



Was decriminalisation effective in North America?

Oregon and Washington, USA and Vancouver in British Columbia, Canada have received widespread attention for their recent policy changes decriminalising the personal use of drugs.

At a glance

- Two US states and one Canadian province introduced decriminalisation for possession of drugs for personal use but have since wound these laws back in various ways (e.g. [Oregon](#); [British Columbia](#)).
- This has been interpreted by some commentators to mean that decriminalisation is a 'policy failure'.
- The lack of changes in fatal overdose numbers, and the concerns about drug use in public spaces have been the measures by which these policies have been judged. Yet these were existing problems, and not caused by the decriminalisation measures.
- The main outcome from decriminalisation is reduction in the number of arrests (especially amongst marginalised people), and the associated significant cost-savings to government. These have been achieved.
- Direct health outcomes require investment and roll out of treatment, harm reduction, and support services. These take time.
- The North American laws, even after the windbacks, retain pathways for health responses to illicit drug use, and are not a wholesale rejection of decriminalisation as a public health model.



Suggested citation: DPMP Team. (2024) Was decriminalisation effective in North America? *DPMP Evidence hub for the NSW Drug Summit 2024*. Social Policy Research Centre, UNSW.



What did they do?¹

Oregon: In February 2021, the possession of small amounts of drugs became punishable by a fine only (up to \$100) that could be waived on completion of a health assessment. This change was passed by ballot initiative 'Measure 110' in November 2020 (coming into effect February 2021) (Davis et al., 2023). Oregon recriminalized drug possession in 2024 (passed March, in effect from September).

Washington: In May 2021, the possession of small amounts of drugs was reclassified, and police were required to refer anyone caught with small amounts of drugs to health services at least twice before arresting/charging. Other changes included requiring police to receive training for interacting with people with substance use disorders (Davis et al., 2023). The law changed again in July 2023, removing the requirement for diversion (but retaining it as a voluntary option) (Senate Committee on Ways & Means, 2023).

British Columbia (BC): In January 2023, BC decriminalised personal possession of opioids, crack and powder cocaine, methamphetamine, and MDMA (Xavier et al., 2024). Drug possession for personal use in public spaces was re-criminalised in May 2024 (BC CDC, 2024).

What were the effects/outcomes/impacts?

Judgements about policy success or failure rely on agreement about what outcomes are being sought. Is a new policy being judged against its expected and intended outcomes, or against other outcomes?

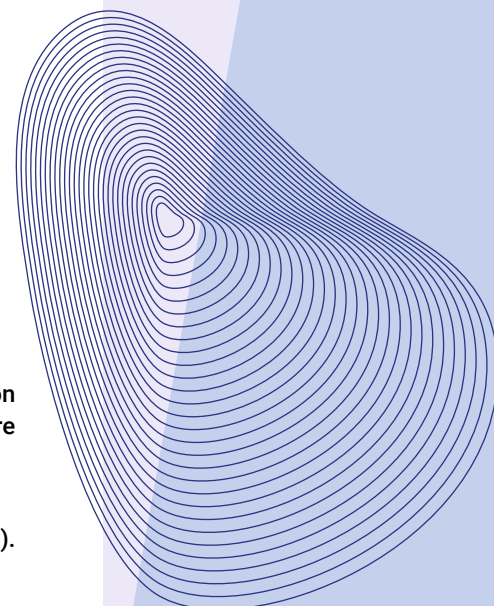
The removal of criminal penalties recognises that personal drug use/possession should not be a criminal offence, and that health or social responses to drug use are more appropriate.

The outcome associated with the removal of criminal penalties is criminal justice outcomes, i.e. a reduction in arrests (and associated cost savings to law enforcement).

Recent academic research using an interrupted time-series analysis (tracking arrests in Oregon and Washington before and after the law changes, and comparing them to 'control' states where no changes to the law were made) found **significant reductions in arrests in both Oregon and Washington after they decriminalised drug possession (Davis et al., 2023)**. Other recent data from Oregon supports this conclusion (Russoniello et al., 2023). Arrests for Black and First Nations people also reduced after the decriminalisation changes, although Black individuals and First Nations individuals were still arrested at more than 2x and nearly 4x the rate of white individuals respectively (Davis et al., 2023).

In the context of an overdose epidemic, removal of criminal penalties on their own are unlikely to have any effect on overdose deaths. The positive health outcomes from removal of criminal penalties can be overstated if other policies are not also introduced. The logic chain from removal of criminal penalties to positive health outcomes requires a strong link to harm reduction and treatment services. This means that everyone who was arrested will receive harm reduction or treatment. That is not only unnecessary as many do not need treatment, but requires significant harm reduction and treatment investment. A reduction in stigma may increase help-seeking but this likely takes many years (and the Oregon and Vancouver experiences are less than 4 years old). The investment in health and social support in Oregon was much slower to materialise than the effect on arrests (Russoniello et al., 2023)).

¹ It is surprisingly difficult to get an accurate description of the decriminalisation measures and counter-measures, partly because there are differences within counties and partly because the laws have been subject to changes over time. The text here is as we understand the arrangements in Oregon, Washington and BC at time of writing.

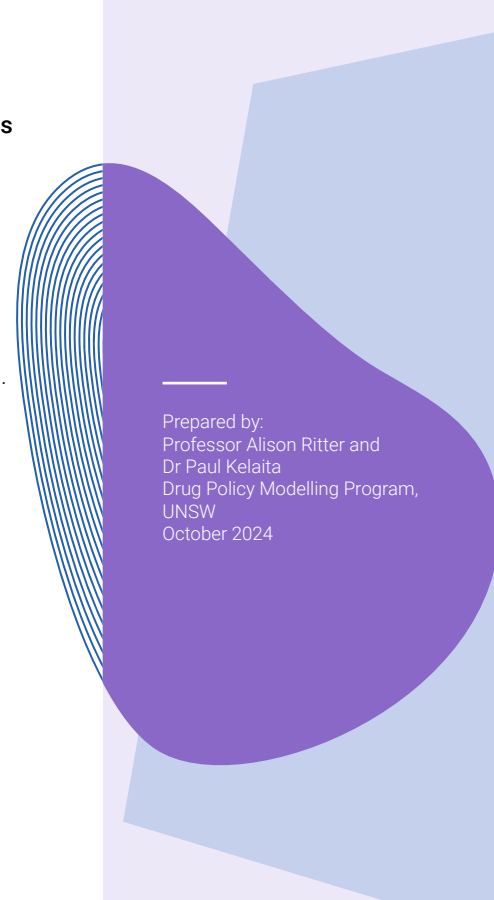


Separate to the argument about which outcomes we expect/should measure from removal of criminal penalties, **there is a strong academic basis to the assertion that the removal of criminal penalties was not associated with any change (positive or negative) in fatal drug overdoses.** One paper concludes with: "This study found no evidence of an association between legal changes that removed or substantially reduced criminal penalties for drug possession in Oregon and Washington and fatal drug overdose rates" (Joshi et al., 2023). Another paper also concluded (after sophisticated statistical analyses, as in Joshi et al., 2023) that "After adjusting for the rapid escalation of fentanyl, analysis found no association between M110 and fatal drug overdose rates" (Zoorob et al., 2024).

It is crucial when designing and assessing any policy change to consider the outcomes of interest and whether policy mechanisms in isolation can reasonably be expected to lead to the desired outcome. Overdose deaths in North America are often discussed as evidence of the 'failure' of decriminalisation. Yet the mechanism by which removing criminal penalties for drug use will impact fatal overdoses requires a long causal chain (for example, changes to access to harm reduction services and reductions in risky injecting practices – effects that can take many years to achieve after criminal penalties are removed). As discussed above, the removal of criminal penalties has not been shown to have any effect on fatal drug overdoses (Joshi et al., 2023; Zoorob et al., 2024). The success of decriminalisation in countries such as Portugal occurred in a different context, where fentanyl was not present, and where multiple policy mechanisms were utilised—there was substantial investment in treatment pathways (Xavier et al., 2024). Furthermore, it is clear from research with people who use drugs that the removal of criminal penalties by itself should not be expected to reduce overdose deaths when it does not address realities of drug use and the toxic, illegal drug supply (Xavier et al., 2024).

There are many known harms of the criminalisation of drug use and possession (Baker et al., 2020; Bardwell et al., 2019; DeBeck et al., 2017; Lenton & Heale, 2000; Lenton et al., 2000; Maher & Dixon, 2017; Scher et al., 2023; Stone et al., 2018; Werb et al., 2011). Many of the positive effects of the removal of criminal penalties for drug use and possession for personal use are likely to take years to emerge. These include for example reductions in stigma which will enhance help seeking, improvements in health (through reduced incarceration), or changes in the delivery of harm reduction services (requiring new government investment). There needs to be sufficient time since the law changes for these effects to emerge. The experiences from these North American states demonstrate the 'flip flop' nature of policies about drug laws in a short time frame. In each case, the jurisdiction has made changes to the policy. This means that any effects which might emerge over time (given the long causal chains) are not apparent.

There is strong evidence that removal of criminal penalties is successful in achieving criminal justice outcomes, namely the reduction in arrests (Davis et al., 2023; Plunk et al., 2019; Russoniello et al., 2023; Sheehan et al., 2021) and the associated cost-savings that can be expected for law enforcement (Ritter et al., 2024; Stevens et al., 2019; Tran et al., 2023).



Prepared by:
Professor Alison Ritter and
Dr Paul Kelaita
Drug Policy Modelling Program,
UNSW
October 2024

References

- Baker, P., Beletsky, L., Avalos, L., Venegas, C., Rivera, C., Strathdee, S. A., & Cepeda, J. (2020). Policing Practices and Risk of HIV Infection Among People Who Inject Drugs. *Epidemiologic Reviews*, 42(1), 27-40. <https://doi.org/10.1093/epirev/mxaa010>
- Bardwell, G., Strike, C., Altenberg, J., Barnaby, L., & Kerr, T. (2019). Implementation contexts and the impact of policing on access to supervised consumption services in Toronto, Canada: a qualitative comparative analysis. *Harm Reduction Journal*, 16(1), 30. <https://doi.org/10.1186/s12954-019-0302-x>
- BC CDC. (2024). Decriminalization in B.C. BC Centre for Disease Control. Retrieved 3 October 2024 from www.bccdc.ca/health-info/prevention-public-health/decriminalization-in-bc#:~:text=On%20January%2031%2C%202023%2C%20an,people%20over%2018%20years%20old.
- Davis, C. S., Joshi, S., Rivera, B. D., & Cerdá, M. (2023). Changes in arrests following decriminalization of low-level drug possession in Oregon and Washington. *International Journal of Drug Policy*, 119, 104155. <https://doi.org/https://doi.org/10.1016/j.drugpo.2023.104155>
- DeBeck, K., Cheng, T., Montaner, J. S., Beyrer, C., Elliott, R., Sherman, S., Wood, E., & Baral, S. (2017). HIV and the criminalisation of drug use among people who inject drugs: a systematic review. *Lancet HIV*, 4(8), e357-e374. [https://doi.org/10.1016/s2352-3018\(17\)30073-5](https://doi.org/10.1016/s2352-3018(17)30073-5)
- Joshi, S., Rivera, B. D., Cerdá, M., Guy, G. P., Jr, Strahan, A., Wheelock, H., & Davis, C. S. (2023). One-Year Association of Drug Possession Law Change With Fatal Drug Overdose in Oregon and Washington. *JAMA Psychiatry*, 80(12), 1277-1283. <https://doi.org/10.1001/jamapsychiatry.2023.3416>
- Lenton, S., & Heale, P. (2000). Arrest, Court and Social Impacts of Conviction for a Minor Cannabis Offense under Strict Prohibition. *Contemporary Drug Problems*, 27(4), 805-833. <https://doi.org/10.1177/009145090002700405>
- Lenton, S., Humeniuk, R., Heale, P., & Christie, P. (2000). Infringement versus conviction: the social impact of a minor cannabis offence in South Australia and Western Australia. *Drug and Alcohol Review*, 19(3), 257-264.
- Maher, L., & Dixon, T. C. (2017). Collateral damage and the criminalisation of drug use. *The Lancet HIV*, 4(8), e326-e327. [https://doi.org/https://doi.org/10.1016/S2352-3018\(17\)30071-1](https://doi.org/https://doi.org/10.1016/S2352-3018(17)30071-1)
- Plunk, A. D., Peglow, S. L., Harrell, P. T., & Grucza, R. A. (2019). Youth and Adult Arrests for Cannabis Possession After Decriminalization and Legalization of Cannabis. *JAMA Pediatrics*, 173(8), 763. <https://doi.org/10.1001/jamapediatrics.2019.1539>
- Ritter, A., Greal, M., Kelaita, P., & Kowalski, M. (2024). The Australian 'drug budget': Government drug policy expenditure 2021/22. *Social Policy Research Centre, UNSW*. <https://doi.org/10.26190/unsworks/30075>
- Russoniello, K., Vakharia, S. P., Netherland, J., Naidoo, T., Wheelock, H., Hurst, T., & Rouhani, S. (2023). Decriminalization of drug possession in Oregon: Analysis and early lessons. *Drug Science, Policy and Law*, 9, 20503245231167407. <https://doi.org/10.1177/20503245231167407>
- Scher, B. D., Neufeld, S. D., Butler, A., Bonn, M., Zakimi, N., Farrell, J., & Greer, A. (2023). "Criminalization Causes the Stigma": Perspectives From People Who Use Drugs. *Contemporary Drug Problems*, 50(3), 402-425. <https://doi.org/10.1177/00914509231179226>
- Senate Committee on Ways & Means. (2023). Final Bill Report 2E2SSB 5536. Washington State Legislature Retrieved from <https://app.leg.wa.gov/billssummary?Bill Number=5536&Year=2023&Initiative=false>
- Sheehan, B. E., Grucza, R. A., & Plunk, A. D. (2021). Association of Racial Disparity of Cannabis Possession Arrests Among Adults and Youths With Statewide Cannabis Decriminalization and Legalization. *JAMA Health Forum*, 2(10), e213435-e213435. <https://doi.org/10.1001/jamahealthforum.2021.3435>
- Stevens, A., Hughes, C. E., Hulme, S., & Cassidy, R. (2019). Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology*, 19(1), 29-54. <https://doi.org/10.1177/1477370819887514>
- Stone, J., Fraser, H., Lim, A. G., Walker, J. G., Ward, Z., MacGregor, L., Trickey, A., Abbott, S., Strathdee, S. A., Abramovitz, D., Maher, L., Iversen, J., Bruneau, J., Zang, G., Garfein, R. S., Yen, Y. F., Azim, T., Mehta, S. H., Milloy, M. J., . . . Vickerman, P. (2018). Incarceration history and risk of HIV and hepatitis C virus acquisition among people who inject drugs: a systematic review and meta-analysis. *Lancet Infect Dis*, 18(12), 1397-1409. [https://doi.org/10.1016/s1473-3099\(18\)30469-9](https://doi.org/10.1016/s1473-3099(18)30469-9)
- Tran, A. D., Weatherburn, D., & Poynton, S. (2023). The savings associated with decriminalization of drug use in New South Wales, Australia: A comparison of four drug policies. *Journal of Substance Use and Addiction Treatment*, 149, 208983. <https://doi.org/https://doi.org/10.1016/j.josat.2023.208983>
- Werb, D., Rowell, G., Guyatt, G., Kerr, T., Montaner, J., & Wood, E. (2011). Effect of drug law enforcement on drug market violence: A systematic review. *International Journal of Drug Policy*, 22(2), 87-94. <https://doi.org/https://doi.org/10.1016/j.drugpo.2011.02.002>
- Xavier, J. C., McDermid, J., Buxton, J., Henderson, I., Streukens, A., Lamb, J., & Greer, A. (2024). People who use drugs' prioritization of regulation amid decriminalization reforms in British Columbia, Canada: A qualitative study. *International Journal of Drug Policy*, 125, 104354. <https://doi.org/https://doi.org/10.1016/j.drugpo.2024.104354>
- Zoorob, M., Park, J. N., Kral, A. H., Lambdin, B. H., & del Pozo, B. (2024). Drug decriminalization, the introduction of fentanyl to drug markets, and fatal overdose in Oregon. *medRxiv*, 2024.2004.2008.24305508. <https://doi.org/10.1101/2024.04.08.24305508>

