

Drug Decriminalization in (



# Drug Decriminalization in Oregon: How's It Going So Far?



BY MORGAN GODVIN APRIL 22, 2021



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**T**anesia DeMacon is no stranger to jail. She estimates she was arrested no fewer than 15 times, starting at the age of 18 and continuing throughout her 20s.

“I used to joke that county jail was school for the ‘hood,” says DeMacon, an African American woman from East Portland, Oregon. “I just started meeting more and more people who were into more and more things. Honestly, it taught me how to do more criminal activity.”



hand with her heroin addiction. She recounts having overdosed five times, resuscitated each time by police or EMTs with naloxone. Once

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it was a grocery store bathroom, another time a 24-hour diner. Somehow, she was always found.

Now 30, DeMacon has grieved for more of her friends than most people twice her age. At least 10 people she knows have fatally overdosed. She fears more deaths are on the horizon.

“I was on probation. I could never pass a drug test. It’s stressful being in that situation because you’re always possibly going to go to jail.”

“In jail, they don’t care about you,” she says, her voice tinged with cynicism and sadness. “You’re just another number. They don’t even treat us like humans. I’ve literally been called ‘animal’ by a CO.”

She sought substance use disorder treatment many times, only managing to “graduate” once at a center that emphasized healing from past traumas. She used heroin again an hour later. On her other eight attempts, she didn’t last more than four days before leaving.

Now, she says, she “fell in love” with life. She left her addiction behind and is starting school in the fall, though she worries that her criminal record could limit her options. She has decided to major in political science, since it was politics—of which the criminal justice system is a direct outcropping—that wreaked so much havoc on her young life.

“I was on probation. I could never pass a drug test,” she says. “It’s stressful being in that situation because you’re always possibly going



“So, do you just not check in and take the warrant?”



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Tanesia DeMacon



For decades, that was the paradox faced by Oregonians with substance use disorders (SUD) who had been arrested. You were jailed, put on my probation, and if you provided a positive urine screen, or transgressed on one of countless other technicalities, you were violated and sent right back to jail.



Although the drug war is global, the United States remains an outlier

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Out of more than 1.5 million drug arrests made in 2017, the vast majority—86.7 percent—were for simple possession. Despite a

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growing recognition of its racist origins and implementation, two decades into the 21st century, the War on Drugs rages on.

But in November, Oregon became the first US state to try a different approach than the one that has harmed DeMacon and countless others—including many people who do *not* have SUD—when voters passed Measure 110, decriminalizing small-scale possession of all drugs.

Measure 110 also diverts a portion of tax revenue from the cannabis industry, which Oregon legalized back in 2014, to SUD treatment.

The passage of the measure made history. It also brought controversy close on its heels, as lawmakers and wider society grapple with interpretations, funding and challenging timelines.

### Decriminalization in Practice



The decriminalization element of Measure 110 went into effect on February 1.



Haven Wheelock, a chief petitioner of the measure, is already seeing the impact. As a harm reductionist who administers a syringe service program at OutsideIn in downtown Portland, she is on the frontlines, and has seen the suffering caused by the drug war. It's one of the main reasons she became so passionate about decriminalization and funding evidence-based treatment.



Her clients, she said, often tell her that they “walk through the world always scared.” The constant fear of arrest for drug possession takes a



assuaged some of that fear.



“People are finally breathing just a little bit easier.”

A limitation of decriminalization—as opposed to legalization—is that it does not make the drug supply safer. Fentanyl has contaminated a large swath of the market, from heroin and pills purporting to be opioids or benzodiazepines to cocaine and other stimulants. This volatile and unreliable supply, exacerbated by the COVID-19 pandemic, is linked with **unprecedented death rates**, even higher than those reported by media.

Wheelock believes Measure 110 brings hope in this regard, however. “One of the benefits ... is we’re going to be able to do effective drug checking and safe consumption spaces within the next three years.”

“ She is working on messaging, so people know just how much of a drug they can possess.


Both of these interventions save lives. Safe consumption is currently banned nationwide and drug checking is nearly absent in Oregon. But reforms tend to pave the way for more reforms. And for now, harm reductionists can become involved—in drug checking, for example, which may require taking brief possession of residue amounts of controlled substances—with less fear of legal retribution.



While much confusion around this rapid policy shift remains, Wheelock sees the positives. She is working on messaging, so people know just how much of a drug they can possess before it becomes an arrestable offense. For heroin, it’s one gram—less than many people use in one day or buy at a time. For other substances, the quantities


when a law enforcement officer finds someone in possession of drugs, they are now written a Class E violation. They will either face

a \$100 fine, or undergo an assessment within 45 days. If the assessment is not completed, the fine will be imposed. People caught with drugs who do not have a SUD still must still complete the assessment—but if the assessment tools work as intended they won't be recommended to treatment. For people diagnosed with SUD and recommended treatment, completing treatment is not mandatory. Once an assessment is completed, the violation is dismissed.


People can alternatively show up to court to contest the ticket and a judge is authorized to reduce the fine to the minimum of \$45. If the judge determines the ticket to have been given improperly, it could also be dismissed.

Importantly, unpaid fines will never trigger incarceration and missed court dates will never trigger a warrant for failure to appear. The Oregon Judicial Department is developing an e-filing system with Lines of Life so that when people complete their assessments, that information is automatically given to the courts. 

The legislature is in the home stretch of finalizing SB755—the bill  make Measure 110 become law. Dozens of amendments have been  compiled from their respective work groups and weaved into one single bill.

Questions not addressed in the text of the ballot measure had to be answered by the legislature—such as which category of court would attend to the newly-created Class E violations (the answer: circuit courts) or which professionals should conduct the screenings (likely to be certified drug and alcohol counselors and peers). 



hydrocodone were omitted. (Instead they defaulted to the federal Schedule II statute.). But that was perceived as an accidental 

oversight and “user amounts” for both fentanyl and hydrocodone have now been defined—and therefore decriminalized.

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### The Measure’s Health Care Arm

Other questions surround Measure 110’s treatment funding arm. A temporary phone line, administered by the nonprofit Lines for Life, has been set up to provide the assessments and referrals to services demanded by small-scale possession cases in the new era.

The measure emphasizes harm reduction, supportive housing, peers to mitigate retention and navigation barriers, and the full spectrum of treatment services, including medications for opioid use disorder. The funding for all this is not supposed to be restricted to people who receive citations for drug possession—any Oregonian who requests services will be eligible. It is a truly fundamental shift in how the state deals with substance use, recognizing the importance of services for people who actively use drugs as well the importance of being securely housed. Some say there isn’t enough money to meet the need, but it is a start.

Intended as a stop-gap until what the measure called “Addiction Recovery Centers” can be set up statewide, the phone line could yet become a permanent fixture. Like so much else, that remains to be seen.

Oregon’s budget biennium ends on June 30. The cannabis tax revenue earned in the first quarter of 2021, stipulated by Measure 110 to go to the Drug Treatment and Recovery Services Fund, was already

This conflict between the measure, voter intent and Oregon’s budget cycles has been somewhat mitigated by the legislature: On March 16,

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the Oregon House of Representatives announced an allocation of \$20.2 million for immediate disbursement into the fund—a rare instance of legislators moving faster than expected.

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“ The foundational shift can be felt in the council meetings.

Implementation of Measure 110’s health care aspects has many more moving parts—not least the Oversight and Accountability Council (OAC), which was mandated to be formed by the date decriminalization took effect. The Oregon Health Authority voluntarily raised the number of council members to 21, above the minimum of 16 set out in the measure.

I was appointed by the Oregon Health Authority to the Council because of my lived experience with repeated incarceration for heroin possession, my less-than-pleasant experiences in drug court, and my current public health expertise and my drug policy research position at the [Health in Justice Action Lab](#).



The foundational shift can be felt in the council meetings. Many of the councilmembers have been directly impacted by incarceration or addiction; others are leaders in the treatment and recovery services field. In a state that is 85 percent white (though Census Bureau race statistics obfuscate Latinx heritage), the majority of members are people of color—a damning recognition of the drug war’s disproportionate impacts.



Black and Indigenous Oregonians are grossly overrepresented in the criminal-legal system and in [drug arrests specifically](#). Black



rate [five times higher](#). Upholding values of racial justice is a defining aim of the landmark bill.

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While Measure 110 modified pre-existing segments of the Oregon Revised Statutes around drug possession, it also added entirely new language. Senate Bill 755 is taking all of the pieces and “plugging them in” to state law. This process has been far more arduous than it sounds, requiring three separate Senate work groups involving an extraordinary range of stakeholders and hundreds upon hundreds hours of work.

There have been major changes to the treatment section of the bill, but with near-unanimous support from stakeholders. Language has been one area of heated discussion. The name “Addiction Recovery Center” was deemed problematic because of the implication it must be a “center”—a brick-and-mortar location—which may not be necessary, or even possible, in all areas of the state. While Oregon’s population is heavily concentrated in the Willamette Valley, containing the Portland Metro and Eugene, the vast majority of the state is rural.

“ Drugs are *not* decriminalized on tribal land, which is subject to federal law.



There was also conversation around the term “addiction” since the medical terminology is substance use disorder—and even then, not everyone accessing services will meet the diagnostic criteria. “Behavioral Health Resource Network” is the frontrunner. The term “assessment” has been changed to “screening.” It was mandated in the ballot measure as being performed by a “licensed treatment provider,” meaning Lines for Life could only hire people with CADQ certification and not peer mentors, another hiccup that is being



Meanwhile, the OAC is busily determining how it will distribute grants from the Drug Treatment and Recovery Fund. It has \$20 million to dole out by June 30, and then each quarter thereafter, ~~depending on~~ cannabis tax revenue. Current revenue projections from the Legislative Fiscal Office amount to \$318 million for the 2021-23 cycle, of which \$228 million would be routed into the fund for disbursement, broken down into eight quarters over the two years.

The Oregon Health Authority is also negotiating with the state's nine federally recognized tribes to ensure they receive adequate funding. It is important to note that drugs are *not* decriminalized on tribal land, which is subject to federal law.

### Some Severe Challenges

Aaron Knott, policy director at the Multnomah County District Attorney's Office, which ceased prosecuting drug possession earlier than the rest of the state at the behest of DA Mike Schmidt, called Measure 110's timelines "the most aggressive I have ever seen in a ballot measure."

He has a point. From distributing grant funding to fundamentally altering policing and the courts, things are required to move remarkably fast.

However, despite some pushback from community advocates fearing unnecessary bureaucratic footdragging, the timelines have now been somewhat extended by Senate Bill 846—a companion bill to SB755

The deadline to establish the Addiction Recovery Centers, to use their original name, has been extended three months and is now January 1, 2022. The Oversight and Accountability Council now has until September 1, 2021 to establish its rules—a two-month extension. The temporary phone line will no longer be terminated in October, but will rather be extended into at least next year.

Concerns about the measure go beyond its technical workings and logistics. While law enforcement was predictably against it, opposition also came from more unexpected corners—including the recovery community.

“Nonprofits and other people are all advocating for their own things ... There’s redundancy all over the place.”

“What we have is a system that is fractured and incomplete,” said Tony Vezina. He’s the executive director of 4th Dimension Recovery Center, a nonprofit youth service with multiple locations in the Portland metro area. A person in long-term recovery and a leader in the recovery community, Vezina advocated against Measure 110, even though he doesn’t disagree with decriminalization in principle. He sees the current system as utterly lacking in cohesion, compounded by inadequate resources.

“It’s also fractured from a governance policy perspective,” he said. “I hate to use the word but there should be some type of authority. No one is steering the ship. The system is just this free-market thing where nonprofits and other people are all advocating for their own things ... There’s redundancy all over the place.”

to get organized to implement it well. And a good starting point in determining where the state needs to go would be knowing where it

is today. Included in the \$20.2 million Oversight and Accountability Council allocation, the legislature earmarked \$200,000 to go directly to the Oregon Health Sciences University to complete an inventory—  
Drug Decriminalization | determining just what the state does and does not have in terms of a SUD treatment ecosystem.

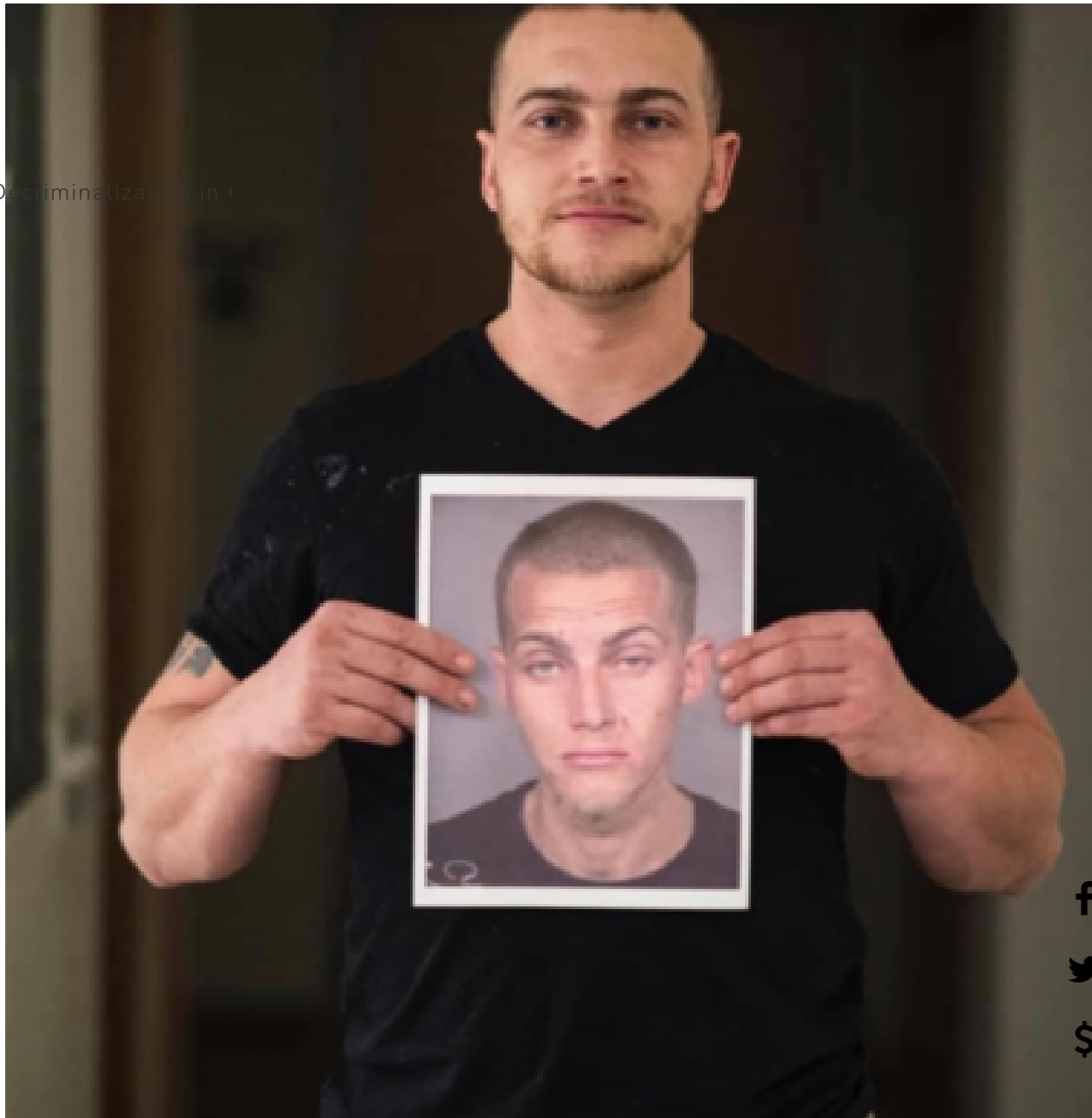
That’s something the state’s Alcohol and Drug Policy Commission (on which both Vezina and I serve) has been asking for for at least two years, but it was never funded.

“What Measure 110 did was accelerate the decriminalization part, put some money into the system, but then also exacerbated the disorganization,” said Vezina.





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*Tony Vezina*

He also cited well-founded concerns about the preparedness of our health care system, where providers receive little-to-no training in addiction and are known to stigmatize people who use drugs.



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the expansion of Oregon's treatment ecosystem will include more

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points-of-engagement, actively connecting with people with services. Passively sitting by and waiting for someone to call a number is not sufficient, he believes.

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Even having one number to call is progress from where the state was before. Oregon consistently ranks bottom of the pack for treatment access—though defining “treatment” is tricky, as Senate workgroups can confirm. There is no unified system to triage or direct people who need services—or even to identify who needs them. Parents watching their children struggle with SUD have no idea where to go for help, what to do.

The Lines for Life line may be able to refer someone to services, but inadequate supply of those services can result in long wait lists. There may be nowhere for people to go. Further grant allocations from the OAC should improve this situation in time; some providers envision a number like 211—something easy to remember and centralized.



“If it were me, and I was either mandated to an assessment or desperate for help, or had a kiddo I was desperate to get help for, I would want one phone number,” said Jessica Gregg, chief medical officer at DePaul Treatment Centers. “I would want someone to answer it. I would want, ‘This is the next step ... if it doesn’t happen, call me back. Here’s my name.’”



“ A key to improving health outcomes is improving integration within and across the service delivery system.



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profit and nonprofit organizations—and because of our unfathomably complex insurance structure that excludes millions—the burden of

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navigating this byzantine system falls onto the patient. With no robust public health infrastructure or centralized provider, we have a hodgepodge where everyone works mostly independently. Not coincidentally, despite spending more on health care *per capita* than any other rich country, the United States reports alarmingly poor health outcomes.

Privileged people in ideal circumstances are often incapable of navigating our systems. For marginalized people who use drugs, with numerous other barriers, it becomes an impossibility.

Dane Zahner, the prevention and harm reduction manager for HIV Alliance, highlighted the myriad obstacles facing the people he serves. “About 50 to 60 percent are homeless,” he said. “They also have transportation needs here in rural Oregon. There are barriers to food and barriers to housing.” The list goes on.

People who are handed a list of phone numbers and sent back to the streets inevitably fall through the cracks. So a key to improving health outcomes is improving integration within and across the service delivery system. Oregon is not Portugal, that famous international example of successful decriminalization coupled with service provisions. The state does have expanded Medicaid, but only 23 percent of the state’s residents are on it. Most of the rest are divided between any number of private insurers. Almost 250,000 are uninsured.

To Gregg, one way to help people navigate these labyrinthine systems is simple: “Peers, peers, peers.”

engagement and retention in SUD treatment. Hopefully the infusion of funds into the system will enable more peer hires—though there

are whispers of a looming behavioral health shortage due to low wages, a situation that could, in theory, be mitigated by the extra funds.

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COVID has disrupted service provision and fueled surges in both drug use and overdoses. Extricating COVID—the confounding factor—from the data around decriminalization and treatment will be a challenge for researchers studying the outcomes of Measure 110 in years to come. We know that 2020, before decriminalization, was the worst year in history for overdose deaths. 2021 is currently on a similar trajectory.

### Problems With Policing, High Hopes

A mere fraction of the people cited for drug possession since February 1 have called Lines for Life, the only currently authorized provider of screenings to avoid that ticket. Some advocates have suggested that law enforcement officers hostile to decriminalization are not communicating the procedure clearly to people cited, or failing to provide the phone number to Lines for Life. They also suggest that people are simply so afraid of police that they are choosing not to engage with the system.

Oregon first fundamentally changed drug policing in 2017, when the legislature reduced possession from a felony to a misdemeanor. Arrests plummeted afterwards, despite drug use likely remaining constant. Whether police changed their tactics or simply didn't want to bother with a misdemeanor is unknown.

struggling with addiction and could increase the likelihood that



someone seeks help, without fear of going to jail. He noted that drugs are not legalized, and will still be confiscated by law enforcement as evidence for what's now a Class E violation.

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He nonetheless has strong reservations about the measure. "Frontline deputies are having to shift their mindset and rethink things like search and seizure, subject stops, detention, and DUIs," he said.

Some would argue that is the point. The War on Drugs has been used to dramatically expand police powers when it comes to search, seizure and detention, greatly diminishing Fourth Amendment rights. Police interactions, which Measure 110 is intended to reduce, also carry far greater risks for people of color. Portland, for example, has the **fifth worst arrest disparities in the nation**, with Black people being killed by police at a rate 3.9 times that of white people.

“ The reality is that the burden of substance use disorder and mental health “care” has largely fallen onto the criminal justice system.

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Sheriff Pixley also expressed concerns that there will be an increase in crime rates, addiction, and overdose if people no longer fear jail or severe legal repercussions. What evidence we have points the opposite way, however. Oregon, again, is not Portugal. But Portugal **saw better outcomes** across the board after implementing its own decriminalization model back in 2001.

Pixley hopes to be able to get the funding to provide medications for opioid use disorder in jail and naloxone to people upon their release

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The reality of the last several decades is that the burden of substance use disorder and mental health “care” has largely fallen onto the

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criminal justice system, which—besides the inherent ethical problems—is unequipped and unwilling to handle it. No government alternative was provided.

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Tera Hurst is familiar with this reality. She's the executive director of the Health Justice Recovery Alliance (HJRA), described as the implementation arm of what was the Yes on 110 campaign. Initially supported by the Drug Policy Alliance, HJRA's fiscal sponsor is now Partnership for Safety and Justice, an Oregon reform organization. They are advocating for funding from the legislature, suitable amendments in SB755, consistent support of the OAC, and overall excellence in implementation.

“Most law enforcement, they have just never had a system that isn't starved,” Hurst said. “They've always had to constantly arrest folks. They watch them cycle through, they watch them on waiting lists. I believe that once we get a funded system where they could actually send somebody and know that's going to be an avenue and not just a phone number and then they're back on the street ... Once law enforcement sees that commitment, and as long as we continue to get these things funded and up and running, they're going to be relieved. They will be able to say ‘Hey, call this number. It worked for so-and-so. It works.’”

Seeing, as they say, will be believing. Though some people with SUD who come in contact with the criminal justice system and its programs do find recovery that way, most arrests are destabilizing at best and often traumatizing—or ultimately, deadly. One study showed the risk of overdose being 129 times greater in the two weeks after release from incarceration

saddled with criminal records. The collateral, lifelong consequences of criminal convictions are numerous, ranging from housing, to

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employment, to government benefits, to professional licensure, to immigration.

Jack, a Chinese American man who asked that only his first name be used, got a possession conviction before the 2017 defelonyzation.

“Being labeled a felon,” he said, “I sometimes feel like a second-class citizen.”

A recognized shortcoming of many decriminalization measures—and of Measure 110 in particular—is the failure to expunge past convictions for things that are no longer criminalized. Jack still has a felony.

“Jack, who unequivocally supported Measure 110, reflected on how different his life might be had it been in effect before his conviction.

Senate Bill 397, currently before congress, makes expungement more accessible by eliminating fees and shortening wait times. But advocates like Tera Hurst and Haven Wheelock want to see it become automatic and sweeping. That is proving to be a heavier bureaucratic lift than it would seem (many records are not digitized), but the wheels are turning for future legislative sessions.

There is also ongoing conversation between lawmakers and immigration experts about how to avoid triggering future deportations—and whether there is any potential for relief for people already removed from the country. (Though that looks bleak.)

—now a common refrain of impacted Oregonians.

“Maybe there would’ve been better resources to guide me to the right treatment center instead of me hopping around, for years on end, in and out of different treatment centers before I found a program that worked for me,” he said. “Possibly could’ve saved years of my life I can never get back.”

“Punitive measures aren’t effective in addressing this issue,” he continued. “Jail does nothing but worsen the problem... I didn’t learn anything of any value during my tenures in jail. I learned nothing but to perfect the crimes I already did and I learned more crimes to feed my addiction.”

As of February 1, the state of Oregon stopped inflicting some of its worst harms on people who use drugs. Now comes the healing phase—if it is handled right.

There are many moving parts, and in the short-term, there will be hard work and growing pains. In the long-term, experts are hopeful. People who use drugs are already breathing a sigh of relief. But it remains to be seen whether Measure 110 turns out to be the dominant force that brings the entire drug war crashing down.

*Top photograph courtesy of the Yes on 110 campaign. Other photographs courtesy of Tanesia DeMacon and Tony Vezina.*

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*The Drug Policy Alliance previously provided a restricted grant to The Influence Foundation to support a Drug War Journalism*

# Diversity Fellowship.

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Morgan Godvin

Morgan is a writer from Portland, Oregon. She founded **Beats Overdose**, a harm reduction provider for the music and entertainment industry. She is a research associate with **Health in Justice Action Lab** and a councilmember on Oregon's decriminalization Measure 110 Oversight and Accountability Council. She was formerly incarcerated.



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CA passed Proposition 47 in 2014 that AUTOMATICALLY REDUCES ALL "FELONY" DRUG POSSESSION CONVICTIONS to MISDEMEANORS (upon application by the convicted person!). It also changed all "low-level" drug possession quantities into MISDEMEANOR level crimes. Not as drastic as what OR has done, but it is probably in the "works" (everyone wants to see if the "sky falls" in OR!). There is current legislation in the CA legislation (SB 519) that will full-on LEGALIZE Psilocybin (it will be just like alcohol and marijuana!), Gonna be interesting to see how THAT works out!

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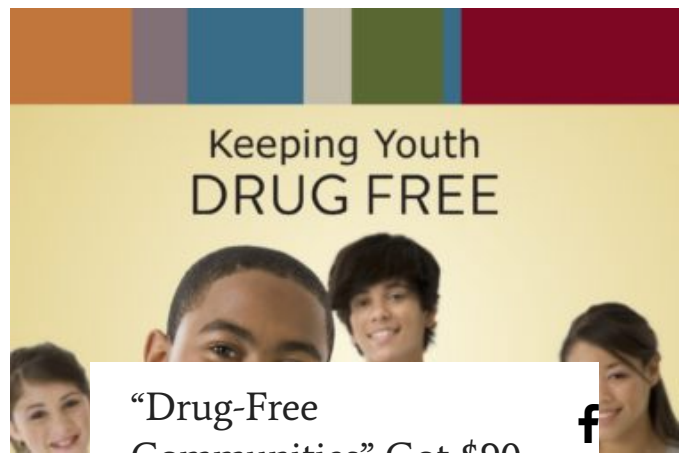
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