

Resolution opposing jailing for drug use and recommending policy alternatives

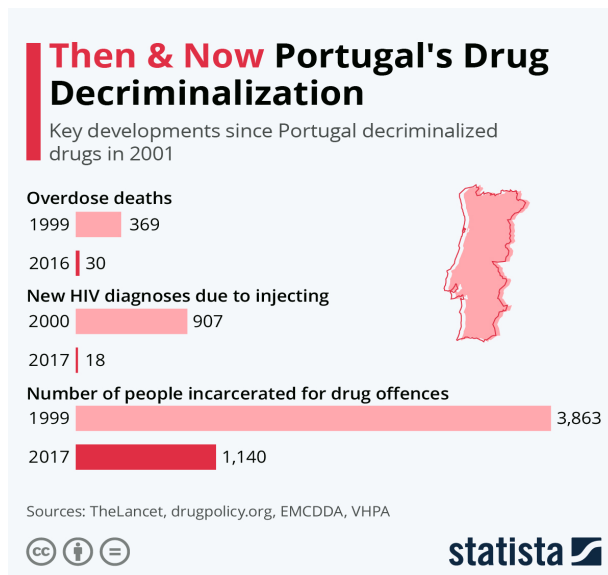
WHEREAS the “War on Drugs” has been a costly failure, leading to ever worse outcomes.

WHEREAS the Washington State Democrats Platform calls for “Decriminalization of personal possession and use of most drugs in a manner similar to Oregon Initiative 110 passed by voters in 2020,” and the Whatcom Democrats Platform calls on the State Legislature to “Decriminalize possession and use of personal quantities of controlled drugs, as Oregon has approved by initiative.”

WHEREAS “Human Rights Watch and the American Civil Liberties Union call on all states and the federal government to decriminalize the use and possession for personal use of all drugs and to focus instead on prevention and harm reduction.”¹

WHEREAS British Columbia this year became the first Canadian Province to decriminalize personal use and possession of drugs with the approval of the Canadian federal government.²

WHEREAS Portugal, by decriminalizing all personal drug possession and switching to a public health model focused on harm reduction has reduced incarceration while cutting overdose deaths by over 82% and the spread of HIV through needles by 99% between 1999 and 2019. Use of heroin, cocaine, and amphetamines have declined, and Portugal has the fourth lowest rate of illicit drug use in the European Union, well below the average.³



WHEREAS two-thirds of Americans support “eliminating criminal penalties for drug possession and reinvesting drug enforcement resources into treatment and addiction services”,⁴ and two-thirds of Washington voters support decriminalization.⁵ Oregonians continue to support decriminalization, with more than two-thirds saying, “increased crime and homelessness stems

from poverty, lack of affordable housing and lack of mental health care”, with only 28% saying it is “due to a lack of arrests”.⁶

WHEREAS a structured review of the most rigorous peer-reviewed studies concluded, “Evidence does not, on the whole, suggest improved outcomes related to compulsory treatment approaches, with some studies suggesting potential harms. Given the potential for human rights abuses within compulsory treatment settings, non-compulsory treatment modalities should be prioritized by policymakers seeking to reduce drug-related harms.”⁷

WHEREAS, an investigation by Physicians for Human Rights “found that drug courts largely failed at providing treatment to those who truly needed it, and filled up limited treatment spaces with court-mandated patients who didn’t always need the care. ... International human rights law protects the right to physical autonomy, including the right to refuse medical treatment. This principle is routinely flouted in drug courts. ... Diagnosis and initial treatment plans for drug court participants were often developed by people with no medical training or oversight, at times resulting in mandated treatment that was directly at odds with medical knowledge and recommendations.” Its recommendation: “Decriminalize drug possession for personal use as a direct way to facilitate access to voluntary treatment by removing fear of arrest.”⁸

WHEREAS, a report by the Social Science Research Council concludes, “Drug courts are not an alternative to incarceration: Defendants remain in criminal proceedings at every step in the drug court program, risk incarceration, both as a sanction while in the program and for failure to complete it, and, in some cases, spend more time behind bars than they would have had they chosen to pursue criminal justice proceedings instead of drug court.” Also, “Drug courts point to drug dependence as the factor that puts people at risk of criminal justice involvement, ignoring the racial bias in drug policing and prosecution in the United States that leads African Americans and Latinos into long-term criminal justice supervision at much higher rates than their white counterparts.” It concludes, “Any serious attempt to provide an effective alternative to incarceration should start with the decriminalization of drug use and possession for personal use.”⁹

WHEREAS Bellingham Mayor Seth Fleetwood has proposed a city ordinance criminalizing use of a controlled substance in public, ostensibly to “connect people who have substance abuse, behavioral health and other needs with services and treatments”¹⁰ but betrays its real purpose of clearing the streets of unhoused persons in the press release: “Everyone who works, lives and enjoys our downtown deserves clean, welcoming experiences.”¹¹

WHEREAS we recognize that the presence of large numbers of unhoused persons on our downtown streets is unwelcoming and disturbing, but we refuse to blame the primary victims. Like the Washington State Democrats, we assert that “Housing is a human right; That exclusionary zoning policies and the private housing market have failed to adequately provide for those at low to middle income ranges ... It is the right and proper role of the government to provide permanent stable housing to people experiencing housing insecurity or are under-housed, to expand the stock of supportive, low income, and affordable housing, and to use all tools available to control the astronomic explosion of the cost of housing”.

WHEREAS ever-more extreme inequality of wealth and income has enabled cash-flush buyers and “investors” to bid up the cost of housing, making it unaffordable to those at the low end of the curve. Statistical analysis by a University of Washington professor and a statistician testing conventional beliefs on what drives the prevalence of homelessness in a given city – including mental illness, drug use, poverty, weather, and generosity of public assistance – shows that none explain the regional variation observed across the country. Only one factor does: housing market conditions.¹² U.S. cities with small homeless populations have similar rates of drug addiction and mental health issues, but do not have shortages of affordable housing.

WHEREAS none of our levels of government have responded to the housing crisis with anywhere near the boldness and scale that is required, and it is shameful for elected officials to try to conceal the daily evidence of this failure by jailing the victims to get them out of public sight and mind.

THEREFORE, BE IT RESOLVED, THAT WHATCOM DEMOCRATS:

- Reaffirms its support of decriminalization of drug use. Supports the Portuguese model, in which police may confiscate illicit drugs and issue an administrative citation requiring appearance within 72 hours before a panel consisting of a legal professional, a medical professional, and a social worker. This is not a court. There is no threat of jail. The panel first determines whether the drug use is problematic. If not, they may simply record the visit. Problematic use leads to voluntary referral for either substance abuse treatment or to prescription for opioid substitution or needle exchange programs. As seen above, this system has the best health outcomes, while also reducing incarceration and criminal records.
- Rejects the concept of drug courts, often euphemistically branded “therapeutic”. These present a stark choice: get booked in jail or plead guilty and sign a diversion agreement that states that failure to complete a mandated treatment program, or testing positive on a drug test, will lead to jail. Since roughly half of those entering such programs fail, this adds a large stream of persons to the jail queue.¹³ No one should ever be jailed for mere drug use.
- Urges our State Legislators to vote no on SB 5536, passed by the State Senate, which raises possession and use of personal amounts of banned drugs from a misdemeanor to a gross misdemeanor, with mandatory jail sentences of up to a year for treatment discontinuation or positive drug tests. Again, this will fill our jail with persons whose only offense is using an illicit substance. Our legislators should instead fund evidence-based treatment and harm reduction strategies that do not include jail sentences.
- Urge our state legislators to build on SB 5022, which decriminalized life-saving fentanyl testing strips, and decriminalize all drug use supplies so that additional harm reduction strategies, such as drug use supply replacement and drug checking, can be implemented without fear of criminal prosecution. This should be prioritized especially in advance of the expected availability of Xializine testing strips, an increasingly common opioid adulterant.
- Urge our state representatives to provide grant funding and mandate local prosecutorial cooperation to establish public drug testing programs, similar to the Massachusetts Drug Supply Data Stream, Streetcheck.org, NPS Discovery, to ensure that changes in the drug supply are detected in time for harm reduction interventions.

- Urge our local officials and state representatives to consider the implementation of safe use sites and public drug checking programs to provide a safer alternative to open drug use while reducing overdoses.
- Urge Bellingham City Council Members to continue to block the mayor's proposed ordinance to clear the streets by arresting the unhoused on public drug consumption charges and instead address the underlying driver of homelessness: the shortage of affordable housing. A "therapeutic" court is no excuse for another jail stream.
- Urge state legislators and city and county councils to fully fund and support community led solutions to public health issues.
- Urge city and county councils to fund and support permanently affordable housing in Bellingham, centering solutions led by low-income renters and unhoused people.
- Until that housing is available, Whatcom County must stop creating civic refugees by withholding emergency protection and services to those who have no homes or safe shelter. Criminalizing drug use, and hazing the homeless by driving them off public property promotes jailing. Instead, providing Emergency Crisis Management Services such as FEMA Tents and clinical emergency oversight is humane treatment.

Adopted at the March 25, 2023 General Membership Meeting by a vote of 49 to 3.

¹ Human Rights Watch and ACLU, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, https://www.hrw.org/sites/default/files/report_pdf/usdrug1016_web_0.pdf.

² Cascadia Daily News, "British Columbia decriminalizes drug possession: *Sweeping move expected to reduce incarceration of province's large Indigenous population*," March 24, 2023, <https://www.cascadiadaily.com/news/2023/mar/24/british-columbia-decriminalizes-drug-possession/>.

³ Observatoire Français des Drogues et des Toxicomanies, *Dépénalisation des drogues au Portugal: bilan 20 ans après*, <https://www.ofdt.fr/BDD/publications/docs/eisxio2b6.pdf>.

⁴ Newsweek, "Two-Thirds of American Voters Support Decriminalizing All Drugs: Poll," June 10, 2021, <https://www.newsweek.com/two-thirds-american-voters-support-decriminalizing-all-drugs-poll-1599645>.

⁵ Anika Dandekar, "Washington Voters Want to Decriminalize Drug Possession and Fund Substance Abuse Resources," June 27, 2022, <https://www.dataforprogress.org/blog/2022/6/27/washington-voters-want-to-pass-i-1922-and-decriminalize-drug-possession>.

⁶ Garrett Andrews, "Survey: Oregonians still support Measure 110 despite flawed rollout," *Oregon Capital Chronicle*, Sept. 19, 2022, <https://oregoncapitalchronicle.com/2022/09/19/survey-oregonians-still-support-measure-110-despite-flawed-rollout/>.

⁷ D. Werb et al., "The effectiveness of compulsory drug treatment: A systematic review," *International Journal of Drug Policy* (2016), <https://www.sciencedirect.com/science/article/abs/pii/S0955395915003588>.

⁸ Physicians for Human Rights, *Neither Justice nor Treatment: Drug Courts in the United States*, 2017, https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf.

⁹ Social Science Research Council, *Drug Courts in the Americas*, 2018, <https://www.ssrc.org/publications/drug-courts-in-the-americas/>.

¹⁰ Robert Mittendorf, "Bellingham seeks crackdown on drug use in public. Here's what's proposed," *Bellingham Herald*, March 9, 2023, https://www.bellinghamherald.com/news/local/article272940445.html#storylink=mainstage_card.

¹¹ Press Release, March 8, 2023, <https://cob.org/news/2023/initiatives-propose-to-prohibit-open-drug-use-and-create-new-therapeutic-court>.

¹² Gregg Colburn and Clayton Page Aldern, *Homelessness Is a Housing Problem: How Structural Factors Explain U.S. Patterns* (University of California Press, 2022), <https://bellingham.bibliocommons.com/v2/record/S150C581692>.

¹³ Kerwin Kaye, *Enforcing Freedom: Drug Courts, Therapeutic Communities, and the Intimacies of the State* (Columbia University Press, 2019), pp. 10, 18.