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THE DEFICIENCIES OF OREGON BALLOT MEASURE 110

*Jacob Towles**

ABSTRACT

In 1970, the Federal Government enacted the Controlled Substance Act (CSA), which made certain drugs and substances illegal absent a medical prescription. The control of drugs through the CSA exists to prevent harm to the public. Nonetheless, some cities and states have enacted laws that allow for the benefit or pleasure of using illegal drugs to outweigh the legal ramifications.

In November 2020, The Drug Addiction Treatment and Recovery Act, also known as Oregon Ballot Measure 110 (Measure 110), made Oregon the first state in the country to decriminalize all drugs. Measure 110 was enacted with the overarching goal to reduce addiction rates and help fight the war on drugs. However, what principles rationalize this heightened degree of decriminalization as a course to lowering addiction rates and combating the war on drugs?

This Note provides historic background information on controlled substances, Measure 110, and the laws surrounding controlled substances. It also includes recent news reports, warning letters written prior to the enactment of Measure 110, and a comparison of foreign drug legislation to that of Oregon. While this Note does not discuss the use of psychedelics in therapy, it does include discussion on the implications that have come to pass and are still to come since Measure 110's enactment, including (1) the effects it has on addicts and relapse concerns; (2) how Brazil and Portugal's decriminalization laws differ; (3) how it violates public health policy; (4) the increase it will have on crime rates; and (5) its negative impact on juveniles. Finally, this Note discusses alternative measures Oregon could take to assist addicts in the recovery process, incentivize them to stay clean, and lower incarceration rates.

I. INTRODUCTION

In 1970, the Federal Government enacted the Controlled Substance Act, which made certain drugs and substances illegal absent a medical prescription.¹ The control of drugs through the CSA exists to prevent harm to the public; however, the War on Drugs has been ongoing since the CSA's enact-

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1. Elizabeth Hartney, *What is a Controlled Substance?*, VERYWELL MIND, <https://www.verywellmind.com/what-are-controlled-drugs-22310> [<https://perma.cc/9MWN-KS4N>] (last updated Jan. 27, 2022).

ment.² The CSA splits drugs and chemicals into five different categories according to their effect on the human body and the potential for addiction.³ Within those categories are five classes that describe how the substances affects the body: hallucinogens, anabolic steroids, narcotics, depressants, and stimulants.⁴ Many of the drugs or substances listed in the CSA are extremely dangerous and have taken hundreds of thousands of lives over the years. The United States government has not yet come to a consensus on what to do on issues of drug use, addiction, or recovery, enthralling politics, the criminal justice system, and the health care system for decades.⁵

Since 1999, the Center for Disease Control (CDC) has reported nearly 841,000 deaths from drug overdose.⁶ In 2019, the United States witnessed 70,630 overdose related deaths, which was a 4% increase in overdose deaths from the previous year.⁷ In 2020, experts warned that the COVID-19 pandemic would only exacerbate the overdose death toll because of mental health problems deriving from and increasing because of the pandemic.⁸

The lack of insurance largely contributes to mental health issues and the potential to become dependent on a substance.⁹ For example, in 2001 over forty-six million Americans were uninsured—a large number of who belong to a racial minority and live in low-income housing.¹⁰ Among young adults, sixty-six percent lacked health insurance, and of those individuals, seventy-two percent were dependent on alcohol or controlled substances.¹¹ One study

2. Keziah Wong, *Measure 110: How Oregon Became the First State to Decriminalize Personal Possession*, MHA AO (Jan. 29, 2021), <https://www.mhaoforegon.org/blog/2021/1/29/measure-110-how-oregon-became-the-first-state-to-decriminalize-all-drugs> [<https://perma.cc/4BUK-VEDB>].
3. Hartney, *supra* note 1.
4. *Id.*
5. Wong, *supra* note 2.
6. *Drug Overdose Deaths Remain High*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/drugoverdose/deaths/index.html> [<https://perma.cc/W9J2-3LYN>] (Feb. 22, 2022).
7. *Id.*
8. See Mason Marks, *Controlled Substance regulation for the Covid-19 Mental Health Crisis*, 72 ADMIN. L. REV. 649, 651 (citing William Wan & Heather Long, ‘Cries for Help’: Drug Overdoses Are Soaring During the Coronavirus Pandemic, WASH. POST (July 1, 2020), <https://www.washingtonpost.com/health/2020/07/01/coronavirus-drug-overdose/> [<https://perma.cc/DB67-Q37K>]).
9. See Li-Tzy Wu & Chris Ringwalt, *Use of Substance Abuse Services by Young Uninsured American Adults*, 56 NO.8 PSYCHIATRIC SERVICES 946, 946 (Aug. 2005), <https://doi.org/10.1176/appi.ps.56.8.946> [<https://perma.cc/T4HB-AE28>].
10. *Id.*
11. *Id.*

sample revealed, “[o]ne fourth of the uninsured group met criteria for dependence on more than one substance, compared with 15% of the privately insured group.”¹² Several studies have also shown those belonging to a racial minority or in low-income housing are more likely to be uninsured and suffer from addiction.¹³

Illicit drug use does not only result in adverse health effects, but it often causes negative societal effects such as “overdoses, HIV and Hepatitis C infections, heart valve infections, epidural abscess, skin-grafts due to injection drug use, homelessness, domestic violence, suicide, psychiatric holds, work-loss, divorce, loss of child custody, and social isolation.”¹⁴ Because addiction diminishes rational cognitive ability, it often leads to secondary crimes, such as “identity theft, property crimes, and sometimes, violent crimes, if left unchecked.”¹⁵

Despite the statistics concerning the harmful consequences of drugs, some cities and states are putting measures into effect that allow for the benefit of selling or the pleasure of using drugs to outweigh legal ramifications.¹⁶ In November 2020, The Drug Addiction Treatment and Recovery Act, also known as Oregon Measure 110, made Oregon the first state in the country to decriminalize hard drugs,¹⁷ which created a greater rift in the War on Drugs compared to when Denver, Colorado, decriminalized psychedelics in May 2019.¹⁸ While Colorado’s decision did not influence other places to change their laws until over a year later, Oregon’s decision has already caused other states to consider decriminalizing hard drugs.¹⁹ Oregon’s Measure 110 is funded by the state’s marijuana tax revenue,²⁰ and its overarching goal is to

12. *Id.* at 947.

13. *Id.* at 948.

14. *Arguments In Opposition of Measure 110*, ORG. VOTE GUIDE (Sept. 28, 2021 3:46PM) [<https://perma.cc/FTP3-8DHM>] (referring to argument authored by Paul Coelho).

15. *Id.* (referring to argument authored by Jeff Barker, Representative).

16. Hartney, *supra* note 1.

17. Andrew Selsky, *Oregon 1st State to Decriminalize Possession of Hard Drugs*, PBS (Feb. 1, 2021), <https://www.pbs.org/newshour/politics/oregon-1st-state-to-decriminalize-possession-of-hard-drugs> [<https://perma.cc/46F9-GZY4>].

18. *See generally* Fred Lucas, *Denver Just Legalized “Magic Mushrooms”: What Happens Next?*, THE NAT’L INT. BLOG (May 14, 2019), <https://nationalinterest.org/blog/buzz/denver-just-legalized-magic-mushrooms-what-happens-next-57457> [<https://perma.cc/V9BK-MUXB>].

19. Sophie Quinton, *Oregon’s Drug Decriminalization May Spread, Despite Unclear Results*, PEW (Nov. 3, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/11/03/oregons-drug-decriminalization-may-spread-despite-unclear-results> [<https://perma.cc/L5QL-7DGA>].

20. Kathleen Davis, *Oregon Just Decriminalized Small Amounts of All Drugs. Now what?*, OPB (Mar. 5, 2021), <https://www.opb.org/article/2021/03/05/science->

lower addiction and incarceration rates to help counter the War on Drugs.²¹ But places like Portugal, which decriminalized illicit drugs in 2001, had crime rates skyrocket,²² albeit Portugal seemed to be in a much better place than Oregon to decriminalize drugs.²³ What principles could justify this decriminalization—eliminating criminal penalties for, at a minimum, the use and possession—of hard drugs to decrease addiction and to counter the War on Drugs?²⁴

Oregon’s Criminal Justice Commission records have found on average 9,000 people were arrested annually for small drug possession amounts.²⁵ Since Measure 110’s enactment, the number of those arrested for possession was brought down to zero, but the consequences are increasing.²⁶ Elly Staas, with the Fourth Dimension Recovery Center in Portland stated, “[r]elapse numbers have gone up.”²⁷

While arrest and conviction rates may go down, drug related impacts will quickly rise.²⁸ Policy makers for Measure 110 fail to see the bigger picture and negative impacts that will result from Measure 110, such as increased drug use, travel to Oregon to use drugs freely, public safety issues, drug dealings, other crimes, impact on juveniles, and the fact it requires addicts to be responsible enough to seek help on their own accord.²⁹

friday-oregon-measure-110-drug-decriminalization/ [https://perma.cc/7DJX-FQAU].

21. *Id.*
22. OFF. OF NAT’L DRUG CONTROL POL’Y, EXEC. OFF. OF THE PRESIDENT, FACT SHEET, DRUG DECRIMINALIZATION IN PORTUGAL: CHALLENGES AND LIMITATIONS (Aug. 2010), https://obamawhitehouse.archives.gov/sites/default/files/ondcp/Fact_Sheets/portugal_fact_sheet_8-25-10.pdf [https://perma.cc/FYL3-TQ5M].
23. *Portugal Golden Visa Healthcare for Foreigners Guide*, GLOB. CITIZEN SOL., <https://www.globalcitizensolutions.com/healthcare-foreigners-portugal/> [https://perma.cc/4Z6Q-3SY7] (last updated Mar. 2, 2022).
24. Dustin Marlan, *Beyond Cannabis: Psychedelic Decriminalization and Social Justice*, 23 LEWIS & CLARK L. REV. 851, 851 (2019), <https://law.lclark.edu/live/files/28626-lcb233article3marlanwebsite.pdf> [https://perma.cc/2NUA-8QHK].
25. Eric Westervelt, *Oregon’s Pioneering Drug Decriminalization Experiment Is Now Facing The Hard Test*, NPR (June 18, 2021), <https://www.npr.org/2021/06/18/1007022652/oregons-pioneering-drug-decriminalization-experiment-is-now-facing-the-hard-test> [https://perma.cc/E7T2-7V77].
26. *Id.*
27. *Id.*
28. *Id.*
29. See ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Jeff Barker, Representative).

This Note will provide background information on controlled substances, Oregon's Measure 110, and the laws surrounding controlled substances. Additionally, it will include recent news reports, warning letters prior to the passage of Measure 110, and a glimpse at foreign legislation. While this Note does not discuss the use of psychedelics in therapy, it does include implications that have come to pass and are still to come since Measure 110's enactment including (1) the impact it has on current and former addicts; (2) how other nations' decriminalization laws differ; (3) how it violates health policy; (4) the increase it will have on crime rates; and (5) its impact on juveniles. Finally, this Note discusses alternative measures Oregon could take that would benefit addicts in the recovery process and help them stay clean while still lowering incarceration rates.

II. CONTROLLED SUBSTANCE ACT & OREGON MEASURE 110

The Controlled Substance Act of 1970 sets the standard definition of what qualifies as a controlled substance—"a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V . . . the term does not include distilled spirits, wine, malt beverage, or tobacco."³⁰ Additionally, the CSA has a general list of drugs and their scheduled category, although not an exhaustive list; therefore, a substance is not required to be listed in the CSA to qualify as a schedule I—the most harmful and likely to cause addiction—substance in criminal prosecution.³¹ The intent of the CSA when drafted was to serve as a sweeping federal approach to uniformly address different aspects of drug use and abuse.³² The key factor in determining the schedule of a substance is its addiction potential.³³ All scheduled II, III, IV, or V substances have some current medical use.³⁴ However, those substances still require a medical prescription and are strictly regulated by federal and state governments.³⁵

Schedule I substances are deemed the most dangerous.³⁶ Substances that fall into this parameter have no current medical use, except marijuana, and

30. 21 U.S.C. § 802(6).

31. See U.S. DRUG ENF'T ADMIN., DRUG SCHEDULING, <https://www.dea.gov/drug-information/drug-scheduling> [<https://perma.cc/VD5S-K292>] [hereinafter *Drug Scheduling*].

32. VICTOR B. STOLBERG, THE SAGE ENCYCLOPEDIA OF PHARMACOLOGY AND SOC'Y 417 (Sarah E. Boslaugh 2016).

33. Drug Scheduling, *supra* note 31.

34. Hartney, *supra* note 1.

35. Charles V. Preuss et al., *Prescription of Controlled Substances: Benefits and Risk*, STATPERALS PUBL'G, <https://www.ncbi.nlm.nih.gov/books/NBK537318/> [<https://perma.cc/M4FX-NCYF>].

36. Stolberg, *supra* note 32, n.9, 418.

have a high potential to become addictive.³⁷ A few examples of drugs listed under schedule I include heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), peyote, methaqualone, and 3,4-methylenedioxymethamphetamine (“Ecstasy”).³⁸

Schedule II substances, drugs, and chemicals are classified as those with a high potential for abuse that may potentially lead to severe psychological or physical dependence.³⁹ The drugs in this schedule are considered more dangerous than schedule I substances.⁴⁰ Additionally, the substances in this category are split into two subcategories: schedule II narcotics and schedule IIN stimulants.⁴¹ A few examples of schedule II narcotics include “hydromorphone (Dilaudid), methadone (Dolophine), meperidine (Demerol), oxycodone (OxyContin, Percocet), and fentanyl (Sublimaze, Duragesic) . . . morphine, opium, codeine, and hydrocodone.”⁴² Schedule II substances that fall under stimulants include “amphetamine (Dexedrine, Adderall), methamphetamine (Desoxyn), and methylphenidate (Ritalin).”⁴³

Schedule III drugs, chemicals, and substances are categorized as a low to moderate risk for physical and psychological dependence.⁴⁴ Those in this classification have a less potential for abuse than those in schedule I or II; however, they have a higher potential than those under schedule IV.⁴⁵ Similar to schedule II sub-categories, schedule III has two categories: schedule III narcotics and schedule IIIN non-narcotics.⁴⁶ Some examples of those classified as schedule III narcotics include products containing not more than 90 milligrams of codeine per dosage unit (Tylenol with Codeine) and buprenorphine (Suboxone).⁴⁷ Similarly, those under schedule IIIN non-narcotics include “benzphetamine (Didrex), phendimetrazine, ketamine, and anabolic steroids such as Depo-Testosterone.”⁴⁸

37. Drug Scheduling, *supra* note 31.

38. U.S. DEP’T OF JUST., DRUG ENF’T ADMIN., DIVERSION CONTROL DIV., CONTROLLED SUBSTANCE SCHEDULES, <https://www.dea/diversion.usdoj.gov/schedules/> [<https://perma.cc/9AGV-T6D2>] [hereinafter *Controlled Substance Schedules*].

39. Drug Scheduling, *supra* note 31.

40. *Id.*

41. Controlled Substance Schedules, *supra* note 38.

42. *Id.*

43. *Id.*

44. Drug Scheduling, *supra* note 31.

45. *Id.*

46. Controlled Substance Schedules, *supra* note 38.

47. *Id.*

48. *Id.*

Schedule IV substances, chemicals, and drugs are those considered to have a low potential for dependence and low risk of abuse.⁴⁹ Examples of schedule IV substances include “alprazolam (Xanax), carisoprodol (Soma), clonazepam (Klonopin), clorazepate (Tranxene), diazepam (Valium), lorazepam (Ativan), midazolam (Versed), temazepam (Restoril), and triazolam (Halcion).”⁵⁰

Schedule V substances are those that have a lowest potential for abuse among the scheduled drug categories.⁵¹ The substances in this category consist primarily of preparations containing limited quantities of certain narcotics.⁵² Drugs in this category tend to be used for antidiarrheal, antitussive, and analgesic purposes.⁵³ A few examples of substances classified as schedule V include ezogabine, cough preparations containing no more than 200 milligrams of codeine per 100 grams or 100 milliliters (Robitussin AC, Phenergan with Codeine),⁵⁴ Lomotil, Motofen, Lyrica, and Parepectolin.⁵⁵

In November 2020, Oregon voted to change its illegal drug laws in an unprecedented way.⁵⁶ Oregon’s Measure 110 went into effect on February 1, 2021.⁵⁷ Measure 110 caused two shifts in how Oregon now handles illegal drugs.⁵⁸ First, it significantly reduced the penalty for possession of any controlled substances.⁵⁹ Secondly, it will take the expected savings from enforcing criminal drug possession penalties with the combined revenue of marijuana sales to finance a new drug treatment and recovery grant program.⁶⁰ However, Measure 110 does not bring in more treatment beds for

49. Drug Scheduling, *supra* note 31.

50. Controlled Substance Schedules, *supra* note 38.

51. *Id.*

52. Drug Scheduling, *supra* note 31.

53. *Id.*

54. Controlled Substance Schedules, *supra* note 3838.

55. Drug Scheduling, *supra* note 31.

56. See Michael Lantz & Brian Niebuurt, STATE OF OR. LEGIS. POL’Y AND RSCH OFF., Measure 110: Background Brief (Dec. 9, 2020), [https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-\(2020\).pdf](https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-(2020).pdf) [<https://perma.cc/84ME-YFMU>].

57. Tatiana Parafiniuk-Talesnick, *Starting Monday, Oregon spearheading drug decriminalization: Here’s what you need to know*, THE REG.-GUARD (Jan. 31, 2021, 5:00 AM), <https://www.registerguard.com/story/news/2021/01/31/faq-measure-110-goes-into-effect-feb-1-need-know-drug-decriminalization/4235674001/> [<https://perma.cc/2HLM-FDYC>].

58. Lantz, *supra* note 56.

59. *Id.*

60. *Id.*

those who lack private insurance, but creates more assessment and referral centers, which the state has enough of already.⁶¹

Possession of a large amount of controlled substances was changed from a felony to a Class A misdemeanor, meaning it is only punishable by up to 364 days of imprisonment and a maximum fine of \$6,250.⁶² Then, small amounts of controlled substance possession was reduced from a criminal misdemeanor to a Class E violation, which makes it the equivalent of a traffic ticket.⁶³ The punishment for small possession is a \$100 fine or submission of a health assessment at an Addiction Recovery Center.⁶⁴ It also removed any penalty enhancements for small possession if the person has previous felonies related to possession.⁶⁵ A few examples of possession amounts that constitute a noncriminal violation include less than one gram of heroin and MDMA; less than two grams for methamphetamine and cocaine; less than forty units for LSD, oxycodone and methadone; and less than twelve grams of psilocybin.⁶⁶

III. WHY MEASURE 110 WILL LIKELY FAIL

According to Senator Bill Hansell, Measure 110 legislation was not only drafted, but also funded with millions of dollars by an out-of-state organization with a special-interest in full decriminalization of drugs.⁶⁷ Sources point to a New York organization known as Drug Policy Alliance, which also backed Oregon's 2014 legislation for recreational cannabis use, for the funding behind Measure 110's passing.⁶⁸ Measure 110 is a decriminalization measure designed to mislead the citizens of Oregon into supporting legislation of lethally large "user amounts" of illegal drugs including heroin, opioids, methamphetamine, cocaine, and LSD, as explained by Brian and Brenda Martinek who lost their child to drug overdose.⁶⁹ One goal of Measure 110 was to lower incarcerations of racial minorities; however, some believe it will hurt minority groups. Fred W. Douglas Jr. stated, "[a]s an

61. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Billy Anderson).

62. Lantz, *supra* note 56.

63. *Id.*

64. *Id.*

65. *Id.*

66. Parafiniuk-Talesnick, *supra* note 57.

67. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Billy Hansel).

68. Amelia Templeton, *Measure 110 would make Oregon 1st state to decriminalize drug use*, OPB, (Oct. 14, 2020), <https://www.opb.org/article/2020/10/15/measure-110-oeragon-politics-decriminalize-drugs/> [<https://perma.cc/Q9FA-4RLR>].

69. *See* ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Brian & Brenda Martinek).

African-American Oregonian and someone who spent 45 years working to better the lives of families in Portland, I applaud efforts to fix the problem of unequal justice for people of color, but Measure 110 has serious flaws.”⁷⁰

Oregon’s Measure 110 is a replica of what San Francisco attempted and failed to accomplish in California.⁷¹ Furthermore, San Francisco’s decriminalization of drugs had similar goals to Measure 110’s goals including the attempt to help people of color, which backfired and ended up hurting people of color at a disproportional rate.⁷²

A. Effect on Addicts and Relapse Concerns

Mike Marshall, executive director of Oregon Recovers, spoke out in opposition to Measure 110 emphasizing that overdose rates are going to skyrocket as an unintended consequence.⁷³ His prediction was correct. In June 2021, former president of Oregon’s Association of Chief of Police, Jim Ferraris, explained that National Public Radio (NPR) has contacted multiple organizations for information as the number of former addicts relapsing is steadily increasing.⁷⁴ Several organizations have explained that groups are having trouble obtaining enough peer counselors with so many people using again.⁷⁵ One author wrote, “[i]f you pretty much decriminalize shoplifting, don’t be surprised when you get more shoplifting.”⁷⁶ This same concept can be applied to the decriminalization of controlled substances.

Prior to Measure 110, Oregon’s treatment and recovery system was already lacking, but this legislation made it even worse.⁷⁷ Oregon resident Fred W. Douglas Jr. argued,

[w]e need more treatment beds to meet the needs we have today.
Measure 110 doesn’t create new funding for treatment. It doesn’t

70. See ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Fred W. Douglas, Jr.).

71. Katya Sedgwick, *The San Francisco Mess Proves Decriminalizing Drugs Doesn’t Work*, THE FEDERALIST (Jan. 21, 2020), <https://thefederalist.com/2020/01/21/the-san-francisco-mess-proves-decriminalizing-drugs-doesnt-work/> [<https://perma.cc/2UCH-YFKC>].

72. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Fred W. Douglas, Jr.).

73. Westervelt, *supra* note 25.

74. *Id.*

75. *Id.*

76. Bernard Goldberg, *The ‘little things’ are turning San Francisco bad in a big way*, THE HILL (June 20, 2021), <https://thehill.com/opinion/criminal-justice/559465-the-little-things-are-turning-san-francisco-bad-in-a-big-way> [<https://perma.cc/K56Z-BNTR>].

77. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Fred W. Douglas, Jr.)

help poor people pay for treatment. Decriminalizing drugs in this measure will not only overwhelm our current system it would severely set us back attempts to help those who need help.⁷⁸

B. Portugal and Brazil Impact on Oregon

Many supporters of Measure 110 rely on Portugal's decriminalization of controlled substances and the so called "positive effect" it has had since its enactment. In November 2000, Portugal amended its 1993 drug laws and passed bill 30/2000.⁷⁹ This legislation was enacted in July 2001, and it decriminalized the use and possession of all illicit drugs.⁸⁰ Portugal's legislation and Oregon's differ immensely. For example, in Portugal, if the amount exceeds ten days' worth of doses, the penalty (depending on the type of illicit drug) ranges from one to twelve years' imprisonment.⁸¹ However, the penalty is reduced by several years if the person sells drugs only to fund their addiction—a maximum of one to three years' imprisonment.⁸² On the other hand, Measure 110 is much more lax.⁸³ For example, any amount over the personal use allowed has a maximum of up to 364 days imprisonment and is reduced from a felony to a misdemeanor.⁸⁴

Oregon clearly failed to fully analyze the results of Portugal's decriminalization because the death toll is still on the rise.⁸⁵ In 2018, Portugal News found that deaths from overdoses increased by almost 30%, and in the last five years, the country saw their highest figure of drug-related deaths.⁸⁶ This data, provided by the Intervention Service in Addictive Behaviors and Dependencies (SICAD), gave a breakdown of the overdoses that were related to certain drugs.⁸⁷ Most overdoses reflected in the data resulted from Schedule I or II drugs.⁸⁸ Additionally, it found that most of these cases involved

78. *Id.*

79. *Country Legal Profiles*, EUR. MONITORING CTR. FOR DRUGS AND DRUG ADDICTION, <https://www.emcdda.europa.eu/html.cfm/index5174EN.html?pluginMethod=ELdd.countryprofiles> [<https://web.archive.org/web/20210124025613/>].

80. *Id.*

81. *Id.*

82. *Id.*

83. *See* Lantz, *supra* note 56.

84. *Id.*

85. *See* *Overdose deaths increase by almost 30%*, PORTUGAL NEWS (Dec. 20, 2019), <https://www.theportugalnews.com/news/overdose-deaths-increase-by-almost-30/52412> [<https://perma.cc/7B7N-PVS9>].

86. *Id.*

87. *Id.*

88. *Id.*

multiple drugs.⁸⁹ If this was the result in Portugal, how much worse will it be in Oregon with the state's already high rates of addiction and difficulty to access treatment?⁹⁰

Similarly, in April 2012, Brazil decriminalized personal use of controlled substances if it does not exceed five days' use.⁹¹ In Brazil this penal code does not apply "if the individual is in the presence of children and adolescents, or near to schools or other places with a concentration of children and adolescents."⁹² Measure 110 does not take the same or any steps to shield children and adolescents from controlled substances or their use.

Measure 110 likely emulated Portugal in some of its recently enacted legislation; however, Oregon made it weaker and less personable. In Portugal, if found in possession of up to ten days' worth of illicit drugs, the police will write a referral of drug users identified to the local Drug Addiction Disuasion Commissions (Commission).⁹³ This Commission is comprised of multidisciplinary teams that assess users and decide appropriate sanctions, educational programs, or treatment programs.⁹⁴ Sanctions can include fines, community service, bans from certain areas, and even suspension of license.⁹⁵ Officers are required to get the offenders information to the Commission within seventy-two hours, and the Commission then can determine the appropriate treatment or educational service for the drug offender.⁹⁶ This procedure is much more involved than Measure 110, which only requires users to pay a \$100 fine or submit a health survey within forty-five days.⁹⁷

89. *Id.*

90. See John Kitshaber, *Vote No on Measure 110*, JOHN KITZHABER BLOG (Oct. 18, 2020), <https://blog.johnkitshaber.com/vote-no-on-measure-110/> [https://perma.cc/EAB2-6WEZ].

91. Carla Aparecida Arena Ventura & Débora Aparecida Miranda Benetti, *The Evolution of Anti-Drug Laws: Treatment for Drug Users and Addicts in Brazil and in Portugal*, PEPSIC, http://pepsic.bvsalud.org/scielo.php?pid=S1806-69762014000200002&script=SCi_arttext&tlng=EN [https://perma.cc/2EHP-Q2XT].

92. *Id.*

93. Paula Vale de Andrade & Ludmila Carapinha, *Drug decriminalisation in Portugal*, BMJ (Sept. 10, 2010), https://www.researchgate.net/profile/Ludmila-Carapinha/publication/46220241_Drug_decriminalisation_in_Portugal/links/5757f18a08aef6cbe3625bf3/Drug-decriminalisation-in-Portugal.pdf [https://perma.cc/DG3P-MG2M].

94. *Id.*

95. Laurence Allen, et al., *Decriminalisation of drugs in Portugal: a current overview*, THE BECKLEY FOUND. DRUG POL'Y PROGRAMME (2004), http://fileserv.idpc.net/library/BFDPP_BP_06_DecrimDrugsPortugal_EN.pdf [https://perma.cc/76XQ-PXKJ].

96. *Id.*

97. Lantz, *supra* note 56.

Not only are Portugal's decriminalization efforts more personable than Measure 10, but their health care system is set up to handle mass drug overdoses because Portugal, unlike the United States, has a universal health care system.⁹⁸ Additionally, in 2018, a census was taken that compared countries' doctor counts per 1000 citizens, and Portugal had almost double that of the United States.⁹⁹ Portugal had 5.12 doctors per 1000 citizens while the United States only had 2.61 doctors per 1000 citizens.¹⁰⁰ Portugal's health care system is able to run efficiently in treating large numbers of addicts; however, neither Oregon's, nor the United States', healthcare system is nearly as prepared.¹⁰¹ America, yet alone Oregon, has not allocated proper funds to their healthcare system and treatment centers like Portugal has over the years.¹⁰²

C. Public Health Concerns

Jeff Barker, the representative for Washington County with over thirty-one years of law enforcement experience, explains that Oregon criminal law has been the most productive in working to treat drug addicts not like criminals but as individuals with a disease, which requires an intervention.¹⁰³ He explains that those who support Measure 110 would have the public believe that Oregon has been locking people up for drug possession, which is not true, and that "simply giving a referral to treatment means addicts go by themselves (they don't)."¹⁰⁴ Finally, he expounds on the importance of balancing Oregon's criminal justice laws in a way that maintains safety in the communities while working toward rehabilitating people who commit crimes.¹⁰⁵

The current pandemic likely will exacerbate addiction rates in Oregon especially with Measure 110 allowing drug possession to be decriminal-

98. *Portugal Golden Visa Healthcare for Foreigners Guide*, GLOB. CITIZEN SOL., <https://www.globalcitizensolutions.com/healthcare-foreigners-portugal/> [<https://perma.cc/2FPC-9U5S>].

99. *Medical Doctor per 1,000 people, 2018*, OUR WORLD IN DATA, <https://ourworldindata.org/grapher/physicians-per-1000-people> [<https://perma.cc/Y888-H5G5>].

100. *Id.*

101. See Serene Desiree, *16 Years Later: What Happened After Portugal Decriminalized Drugs in 2001?*, LEAFLY (June 13, 2017), <https://www.leafly.com/news/politics/portugal-drug-decriminalization-statistics> [<https://perma.cc/DZ5R-PYLP>].

102. See *id.*

103. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Jeff Barker, Representative).

104. *Id.*

105. *Id.*

ized.¹⁰⁶ Former Oregon governor and current doctor and parent, John Kitzhaber, understood the central motivation behind Measure 110 was to counter the War on Drugs, in which racial minority citizens paid a steep price by being incarcerated at higher rates than others.¹⁰⁷ While Kitzhaber agreed with the goal of Measure 110, he stated, “[a]s written, [Measure 110] makes it more difficult to treat the underlying addiction that leads to drug use in the first place.”¹⁰⁸ Additionally, Oregon has the third-highest untreated addiction rate in the United States and is virtually at the bottom of the rankings when it comes to access to treatment.¹⁰⁹ Kitzhaber further reasons that Oregon is in this crisis because addiction has long been viewed as a crime instead of a disease.¹¹⁰ However, “the social isolation, economic stress and anxiety from COVID-19 has led many Oregonians to self-medicate-with addictive drugs.”¹¹¹

Kitzhaber was correct. The Center for Disease Control in a March 2021 article explained that as of June 2020, 13% of Americans reported an increase in using substances to cope.¹¹² And it found that, in comparison to 2019, the pandemic had led to an 18% increase in overdoses throughout 2020.¹¹³ Furthermore, Oregon Council for Behavior Health Executive Director, Heather Jefferis, argues that Measure 110 is only reallocating funds from one service that helps prevent addiction to another.¹¹⁴ Jefferis states, “[s]hifting funds from one part of the continuum of care to another does not equate to increased funding.”¹¹⁵

D. Increase in Crime

One police officer explained the frustration of Measure 110 and the resulting public health concern of out-of-state citizens coming into the state to use drugs because they know the police cannot do anything about it.¹¹⁶ In-

106. Marks, *supra* note 8, at 651-52.

107. Kitzhaber, *supra* note 90.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Ashley Abramson, *Substance use during the pandemic*, AM. PSYCH. ASS’N (Mar. 1, 2021), <https://www.apa.org/monitor/2021/03/substance-use-pandemic> [<https://perma.cc/E3WR-5VSP>].

113. *Id.*

114. German Lopez, *Oregon’s ballot measure to decriminalize all drugs, explained*, Vox (Oct. 21, 2020, 10:00 AM), <https://www.vox.com/21509815/oregon-ballot-measure-110-drug-decriminalization> [<https://perma.cc/XBX2-RV SX>].

115. *Id.*

116. Westervelt, *supra* note 25.

stead of seeking an alternate method from arrest and jail time, the state has decided to abandon any retributive penalty associated with controlled substances.¹¹⁷ Retired chief police Ferraris of Woodburn, Oregon, worries drug cartel activity will continue to increase along the interstate.¹¹⁸ When drug laws become relaxed, crime inevitably increases, as Portugal's experience shows.¹¹⁹

In 2001, Portugal decriminalized personal use and possession of all controlled substances.¹²⁰ However, twenty years later Portugal is still seeing an increase in major crimes.¹²¹ One major negative repercussion is a rise in homicides, which has yet to fall below pre-decriminalization rates.¹²² Today, the homicide rates in Portugal sit at 10% above pre-decriminalization times, and from 2001 to 2007, murder rates were a near 60% above prior decriminalization times.¹²³

Furthermore, Portugal has yet to see incarceration rates decrease since decriminalizing drugs, despite fewer than half as many people being incarcerated for drug crimes.¹²⁴ Although some argue that decriminalization has allowed police officers to focus on other crimes rather than drug possession offenses, this belief is mistaken.¹²⁵ This argument fails to consider that lax drug laws influence more crime and lead to growing underground crime populations, as undercover agents have reported.¹²⁶ This is likely to be the same result in Oregon but much worse. Oregon and America have a much greater problem with intentional homicides and gang and gun violence than Portugal.¹²⁷ Therefore, the increase in crime rates that Portugal has seen since decriminalizing illicit drugs will only be exacerbated in Oregon.¹²⁸ When compared to the public, suicide victims and those committing homicides are more prone to using controlled substances.¹²⁹ This has already been the case in Portland, Oregon. In 2020, prior to Portland decriminalizing drugs, it ex-

117. *Id.*

118. *Id.*

119. *See* Desiree, *supra* note 101.

120. OFF. OF NAT'L DRUG CONTROL POL'Y, *supra* note 22.

121. Desiree, *supra* note 101.

122. *Id.*

123. *Id.*

124. *Id.*

125. *See id.*

126. *See* Desiree, *supra* note 101.

127. *Id.*

128. *See generally id.*

129. Emma E. McGinty, et al., *The Relationship Between Controlled Substances and Violence*, 38 EPIDEMIOLOGIC REV. 5, 6 (Feb. 11, 2016), <https://academic.oup.com/epirev/article/38/1/5/2754864> [<https://perma.cc/55HW-BA5L>].

perienced a total of fifty-five homicides;¹³⁰ in 2021, however, after the enactment of Measure 110, Portland had already seen sixty-nine homicides through late October.¹³¹ Additionally, Measure 110 brings large drug possessions from a felony to a misdemeanor, which will increase drug dealings throughout the state.¹³²

E. Effect on Juveniles

Measure 110 applies equally to juveniles as it does to adults, which has struck fear into the hearts of many parents.¹³³ According to Marnae Powell, mother of a drug addict, Measure 110 gives the impression that drugs are not bad, removing any deterrence from a child's mind because the only consequence is a fine equivalent to a traffic ticket.¹³⁴ Amanda Marshall, former U.S. Attorney for Oregon and supporter of Measure 110, stated, “[c]urrently, when kids get arrested, their parents get notified . . . that won't change.”¹³⁵ However, Marshall fails to realize that Measure 110 will essentially tie parents' hands when it comes to using any type of legal leverage in an attempt to control their children's drug use.¹³⁶

For example, Marne Powell paid over \$50,000 for her teenage son's rehab, and nothing worked.¹³⁷ Under Oregon law, she could not require her

130. Maxine Bernstein, *55 homicides in Portland in 2020 – the most in 26 years – involved victims from 8 months old to 71*, THE OREGONIAN (Jan. 5, 2021, 7:00 AM), <https://www.oregonlive.com/crime/2021/01/55-homicides-in-portland-in-2020-the-most-in-26-years-involved-victims-from-8-months-old-to-71.html> [https://perma.cc/4MJZ-WN8R].

131. Maxine Bernstein, *Under the gun: 69 people have been killed so far this year in Portland amid a stunning wave of gun violence*, THE OREGONIAN (Oct. 26, 2021, 7:00 AM), <https://www.oregonlive.com/crime/2021/10/under-the-gun-68-people-have-been-killed-so-far-this-year-in-portland-amid-a-stunning-wave-of-gun-violence.html> [https://perma.cc/LV2T-M4PQ].

132. See Lantz, *supra* note 56.

133. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Sandra Nelson).

134. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Marnae Powell).

135. Nigel Jaquiss, *Former Gov. John Kitzhaber Urges “No” Vote on Measure 110, Which Decriminalizes Drug Possession*, WILLAMETTE WK. (Oct. 19, 2020, 12:53 PM), <https://www.wweek.com/news/state/2020/10/19/former-gov-john-kitzhaber-urges-no-vote-on-measure-110-which-decriminalizes-drug-possession/> [https://perma.cc/398X-A2AN].

136. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Sandra Nelson).

137. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Marnae Powell).

teenager to go to a treatment center without a court order.¹³⁸ With Measure 110, parents will not have the justice system to help save their children.¹³⁹ Prior to Measure 110, juveniles and adults charged with a misdemeanor possession are given a choice between getting treatment or conviction, but this new law removes the structure or incentive for addicts to participate in treatment such as a court-ordered program.¹⁴⁰

Some education experts believe Measure 110 will negatively impact schools along with the students.¹⁴¹ Under this enforcement, public K-12 schools are expected to lose upwards of \$70 million.¹⁴² According to Superintendent Mark Thielman of Alsea School District, this loss may soon tie the hands of school districts' drug enforcement capability on campus or lead to financially burdensome litigation.¹⁴³

IV. POSSIBLE ALTERNATIVES TO MEASURE 110

If Oregon wanted to help counter the War on Drugs, it would have increased the number of beds available at treatment centers for those who are uninsured.¹⁴⁴ Furthermore, a common underlying theme across Oregon's news articles focuses on incarceration rates but neglects to notice the impact Measure 110 will have on the increase of drug use. What the Oregon law purports to accomplish is lower levels of substance addiction in the community.¹⁴⁵ But since the law was passed, the percentage of substance abuse and overdoses has inevitably risen,¹⁴⁶ as it became easier to obtain drugs and substances.¹⁴⁷ Meanwhile, other methods aimed at decreasing substance addiction (like the Teen Challenge) have had an 86% success rate for graduates of the program remaining drug free.¹⁴⁸ Teen challenge is a Christian-based addiction recovery center with a higher success rate than most addiction cen-

138. *Id.*

139. *See id.*

140. *Id.*

141. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Mark Thielman).

142. *Id.*

143. *Id.*

144. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Billy Anderson).

145. *See Lopez, supra* note 114.

146. Westervelt, *supra* note 25.

147. Northwestern U., *How Successful is Teen Challenge?*, NAT'L INST. ON DRUG ABUSE (June 2017), <http://teenchallengehawaii.com/wp-content/uploads/2017/06/Success-Rate-of-Teen-Challenge.pdf> [<https://perma.cc/L9HE-UDBX>].

148. *Id.*

ters, a Northwestern University study concluded.¹⁴⁹ It would be more advantageous for Oregon to provide incentives to attend these kinds of camps rather than allow the public access to harmful substances for little-to-no penalty. Lisa Bingham, a former addict, argues against Measure 110.¹⁵⁰ As she explains, “[c]ourt ordered treatment was a Godsend. Had I not intersected with the justice system, I’m not sure where I would be. Certainty, I wouldn’t be where I am today.”¹⁵¹

Measure 110 fights against incarceration rates more than the War on Drugs. For example, in 2019, Oregon enacted Senate Bill 910, requiring pharmacists to offer naloxone—an opioid overdose reversal drug—to patients without a prescription when prescribing an opioid.¹⁵² Unlike with Measure 110, Senate Bill 910 does not waive the legal consequences for misuse of controlled substances, but it provides them with a safety net.¹⁵³ Meanwhile, Measure 110 removes virtually all legal ramifications for any controlled substance.

If amended, Measure 110 could help addicts get help and get back on their feet. For starters, it could use the marijuana tax revenue to provide addiction centers with more treatment beds for uninsured patients. Next, instead of decriminalizing-controlled substances it could give addicts an incentive to get and stay clean. Measure 110 could implement a program that helps those who graduate from addiction recovery centers with assistance in obtaining housing and a job. This would provide stability, which is shown to help those in recovery. Furthermore, it could require those in recovery to attend therapy or counseling and even give companies a small tax incentive to hire those in recovery. Finally, the state should provide a former addict with the option of submitting a monthly drug test for two to five years and, if clean, their prior drug conviction(s) would be expunged. This is a policy that would make a positive impact in addicts’ lives and give them a reason to seek help rather than make it easier for them to use drugs. If Oregon was to implement a program like this, it would help treat addiction for what it really is—a mental illness.

V. CONCLUSION

The policy makers of Measure 110 focused too much on incarceration rates but failed to look at other circumstances that highlight the flaws of Measure 110. Oregon’s legislators/legislature did not consider that controlled substances have a major impact on violence and that decriminalization would

149. *Id.*

150. ORG. VOTE GUIDE, *supra* note 14 (referring to argument authored by Lisa Bingham).

151. *Id.*

152. S.B. 910, 80th Leg. Assemb., Reg. Sess. (Or. 2019).

153. *See id.*

increase this violence. Nor did they think about the effects it will have on the overall public health, juveniles, recovering addicts, drug dealings, and even the ability of law enforcement to do their job.

Oregon's legislators/legislature claims this will help the addiction rates, but that is highly unlikely because most do not go to get treatment on their own. Furthermore, they allocate state finances toward the wrong things under this bill and do not provide for more addiction center beds for those uninsured or have a program to help them get back on their feet. Overall, the shortcomings of Measure 110 and the unforeseen downstream effects on violence could likely come to fruition in the next half-decade. Therefore, for the reasons outlined above, only time will tell whether Measure 110 will be successful as intended or result in a large increase of drug use and/or violence.