis as a Schedule I substance; the federal government will not permit the study of and access to a product it has politically deemed to have “no currently accepted medical use.” Under the 10th Amendment to the U.S. Constitution, several other states have asserted the authority to regulate and legalize cannabis within their borders for their citizens who can medicinally benefit from its use. In light of federal political interference, Utah should demonstrate similar leadership, notwithstanding the current lack of FDA approval.

The “slippery slope” argument is specious at best, as many states have legalized cannabis for medicinal use and stopped there. Utah's culture and political climate is such that recreational legalization at any point in the future is extremely unlikely.

As for research, we readily agree that more is needed, yet it is the government's restriction of cannabis that has severely reduced access for U.S. scientists to study this plant. Such research can be performed concurrently with legalization; patients should not be made to wait years, or decades, for researchers to satisfy themselves about a product that has been used for millennia without killing people. The same cannot be said of pharmaceuticals.

Finally, it is true that THC can cause psychoactivity—but so too can a host of other legal drugs that are readily available and widely used. Concerns about chemical dependency or addiction apply just as much—indeed, more so—to opiates, which pose a much greater risk than cannabis. Risks should be discussed with a physician, but cannabis should nonetheless be allowed as an option.

Based on a study published in *The Journal of the American Medical Association*, legalizing cannabis for medical use could save the lives of eight or more Utahns each month.

Patients—Not Criminals

Criticisms against legalization of medical cannabis ring hollow in light of the current predicament faced by those who either choose to use approved medications only, or those who decide to defy the law in hopes of better health.

Patients who may benefit from cannabis but choose to abstain from medical use due to its criminalization typically find themselves being prescribed one or more dangerous or addictive drugs—each of which often has side effects that require further prescription medications to manage. This cyclical drug regimen is costly, but more importantly, it can cause a deteriorating medical condition or death.

Around the country, individuals with a wide range of medical problems have offered testimony about their experience weaning themselves off of some, most, or even all of their prescription medications using a cannabis treatment that mitigates their underlying medical issue without introducing damaging side effects. Utahns in similar circumstances have repeatedly expressed the desire to have the same chance, but legislative inaction leaves them no choice but to rely on potentially fatal drugs if they wish to remain in compliance with the law.

Not all Utahns are willing to suffer while they wait for legal reform. This has led to two courses of action. Some patients have become medical refugees in a new state where they face no criminalization for using medical cannabis. They do so at a significant cost, leaving their support network behind—family, friends, co-workers, and a medical team that knows their history.

Other Utah patients are not willing to make such a sacrifice merely to appease politicians who prefer to keep cannabis criminalized. They therefore obtain it illegally, placing themselves at risk of a number of negative consequences: a police raid of their home, having their children taken into state custody and placed in foster care, being incarcerated, paying a fine, losing their right to keep and bear arms, being fired, and more.

Cannabis used by these law-breaking patients is either illegally smuggled across state lines from a neighboring state where it can be legally purchased and used, or it is obtained from the black market, where so-called “marijuana” is readily available, though untested and potentially unsafe. These individuals would prefer to have safe and legal access to their medication without risking the life they are hoping to improve.

Next Step: Legal Access

Many legislators, and the opponents who encourage their resistance, have derailed reform efforts by appearing to be open to change but qualifying it by saying that legal reform in Utah should be cautionary, slow, and backed up by research conducted in the state.

While it is not inherently problematic to be cautious in changing the law, and though more local research would certainly be beneficial, these are not reasons to ignore decades of first-class medical research conducted in other countries such as Israel.⁹ This plant has been safely and successfully used by millions of people over millennia. As noted by the Substance Abuse and Mental Health Services Administration, there has never been a death attributed solely to its use, whether internationally or in over half of the states that have now legalized medical use. This abundance of safe experience provides ample support for Utah taking a cautious step towards a comprehensive regulatory program that provides patients legal access.

For cancer patients, those suffering from chronic pain, people racked with debilitating seizure episodes, and many others, cannabis promises hope. Sick Utahns cannot wait—and should not be made to suffer—while a few elected officials, or taxpayer-funded researchers, satisfy themselves that legalization is acceptable. The public is ready for medical cannabis legalization—now.



At a medical cannabis town hall event, a Utah woman suffering from multiple medical problems shows the prescription drugs that bring some relief but also significantly worsen her medical condition. She hopes for the freedom to use cannabis to manage her condition and wean herself off of these harmful drugs.

UTAH'S PATH FORWARD: A BALLOT INITIATIVE

In light of both legislative resistance to and widespread public support of medical cannabis legalization, we recommend that a citizen-led effort be launched to amend Utah law such that individuals who possess cannabis and a physician recommendation for its medical use are exempted from any criminal penalties or other adverse legal actions.

Voters Are Ready

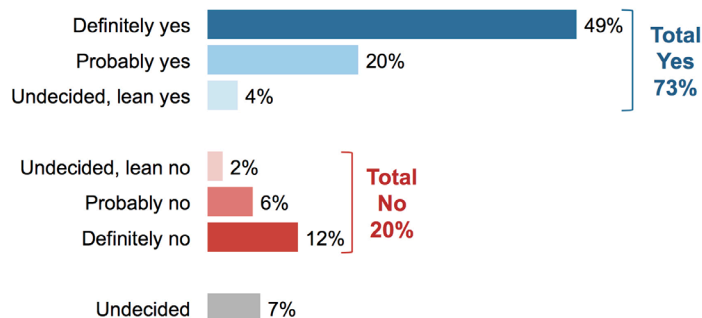
One poll after another confirms that likely voters in Utah are very receptive to legalizing a comprehensive medical cannabis program in the state that benefits individuals suffering from a wide range of conditions.¹⁰

A poll conducted in February 2017 by FM3 explored public sentiment in far more detail than past polls have done. 402 live interviews were conducted with likely Utah voters; the poll has a margin of sampling error of +/- 4.9% at the 95% confident interval. Landline and cell phones were used.

As indicated in the graphic to the right, it appears the public would overwhelmingly enact such a proposal.

A medical marijuana ballot concept yields a 53-point margin of support.

This statewide measure would allow doctors to recommend medical marijuana as a treatment for cancer, epilepsy, Alzheimer's, and other serious illnesses. Would you vote yes in favor of it, or vote no to oppose it?



Recommended Policy

Libertas Institute offered significant input on Senator Madsen's legislation, following research of programs in other states, discussions with cannabis business owners, and learning about the needs of Utah patients. Given the amount of time invested in this draft, and the narrowness with which it was crafted to satisfy the conservative sensibilities of Utah's population, we recommend that the initiative text closely mirror the language that has already been debated and refined.

We do recommend, however, that the restrictions be somewhat loosened—for the number of dispensary licenses, the qualifying condition list, the form of cannabis that can be possessed and used, and the number of recommendations a physician can make, among other changes. This slight expansion of access and freedom will still be well received by the public while facilitating a better functioning regulatory program.

Endnotes

1. "Historical Timeline: History of Marijuana as Medicine - 2900 BC to Present," ProCon.org.
2. "How Did Marijuana Become Illegal in the First Place?," Drug Policy Alliance, October 9, 2014.
3. See *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001).
4. Based on information provided in April 2017 to Libertas Institute by the Chief Medical Examiner and program manager in the Violence & Injury Prevention Program at the Utah Department of Health. Both indicated that a backlog of cases exists that are still being processed for 2016, and that the number will likely increase for an official count in the future.
5. "Utah's growing opioid problem and what's being done to stop it," KSL, February 21, 2017.
6. "'It's beyond pain': how Mormons are left vulnerable in Utah's opiate crisis," *The Guardian*, May 26, 2016.
7. "Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010," *The Journal of the American Medical Association*, 174(10):1668-1673.
8. "Marijuana stops child's severe seizures," CNN, August 7, 2013.
9. "The Holy Land of Medical Marijuana," *U.S. News and World Report*, April 11, 2017.
10. "Poll: Utah voters still favor legalizing medical marijuana, though legislative future is uncertain," *The Salt Lake Tribune*, October 10, 2016.

PUBLIC POLICY BRIEF

Medical Cannabis: Decriminalizing Sick Utahns



FREQUENT
RECURRENCE
===== TO =====
FUNDAMENTAL
PRINCIPLES IS
ESSENTIAL
===== TO =====
THE SECURITY
===== OF =====
INDIVIDUAL
RIGHTS

UTAH CONSTITUTION
ARTICLE I, SEC 27