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SHUTTING THE BARN DOOR

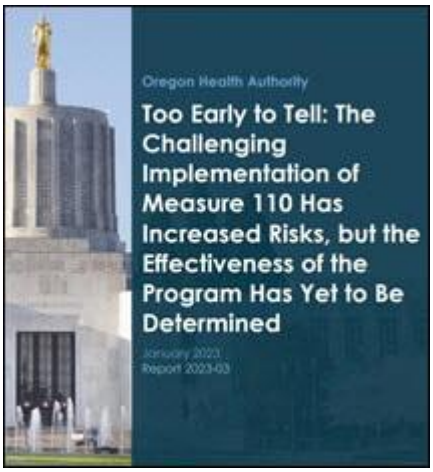
Three years into its ambitious experiment,
Oregon moves to re-criminalize hard drugs

For Police Issues by Julius (Jay) Wachtel. "Without some external pressure, most people will not attempt to reduce their drug use via treatment or other means." Addiction researcher Keith Humphreys' sobering words highlight the challenges that authorities faced carrying out Oregon's pioneering approach to drug abuse. Approved by voters in November 2020, and taking full effect in February 2021, Measure 110, the "Drug Addiction Treatment and Recovery Act of 2020" used marijuana tax revenue to fund a host of programs, from medical care to housing, that could ostensibly help addicts kick their habits.

Throughout, the emphasis was on treatment. Possession for personal use of small quantities of drugs including LSD, methadone, oxycodone, heroin, meth and cocaine was decriminalized (Sections 11-17). Unless drugs were present in substantial amounts or were possessed by felons or repeat drug offenders, getting caught with them became a civil infraction carrying a maximum fine of $100. And even that small penalty was forgiven for violators who agreed to be screened by telephone for a drug abuse disorder (Section 22).

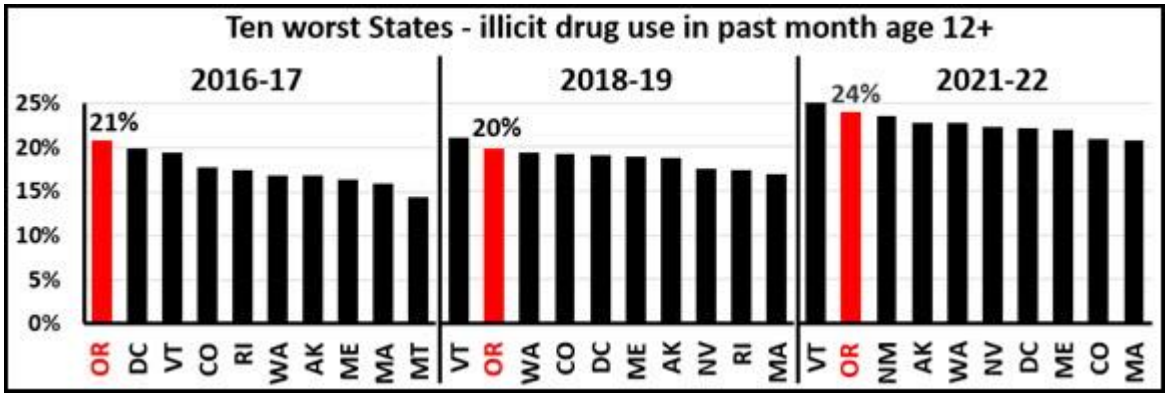
By design, law enforcement remained in the deep background. Inevitably, the issue of voluntary compliance reared its problematic head. According to the drug screening hotline, "only 92" of the approx. 2,000 drug possessors cited during the program's first year actually called, and of those "only 19" asked for services. Why such a tepid response? Here's Section 22's closing provision: "Failure to pay the fine shall not be a basis for further penalties or for a term of incarceration."

Ergo, why comply?

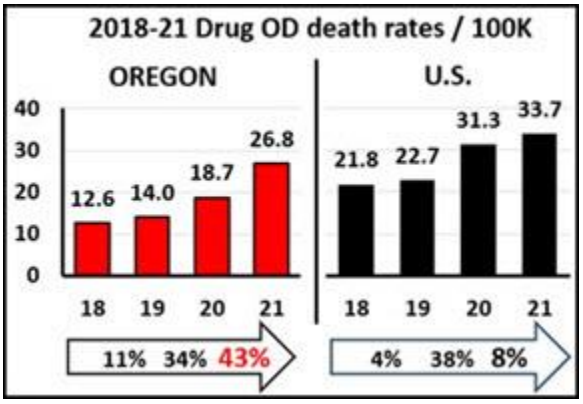


In January 2023 Oregon Health Authority auditors published "Too Early to Tell: The Challenging Implementation of Measure 110 Has Increased Risks, but the Effectiveness of the Program Has Yet to Be Determined". It prominently mentions the "racist and brutal history" that presumably inspired the measure. But its recommendations seem exclusively focused on bureaucratic challenges. Even the hotline's pronounced under-use is attributed to poor program design and management. Nothing at all is said about the culture of drug abuse or the possibility that its adherents may have taken advantage of decriminalization to keep doing what they prefer. And possibly even *increase* their use of drugs.

So, did they? A sidebar at the top of the report notes that Oregon had "the second highest rate of substance use disorder in the nation and ranked 50th for access to treatment." That reference, we assume, is to the National Survey on Drug Use and Health. This graph uses its data to depict the percent of persons age 12+ who self-reported illicit drug use between 2016 and 2022 in the ten States with the highest drug abuse rates (SAMHSA left out 2020-2021 for methodological reasons, and 2022-2023 data isn't in).

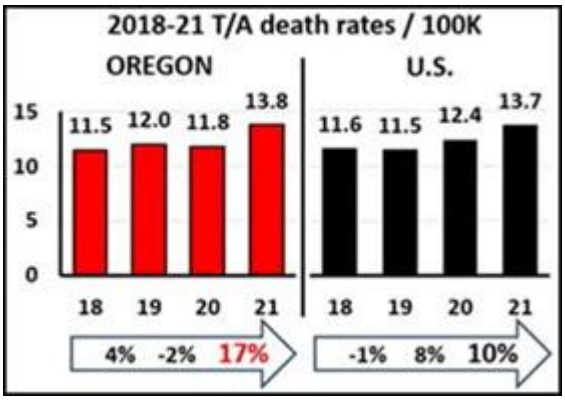


Note that Oregon was "number one" in the U.S. – meaning, the *worst* – five years preceding decriminalization. (It climbed there from sixth-worst during 2013-2014, when "only" 14% of its respondents age 12+ admitted using illegal drugs.) Self-reported drug use then slightly abated, and Oregon fell to second place. And while it remained number two, the State's percentage of self-admitted drug users actually worsened during 2021-2022, when Measure 110 was in effect.



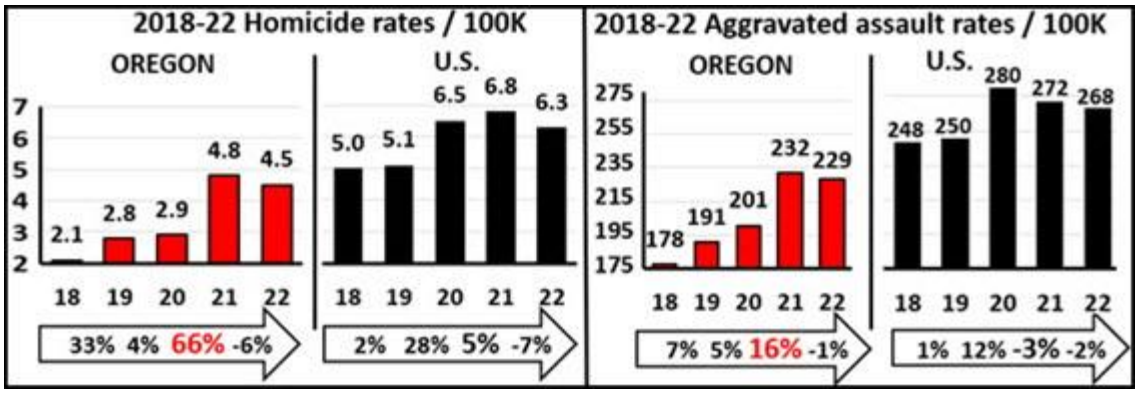
For the possible consequences of drug abuse we turned, first, to the CDC. The graph on the left compares drug overdose rates reported between 2018-2021, the most recent year available. Although it was signed into law in 2020, Measure 110 took effect in February 2021. That year, Oregon's drug overdose death rate of 26.8 was 43 percent worse than its 2020 rate of 18.7. During the same period the mean U.S. rate, which has always been higher than Oregon's, went up by the far smaller amount of eight percent.

Might unhindered access to "hard" drugs lead to a lot of addled driving? We used data provided by the CDC Wonder website to look into traffic accident deaths. On the right is a four-year comparo between Oregon and the U.S. Their traffic accident death rates seem quite close. Again, the only deviation of note is for 2021. That year, Oregon's rate jumped 17 percent from the previous year's figure. Meanwhile the U.S. rate increased by a considerably lesser 10 percent.



What about crime? "Does Legal Pot Drive Violence?" reported that three of ten States that legalized pot during 2012-2016 – Alaska, Colorado and Oregon – suffered substantial post-legalization increases in their UCR violent crime rates (31.8, 37 and 17.9 percent, respectively). However, three other early pot-legalizing states – Maine, Massachusetts and Nevada – enjoyed substantial *decreases* in violence (-11.5, -23.8 and -24.2 percent, respectively). Perhaps not-so-coincidentally, nine of the top-ten early-pot States (California excluded) landed in our top-ten hard-use graph (see above).

Criminal violence-wise, marijuana seemed very much a mixed bag. So what about hard drugs? These graphs depict 2018-2022 homicide and aggravated assault data from



the UCR. Both show substantial increases in Oregon rates between 2020-2021, and particularly for homicides. Their contrast with the marginal changes in U.S. rates seems profound.

Full stop. An accurate analysis of the reasons behind Oregon's surge in drug overdose deaths and homicides, and the substantial increase in traffic accident deaths and violent crimes, would require taking a host of potential influencers into account. Still, most of the numbers, from drug use self-reports through Oregon's homicide and aggravated assault rates, seem consistent with criticisms that decriminalizing the possession of hard drugs and transforming it into a civil infraction may have been a step too far.

Last July, as Oregon's measure was into its third year, the (normally, very liberally-inclined) *New York Times* took a deep dive into Portland. "At four in the afternoon the streets can feel like dealer central. At least 20 to 30 people in ski masks, hoodies and backpacks, usually on bikes and scooters." That's how coffee-shop owner Jennifer Myrle described her city's new normal. What's more, "there was no point calling the cops." Her pessimism about that was seconded by a bicycle-mounted officer who frequently gave Narcan shots. "So we cite them and give them the drug screening card. Then they'll say they don't want treatment or they'll tell us, 'OK, I'll call the number.' And two hours later we run into them again, and they're smoking or even overdosing."

By September 2023, Measure 110 seemed to be in its last gasps. Leading members of Oregon's business community and a former lawmaker filed ballot measures to recriminalize drug possession and prohibit its public use. Bemoaning that "people don't feel safe on the streets," Senate Majority Leader Kate Lieber (she's a "Blue", by the way) soon held hearings on the drug crisis. But impatience was growing. "Oregonians believe that Measure 110 has been a failure," said Senator Tim Knopp, her "Red" counterpart. "I really don't want to wait another year for a ballot measure."

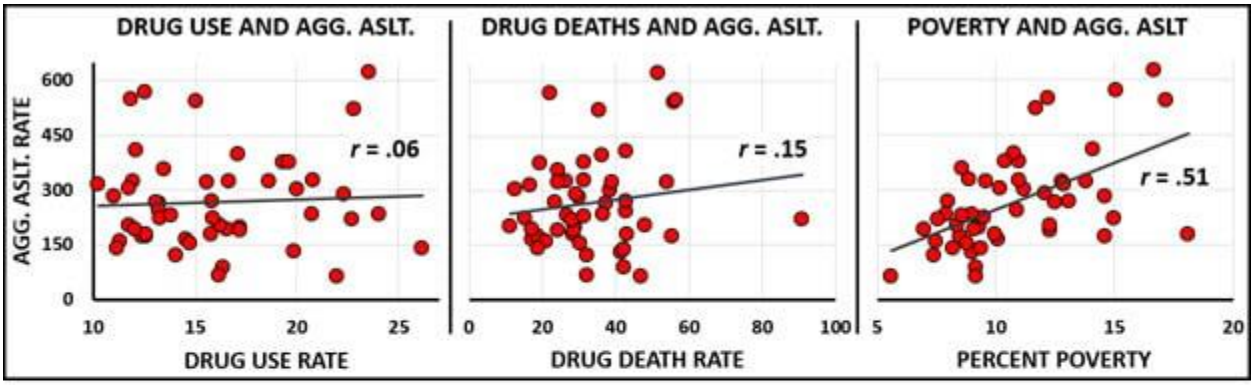
He didn't have to. Two weeks ago a bill to replace Measure 110 sailed through the State legislature. While House Bill 4002's focus remains on funding and providing substance abuse treatment – "treatment over penalties" is its watchword – possessing even small, single-use amounts of hard drugs returns to being a misdemeanor (click here for the legislative summary). And yes, Oregon Governor Tina Kotek has promised to sign it.

So we'll see. Recriminalizing hard drugs may discourage their use, or at least their flagrant public use, and to that extent Portlanders may feel reassured. But Oregon's homicide and aggravated assault rates markedly increased during 2020-2021 (they edged back somewhat in 2022.) Might reducing the use of hard drugs keep things on a positive track?

Eager to crunch a few numbers, we used simple correlation (the "*r*" statistic) to analyze the relationships between 2021 drug use rates, drug overdose rates, homicide rates, aggravated assault rates, and percent in poverty, for all fifty States. (Drug overdose death rates came from the CDC, crime rates from the UCR, and poverty rates from the Census.) Correlations range from zero, meaning no relationship between variables, to one, which represents a "perfect", lock-step association. Positive *r*'s mean that variables go up and down together; negative *r*'s, that they move in opposite directions. Coefficients of plus-or-minus .40 or greater are generally considered substantial. Here are the results:

	Drug use	Drug death	Pct pov	Agg Aslt	Homicide
Drug use		.20	.06	-.11	-.14
Drug death	.20		.15	.43	.35
Pct pov	-.14	.35		.51	.70
Agg Aslt	.06	.15	.51		.68
Homicide	-.11	.43	.68	.68	

These graphs portray the relationships between the three hypothesized "causes" (drug use, drug death and poverty) and their two possible "effects" (aggravated assault and homicide). Each State appears as a "dot":



Self-reported drug use rates seem unrelated to either homicide or aggravated assault. Drug overdose death rates have a weak relationship with aggravated assault and a moderate relationship with homicide. But what clearly matters most is poverty. No, we're not saying that impoverished citizens are criminals. Yet as our essays have often pointed out (see, for example, "Fix Those Neighborhoods!"), economic conditions are strongly linked to a host of factors, such as unemployment and lack of child care, that *do* drive crime.

Bottom line: tinkering with drug laws may have little effect on criminal violence. Our assessment of State violent crime numbers pre-and-post marijuana legalization ("Does Legal Pot Drive Violence?") concluded that legalizing marijuana was unlikely to "cause violence to explode." And if self-reports accurately measure drug use, that seems true for legalizing hard drugs as well. Neither should we expect that re-criminalizing possession will substantially *reduce* violence.

That doesn't mean that Oregon's retrenchment won't have *any* noteworthy effects. If Governor Kotek puts pen to paper (she has yet to sign the bill, but is expected to do so any day now), many drug users will likely revert to "lighting up" in private. And if they do, that should make Portland, and its cops, happy!