

# Decriminalization in the 21st Century

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In the past few decades, the general view of drugs has been changing across the world. An increasing number of policies have been passed since the turn of the century decriminalizing the use, possession, and distribution of drugs. The decriminalization of drugs usually isn't a solo sweeping law but instead comes with new policies or systems put into place that focus on assisting those with substance use disorders or direct law enforcement toward larger-scale drug trafficking. In many of these places, the legislation provides a new framework for how drugs are regulated and how drug users are processed in the criminal justice system. The idea of decriminalization is highly disputed to this day and there are many reasons on both sides of the argument. In places that haven't decriminalized drugs, it is likely because they believe it is unsafe, that it will promote drug use, or increase crime and overdose rates. Places that have decriminalized, or plan to, believe that it will encourage more people with substance use disorders to get help, to use emergency services, and to promote healthy drug use through better education. The motivation for this shift is largely due to new views on substance use disorders and finding ways to help people instead of fining them or putting them in jail. This review paper will provide an overview of the efficacy of decriminalization policies in Portugal, Oregon, and Canada, and evaluate how the traditional treatment of drug use offenses impacts overdose rates.

In 2001 Portugal passed legislation that decriminalizes the use, possession, and purchase of illicit drugs for personal use, which is defined as a 10-day supply [6]. Additionally, the focus of law enforcement was shifted away from individuals to larger-scale drug trafficking operations, and the Commission for the Dissuasion of Drug Addiction (CDT) was implemented to act as a referral system for drug users and rework drug education in schools. A study conducted in 2007 interviewed citizens of Portugal about how they believed decriminalization was working [6]. The reviews were mixed indicating that the new policy was beneficial for current drug users, but that it might encourage new drug use. Additionally, people believed that the CDTs were more effective in theory than reality, pointing out that the funding and staffing had decreased over time. However, in the same year, research showed that there had been a reduction in deaths and new cases of drug-related blood-borne diseases. There was an 11% increase in trafficking charges, and prisons were less crowded [6]. This is a result of the change in focus away from individuals. Since law enforcement began focusing on larger-scale operations, there were fewer individual minor possession or use charges and an increase in trafficking charges. New research from 2021 [12] indicates that since 2001, Portugal's drug-related death rate has been decreasing, while the rate across Europe has been increasing. Additionally, a study was conducted looking at the treatment-seeking patterns of those with heroin use disorder before (1992-1999) and after (2002-2013) decriminalization [9]. Researchers found that the overall demand for treatment declined, but there was an increase in engagement with therapeutic treatment, and that the number of new cases of HIV had decreased.

Two decades after decriminalization in Portugal, Oregon passed Measure 110. Measure 110 eliminated criminal penalties for drug possession and use with some limitations and established the Oversight and Accountability Council to carry out health services [11]. The policy was passed in November 2020 but has recently been overturned and was officially deactivated in September 2024. Measure 110 is said to have 'failed' because there wasn't a clear decrease in drug use or in the rates of overdose in Oregon. It is too early to tell what the repercussions of reversing decriminalization will be. After the implementation of Measure 110, the number of drug-related arrests dropped significantly, but the overdose rates did not. In recent years overdose rates have been increasing at an unprecedented rate. This increase is often attributed to the increase in the presence of fentanyl in the US. A study published in early 2024 [15] sought to provide insight as to why Measure 110 failed. To do this they looked specifically at the rates of fentanyl-related overdoses in Oregon and across

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the country. They predicted what the overdose numbers would have been in Oregon without decriminalization by factoring in how fentanyl has been spreading. When the predicted numbers were compared to the actual numbers, they found that the prediction was significantly higher than the reality of Measure 110. The researchers concluded that the increase in overdose deaths in Oregon cannot be solely attributed to decriminalization.

A policy similar to Oregon's Measure 110 was passed in Canada in January 2023. Canada recently implemented a new three-year policy under the Controlled Drugs and Substances Act (CDSA) that prevented adults over the age of 18 from being arrested or charged for the possession or use of small amounts of opioids. The main reason for this policy is the growing overdose crisis and the belief that criminal punishment is not an effective method in deterring drug use [3]. This is still a very new change for Canada, and so far, there have been good and bad results. 2023 was a record year for all drug related deaths in Canada, but from March 2023 to March 2024 there was actually a 10% decrease in opioid overdoses. The CDSA is a three-year pilot program, which is intended to be a test run for decriminalization in Canada. The British Columbia Ministry of Mental Health and Addictions has been publishing updated research every few months tracking health pathways and law enforcement. They believe that these are the two most important factors in evaluating the progress made by decriminalizing and gauging its efficacy.

The policies in Oregon, and Portugal were, on paper, very similar in their goals, reasoning, and execution, yet they had extremely different outcomes. This brings into question other factors that impact drug use, overdose, and drug-related arrests. In the United States, drug criminalization has been historically motivated by discrimination. Additionally, especially in recent years, there is a general distrust of law enforcement across the country. A study analyzing drug-related arrest outcomes in Arizona found that of those arrests from 2009-2018, 24% were American Indian or Alaskan Native, 12% were Latino/a, 6% were Black, and 57% were White. However, 33% of black men, 17% of Latino men, and 6% of white men were found to serve time at the adjudication and sentencing stage [2]. As this study shows, there is a discrepancy between those who are arrested for illicit drug use and those who end up serving time for those drug charges. These statistics are especially important when looking at the overdose rates of people recently released from prison. A study from 2014-2018 found the rate of overdose for individuals recently released from prison in Oregon is 10 times higher than the rate of the general population [5]. Another study in Washington from 1999-2009 found that the average time from prison release to death was 1.7 years and that the leading cause of death was mostly overdose [1]. Not only are people of color more likely to serve time in prison, but they are disproportionately affected by their time spent incarcerated.

A route other than prison must be developed for people with substance use disorders. When people believe that they may go to jail for possession or use of illicit drugs they become less likely to seek help for themselves or others when something goes wrong. Many states in the US and other countries across the world have developed good Samaritan laws instead of decriminalizing them, which have been more effective in theory than reality. Good Samaritan laws are meant to increase the use of emergency services in cases of drug use without fully decriminalizing the use of drugs. Many of these policies promise amnesty for those who call EMS in a situation in which the parties involved are participating in illegal activities. However, a study that examined fatal overdoses from 2015 to 2019 in seven states that have good Samaritan laws found that there was no significant effect of the laws in reducing overdose rates [13]. Another study found that across 3109 counties with good Samaritan laws, there was not a significant reduction in fatal overdoses within the first 2 years of the law's enactment [4]. The reasoning of why these laws is not effective is unknown, but it's clear that there lack of trust in these good Samaritan laws that prevents them from having their intended effect.

In addition to the lack of trust in law enforcement, it has been found that there is a correlation between drug seizures and an increase in overdoses in the area following the seizures. A study in Marion County, IN found that there were 17.7 more overdoses per 1000 drug seizures within 250ft and 21 days of a drug seizure [8]. A similar study conducted in Ohio found a significant association between drug seizures and

sons as to why this pattern occurs, and both mention tolerance and consistency of drug source as factors. When people who use drugs have to go through a difficult process to procure drugs, they often find a consistent dealer. If that source is removed, those in need have to find a new way to get the drugs they need which quickly becomes dangerous.

There has been so much research done in the past two decades alone investigating the effectivity of decriminalization and how to implement policies that may work better. In research looking at how effective the current policies are, there is a lack of focus on new drug use. This is difficult to measure for many reasons, mainly self-reporting and comfortability in reporting drug use. In Portugal there appears to be an increase in overall drug use [6] but it is unclear if this is new use since the change in legislation, an uptick in self-report, or an increase by those who were already using. Similarly, research could be done on the views of younger generations regarding the new policies and drugs in general. Many decriminalization policies aim to implement better education about drug use for the younger population, but there hasn't been much research as to how effective it has been.

Another gap in the research occurs in looking at why some policies have been effective, and some haven't. Cross-cultural research could provide insight into views of drugs before and after decriminalization either in participants home country or in other countries. A deeper dive into the similarities and differences between Portugal and Oregon could indicate why one has stuck for two decades and why one failed after three years. This research could focus on the policies themselves, how they were implemented, how they were maintained over time, or how the public responded to them. All of these and more are huge factors in why legislation has been successful in some places and not in others.

It is unrealistic to believe that decriminalizing drugs will have a positive overnight effect anywhere in the world. That being said, it is a necessary step in providing aid to those who use drugs. As the opioid crisis grows, and the number of overdose deaths grows each year it becomes even more clear that the current measures in place to handle drugs are not working. An increasing amount of research is being done on substance use disorders and their treatment them, which needs to be used when new policies are created to provide a safe and effective system for those who need help. It is important to acknowledge that currently there are many places where decriminalization is not feasible. Specifically in the US, the general view of drug use, the treatment systems in place, and the state of law enforcement create an environment that would make decriminalization even harder than it already is. Keeping that in mind, the US needs a change just as much as any other country.

The most important next step is to determine what is working from the current decriminalization laws. This research is important because it could help generalize a decriminalization policy to be used anywhere in the world, or to find ways to specifically cater policies to individual countries. As seen by the differences in policy success between Portugal, Canada, and Oregon it is clear that there are factors at play that aren't covered by current legislation. All three places focused on in this paper implemented very similar policies, and further research could help determine the why behind each of the outcomes. This could be more research in Portugal, the Netherlands, or any number of other places around the world that have successfully decriminalized. There should be a focus on the treatment centers and how to optimize them. It is still early but seems like Canada has the right idea in their handling of the CDSA. They are focusing on health pathways and law enforcement and making amendments to their policy as new issues arise. It may also be beneficial to examine the practices of law enforcement concerning drug use in each country. This could provide insight into drug use patterns and demographics. This could help create policy that redirects law enforcement or reallocates funding into drug education that could help mitigate any issues before they arise. There are no laws that can prevent drug use, only legal drug use, and making something illegal doesn't make it stop, it only makes it more dangerous.

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