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Decriminalizing Drugs: A Comparative Study of Oregon in an International Context

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by

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Abstract:

Oregon made history in 2020 when voters joined together to approve ballot measure 110, the Drug Addiction Treatment and Recovery Act, which decriminalized personal amounts of all illicit substances. This was done in a bid to begin treating the ongoing drug crisis as a public health issue as opposed to a criminal justice issue. While Oregon may be the first in the nation to make such a move, they are not the first government to experiment with decriminalizing 'hard drugs.' Some argue that Oregon's model was based on Portugal's decriminalization effort and point to Portugal's success as a potential outcome for Oregon's policy shift. However, it seems irresponsible to expect the same results when Oregon's policy is not very closely modeled after Portugal's. This thesis seeks to present a comparison of Oregon's decriminalization policy amid an international discussion of the decriminalization policies in British Columbia, Canada, where government officials have just passed a temporary experimental exemption of criminal punishment for certain substances, and Portugal, where decriminalization has been regarded a great success. While not intended to present any location's policy as 'better' than another, this thesis was crafted to present information on each location's decriminalization policy before providing commentary on how each policy compares and contrasts with the others. Through comparison, questions on whether Oregon's decriminalization policy can claim to be modeled after Portugal's or expect the same success arise. The author hopes to contribute to ongoing discussions regarding decriminalization and question the content and validity of current policy comparisons with future policy modeling in mind.

Introduction

The ongoing drug crisis in Oregon and other states in the nation has different culprits, depending on whom you ask. It is certain that we cannot understand the drug problem in Oregon without recognizing the greater "War on Drugs" and the lasting implications the later associated policies saddled states with long after the ink had dried. Decades of punitive policies that criminalized drug use and dependency left few treatment options for those wanting to change their life's course. While the nation deprioritized treatment facilities of any kind, it set out to wage an all-out offensive on drugs at any cost (Britannica, 2023). Until recently, it seemed many of these draconian policies and lack of comprehensive treatment options would continue to be fixtures in America's efforts against drugs. However, there is a growing level of support for drug reform throughout the nation and in nations across the world. Many are dipping their toes in the waters to test new decriminalization policies and approaches targeted at the issue in the name of public health instead of treating it as a criminal justice problem (Release, 2016; TalkingDrugs, n.d.; Pascual, 2021).

President Nixon initiated the War on Drugs in 1971. The government mandate that declared substance abuse "public enemy number one" was aimed to combat substance use by increasing enforcement, penalties, and incarceration for drug offenses. By 1981, then-President Reagan kicked the war into hyperdrive and championed the position of punishment over treatment for drug offenders (Britannica, 2023). Under Reagan's presidency, the 1986 Anti-Drug Abuse Act became the first federal criminal law that differentiated other forms of cocaine from crack, introducing the infamous 100:1 weight ratio for crack to powder cocaine. Along with the five-year mandatory minimum for possession, this shift saw incarceration levels soar (Palamar et al., 2015). What quickly became apparent and was admitted in an interview as early as 1994 was

the [intentionally] disparate impact the War on Drugs had on communities of Color—Black communities especially (Dholakia, 2021).

The US War on Drugs and Reagan's expanded vision of the onslaught were responsible for the prison boom that saw incarcerated populations rise from 50,000 to 400,000 between 1980 and 1997 (Britannica, 2023). Of those incarcerated, about 60% of those in state prisons, and 80% of those in federal prisons for drug offenses are people of Color (Drug Policy Alliance, 2022). Unfortunately, this was not the first time drug laws had been intentionally crafted and selectively enforced in the US. Anti-opium laws in 1870 targeted Chinese immigrants, and the first anti-cannabis legislation was aimed at Mexican Americans in the early 1900s (Dholakia, 2021). However, more states and a growing number of countries have begun to acknowledge these disparities and reevaluate their drug policies, many beginning with cannabis reform. Across the nation, government leaders are coming together to highlight the need to label and treat the American drug crisis as a public health issue instead of a criminal justice issue.

In 2020, Oregon made history with the Drug Addiction Treatment and Recovery Act [Measure 110] (2019) as the first state in the US to vote to decriminalize the possession of personal amounts of illicit drugs, including cocaine, methamphetamine, heroin, oxycodone, and MDMA. Along with the shift in how the state manages penalties for possession, the bill allocated the funds that would have gone into criminal enforcement to be paired with cannabis sales tax revenue to fund a recovery grant and addiction treatment program. A new "Class E Violation" was created, shifting minor possession charges out of the misdemeanor criminal realm. Measure 110 also shifted possession of more significant amounts of illicit substances from a felony charge to a Class A misdemeanor (Legislative Policy and Research Office, 2020).

The statute dictates that beginning in 2021, 1 gram of meth or heroin, for example, under

decriminalization provisions would equate to a non-criminal violation with a $100 fine or alternative drug/health assessment (Drug Addiction and Recovery Act, 2019). This is a change from Oregon's previous 'defelonization' effort from 2017-2021, which could have seen 1 gram of meth or heroin possession charged as a misdemeanor, depending on criminal history, but could result in probation, jail, or even prison time for those with prior records. Before defelonization efforts in 2017, 1 gram of meth or heroin would be a felony that could result in prison time and the lasting repercussions of a felony conviction, such as difficulty securing employment or housing upon release (Oregon Criminal Justice Commission, 2018; Green, 2016).

While Oregon is the first state in the country to advance decriminalization legislation, they are not the first international body to experiment with decriminalizing illicit substances. Academia is teeming with scholarly articles regarding cannabis decriminalization efforts. While there is much discussion about the decriminalization and legalization of cannabis internationally and in the US, there are few discussions concerning the decriminalization of drugs considered 'harder' than cannabis. The bulk of what is currently being discussed regarding widespread decriminalization comes from Europe, where most nations that have decriminalized hard drugs are located. However, there are currently eighteen countries that have made moves to decriminalize all substances, though many still employ punitive measures despite their legislation (Unlu et al., 2020; Health Canada, 2023). Others rely heavily on police and judicial discretion in dictating what constitutes a personal amount of a given substance (TalkingDrugs, n.d.).

While some researchers have highlighted the impact of decriminalization policy in various European locations, they did not include Oregon in their assessment (Unlu et al., 2020). This thesis seeks to situate Oregon amid the existing and emerging decriminalization landscape

to compare comprising factors and structures of differing decriminalization efforts. The research seeks to answer how Oregon compares to other international locations experimenting with decriminalizing hard drugs, particularly British Columbia, Canada, and Portugal.

This paper begins with a light review of the methods used for research ahead of some clarifying definitions before presenting individual profiles of the three locations analyzed. A comparison table is provided for ease of viewing key features for comparison. From there, the thesis provides a section that compares and contrasts the policies of the three locales to highlight similarities and differences in policy. A brief discussion follows the comparisons in the conclusion, where themes will be revisited and some limitations of the research discussed before finally drawing to a close.

Instead of comparing the three policies in a hierarchy, this thesis seeks to present the structure of the policies side-by-side for a more accessible analysis of each policy's moving parts. It is hoped hat this analysis will add to the discourse surrounding decriminalization efforts and contribute to a better understanding of what makes a policy successful so we can move forward in creating efficacious decriminalization policies. This paper also seeks to pose questions regarding whether we can claim the success of other programs when the same or similar structure is lacking.

Methodology:

To answer these questions, this thesis focuses primarily on literature and legislative review as the primary data collection methods. Research into various national legislation databases was necessary to create country profiles. State and country profiles were constructed utilizing specific decriminalization legislation as the primary resources to create comprehensive

outlines of policy specifics. State and government documents were heavily relied-upon resources for the profiles and comparison sections. Some documents required translation, which was done via built-in browser functionalities.

The great bulk of the information was gathered from Google Scholar or simple Google searches. Some searches were conducted with specifiers to exclude entries regarding cannabis, as searches for anything regarding drug policy naturally returned a majority focused on cannabis decriminalization, depenalization, or legalization. Search terms included various forms of key phrases, e.g., "Oregon/Canada/Portugal drug decriminalization," "Oregon/Canada/Portugal decriminalizes all drugs," and "Oregon/Canada/Portugal drug policy." Simple Google searches proved most useful as it was known it would be necessary to locate specific legislative documentation, which Google allowed to search directly for with attention to documents linked to government sites.

Decriminalization Definitions:

Despite living with Measure 110 for two years, many still do not fully understand what 'decriminalization' is and what it entails. Still, there are different decriminalization frameworks that also impact how the policies are carried out. Decriminalization refers to changes in the criminal status of specific behaviors or actions. It generally refers to laws regarding personal drug use or possession. As purchasing substances is still illegal, they can sometimes be confiscated and grounds for non-criminal penalties. This marks a policy shift from traditional criminal justice system approaches to healthcare frameworks. The healthcare framework enables the provision of public health interventions for drug users and minimizes the potential negative impacts of a criminal record on future well-being (Unlu et al., 2020).

There are two legal frameworks used to formulate decriminalization efforts; de facto and de jure decriminalization. De facto decriminalization means that using and possessing illicit substances remains a criminal offense. However, the penalties are not enforced in practice. While there are no criminal convictions in de facto decriminalization, administrative sanctions such as referrals to treatment, counseling, social services, or education are possible (Unlu et al., 2020).

Within de facto decriminalization, there are two distinct frameworks: depenalization and police diversion. Depenalization (or 'deprioritization') does not involve referrals to treatment services. Instead, it focuses on addressing more serious crimes like drug trafficking while essentially "doing nothing" to address simple possession cases (Unlu et al., 2020, p. 24). Police diversion includes referral programs. De facto decriminalization is a good option when the main objective is to reduce the burden on the criminal justice system (Unlu et al., 2020).

De jure decriminalization means that criminal penalties for specified activities are officially removed via legislative reform that makes possession or use of substances a civil or administrative offense rather than a criminal one (Unlu et al., 2020).

Below are the individual location profiles detailing key policy design elements, how the policy is meant to work, the new role of police under the policy, the new role of the courts under the policy, and the role of any third-party entity involved in the process under the new policy.

Oregon

Key Design Elements: De jure: Police issue new 'Class E' violations instead of criminal citations for personal possession. Arrests or criminal prosecution for personal possession of substances no longer take place. Courts are limited in their response to amounts greater than personal possession, treating those now as Class A misdemeanors instead of felonies. A third

party, in the form of Addiction Recovery Centers, facilitates health assessments in place of fine payment (Drug Addiction Treatment and Recovery Act, 2019).

How it is Supposed to Work: Measure 110 is a response to drug addiction and overdoses according to a health-based approach. Savings from reduced criminal enforcement are set aside with state cannabis sales revenue to fund a recovery grant and addiction treatment program. Oregon Health Authority is responsible for dispersing funds to and overseeing the Addiction Recovery Centers' implementation. The grants go to existing organizations and agencies to create Addiction Recovery Centers. The centers are meant to provide immediate triage of acute needs of those who use drugs, using intensive case management and linking individuals to care and services to assess and address continuing needs (Drug Addiction Treatment and Recovery Act, 2019).

Instead of arresting individuals for drug use or possession, police now issue Class E violation citations for personal possession cases before leaving the individual to decide their next steps, if any. Recipients of Class E violation citations have a choice in whether they pay a fine of up to $100 or receive a health assessment to avoid payment. After completing the health assessment at an Addiction Recovery Center, individuals can choose to follow up on treatment for the assessment-identified needs. Treatment is not required. Those who choose to participate in an individual intervention plan are not required to abstain from using substances as part of treatment (Drug Addiction Treatment and Recovery Act, 2019).

According to the legislation, failure to pay the fine is not a basis for additional penalties or incarceration. The legislation also does not specify whether assessments may be completed more than once for future Class E violations. The Oregon Secretary of State Audits Division must complete audits every two years of the effectiveness and uses of the treatment and recovery

services fund and the fund's efficacy in treating clients. This appears to be the only oversight into who completes a health assessment or pays their fine, though it is not binding (Drug Addiction and Recovery Act, 2019).

Role of Police: Police no longer have the authority to make arrests or issue criminal citations for personal possession of illicit substances. Instead, police disperse 'Class E' violation citations. Oregon police leave the scene or individual and have no further role after issuing citations for personal possession. Individuals with substances in amounts for personal possession are not subject to detainment or transport by police after receiving Class E violation citations (Drug Addiction Treatment and Recovery Act, 2019).

Role of Courts: The role of the criminal court is reduced to handling previously designated felony (now misdemeanor) charges. Class E violation recipients are not bound to appear in court; they choose whether to pay a fine or complete a treatment/assessment. As such, personal possession cases are no longer the prevue of the criminal courts. They are tried in municipal or circuit courts that deal in other types of violations but are typically not equipped to assist defendants best. Amounts greater than what is deemed 'personal' are now treated as Class A misdemeanors instead of felonies. Courts can no longer apply penalty enhancements for smaller amounts of illicit substances found on those with felony convictions or multiple previous possession convictions (Drug Addiction Treatment and Recovery Act, 2019).

Role of 3rd party: Addiction Recovery Centers help Class E violation recipients to complete health assessments in lieu of paying the (up to) $100 fine associated with the citation. Addiction Recovery Centers must facilitate health assessments within 45 days of the date of the violation citation. If there is no center in the area where a person is subject to penalties of Class E citations, they are allowed to complete their health assessments by way of temporary telephone

addiction recovery centers mandated to be implemented no later than February 1, 2021. A designated Addiction Recovery Center should be established in each coordinated care organization no later than October 1, 2021. As with the police and courts, the third-party Addiction Recovery Centers have no authority or power to compel Class E violation citation recipients to engage with health assessments or any treatment offered after assessment (Drug Addiction Treatment and Recovery Act, 2019).

British Columbia, Canada

Key Design Elements: De jure: Subsection 56(1) was designed as a temporary class exemption from the country's existing drug code to address the ongoing overdose crisis in British Columbia (BC). The exemption allows adults in BC to possess small amounts of MDMA, opioids, methamphetamine, and cocaine. Effective January 31, 2023, the exemption has a scheduled duration of three years from the effective date or until it is replaced by another exemption (Health Canada, 2022b).

As specified in the exemption, the temporary legislative shift is not the same as legalization, and drugs other than cannabis remain illegal in Canada. During the three-year exemption, those over 18 will not face criminal charges for personal possession of illicit substances. The Canadian Government defines personal amounts as "a cumulative total of up to 2.5 grams of certain illegal drugs for personal use" (Health Canada, 2023). At a minimum, those found possessing exempted substances will receive information on local social and health services. It applies only to possession for personal use. The exemption does not cover those found with intent to traffic or export to use in production. Protection does not extend to K-12 campuses, childcare facilities, airports, or Canadian Coast Guard vessels and helicopters. It also

does not apply to minors, with specifications regarding minors operating motor vehicles or watercraft, whether in motion or not.

How it is Supposed to Work: In 2016, British Columbia declared their overdose crisis a public health emergency. The request for the exemption came amid the province's comprehensive public health response to the problem. The federal Minister of Mental Health and Addiction and the Associate Minister of Health reviewed the information provided by BC in its request. Before granting the exemption, they assessed its capability on several elements, including readiness, law enforcement, and health and social system capacity. The Canadian government views substance use as a public health issue with myriad complex factors that may be out of one's control. They also recognize that the pandemic has exacerbated mental health and substance use issues in the country and that any solutions must also consider broader social and health problems.

For the specified three-year period, adults in British Columbia will not be subject to arrest or charged for possessing MDMA, opioids like heroin and fentanyl, methamphetamine, or cocaine in crack and powder form. Adults will face no arrests or charges for any combination of these illicit substances so long as the combined total is not more than 2.5 grams. Substances in vehicles, railway transportation, and watercraft must not be readily accessible to the driver or operator. Any possession above this threshold is illegal and remains subject to criminal charges. All other substances (save cannabis) also remain illicit and unprotected by the provisions of the exemption. The exemption does not protect giving substances away, producing them, or keeping them for purposes other than personal use (Health Canada, 2023).

The exemption only applies to British Columbia; existing drug laws are still enforced in all other Canadian territories and provinces. It does not apply in K-12 settings, childcare

facilities, airports, or Canadian Coast Guard helicopters and vessels. It also does not apply to Canadian Armed Forces members, whom the Code of Service Discipline binds. Canadian border rules remain unchanged; any transport of illegal drugs into or out of Canadian borders (even into BC, where the exemption is in effect) remains unlawful and could result in severe criminal penalties (Health Canada, 2023).

Role of Police: As of January 31, 2023, police no longer arrest or issue citations for possession under the threshold of 2.5 combined grams of substances. Instead, they are now charged with providing information about treatment services to those found with personal possession amounts. If the individual requests assistance, police are authorized to connect them with services and treatment options to help with substance use. Police do not work to compel individuals into treatment or transport them to second locations such as jails or treatment facilities. Police assign no alternative 'violations' or fines for those within threshold limits subject to the exemption. Police will work with the BC Ministry of Mental Health and Addictions (MMHA) to develop training resources and supporting knowledge and fully implement the framework with front-line police in BC. Officers will be trained in applying the exemption in various scenarios and how it intersects with existing legislation (Health Canada, 2022a).

Role of Courts: The courts no longer hear any cases regarding personal possession of the four specified substances beneath the threshold of 2.5 combined total grams. The courts still try cases involving other substances and amounts higher than 2.5 grams as they have previously. Prosecutors still retain the authority to refuse to pursue criminal charges in some instances that are not deemed dangerous to public health or safety. Before exemption and for those outside the threshold, those found guilty of the indictable offense of possessing an illicit substance could be

imprisoned for up to seven years. Those guilty of a summary conviction offense could face fines up to $1000, imprisonment of up to six months, or both, for first-time offenders, and fines up to $2000, imprisonment of up to one year, or both, for subsequent offenses (Controlled Drugs and Substances Act, 1996). No secondary court or body manages anything regarding sanctions and the exemption, as there are no required sanctions for those subject to the exemption.

5.13 Prosecution of Possession of Controlled Substances Contrary to s.4(1) of the Controlled Drugs and Substances Act (2020) remains in effect, which directs prosecutors only to pursue criminal charges for severe cases. It also directs prosecutors otherwise to pursue fitting diversion and alternative measures to criminal justice system involvement for "simple" possession cases. The legislation determines that "serious manifestations" of harms that justify criminal prosecution are those committed in the vicinity of areas frequented by young people and children or by those in positions of statutory authority or trust in respect of children. Conduct that puts the health and safety of others at risk or is in breach of rules and regulations of jails or penitentiaries, as well as conduct with a factual basis linking to cultivation, harvesting, possession, or trafficking, are also considered more severe cases.

Role of 3rd Party: British Columbia's request to implement a decriminalization exemption was reviewed and approved by the federal Minister of Mental Health and Addictions and Associate Minister of Health. The Minister reserves the authority to revoke the exemption or suspend it without prior notice if the Minister deems it unnecessary or determines that a suspension is necessary for public health and safety. The federal government will monitor and evaluate whether the exemption contributes to the comprehensive public health approach to reduce harms and stigma surrounding substance use while increasing access to social and health

services for people who use drugs (PWUD). All treatment is voluntary and not enforced by third-party government bodies.

The British Columbia Ministry of Mental Health and Addictions led the comprehensive approach that included the request for exemption in BC. The BC MMHA will also take point on monitoring, oversight, and evaluation of the exemption. BC MMHA will continually work with external and internal partners to monitor progress toward objectives, unintended consequences, intended outcomes, risk mitigation strategies, and general risks surrounding the exemption. Data collection must begin immediately upon granting of the exemption so a baseline can be established (Health Canada, 2022a). While they do not enforce treatment, they monitor treatments for evaluative purposes. There are no specifically contracted treatment centers noted in legislative documents.

Portugal

Key Design Elements: De Jure: The Commission for a National Drug Strategy published a report that suggested decriminalization, among other harm reduction efforts, to address the growing drug and addiction problem in Portugal. In 2001, Portugal passed a national law decriminalizing all drugs, including heroin and cocaine. Before decriminalization, offenders could be levied with fines or up to a year in prison for possessing personal amounts of illicit substances (Hughes & Stevens, 2007).

Portuguese decriminalization did not legalize drugs, so personal possession and use of drugs are still illegal. Under the new framework, drug offenses are treated as “administrative violations,” completely removed from criminal prosecution, with the exception of drug trafficking, which is still in the criminal realm. The statute applies to the purchase, possession,

and consumption for the personal use of all drugs. Portugal's legal framework defines 'personal use' as the "average individual quantity sufficient for 10 days' usage for one person" (Greenwald, 2009, p. 2).

How it is Supposed to Work: Portugal's drug crisis was at its height at the end of the '90s, with the highest HIV rate amongst people who inject drugs in the European Union in 1999. The drug crisis was overburdening the criminal justice and court systems, and the cost of imprisonment was passed on to taxpayers (Greenwald, 2009). Portugal determined the government's punitive approach to drug enforcement was inhumane and ineffective and declared their drug scourge a public health crisis. The law came into effect on July 1, 2001, with a 180-day implementation decree to have the regulatory, technical, and financial measures relevant to treatment in place.

The new legislation implements regional commissions to review circumstances surrounding individual drug use cases referred by police intervention. After determining whether a given individual is a recurring drug user, the commission will recommend treatment or other alternative sanctions and follow up with treatment providers to ensure the completion of drug treatment programs. Those determined to be 'non-addicted' may receive fines or non-monetary sanctions. Fines can range from 5,000- 30,000 euros. Once treatment is completed, the commission closes the individual's case (Lisbon District Attorney General, 2011).

Other sanctions can include prohibitions on practicing professions or activities subject to licensing regimes, specific-place frequency bans, prohibitions on whom you can associate with, restrictions on unauthorized travel abroad, restrictions on gun ownership, requirements to present to the commission at a designated location periodically, and mandated monetary contributions or provision of free services to benefit the community. 'Admonitions' are generally reserved for

those the commission determines will likely abstain from future consumption and do not require stricter sanctions to deter future use (Lisbon District Attorney General, 2011).

Role of Police: While police are no longer authorized to impose criminal sanctions for drug use or possession, the legal framework suggests police are authorized to search and seize illicit substances in the identified consumer's possession and include this information in 'occurrence reports' that are provided to the appropriate regional commission for review. While the statute does not reference the term "arrest," police are also authorized to detain and transport to ensure consumer appearance before the commission under provisions of detention for identification purposes (Lisbon District Attorney General, 2011). However, police do not issue any form of alternative "violation citation."

Police also have the responsibility of the enforcement of fines and alternative sanctions. Police facilitate connections to services and the overseeing authorities of the treatment or sanction demands handed down by regional commissions. Commissions share their determinations with police on individual cases to structure police involvement.

Role of Courts: The courts that were once overburdened with drug cases are now reserved for those found guilty of trafficking and those with possession thresholds higher than the 10-day supply for personal use dictated in the statute. Criminal courts no longer oversee any casework for cases of personal possession. Regional commissions now provide oversight, the direction of consumer treatment, and sanction outcomes for personal possession cases (Lisbon District Attorney General, 2011).

Role of 3rd Party: Regional panels of three qualified medical professionals called 'commissions' evaluate cases individually to determine if the given case is an occasional or

dependent drug user. Those who are found to be dependent on substances are encouraged to complete an education program or seek treatment. The "addicted consumer" can choose to rely on public or private health services qualified to provide drug treatment. The commission communicates consumer choices to appropriate health service providers when treatment is accepted. Private drug treatment costs are the responsibility of the consumer. Treatment providers communicate every three months with regional commissions on the continuation of treatment (Lisbon District Attorney General, 2011).

The commissions meet with consumers to determine drugs of choice, consumption circumstances, and economic situations. They weigh economic and financial situations with the severity of the charges against an individual and the drugs involved to determine sanctions according to the need to prevent future consumption in a given individual. Those who cannot or refuse to complete treatment may have their sanction enforcements suspended and periodic presentations imposed as often as the commission deems necessary to promote health conditions. Treatment periods cannot exceed six months, while sanctions can last a maximum of three years. Commissions reserve the right to impose other sanctions determined with thought to individual circumstances and situations surrounding drug use incidents.

The commission is the ultimate say in the sanctions imposed on individuals and relays their suggestions to the police to carry out connections to services and collaborating authorities. The commission also determines when sanctions can be lifted or revoked (Lisbon District Attorney General, 2011).

Comparison Table

	Oregon	BC	Portugal
KEY DESIGN			
A. Framework	De Jure	De Jure	De Jure
B.Possession	PCS Decriminalized	PCS of Select Substances Decriminalized	PCS Decriminalized
C. Sales / Manufacturing / Trafficking / PCS > Thresholds	Remains Criminal	Remains Criminal	Remains Criminal
D. Drug/Amount	Substances With Specified Thresholds: MDMA/Ecstasy – < 1 gram OR 5 pills/tablets/capsules Heroin – < 1 gram Oxycodone – < 40 pills/tablets/capsules Methadone – < 40 pills/tablets/capsules Methamphetamine – < 2 grams Cocaine – < 2 grams Psilocybin – < 12 grams Fentanyl – No specified threshold	Any combination of MDMA, opioids (including heroin), methamphetamine, or cocaine < 2.5 grams	Any drug - 10-day supply
ROLE OF POLICE			
A. Citation	New 'Class E' violation citation	None	None
B. Detention	No authority	No authority	Authority to detain for identification or transport
C. Authority	Ends at issuing Class E violation citations for those within thresholds.	Required to provide information about available treatment services. Must connect those who ask for help to services.	Can detain and transport individuals to regional commissions. Can search individuals and confiscate illicit materials. Liason between consumers and treatment providers.
ROLE OF COURTS			
A. Hears PCS Cases	No	No	No
B. Role	Criminal courts now handle trafficking, manufacturing / sale, and PCS > threshold limits	Criminal courts now handle trafficking, manufacturing / sale, nonexempted substances, and PCS > threshold limits	Criminal courts now handle trafficking, manufacturing / sale, and PCS > threshold limits
ROLE OF 3RD PARTY			
A. Type	New Treatment Centers	Existing Treatment Centers	New Regional Commissions
B. Authority	Can recommend voluntary treatment	Can recommend voluntary treatment	Can recommend treatment and impose sanctions & supervision requirements. Oversees/dictates circumstances of supervision. Takes place of criminal courts in determining culpability and punishment.
C. Follow-up	Appears to be none	Appears to be none	Consistent monitoring & oversight

Comparison

Key Design Elements: All three comparison decriminalization efforts utilize a 'de jure' framework. This means that penalties for personal amounts of illicit substances are officially removed via legislative reform. However, drugs and drug use remain formally illegal. While Oregon and Portugal shifted penalties for personal possession to administrative or civil offenses from the criminal realm, British Columbia has done away with penalties for personal amounts of certain illicit substances altogether for three years. All three locations still treat drug traffickers and trafficking as criminal offenses. BC's policy is focused on MDMA, opioids,

methamphetamine, and cocaine, while Oregon and Portugal have made moves to decriminalize all illicit substances.

All three policies decriminalize 'personal amounts' of illicit substances. British Columbia's policy threshold for what constitutes 'personal' amounts is a combined 2.5 grams of any recently exempted substance (Health Canada, 2023). Oregon's thresholds vary, with what appears to be the highest amount sharing a limit of below '40 units,' e.g., the number of methadone or oxycodone pills in an individual's possession. However, Oregon limits substances like heroin and methamphetamine to one gram and cocaine to two grams (Drug Addiction Treatment and Recovery Act, 2019). Portugal has the most liberal of the policies, classifying 'personal' amounts as anything that equates to a 10-day supply (Greenwald, 2009).

Whereas Oregonians voted the Drug Addiction Treatment and Recovery Act into the legislature, direct government intervention initiated decriminalization efforts in Canada and Portugal. Canadian and Portuguese government officials reviewed reports prepared on national drug strategy and public health before experimenting with decriminalization efforts. In all three locations, arrests are no longer part of the procedure for personal possession cases. Oregon stands out as the only location to issue an 'alternative sanction' to those apprehended by police with illicit substances. In both Canada and Portugal, no alternative sanctions or citations are issued.

How it is supposed to work: All three locations share similar motivations for experimenting with decriminalization efforts. In each place, government bodies note the need to begin viewing substance use and abuse as a public health issue that warrants a public health approach instead of the traditional criminalization of substance use. Overburdened court systems were another motivating factor inspiring decriminalization efforts in all three locations. Oregon

voters made their decriminalization efforts materialize through voting, while government bodies in both BC and Portugal prepared comprehensive reports to present to government officials detailing the need for radical drug policy reform in the way of decriminalization. Oregon and Portugal utilize decriminalization frameworks with no end in sight, while BC introduced its effort as a three-year trial.

As indicated in the name, Oregon's Drug Addiction Treatment and Recovery Act (2019) was touted as a way to get much-needed addiction treatment services to the state using tax revenue from medicinal cannabis sales. It was designed to funnel cannabis tax revenue savings into treatment grants to create Treatment Centers. The legislation names the Oregon Health Authority to disperse funds to existing agencies to create Treatment Recovery Centers, which were thought up with the intent to provide myriad services to PWUD (Drug Addiction Treatment and Recovery Act, 2019). BC's push to decriminalize came on the back of an overdose crisis, with government officials realizing the need to approach the issue as a public health concern. There are no stipulated treatment requirements for BC's exemption, so there is no additional funding pool to support their decriminalization efforts (Health Canada, 2023). Portugal was seeing record-setting disease spread when they pushed to begin viewing the drug epidemic as a public health issue. Portugal's efforts rely on government-created commissions for oversight and government funding for the commissions (Lisbon District Attorney General, 2011).

All three locations still retain criminal punishments for those found with amounts greater than the designated amount for personal use in each respective area. Those in Oregon found with less than 40 units of substances like oxycodone and methadone, less than two grams of cocaine, or one gram of methamphetamine or heroin, now receive Class E violations instead of criminal

repercussions (Drug Addiction Treatment and Recovery Act, 2019). In BC, possessing up to 2.5 grams of any combination of MDMA, opioids, methamphetamine, or cocaine is no longer a criminal charge and carries no other associated violations or citations (Health Canada, 2023). Meanwhile, carrying up to a ten-day supply of any illicit substance in Portugal no longer carries criminal penalties or any associated violation citations under their decriminalization legislation (Lisbon District Attorney General, 2011).

In Oregon, Class E violations are associated with a $100 fine instead of criminal charges. Class E violation citation recipients are offered the opportunity to complete a health assessment at a Treatment Center to avoid paying the accompanying fine (Drug Addiction Treatment and Recovery Act, 2019). Oregon is the only of the three locations that have created a new category of violations to replace previous criminal sanctions for personal possession. BC's policy is the least involved, abandoning criminal persecution for personal possession with no associated fines or fees (Health Canada, 2023). In Portugal, individual circumstances come into play to determine ultimate sanctions for those found with personal amounts of illicit substances. Those deemed 'non-addicted' to substances can receive fines ranging from 5,000-30,000 euros. Portugal's policy legislation also allows for additional sanctions and restrictions as determined by regional commissions (Lisbon District Attorney General, 2011).

The Oregon Secretary of State and Oregon Health Authority appear to be the only oversight linked to Oregon's decriminalization effort. The former must conduct regular audits to analyze the efficacy and use of the allotted treatment and recovery services, while the latter is responsible for overseeing Behavioral Health Resource Networks' (BHRNs) funding and implementation. BHRNs are entities grouped and working to provide comprehensive, community-based resources for PWUD (Drug Addiction and Recovery Act, 2019; Oregon

Health Authority, n.d.). BC's policy has no governing body or dedicated oversight, as they introduced no third-party services, treatment, or financial requirements to their decriminalization exemption (Health Canada, 2023). Portugal's decriminalization legislation carved out the space for regional commissions to provide oversight of their efforts. These regional commissions are tasked with reviewing each case and identifying mitigating factors. The regional commissions have broad authority to impose fines or other sweeping sanctions for those they determine are 'non-addicted' to the substances that police caught them with (Lisbon District Attorney General, 2011).

Role of Police: Decriminalization efforts in Oregon stripped police of the authority to make arrests or issue criminal citations for personal possession cases within designated thresholds. Now, Oregon Police roles are limited to issuing Class E violations and leaving individuals to decide whether to follow up with treatment (Drug Addiction Treatment and Recovery Act, 2019). Similarly, police in British Columbia no longer have the authority to arrest or issue criminal citations for those found with specified illicit substances within the 2.5-gram threshold. BC Police are now only charged with providing information on available treatment services or assistance connecting to said services for those who inquire; they issue no alternative citations (Health Canada, 2023). Likewise, Portuguese Police can no longer arrest or issue criminal citations for those found with up to a ten-day supply of any illicit substance. Portuguese Police issue no alternative citations, though they do have the authority to transport individuals to present before regional commissions for review (Lisbon District Attorney General, 2011).

Oregon's decriminalization legislation does not specify whether police have the authority to search and seize individuals found with personal possession amounts of illicit substances. This suggests a gray area where police might be empowered to search and take possession of illicit

substances in lieu of traditional criminal sanctions. Oregon Police have no role in compelling individuals into treatment (Drug Addiction Treatment and Recovery Act, 2019). British Columbia's policy states explicitly that the role of the police is limited to providing information on available treatment services or assistance in connecting to these services for individuals who ask. BC Police are also charged with working with the BC MMHA to develop and complete training resources to help assist with the policy shift. They do not compel individuals into treatment (Health Canada, 2023). Police appear to keep no records of public encounters during which they provide information on treatment services, making tracking these interactions nearly impossible.

The role of the police in Portugal's decriminalization efforts is markedly different and more robust than that of those in Oregon or BC. Portuguese police are granted authority to search and seize illicit substances from identified consumers' possession. Portuguese police are also responsible for creating 'occurrence reports' to deliver to respective regional commissions to aid in determining the appropriate sanctions and treatment plans for individuals. They also oversee the enforcement of fines and alternative sanctions and facilitate connections to services as determined by regional commissions (Lisbon District Attorney General, 2011).

Role of Courts: Oregon's criminal courts are now only required to facilitate newly-designated misdemeanor charges charged as felonies before decriminalization, namely, those involving amounts above stipulated thresholds (Drug Addiction Treatment and Recovery Act, 2019). As British Columbia only moved to decriminalize MDMA, opioids, methamphetamine, and cocaine, BC criminal courts still hear all cases involving substances other than cannabis and those cases involving more than 2.5 grams of exempted substances. However, Canadian Prosecutors continue to possess the authority to refuse to pursue criminal charges in cases that do

not constitute dangers to public safety or health (Controlled Drugs and Substances Act, 1996; Health Canada, 2023; Health Canada, 2022b). Portugal's criminal courts, in terms of drug charges, are now reserved for those guilty of trafficking or those possessing more than the ten-day personal amount threshold specified in the legislation (Lisbon District Attorney General, 2011).

Although Oregon replaced criminal citations with Class E violations for personal possession cases, recipients of such citations are not required to appear in court. Personal possession cases in Oregon are now tied to municipal or circuit courts instead of criminal courts (Drug Addiction Treatment and Recovery Act, 2019). It is unclear the enforcement mechanism municipal and circuit courts may apply if fines or assessments are not met by those cited. BC introduced no alternative violation citations or required sanctions for those subject to their decriminalization exemption. As such, no secondary court body manages anything related to the decriminalization exemption (Health Canada, 2023). Similarly, Portugal instituted no alternative citation violations to replace previous criminal citations for personal possession cases. Portuguese criminal courts now only hear drug cases tied to trafficking or those with individuals possessing more than the ten-day supply threshold. Oversight for casework of personal possession cases is now the prevue of the regional commissions tasked with treatment implementation and oversight (Lisbon District Attorney General, 2011).

Role of 3rd party: Oregon's decriminalization effort utilizes third-party Addiction Recovery Centers to facilitate individuals seeking to sidestep the $100 fine associated with Class E violation citations. These centers facilitate health assessments within 45 days of the date of receipt of a Class E violation citation (Drug Addiction Treatment and Recovery Act, 2019). British Columbia does not utilize a third-party entity to facilitate treatment. Instead, the

government is partnering with existing addiction treatment centers for when officers need to inform those found with personal amounts of illicit substances of available treatment options (Health Canada, 2023). Portugal's third-party regional commissions have the broadest authority compared to Oregon and BC. The regional panels include qualified medical professionals who evaluate cases individually to determine whether respective individuals are frequent users and create an appropriately fitting treatment plan for said individuals.

The Oregon Health Authority and Oregon Secretary of State are responsible for financial oversight. Still, they do not interact directly with those who possess personal amounts of illicit substances. Instead, they oversee the funding and implementation of Behavioral Health Resource Networks; they have no direct oversight on individuals found in the personal possession of illicit substances or power to compel them toward any treatment option. Similarly, the Oregon Secretary of State is responsible for routine audits of program spending and treatment implementations (Oregon Health Authority, n.d.).

The third-party interaction in BC's decriminalization policy comes from the Canadian Government at large, making it less of a third-party involvement. BC's request for decriminalization policy was approved and can be revoked by the Minister of Health. The Canadian Federal Government monitors and evaluates the substance exemption's success in contributing to a comprehensive public health approach to reduce stigma and social harms surrounding substance use. The BC Ministry of Mental Health and Addiction oversees, monitors, and evaluates the decriminalization exemption. As all treatment associated with the substance exemption is voluntary, no third-party entity in Canada can compel individuals into treatment or enforce treatment requirements (Health Canada, 2022a).

While Oregon and British Columbia's policies leave little room for enforcement in their oversight, Portugal stands out due to the amount of power granted to the third-party entity charged with oversight and implementation of treatment protocols. Portugal's regional commissions evaluate each case individually to determine an individual's drug of choice, their economic circumstances, and whether they are an 'addicted consumer' or 'non-addicted consumer.' They then weigh these factors with the severity of the given charges and the drugs involved to determine appropriate sanctions with the goal of preventing future consumption. Those determined to be substance-dependent are encouraged to seek treatment or education programs on substance use (Lisbon District Attorney General, 2011).

The regional commissions keep regular contact with treatment providers to oversee individual treatment progress. Those unable or unwilling to complete treatment can have their sanction enforcement extended and be made to appear regularly before their respective commission for evaluation. Sanctions can range from monetary to restrictions on geographic location or the company an individual can keep. The commission can order this as they deem necessary to promote health conditions. Commissions can oversee individuals receiving sanctions for up to six years. Ultimately, they have the most prominent role in determining which sanctions will be imposed on a given individual. Commissions engage with police to relay treatment suggestions so police can facilitate connections to the services. Regional commissions in Portugal also have the authority to revoke or lift sanctions (Lisbon District Attorney General, 2011).

Conclusion

Through comparing the three policies, some key differences stood out as notable. The remainder of the paper will focus, in part, on these differences. It will briefly touch on

perceptions in Portugal after having time to live with the implications of their decriminalization policy. The paper will then discuss some of the most significant policy differences that raise the question of whether we can say Oregon's policy was modeled after Portugal's. It will also highlight opinions from news stories and preliminary outcomes regarding Oregon's policy as a gauge of the thoughts on the ground where these policies live. The thesis close with the aim of this research and question whether we can or should look at the results of decriminalization policies elsewhere as potential outcomes for our efforts when they are so fundamentally different.

Portugal appears to be the stand-out success story that other policies will likely continue being based on, however loosely. By all apparent accounts, Portugal's decriminalization seems to be a success nearly 23 years after its initiation. According to one Portuguese doctor, overdose deaths before decriminalization reached about one per day or over 360 per year. However, in 2021, they reported only 63 overdose deaths. He also notes that the country has seen a dramatic decrease in HIV and hepatitis C infections, with more people seeking treatment and being cured of the latter. New HIV diagnoses from injecting drugs decreased from 907 in 2000, at the height of the issue and just before decriminalization, to 18 in 2017. Overall, the health conditions for PWUD appear to have improved in Portugal since decriminalization. These improvements have not come without structure and planning not present in Oregon's effort (Dooris & Parfitt, 2022).

British Columbia escapes much discussion surrounding the comparison of oversight or governing bodies, given the nature of their exemption. Treatment in BC is not mandated or even written into the policy outside of the provision that charges police with providing information about available services to those found in the personal possession of specified illicit substances (Health Canada, 2023). It is also unclear whether BC is able to track how many police/consumer

encounters occur and information or connections provided as there is no apparent paper trail of the event.

The first and most visible difference between the three policies is that Oregon is the only place where alternative citations are dispersed in the form of new Class E violation citations. Police in British Columbia and Portugal issue no form of citation for individuals found in personal possession of allotted substances. Still, these Oregon citations hold little power and do not appear capable of binding the recipient to the implied $100 fine. While provisions allow recipients to avoid a fine by submitting to a health assessment, it seems the citations and associated fines are not enforced by any government or third-party entity (Drug Addiction Treatment and Recovery Act, 2019).

While they do not issue fines or alternative citations, Portuguese Police retain the most authority of the three locations. They are authorized to conduct search and seizure operations, even on those found with personal amounts of illicit substances. They can also detain individuals for identification purposes and transport them to appear before their regional commission to ensure they do not evade evaluation or attendance (Lisbon District Attorney General, 2011). Police in BC are only authorized to assist in linking individuals to services when they ask and are only required to inform people of available services (Health Canada, 2023). Oregon Police are limited to issuing the previously mentioned Class E violation citations and ending the contact (Drug Addiction Treatment and Recovery Act, 2019).

One of the most significant differences between the three policies comes from the broad authority granted to the regional commissions in Portugal. These commissions take the place of criminal courts and traditional sanctions and can dictate basic aspects of daily life for those who refuse or are not determined to require treatment services. Where Oregon's new third-party

Treatment Centers operate on a strictly voluntary treatment model with no alternative sanctions or authorities, Portugal's third-party regional commissions can enforce monetary and nonfungible sanctions for those who do not comply with treatment recommendations (Lisbon District Attorney General, 2011). Failure to appear at scheduled hearings with a regional commission can result in incarceration (Dooris & Parfitt, 2022).

Another key difference between the policies is the reliance on voluntary engagement in Oregon and BC's policies. Portugal has granted their regional commissions the authority to level heavy sanctions against those they deem addicted consumers who refuse suggested treatment (Lisbon District Attorney General, 2011). Closely related, Oregon and BC both appear to lack any regimented oversight or monitoring when it comes to situational outcomes. To be sure, the Oregon government has already begun its efforts to evaluate the effectiveness of the policy. However, the only apparent oversight bodies seem to be those concerning fiscal operations and procedures, from which we can determine the number of people who access treatment services due to Measure 110.

The temporary nature of BC's exemption suggests they will monitor the policy for efficacy in reducing the impact of their recognized drug crisis. However, as no mandatory treatment engagements are written into the exemption, there are similarly no overseeing bodies charged with follow-up. Their use of existing treatment centers could make it difficult to determine who is seeking treatment due to receiving information as a result of a police encounter involving personal amounts of an exempted substance (Health Canada, 2023). There is no apparent 'paper trail' for these encounters.

Advocates for decriminalization in Oregon and elsewhere have pointed to Portugal's relative success with decriminalization as proof that it can happen in the US. Others have gone

so far as to compare Portugal's regional commissions and the amount of pressure they can apply to compel consumers into treatment to the telephonic health assessments taken in lieu of paying the $100 Class E violation citation fee in Oregon (Lopez, 2020). Still, there has been media speculation regarding whether Oregon could claim to have based its decriminalization effort on Portugal's. The concern of compatibility in comparison is not entirely new (Dooris & Parfitt, 2022). However, the policy differences highlighted in this paper pose an essential question to Oregonians and others in the current discourse: if policies are not modeled closely (or even very loosely) after Portugal's decriminalization effort, can we genuinely point to their success as a potential outcome of our policy attempts?

Even as some in Oregon have held up Portugal's decriminalization efforts as a blueprint or beacon of hope that our attempts at progressive policies can help rescue society from the ills of drug abuse and dependence, this comparison seems hardly earned. The policies themselves remain fundamentally different, even from a cursory glance. Where Portugal implemented the newly created regional commissions and granted them broad authority to minimize the public health risks associated with drug use through the help of treatment programs and heavy sanctions, Oregon took a more liberal approach with voluntary treatment at Treatment Centers with little to no real authority. Portugal's commissions follow 'addicted consumers' for years in some cases before determining the individual is no longer a threat to public health and safety (Lisbon District Attorney General, 2011). Oregon's Treatment Centers operate on a strictly voluntary basis, with no apparent follow-up from centers (or anybody at all).

Despite passing with 58% of voters' support, there has been vocal opposition to Oregon's decriminalization from day one. One year after its implementation, the drug treatment element was dubbed a 'botched' plan by local Portland news, which noted that only 1% of Class E

violation citation recipients inquired about help or treatment through the hotline established to facilitate health assessments in lieu of the associated $100 fine. A Southern Oregon representative claimed that overdoses in her district at that time had increased by 700% since decriminalization took effect, with a 120% increase in overdose deaths. The Oregon Secretary of State publicly acknowledged that many Oregon communities have "seen the problem with drug addiction get worse" since decriminalization (Associated Press, 2022, para. 10).

Many have been vocal about their disapproval of the decriminalization legislation or quick to label the venture as a failure before appropriate time has passed to gather and review data. In fact, the Oregon Secretary of State's office released an audit at the beginning of 2023, claiming that not enough time had passed to give the decriminalization effort a chance to produce tangible results. This is more apparent given that until September 2022, all counties in the state had not received funding to prop up the bill's new Treatment Centers meant to offer the ever-important second aspect of the decriminalization legislation: to provide addiction treatment and recovery services to communities statewide (Parfitt & Dooris, 2023).

A new report cites Oregon Police as one of the strong opponents of Oregon's decriminalization venture. Among 25 coded officer perceptions regarding Measure 110, they note losing probable cause to search, losing informants, and a general hesitancy to disperse the new Class E violation citations. The report contends that officers gave two primary justifications for not administering the citations; they did not believe they needed to cite individuals to provide treatment resource information, and they did not believe it was "worth the time" given their perceived lack of follow-through or accountability on paying the fine or completing the associated assessment (Henderson et al., 2023, p.5). While the officers interviewed leave the impression that Measure 110 is ineffective and detrimentally contributes to public safety

consequences, substance ubiquity, and substance-related deaths, the authors suggest that "it is still too early to know what effects are attributable to Measure 110" (Henderson et al., 2023, p. 7).

It is beyond the scope of this project and paper to consider other contextual contrasts and contributions between the efforts in Oregon, BC, and Portugal, but future research should consider these and how they impact policy outcomes. Additional research should also consider factors such as any differences in the nature and degree of local drug problems; government assistance for housing; healthcare and mental healthcare; the quality of existing drug treatment programs and providers; and even potentially other cultural or social factors and attitudes at the time of decriminalization. These factors, and others, could impede the efficacy of decriminalization policies and approaches on top of the policy nature itself.

Although they have fundamental differences, all three policies share similar legal formatting. They also share similar motivations for wanting to experiment with drug decriminalization. The 'de jure' nature of all three location's policies suggests that more significant concerns were involved in the decriminalization decision than merely reducing the burden on the criminal justice system. All three locations also note their desire to view drug dependency and abuse as a public health issue instead of strictly a criminal one. As such, they desire a public health approach to address the issue (Lisbon District Attorney General, 2011; Drug Addiction and Recovery Act 2019; Health Canada, 2023).

This paper does not suggest presenting one policy above the others as the most effective. Nor was it intended to detail which of the policies is 'better.' Instead, this paper was structured to provide information to help better understand how these policies are similar and how they differ from one another. Although additional research and time living with these policies in the cases of

British Columbia and Oregon will be necessary to make any definitive claims about the efficacy of any given policy, this author hopes that the contrast and comparison herein might lend toward our ability to predict the implications of these policies while simultaneously continuing to raise questions regarding the content and validity of our comparisons of current and future policies.

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