



**HB1057 - Task Force to Study the Use and Possession of De Minimis Quantities of Controlled Dangerous Substance**

**Position: FAVORABLE**

**TO:** Chair Luke Clippinger, Vice Chair Bartlett, and Members of the Judiciary Committee

**FROM:** The Maryland Coalition on Drug Use, Treatment, and Recovery.

The Maryland Coalition on Drug Use, Treatment, and Recovery is composed of groups and individuals committed to promoting alternatives to criminal justice intervention by concentrating on meaningful public health responses. We urge a favorable report for HB1057, a task force designed to bring key stakeholders together to recommend types of controlled dangerous substances and de minimis quantities that should be eligible for a civil citation for use or possession instead of criminalization. Our coalition believes that citations triggering assessments of substance use or mental health disorders can lead to meaningful referrals to drug education programs or treatment centers, rather than arrest and incarceration.

Representing survivors of substance use disorders and groups dedicated to sensible and meaningful drug policy reform, we have seen firsthand the devastating consequences of drug use – lives lost, families destroyed, and communities devastated. However, after taking a hard look at the data, it is clear that the harms traditionally associated with drug use (e.g., overdose, crime, poverty) are caused and/or exacerbated by long standing drug prohibition policies. To put it bluntly, the war on drugs has only made things worse.

**The War on Drugs – 52 years of failure!**

President Nixon announced his “war on drugs” almost 52 years ago and it has not been an inexpensive undertaking. To date, the United States has spent more than \$1 trillion on drug interdiction and enforcement.<sup>1</sup> And what did we get for all that money? Since 1980, the number of people incarcerated for drug related offenses in the United States increased 1,161%, to 353,000 in

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<sup>1</sup> Dante Chinni, Cost in the war on drugs continue to soar (NBC News, July 2, 2023), available at <https://www.nbcnews.com/meet-the-press/data-download/costs-war-drugs-continue-soar-rcna92032>.

2023.<sup>2</sup> That is more than the populations of Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, Talbot, and Worcester counties combined.

However, during that same period, drug use increased 23% and overdose deaths increased 1,141%. In 2023 alone, we lost an estimated 107,000 friends and loved ones to overdose deaths in our country, including more than 2,500 in Maryland.<sup>3</sup> Clearly, drug prohibition is not working. Given the life-or-death stakes, we need to explore options beyond simply locking people up.

### **Decriminalization Works**

In 2001, Portugal led the European Union in both drug use and fatal overdoses.<sup>4</sup> In response, they decriminalized possession of drugs and increased investment in treatment and social services. As a result, the number of people seeking treatment increased<sup>5</sup> and rates of drug use and fatal overdose fell.<sup>6</sup> By 2019, Portugal's rates of drug use and fatal overdose were among the lowest in the European Union.<sup>7</sup> In addition, there are numerous other benefits from decriminalization. Fewer lives were destroyed by the collateral consequences of a drug arrest, such as barriers to employment, professional licensing, housing, financial aid, and government benefits.<sup>8</sup> Also, the money saved from reduced criminalization can be reinvested into other services such as voluntary treatment, housing, employment, harm reduction, and peer support.<sup>9</sup>

### **What about Oregon?**

In November 2020, Oregon voters passed Measure 110, making it the first state to decriminalize possession of drugs. At the same time, the state redirected almost \$300 million to treatment and recovery support services. While it is still too early to say if Oregon will be as successful as Portugal, early results look promising. For example, in the first three quarters under Measure 110, service

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<sup>2</sup> The number of people incarcerated for drug related offenses increased from 8.3 per 100,000 in 1980 to 104.7 per 100,000 in 2023. This is based on 19,000 incarcerated and a population of 226.5 million in 1980, and 353,000 incarcerated and a population of 334.2 million in 2023. Bureau of Justice Statistics, Correctional Populations in the United States (1995), available at <https://www.ojp.gov/pdffiles1/Digitization/153849NCJRS.pdf>; Sawyer W, & Wagner, P, Mass Incarceration: The Whole Pie 2023 (Prison Policy Initiative, March 14, 2023), available at <https://www.prisonpolicy.org/reports/pie2023.html>.

<sup>3</sup> Ahmad FB, Cisewski JA, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2023, available at <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>; U.S. Census Bureau, Population Division, Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2023 (NST-EST2023-POP) (December 2023), available at <https://www2.census.gov/programs-surveys/popest/tables/2020-2023/state/totals/NST-EST2023-POP.xlsx>.

<sup>4</sup> Transform Drug Policy Foundation, Drug Decriminalization in Portugal: Setting the Record Straight (May 13, 2021), available at <https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight>.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Fatal overdose rate in Portugal was 6 deaths per million among people aged 15-64, compared to the EU average of 23.7 per million in 2019. T. Evan D. Gumas and Jesse C. Baumgartner, U.S. Overdose Deaths Remain Higher Than in Other Countries — How Harm Reduction Programs Could Help (June 22, 2023), available at <https://www.commonwealthfund.org/blog/2023/us-overdose-deaths-remain-higher-other-countries-how-harm-reduction-programs-could-help>;

<sup>8</sup> American Bar Association, Collateral Consequences of Criminal Convictions: Judicial Bench Book (March 2018), available at <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf>.

<sup>9</sup> Drug Policy Alliance, Decriminalize Drugs, Invest in Health Services, available at <https://drugpolicy.org/issue/decriminalize-drugs-invest-in-health-services/>.

providers reported more than 47,000 people seeking substance use treatment — that is a 134% increase.<sup>10</sup> In addition, the number of people receiving services also increased:

- Employment services = up 365%
- Housing services = up 190%
- Substance use treatment = up 104%<sup>11</sup>

Critics of decriminalization are quick to point out that Oregon's fatal overdose rate has increased since decriminalization. However, it is important to note that overdoses have increased across the country and Oregon is doing better than many other states. In fact, Oregon's fatal overdose rate in 2023 was lower than 17 other states – 7% less than Maryland's, 34% less than Tennessee's, and 66% less than West Virginia's.<sup>12</sup>

### **What's Next for Maryland?**

Decriminalization worked in Portugal and is starting to work in Oregon. But that does not mean that Maryland should simply copy those jurisdictions. Carelessly rushing to replace failed prohibition policies could cause more unintended harm. Which is why HB1057 creates a task force to study what has worked in other jurisdictions, while learning from their mistakes. This bill will bring together representatives from law enforcement, public health, treatment providers, people with lived experience, and more to explore options beyond simply locking people up.

The war on drugs has failed. Ironically, the very policies intended to reduce drug use have only made things worse. Clearly, we cannot arrest our way out of this problem. It is time that Maryland does more to recognize that substance use disorders are health issues that require public health solutions. We must change course before more of our loved ones die from failed drug war policies. We believe that Maryland should invest in quality time at little cost of bringing key stakeholders and experts in the field to conduct a full assessment of how we can best minimize the harm of incarceration and maximize the availability of health care through de minimis efforts. For these reasons, we urge a favorable report on HB1057.

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<sup>10</sup> Oregon Health Authority, Measure 110 data report show gains continued in clients served substance use treatment and other service and supports (September 27, 2023), *available at* <https://content.govdelivery.com/accounts/ORHA/bulletins/372df30>.

<sup>11</sup> Id.

<sup>12</sup> Ahmad FB, Cisewski JA, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2023, available at <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>; U.S. Census Bureau, Population Division, Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2023 (NST-EST2023-POP) (December 2023), available at <https://www2.census.gov/programs-surveys/popest/tables/2020-2023/state/totals/NST-EST2023-POP.xlsx>.

**The Maryland Coalition on Drug Use, Treatment, and Recovery includes the following individuals and organizations:**

American Civil Liberties Union of Maryland

Angel Traynor

Baltimore Action Legal Team

Cause Engagement Associates

Citizens Opposing Prohibition

Communities United

Dan Morhaim, MD

Diana Philip

Esi Mathis

Health Care for the Homeless

Jess Ahart

Jessie Dunleavy

Jennifer Tuerke

Joanna Diamond

Joseph Adams, MD

Law Enforcement Action Partnership

Maryland-DC Society of Addiction Medicine

Maryland Public Defender's Office

Molly Greenberg, RN

MedChi – The Maryland State Medical Society

National Coalition for Drug Legalization

National Council on Alcoholism and Drug Dependence

Progressive Maryland

Recovery Advocacy Project

Thomas Higdon, JD

Serenity Sistas Inc.

Veronica Wright

Voices of Hope, Inc.

Yahtley-Phoenix Bell-Waltz-Ward