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Summary of the NIJ Project

In this project, we examined the multifaceted effects of possession of controlled substances (PCS) drug policy changes on system processes and community outcomes in the State of Oregon. Oregon presents a unique research opportunity to gain insight on successive efforts to reform drug enforcement and punishment that many jurisdictions may find attractive. Since 2013, Oregon has implemented three policy changes that reclassified and lowered the seriousness of low-level drug possession offenses,[1] with multiple years between each: Justice Reinvestment Initiative or "JRI" in 2013 (Justice Reinvestment Act or House Bill 3194), defelonization in 2017 (House Bill 2355), and decriminalization in 2021 (Drug Addiction Treatment and Recovery Act, Measure 110 or "M110"). Even though several states have moved toward PCS defelonization, little research has explored associated effects on justice system processes or outcomes, and both public health and safety. In addition to defelonizing PCS, Oregon was also the first state to entirely decriminalize illicit drug possession (with amount restrictions) in M110.

Although these reforms were motivated by concerns over prison growth, need for more drug treatment, and negative, systemic impacts on marginalized communities, reformers' good intentions can produce unintended consequences depending on how local systems adapt and accommodate the changes (Natapoff, 2015). As such, there was a critical need to empirically determine the effects of each policy as it pertains to state and local systems and public safety. We used a retrospective, longitudinal analysis of past policies on arrests, charges, convictions, sentencing outcomes, crime rates, and overdoses. In addition, we conducted interviews and focus

[1] PCS offenses were recriminalized by 2024 HB 4002, effective September 1, 2024.

group discussions with law enforcement officers, prosecutors, and court personnel to better understand decision-making processes and contextualize quantitative data trends.

Major Goals and Objectives

The goals of this project were to examine impacts of drug legislation on: (1) law enforcement, (2) prosecution, (3) courts/sentencing, (4) public health, and (5) public safety. Our objectives as they relate to the project goals were to:

1. Build longitudinal quantitative data sets of numerous criminal justice system outputs and public health and safety outcomes (i.e., obtaining, prepping, and cleaning quantitative data).
2. Retrospective analysis of state data and county data (e.g., impacts of defelonization and decriminalization).
3. Qualitative interviews with local and state law enforcement, prosecutors and District Attorneys, and related court personnel (e.g., judges, specialty court administrators).
4. Coding/analyzing qualitative interviews for themes.
5. Full analysis of defelonization and decriminalization effects on criminal justice system, and public health and safety outcomes, with attention to COVID-19 and other influences.
6. Write two interim reports on preliminary findings, share interim reports with stakeholders and media, present findings for academic and stakeholder organizations, and write the Final Report.

Key Research Questions

This study has one overarching research question: *What are the multifaceted impacts of changes to PCS policy on the justice system and public health and safety?* To provide an informative and robust analysis of the effects of JRI, defelonization, and decriminalization, we used a mixed-method procedure to examine impacts on law enforcement, prosecution,

courts/sentencing, and public health and safety. Each of the secondary research questions are provided in Table 1.1, along with outcome measures needed to answer each question.

Table 1.1. Project Research Questions & Outcome Measures

Research Questions	Outcome Measures
How have PCS changes impacted *law enforcement practices* related to drug crimes, among others? How have PCS changes impacted *law enforcement perceptions and decision-making* related to drug crimes, among others?	Monthly arrests and citation trends from 2008 to 2024, by county Analysis of officer stop and search trends from 2019 to 2024 Analysis of M110 citations from Feb 2021 to 2024, by county Perceptions regarding defelonization and decriminalization (interview data)
How have PCS changes impacted *prosecutorial charging practices* related to drug crimes, among others? How have PCS changes impacted *prosecutorial charging decisions and use of diversion programs* within select counties?	Monthly differences between arrest-type trends and charge-type filing trends from 2008 to 2024, by county Monthly charge filing trends from 2008 to 2024, by county; whether to charge & type of charge Perceptions regarding charging practices and case outcomes (e.g., diversion and adult drug courts; interview data)
How have PCS changes impacted *conviction types, drug courts, sentencing outcomes, and prison use*?	Monthly conviction trends from 2008 to 2024, by county; convictions and dismissals Analysis of adult drug court enrollment and outcomes, 2020 to 2024 Monthly trends in sentencing (probation, local control,[2] prison) from 2014 to 2024, by county Monthly point-in-time correctional population estimates, 2008 to 2024
How have PCS changes impacted *crime rates and overdoses*?	Monthly crime rates and drug-related overdose trends from 2008 to 2024, by county

[2] Local control refers to the population of convicted individuals sentenced to serving time in prison custody, but for various reasons, they serve their custody time at the local jail instead; that is, serving their time in "local control". Local control is called such by the state to distinguish it from any other jail admissions, and therefore it is not the entire jail population. Local control stays do not include pretrial populations, which is a large portion of the adults housed in local jails.

Research Design, Methods, Analytical and Data Analysis Techniques

To investigate these research questions at the macro-level, we rely on secondary data from multiple sources through information sharing agreements with agency data partners. Most of our quantitative, statewide analysis relies on four secondary data sources measured at the monthly level. To capture arrest data, we used the Law Enforcement Data System (LEDS) by partnering with the Criminal Justice Commission (CJC), which also facilitated monthly stop and search data from the Statistical Transparency of Policing (STOP) program. For charging, conviction, and sentencing data, we used the circuit court data system (Odyssey), by partnering with the Oregon Judicial Department (OJD). Capturing information related to community supervision and incarceration, we used data from the Oregon Department of Corrections (DOC) system, through our partnership with the CJC. Fourth, we used information related to drug-related overdose deaths, by partnering with the Oregon Health Authority (OHA). Each of these secondary data systems provide monthly counts of each outcome measure of interest by county that we can examine in raw form. In the following sections, we provide an overview of the methods used to examine these research questions; a more through discussion of specific analytical techniques is included in the 'Results & Findings' chapters of this report.[3]

These data were supplemented with contextual information from various sources that were captured at the monthly, semi-annual, and even annual level. The supplemental data served as controls for the larger, more complex models. To capture the prevalence of substances in the state, we obtained drug seizure information for the Oregon-Idaho High-Intensity Drug Trafficking Area (HIDTA) program from the Drug Enforcement Administration.[4] This datafile

[3] The data presented in this report has been compiled specifically to address this request. Each year of our grant timeline required a new data request and pull. Thus, the data may not perfectly align with other figures presented in our prior reports or briefings, due to different definitions, queries, or time periods presented.
[4] Details on the HIDTA program efforts are available at www.dea.gov/operations/hidta.

included daily drug seizures records with information on the type and quantity of the drug seized (i.e., fentanyl, cocaine crack, methamphetamine ICE, and heroin), and as well as the county in Oregon from 2010 – 2023. Twelve of Oregon's 36 counties participate in the Oregon-Idaho HIDTA program, and are located proximate to interstate highways bordering Idaho, Washington, and California.[5] In our analysis on drug-related deaths, we also used semi-annual National Forensic Laboratory Information System (NFLIS)[6] toxicology reports for the period 2008 – 2023 to estimate the prevalence of substances such as fentanyl, among other drugs, that were detected in state toxicology reports.

To capture more economic context, we pulled information from the Federal Reserve Economic Database (FRED), which is a publicly available data system that compiles time series data at the local, county, state, national, and even international levels from various sources including, but not limited to, the Bureau of Economic Analysis, Bureau of Labor Statistics, and the United States Census.[7] We drew several contextual measures from FRED such as the county and state population, proportion of disconnected youth, income inequality, high school graduation rates, unemployment rates, rate of rent-burdened households, percent below poverty, rate of single-parent households, and the consumer price index. From these contextual measures, we created two indices that were sometimes used as proxies to improve model fit. The two indices included the poverty index (unemployment rate, burdened households, percent below the poverty level), and the disadvantage index (income inequality, disconnected youth, single parent households, percent of population without a high school degree or GED).[8]

[5] Details on the Oregon-Idaho HIDTA are available at www.oridhidta.org/.
[6] Details on NFLIS program and reports are available at www.nflis.deadiversion.usdoj.gov/.
[7] Details on FRED are available at www.fred.stlouisfed.org/.
[8] Additional information on the measures used can be found in the Appendix.

Finally, we also accessed secondary data on public safety and health outcomes: property and violent crimes, and overdose deaths. These measures were captured at the monthly level. Data on property and violent crimes came from the Federal Bureau of Investigation (FBI) Uniform Crime Report program, compiled and standardized by Dr. Jacob Kaplan, and capture the offenses known to local and state law enforcement that are then reported to the FBI.[9] Considering the issues surrounding jurisdictional overlap, we only analyzed these data at the state level, not the county level. Data used to compare Oregon to other states on drug related deaths was compiled from the Center for Disease Control (CDC) Wonder Database.[10]

Statewide Analyses

The analyses used to examine macro-level impacts involved multiple approaches dependent on the research question and the outcome measure available. For each area of the system, we selected two types of longitudinal data analyses that best provide an unbiased effect of each legislation. One is an interrupted time-series (ITS) analysis, which compares data trends before and after an intervention. The other is generalized linear mixed modeling, which accommodates complex data relationships like nesting. We will expand more on these techniques later in the report. Using monthly data going back to 2008 for ample trend data pre-JRI, we used ITS analysis to model the effects of each legislative effort. ITS is a quasi-experimental approach that has been shown to provide estimates of immediate, lagged, and decaying effects in policy research generally (Hudson et al., 2019; Jandoc et al., 2015; St. Clair et al., 2016) and in criminal justice policy (McGarrell et al., 2001; Pridemore & Chamlin, 2006;

[9] Additional information on this dataset can be found via the following citations: Kaplan, Jacob. Jacob Kaplan's Concatenated Files: Uniform Crime Reporting Program Data: Offenses Known and Clearances by Arrest (Return A), 1960-2023: Kaplan, Jacob, 2024, "Summary Reporting System (SRS)", https://doi.org/10.7910/DVN/OESSD1, Harvard Dataverse, V2. & Kaplan's book: Kaplan J (2021). Uniform Crime Reporting (UCR) Program Data: A Practitioner's Guide. https://ucrbook.com/.

[10] Additional information on the CDC data can be found at www.wonder.cdc.gov/.

Sliva & Plassmeyer, 2021). ITS allows for more robust confirmation that certain time frames related to PCS policy changes may represent a statistically significant impact on the trend controlling for other explanations. While ITS has its advantages in being able to assess the impact of the intervention on the degree of change in the trend over time, it falls short in providing an estimated effect of the intervention over time while accounting for multiple other time-variant and -invariant measures. Consequently, in addition to the interrupted time-series analysis, we also employ a generalized linear mixed model.

In longitudinal studies the use of fixed and random effects models yields distinct advantages and disadvantages depending on the study and context of measures used (Clark & Linzer, 2015). A prevalent remedy for having to choose one approach over another is using a generalized linear mixed model (GLMM, McCulloch et al., 2008). An extension of generalized linear models, GLMM is a flexible application that allows for fixed and random effects to be used. By adding a random effects component to the generalized linear model equation, the mixed effects model can account for dependence, address serial correlation between measures and across time, and simultaneously describe cross-sectional and longitudinal patterns (Gurka et al., 2012; Morrell et al., 2009). This then provides a relatively accurate inference regarding the fixed effects (Gurka et al., 2012). For the purposes of this study, GLMM fits a model on the fixed matrix of control measures and any random effects across monthly observations by county. Odds ratios provide an estimate of effects each county experiences related to successive PCS changes.

Within Select County Analyses

While robust in many ways, the statewide analysis cannot account for important nuances that comprise patterns observed in the aggregate data. We selected eight counties for further examination of nuanced differences: Douglas, Jackson, Josephine, Lincoln, Linn, Marion,

Multnomah, and Umatilla counties. Our targeting of certain counties was guided by examining LEDS arrest data via the CJC, in relation to county-data from the U.S. Census. Table 1.2 provides a list of the eight select counties, along with their PCS arrest and economic statistics. Also, all but Lincoln County participates in the Oregon-Idaho HIDTA program. We selected four urban counties and four rural counties because they either exhibit some of the highest rates of PCS arrests per capita in the state, have some of the highest monthly averages of PCS arrests in the state, or both.

Table 1.2. Select County Information, 2019

County	Region type	PCS arrests			County Population over 15 years old (2019)	Percent in poverty[b]	Un-employment rate[c]
		Per capita[a]	Monthly avg.	% of drug arrests over last 6 yrs			
Oregon	-	64.6	48.3	10.4	3,371,730	11.5	3.7
Jackson	Urban	133.4	189.5	7.8	177,015	13.6	4.3
Marion	Urban	72.5	137.8	6.5	265,351	12.2	3.9
Linn	Urban	96.2	94.2	5.0	99,766	12.6	4.3
Multnomah	Urban	39.8	278.5	11.9	670,475	12.0	3.2
Josephine	Rural	164.9	92.5	12.6	71,618	15.9	4.9
Umatilla	Rural	105.3	38.7	5.8	59,732	13.9	4.7
Douglas	Rural	119.1	50.9	9.6	90,540	11.8	4.8
Lincoln	Rural	75.5	41.1	5.4	41,395	14.6	4.3

Table Note. Estimates as of 2019.
a. Per 10,000 citizens 16 or older according to the OJJDP
b. Census Bureau small area income and poverty estimates (SAIPE)
c. Bureau of Labor Statistics, seasonally adjusted

In examining the secondary data for these counties, the analytical procedure was like that explained in the statewide analysis but focused on within county change and effects. Perhaps most important is the emphasis placed on qualitative interviews. Using the information gathered from in-depth interviews with law enforcement officers, prosecutors, and court personnel, we used exploratory and thematic coding to unpack legal actors' perceptions of and experiences with enforcing/prosecuting these laws.

In the ‘Results & Findings’ chapters of this report, we separate our findings into four keys chapters: law enforcement, prosecution, courts/sentencing, and public health and safety. Within each chapter, a more detailed description of methods, analytical and data analysis techniques is included, followed by a discussion of policy implications and the expected applicability of the research in a subsequent chapter.

Participants and Other Collaborating Organizations

We partnered/collaborated with the following agencies to complete this project: Oregon Criminal Justice Commission, Oregon Judicial Department, Oregon Health Authority, and Oregon-Idaho High Intensity Drug Trafficking Area. Collaborating agencies provided statewide aggregate data, and well as assistance with questions regarding data reliability and specific variables.

Overview & Background Information on Drug Policy in Oregon

Our intent was to use Oregon's setting to provide empirical context to the nation's interest in state-level drug possession reforms (e.g., defelonization and decriminalization). Our research goals capitalize on these efforts and on the nuanced differences between counties, by qualitatively and quantitatively unpacking system processes and public health and safety outcomes both statewide and within counties.

Possession of Controlled Substance Policy Changes Across the United States

At year's end of 2018, drug-related offenses accounted for 26% of the U.S. probation population (481,900) and 14.1% of people in prison (176,207) (Carson, 2020; Kaeble & Alper, 2020). As jurisdictions recognize the detrimental effect of mass probation and incarceration, many have aimed to reduce both, via law reforms that impact enforcement, prosecution, and sentencing on non-violent offenses, often drug related. As of 2024, at least 15 states have legislatively reduced PCS from a felony to a misdemeanor (with varying user-amount restrictions and other caveats)[11], and at least nine states have relaxed mandatory minimums for low-level crimes, including drug-related offenses. Decriminalization of formerly misdemeanor-level offenses, such as possession of a controlled substance, is central to the criminal justice reform movement. Accounting for 80% of all state court cases, misdemeanors contribute to jail/prison populations, racial disparities, and overwhelm the criminal justice system with low-level cases (Natapoff, 2015). Much of the movement towards defelonizing or decriminalizing low-level charges has been driven by increased concerns over the negative impacts of criminal justice exposure and incarceration on individuals, families, and communities.

[11] https://www.nmlegis.gov/handouts/CCJ%20110817%20Item%203%20Drug%20Policy%20Alliance%20-%20Defelonization.pdf.

The goals behind reforming drug sentencing laws, specifically reclassifying PCS as a misdemeanor, are to reduce prison populations, allow jurisdictions to allocate more resources towards alternative programming (as opposed to costs associated with incarceration), and move away from historically punitive sentencing laws for drug crimes. In 2011, Delaware and South Dakota became the first states to pass legislation that reclassified PCS, which was followed by other states passing similar laws. For example, in 2014, California passed Proposition 47, which reclassified several felonies as misdemeanors, including PCS charges. In 2015, HB348 was signed into law in Utah, which amongst other policy changes, reduced penalties for first and second PCS convictions from a 3rd degree felony to a Class A misdemeanor. Similarly, in 2016, Alaska reclassified PCS; it is estimated to reduce the jail and prison population of the state by 13%, a savings of $380 million (Elderbroom & Durnan, 2018; Pew Charitable Trusts, 2016).

Some laws preclude individuals with past drug convictions from reclassification. For example, in 2016, Minnesota's S3481 classified "trace amounts" of drugs as a misdemeanor, but only for those defendants who do not have a prior drug conviction. Other laws include provisions regarding quantity; for example, Delaware punishes up to one ounce as a civil penalty (no incarceration), less than 175 grams as a misdemeanor (3 months incarceration), and 175 grams or more as a felony (5+ years' incarceration).[12] Despite differences in the laws, most of these efforts have been prompted by the same goals. Interest in legalization, defelonization, and decriminalization is spreading throughout the country.

[12] https://norml.org/laws/delaware-penalties/.

Successive Efforts in Oregon

As noted, Oregon is unique because its reform efforts have included all the primary approaches used in other states – legalization of recreational marijuana, Justice Reinvestment Initiative, defelonization of PCS, and now, decriminalization of PCS.

Figure 1.1. Oregon Drug Policy Shifts

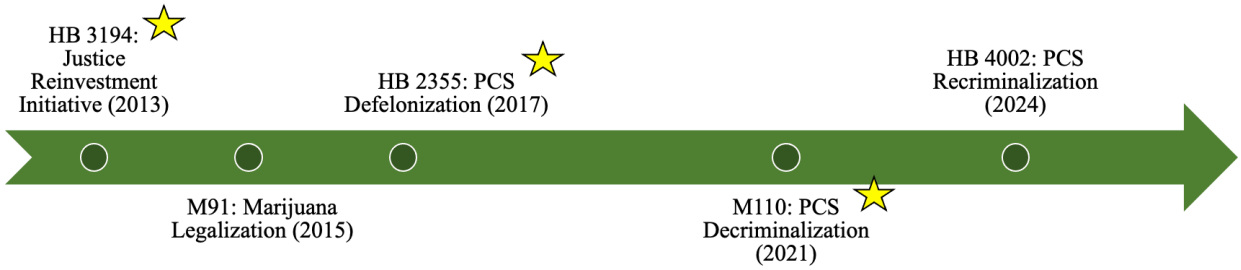


Figure Note. Stars denote key policy changes examined in this project.

House Bill (HB)3194: Justice Reinvestment Initiative (JRI)

Between 2000 and 2010, Oregon's prison population grew from 9,491 to 13,784 adults in custody, an increase of 45% (Bureau of Justice Assistance or BJA, 2014). With concern mounting over the possibility of building a new prison, Oregon passed House Bill 3194, the Justice Reinvestment Act, in October 2013 (for more on Oregon's JRI efforts see Matsuda et al., 2022). Among many changes, it addressed several key reform areas such as reduced mandatory minimum sentences for marijuana offenses and diverted more driving and drug-related offenses (PCS included) to probation. The legislation allowed each county's implementation of JRI to take many forms, if it aimed to achieve the desired goals (e.g., reduce prison use). Most notably, HB 3194 provided an avenue for prosecutors to circumvent Oregon's presumptive state sentencing guidelines for certain non-violent crimes such as drug possession.[13] While studies have been conducted on Oregon's JRI efforts, finding that it was largely effective in meeting its

[13] The Oregon Sentencing Guidelines Grid, https://www.oregon.gov/cjc/resources/documents/guidelinesgrid.pdf.

goals (Dollar et al., 2022; Matsuda et al., 2022; Renauer et al., 2023), none have examined the specific aspects related to drug possession.

Ballot Measure 91 (M91): Marijuana Legalization

In November 2014, Oregon voters passed M91, the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (with 56.11% of the vote). Effective July 15th, 2015, recreational marijuana use was legalized for adults 21-years of age or older. This bill was Oregon's 3rd legislative attempt to *legalize* marijuana (unsuccessful attempts in 1986 and 2012); marijuana possession was decriminalized in 1973, making Oregon the first state in the U.S. to do so. Public use and driving while impaired under the influence of marijuana remain illegal offenses.[14] Although marijuana legalization was not a focus of our project, we include it here in our discussion and in some relevant statistical models as it marks a shift in attitudes and policies about drug use in Oregon.

House Bill (HB)2355: Defelonization of PCS

In 2017, the Oregon Legislature approved House Bill 2355 (HB2355), which reclassified PCS for drugs designated as Schedule 1 or 2 under the U.S. Controlled Substances Act (heroin, cocaine, etc.). This reduced PCS offenses from a moderate level felony to a misdemeanor, with exceptions including "useable quantities"/large amounts of narcotics and those with pre-existing felony convictions (Oregon Criminal Justice Commission, 2018). These sentencing changes were implemented on August 15, 2017. The intent of the legislation was to reduce punitive punishments for PCS, reduce the number of individuals with "first-time felonies" (and therefore subject to a host of collateral consequences), and reduce disparities between people of color and their white counterparts in arrest rates, charges, and sentences for PCS. Although, HB2355 noted

[14] https://www.oregon.gov/oha/ph/preventionwellness/marijuana/pages/laws.aspx.

a remarkable shift in how the system responded to PCS offenses in the state (August 2017 – January 2021), about 4 years later, new legislation advanced the movement further.

Ballot Measure (M110): Decriminalization of PCS

In November 2020, Oregon voters passed M110, the Drug Addiction Treatment and Recovery Act (with 58.46% of the vote). A key selling point of this legislation was the explicit goal of shifting the state's response for "drug possession from criminalization to treatment and recovery."[15] In terms of the criminal justice system's response, personal/non-commercial drug possession offenses were reclassified (as of February 1st, 2021). Possession of a small amount of a Schedule I-IV narcotic (e.g., heroin or cocaine), was downgraded to a violation, resulting in a maximum $100 fine or a completed health assessment.[16] For possession of a large amount, M110 downgraded most criminal penalties from a felony to a misdemeanor (punishable by up to 364 days in jail and a maximum fine of $6,250). Manufacturing and delivery were still classified as a felony. From a public health perspective, a treatment and recovery fund (drawing from marijuana taxes and JRI savings) was set-up to fiscally support addiction recovery centers across the state.

Despite leading the country in misuse of pain reliever medication, being second in methamphetamine use, and fourth in cocaine use, Oregon ranked among the worst states in terms of access to treatment (prior to the implementation to M110; Oregon Criminal Justice Commission, 2019). Part of this issue likely stems from county disjointedness across the state, with a lack of uniformity in access to substance abuse treatment. An important distinction noted by the Oregon District Attorneys Association (ODAA) was that M110 provided individuals with

[15] Information on BM110 provided here: https://www.oregon.gov/oha/HSD/AMH/Pages/Measure110.aspx; https://ballotpedia.org/Oregon_Measure_110,_Drug_Decriminalization_and_Addiction_Treatment_Initiative_(2020).

[16] In lieu of a $100 fine, individuals could have opted to have a health assessment performed at an addiction recovery center.

the *option of engaging* in treatment, but did not require it, as would be typical in diversion programs and drug courts. Despite public support, organizations within the state were split on whether M110 would address the state's treatment and recovery problems. Critics of M110 argued that it removed the threat of criminal prosecution (which incentivized or compelled individuals into treatment), empowered people to abuse drugs without fear of legal jeopardy and eliminated the need for drug courts. M110 was opposed by the Oregon Association of Chiefs of Police (which endorsed HB2355), the Oregon Council for Behavioral Health (OCBH), and the ODAA[17] among others.

Arguments in support of M110 touted the potential to eliminate racial/ethnic disparities in convictions (Black Oregonians were overrepresented in PCS charges[18]), reduce the number of individuals subject to collateral consequences, provide treatment options for uninsured (without a conviction attached), and reduce incarceration for those who are chemically dependent, which could also reduce the number of overdoses in-custody. M110 was endorsed by the Oregon Criminal Defense Lawyers Association, ACLU of Oregon, and Drug Policy Action.[19] Oregon's period of decriminalization lasted for roughly 3.5 years (February 2021 – August 2024).

HB4002: Recriminalization of PCS

In 2024, the Oregon Legislature passed House Bill 4002 (HB4002) re-criminalizing PCS to an undesignated misdemeanor criminal offense, punishable up to 180 days in jail (effective September 1st, 2024). Although, Oregon's experiment with decriminalization under M110 ended, the funding stream through M110 that supports substance abuse treatment and resources was left

[17] https://www.oregonda.org/news-of-interest.
[18] https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-(2020).pdf.
[19] https://ballotpedia.org/Oregon_Measure_110,_Drug_Decriminalization_and_Addiction_Treatment_Initiative_(2020).

in place. HB4002 encourages law enforcement, "in lieu of arrest or prosecution" to refer or divert the suspect into an official "deflection program."[20] Under the new law, "police, in essence, [will] become an entry point for people to get help – with the prospect of prosecution, conviction and jail time serving as incentives to move people toward treatment."[21] At the time of writing this report, little was known about the substance of these optional deflection programs (e.g., eligibility criteria) other than that many counties in the state are interested in creating such programs. After HB4002 takes effect, Oregon's Criminal Justice Commission estimates an additional 2,257 PCS convictions each year (Oregon Criminal Justice Commission, 2024a). As data collection ended with records through April 2024, the pending implementation of HB4002 in September 2024 had less influence on our project; future research should consider the findings and trends we observed before attributing trends and changes to HB4002.

Other Relevant Changes, Impacts, and Events in Oregon

In addition to the major legislated policy shifts noted above, which is the focus of this project, we learned through conversations with community partners of many recent Oregon Supreme Court and Court of Appeals cases, as well as other legislation, that have modified procedures related to drug enforcement and prosecution in the state. And of course, the lasting effects of the COVID-19 pandemic lockdown and resulting court backlogs impacted Oregon's criminal justice system much like other jurisdictions across the country (see Viglione, et al., 2023). Here we include an overview of statewide mandates relevant to COVID-19 (i.e., timing of stay-at-home orders) and resulting impacts on the courts. We also include a discussion of the

[20] https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4002.
[21] https://www.oregonlive.com/politics/2024/03/it-will-be-a-crime-to-possess-fentanyl-in-oregon-again-heres-what-to-expect-next.html.

dominant procedural changes that have likely impacted drug enforcement and prosecution in Oregon. These events are important to recognize for their independent and combined effects on various outcomes of interest (e.g., police stops and searches). Because of their timing, it is difficult to tease apart the effects of one impact/change versus another. For example, consider the 2021 decision in *State v. McCarthy*, which restricted officers' ability to search vehicles without a warrant. This decision took place the same year as M110's implementation, which also restricted officers' ability to search a vehicle (a search was no longer permitted based on drug possession alone). Researchers and those interested in observing the shifts in criminal justice outcomes in Oregon should be cognizant of these important changes as well.

***Oregon v. Arreola-Botella*, 2019**

In 2019, the Oregon Supreme Court ruled that officers must stick to permissible scope of questioning related to the reason for the traffic stop (*Oregon v. Arreola-Botella*). That is, officers cannot use the "unavoidable lull" (e.g., while an individual is searching for their registration) to expand the scope of the search (e.g., to search for weapons). This decision has implications for vehicle searches and seizures, which may impact arrests and prosecution for various crimes.

COVID-19 Pandemic (2020)

In early 2020, Oregon's Governor signed multiple executive orders in response to the COVID-19 pandemic, directing Oregonians to stay home, closing certain businesses, suspending in-person instructional activities, and imposing social distance requirements for public and private facilities.[22] Oregon's stay-at home order was effective on March 23rd, 2020. In May of 2020, the state introduced a "phased approach" whereby counties could ease their baseline COVID-19 restrictions if they met certain criteria (e.g., sufficient healthcare capacity). In

[22] https://www.oregon.gov/gov/pages/executive-orders.aspx.

November of 2020, the Governor instituted a two-week "temporary freeze" in response to rising infection numbers to revert to earlier restrictions (e.g., restaurant closures). Following this, the state moved into a "risk-level system", which allowed for county-by-county assessments of risk (e.g., infection rates) and provided guidance on public safety responses for specific jurisdictions.

On March 13, 2020, Oregon's Chief Justice provided the first guidance related to court procedures during the pandemic (e.g., "postpone jury trials that are not time-sensitive.").[23] Shortly after that, the order limiting court operations and services was modified and extended (e.g., "postpone trials until at least June 1, 2020."). Remote appearances were permitted for some court proceedings (e.g., arraignments). The courts followed the statewide restrictions, phased re-opening beginning in June of 2020, strict restrictions during the "two-week freeze" in November/December of 2020, and in February 2021 permitting more in-person proceedings in low-risk counties. Between March of 2020 and June of 2022, there were over 30 orders related to court procedures in response to the COVID-19 pandemic. As this timeline shows, Oregon's response to the COVID-19 pandemic was dynamic and long-lasting. A discussion of COVID's impact on various outcomes of this project will be taken up in the following relevant chapters.

***State v. Hubbell,* 2021**

In 2021, the Oregon Court of Appeals ruled that having large quantities of drugs, baggies, a scale, etc. does not necessarily constitute proof of "the element of a transfer, either actual, constructive, or attempted" (*State v. Hubbell*).[24] That is, the bar was raised to prove successful sale of drugs. This precedent was struck down by the Oregon Legislature with HB4002 and

[23] https://www.courts.oregon.gov/courts/pages/coronavirus-prior.aspx.
[24] For a discussion of Oregon law regarding "pill presses" see: https://oregon.public.law/statutes/ors_475.916. As of March 2025, a Bill has been proposed for the 2025 Oregon Legislative Session that "changes drug crime laws related to pill presses and similar equipment": https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB2175.

returned to the *Boyd* standard (i.e. "attempt" or "intent" to sell; *State v. Boyd*, 1988). While enacted, this decision had implications for arrests and convictions of drug sale and delivery.

***State v. McCarthy*, 2021**

In 2021, the Supreme Court of Oregon eliminated the motor vehicle exception to the warrant requirement (*State v. McCarthy*). That is, officers cannot search a vehicle *without* a warrant unless there are "exigent circumstances" (e.g., to prevent danger to life or property). This decision overturned a roughly 35-year precedent which allowed for a broader exception to the warrant requirement (*State v. Brown*, 1986). Like *Oregon v. Arreola-Botella* (2019), this decision has implications for vehicle searches and seizures, which may impact arrests and prosecution for various crimes.

SB1510 (2022)

In 2022, the Oregon Legislature passed SB1510, which prohibits officers from pulling over motorists solely for a lighting-related issue, such as a burnt-out headlight, taillight, or brake light. This bill also requires officers to inform motorists that they can decline a search of their vehicle and to obtain written consent to search.[25] Similar to *Oregon v. Arreola-Botella* (2019) and *State v. McCarthy* (2021), this decision has implications for vehicle searches and seizures, which may impact arrests and prosecution for various crimes.

Police Officer Staffing Issues (Ongoing)

One on-going challenge Oregon faces is a decline in sworn law enforcement officers, particularly in the metro region (Portland, OR). Spending for law enforcement has decreased, and many officer vacancies remain unfilled. For example, in 2022, Portland Police Bureau

[25] https://www.oregonlegislature.gov/Jama/Documents/[SB%201510]%20PRESS%20RELEASE_%20Oregon%20Senate%20Votes%20to%20Improve%20Criminal%20Justice%20and%20Public%20Safety%20in%20Oregon.pdf.

reported the lowest number of sworn officers in three decades.[26] In June of 2024, Portland Police Bureau had 881 Authorized Sworn positions (812 filled), compared to 1035 Authorized Sworn Positions in 2005.[27] Portland Police Bureau is used as an example here as it is the largest law enforcement body in the largest county in Oregon (Multnomah). Decreased staffing levels influence office priorities (e.g., violent crime arrests over drug crime arrests), and could have implications for officer proactivity, arrests, and subsequent prosecution and convictions.

Public Defense Crisis (Ongoing)

Another on-going challenge Oregon faces is a nationally recognized public defense crisis. Following many attorneys exits over 2020 and 2021, a report commissioned by the American Bar Association (2022) identified that Oregon was 69% deficient in the number of attorneys needed. In 2022, some of the largest counties in Oregon were notified that the public defense firms responsible for providing indigent defendants with counsel would stop taking new cases. This resulted in a lawsuit against the state driven primarily by the issue of individuals in custody without representation. In 2024, the 9th Circuit Court of Appeals called Oregon's public defense system a "6th Amendment nightmare", and upheld the ruling that "defendants must be released from jail after 7 days if they do not have an attorney" (*Betschart v. State of Oregon*, 2024). Despite Legislative attention, this crisis is on-going (as of 2024); in March of 2024, the Oregon Public Defense Commission released a 6-year plan to reduce the representation deficiency for indigent Oregonians.[28] This crisis could have implications for prosecutorial charging, and subsequent convictions.

[26] https://www.oregonlive.com/data/2021/11/why-portland-has-less-cops-now-than-any-point-in-past-30-years.html.
[27] https://www.portland.gov/police/open-data/ppb-staffing-report.
[28] https://www.opb.org/pdf/OPDC%206%20Year%20Plan%20Reduce%20the%20Public%20Defender%20Deficit%20Final%20Report%203_1711066724736.pdf.

Results & Findings- Policing

The goal of this chapter is to examine the impacts of drug legislation changes related to possession of controlled substance (PCS) in Oregon on law enforcement, and more specifically, the following law enforcement related research questions:

1. How have PCS changes impacted *law enforcement practices* related to drug crimes, among others?
    a. Analysis of officer stops and searches, arrests, and issuance of E-violations
2. How have PCS changes impacted *law enforcement perceptions and decision-making* related to drug crimes, among others?
    a. Perceptions of drug policy shifts, and experiences with drug enforcement (qualitative interviews)

To address these questions both qualitative and quantitative analyses were performed. In Year 1 of the project (2022), we gathered officer perceptions regarding drug defelonization, decriminalization (M110), and other recent policies that may have impacted law enforcement practices around drug enforcement. Most of the law enforcement personnel we interviewed espoused strong negative opinions about the damaging impact of decriminalization, which we review in this chapter. These qualitative perceptions were followed up in Years 2 (2023) and 3 (2024) by examining the long-term quantitative trends in law enforcement activities related to proactivity and drug enforcement. We examine trends in police stops, searches, seizures, and arrests for PCS and related crimes. The quantitative measures examine aggregate police proactivity that may fluctuate with changes in the criminal classification of PCS. In addition, we control for other factors like COVID-19 and law enforcement staffing that may influence proactivity. In comparing quantitative police activity trends since 2008 to officers' subjective

perceptions we discover a more complex narrative regarding the impacts of Oregon legislative/policy changes and PCS enforcement. As this chapter will reveal, officers' negative subjective opinions and experiences around decriminalization, which are valid at an anecdotal level, often do not correspond exactly with aggregate trends in Oregon law enforcement data.

Qualitative and Quantitative Methodologies

Quantitative Data

We used quantitative data to examine the potential change in key law enforcement "practices" that could be influenced by changes in PCS laws. These practices can also represent the "proactivity" of police practices related to drug problems and include police stops, police searches and search outcomes, and arrests for PCS and related crimes.

***Stop and Search Data*:** We partnered with the Oregon Criminal Justice Commission (CJC) to obtain Oregon monthly stop and search data pulled from the Statistical Transparency of Policing (STOP) program. The STOP data contains information from every agency regarding officer-initiated traffic and pedestrian stops starting with the biggest state agencies in July 2018 through June 2024. In addition, the data also indicates whether stops entailed a search of persons or vehicle and whether any contraband was discovered as a result of the search (e.g., drugs, weapons, stolen goods).

Arrest Data: We partnered with the Oregon CJC to obtain Oregon monthly arrest data pulled from the state's Law Enforcement Data System (LEDS). The LEDS arrest data includes information on all arrests across the state of Oregon by county from January 2008 to April 2024. Additionally, it has information related to the offense(s) type that initiated the arrest.

Law Enforcement Interviews

In 2022, we conducted interviews/focus groups with officers from across the state of Oregon. The goal of the interviews was to directly examine our key research questions related to whether *PCS changes impacted law enforcement practices, perceptions and decision-making.* These qualitative interviews speak to the timeline leading up to decriminalization in 2021, as well as implementation and early observations of decriminalization. The interview narratives also allow us to compare officer perceptions of potential changes to the actual quantitative aggregate trends in police practices over time.

The Portland State University Institutional Review Board approved all materials and procedures involved in the collection of interview data. We recruited from relevant law enforcement agencies at the state-level (i.e., Oregon State Police and High Intensity Drug Trafficking Areas leadership) and select counties: Douglas, Jackson, Josephine, Lincoln, Linn, Marion, Multnomah, and Umatilla. An initial email solicitation and one to two follow-up requests were sent out in March – May 2022. In total, over 30 email solicitations were sent out to Department supervisors and officers (with multiple follow-ups).[29] Importantly, interviews were semi-structured, and not all participants were asked the same questions (e.g., questions about defelonization were not asked to more recently hired law enforcement officers). All participants were emailed the Informed Consent document and encouraged to ask any questions they had about the study. To maintain anonymity, the signature portion of the Consent form was omitted, and scheduling the interview was indicative of consent to participate in the study. Additionally, all participants were asked at the beginning of the discussion for verbal consent to be recorded.

[29] We first emailed Department Supervisors (e.g., Sheriffs, Chiefs of Police). In some agencies, this resulted in informational sessions with Department Supervisors to discuss logistics (e.g., some agencies wanted to select officers and schedule the focus groups themselves). In other jurisdictions, Department Supervisors either emailed officers directly (sometimes with our research team cc-ed) or provided email addresses of possible participants.

With the individuals' permission, discussions were recorded for the purpose of transcription. Interviews averaged 43 minutes (ranging from 20 min to 78 min). Following transcription and de-identification, all recordings were destroyed.

In total, 23 unique interviews/focus groups were conducted (we used a reflexive design to determine when saturation of response type was reached to guide data collection). Of the roughly 35 email solicitations sent out, 23 interviews/focus groups were conducted (roughly 66% response rate). Our qualitative data represent 10 unique agencies (two State; four Sheriff's Departments; and four Police Departments), and six different counties (three categorized as "urban" and three categorized as "rural"). This portion of the study was exploratory; as such, we used an inductive approach to discover themes, categories, and patterns in our data, which then illuminated key issues identified by participants within our sample. After transcription, the research team read through each interview and met to identify thematic codes resulting in a final 37 unique codes. Interrater agreement tests yielded acceptable congruence in coding themes across raters. For further information on the coding process and interrater agreement please refer to the Year 1 Interim Report (Henderson et al., 2023). Importantly, much of these data represent practitioners' perceptions and experiences, and might not be representative of all individuals. Quotes have been lightly edited to maintain anonymity, and for length and readability.

Qualitative Findings

Our framework for presenting these findings is to break out the key themes in the law enforcement narrative about the impacts of drug law changes from our interviews/focus groups and compare it with related quantitative trends that can either support, refute, or perhaps offer a different perspective on impacts. Most of the law enforcement officers we interviewed focused their comments on decriminalization. Our Year 1 Interim Report details five common law

enforcement perceptions of M110 impacts, which we review again here. However, before reviewing those themes it is important to point out two additional common perceptions by Oregon law enforcement. These additional themes focus on Oregon's period of PCS *defelonization* from 2017 to 2021 and more recent court cases and legislation. The interviews included specific questions to gather opinions about these other critical changes.

Theme 1: Defelonization of PCS was Viewed as Not Problematic

Oregon law enforcement officers we interviewed did not express concerns over drug enforcement during the years of defelonization. In fact, some officers expressed defelonizing PCS had benefits such reducing erratic suspect behavior (e.g., high speed pursuit) during stops or interrogations where suspects were willing to do anything to avoid a felony charge. Misdemeanor drug possession in the eyes of officers was commensurate to the seriousness of the offense (i.e., proportional) and officers felt its criminal status allowed them to apply other tools or legal coercion to mandate treatment or compel drug informant assistance (e.g., diversion programming). This finding is consistent with the stance of Oregon's law enforcement community that supported defelonization at the time of its passage in 2017 (bill supported by Oregon Association Chiefs of Police and Oregon State Sheriff's Association).[30] The following quote as example:

> *My [agency] was supportive of moving it to a misdemeanor just because you didn't have these crazy vehicle pursuits for people that are trying to run away from the cops when they have a user amount of dope. It was kind of easier on everybody involved. We had guys that would spend their entire days off in grand juries because every single PCS was charged as a felony. Well, that went away, so that was a positive for us and it was also a positive for the people on the street because they're not getting a felony for user level dope. But the nice thing about that is we still had the mechanism to investigate these things further. I could still obtain a search warrant for instance on a misdemeanor-level PCS because it's still a crime…M110 was a big hit for us. The lowering it from a felony to a misdemeanor was actually a positive.* – Rural, Sheriff's Office

[30] https://olis.oregonlegislature.gov/liz/2017R1/Downloads/CommitteeMeetingDocument/113654.

Theme 2: Recent Oregon Case Law and Legislation has been Viewed as Problematic

Many of the law enforcement officers shared their opinion that recent Oregon case law, unique to the state (e.g., eliminating motor vehicle exception to warrant requirement in 2021), and other legislative changes (e.g., restrictions on lighting infractions as justification for vehicle stops), have made it more difficult to conduct stops, searches, and arrests for PCS in recent years. These case law and legislative changes are discussed in the 'Other Relevant Changes, Impacts, and Events in Oregon' section preceding this chapter. Law enforcement officers who expressed these concerns had a hard time judging what has been more impactful on Oregon drug enforcement – decriminalization or the case law/legislative changes.

> *I mean [all these court cases and changes], just one of those has a huge impact. And then you add all of those up, it just, it basically cripples us on what we can do.* – Urban, Sheriff's Office

These initial two themes are critical for framing and analyzing the impacts of changing PCS laws in Oregon. First, defelonization of low-level PCS offenses is currently not common across the U.S. Other states seeking similar changes should know that Oregon law enforcement officers were not only supportive of the change from felony to misdemeanor, but they also did not report significant detriments to law enforcement practices and outcomes based on the charging modification. Second, the coexistence of Oregon's decriminalization at the same time as significant changes in state search/seizure laws makes isolating the impacts of decriminalization on both law enforcement perceptions and their activities complex. This second theme is another reminder that multiple factors can be present that influence both the behavior and outcomes of the criminal justice system.

The next four key themes emerged from these interviews related to perceptions of impacts of decriminalization (see Henderson et al., 2023 for a deeper discussion of the qualitative responses from law enforcement officers).

Theme 3: M110 and Perceived Loss of Probable Cause to Search

Law enforcement officers believed a consequence of reclassifying PCS as a violation was that they lost a strong basis to conduct searches. When PCS was a criminal offense, officers could search incident to arrest as an exception to the warrant requirement. As a result of decriminalization, officers felt they have less cause to search, which they noted has affected their ability to make arrests for "collateral crimes" that often could accompany a drug possession crime (e.g., weapons offense, stolen property – referred to by some officers as the "Drug Nexus").

> *Many crimes have been solved from a traffic stop where you develop probable cause of drugs, which gives you the ability to search the entire vehicle, which you find additional drugs, weapons, stolen property, and you are able to solve multiple cases. Because like I said, just about every case has a nexus to drugs…So, all those additional crimes that are happening, are going unsolved because you don't ever get those breaks from being able to search cars.* – Rural, Police Department

Theme 4: M110 and Perceived Loss of Informants

According to officers, reclassifying PCS as a violation also negatively impacted their ability to cultivate confidential informants. When PCS was a criminal offense, officers could recruit drug buyers as confidential informants by using the drug charge as a bargaining tool to "move up the chain" to drug distributors. Without the threat of an arrest, officers noted that individuals are not motivated to cooperate, which they believe has negatively impacted commercial (i.e., large quantity) drug enforcement.

> *We used line level possession to get to the ones that really mattered, which is the heroin dealer, the meth dealer, the person with the guns, the person with the cash. They're the problem. They're the ones that we need to get to. What M110 did was take away basically any ability for us to get to the cartel drugs coming in and the drug dealers.* – Urban, Sheriff's Office

Theme 5: M110 and Perceived Decreases in Proactive Policing

The combination of the previous two themes has contributed to the perception that law enforcement in Oregon is now reactive to problematic behavior and issues, rather than proactive. Many officers noted that the state's lack of interest in drug crimes has promoted the decrease in law enforcement proactivity. The shifting of roles from proactive to more reactive, response-based policing, was perceived to have a negative impact on officer morale and motivation.

> *It's frustrating because genuinely, I can say everybody I work with wants to help the community. We all live here, we want to do the right thing, but our mechanisms are going away so we're now very much reactive versus proactive and that's really hard for us to stomach because we can see the crime is happening…we know it's happening, but we have no ability to go stop it.* – Rural, Sheriff's Office

Theme 6: Officers are Often Hesitant to Issue M110 Citations

The final main theme that emerged from these qualitative data is that overwhelmingly, officers were hesitant to issue M110 citations (E-violations). The interviews shed light on officer decision-making and use of discretion in issuing citations. Roughly 48% of interviews/focus groups referenced justifications for not giving out citations. Interestingly, justifications for giving out citations were referenced almost as frequently as justifications for not giving out citations (44% and 48%, respectively). It should be noted that we did find some county/agency level variation in the issuance of M110 citations. One agency we talked to noted that there was a strong agency push from the top (i.e., the Chief/Sheriff) to utilize the E-violations because it was the only way they would be able to tell whether M110 was or was not working and to illustrate the level of PCS activity in their area. The primary justifications officers gave for issuing citations included the following:

- Officers believed it is their duty to respect the voters and enforce the law.
- Without issuing citations, it would be difficult to prove the effectiveness of the law.
- Hopefully individuals will take advantage of the resources listed on the citations.

These justifications highlight the noted sense of duty, overarching understanding of policy evaluation, and a sentiment of hope for the people with whom they are interacting with citations. However, an undertone of these points is also a sense of complacency and defeat, as noted by this officer:

> *I will give out as many as, until they tell me to stop doing that, if this is the job, I will do it. I don't mind. And yeah, I've had some people who thank me for it, some people who hate it, and most of the people who I've written the citations to, now I mean they recognize me, and will say hi and just have some type of normal conversations as I ride past. Even though I know you're still out there doing drugs…I know there's probably something we could be doing better for you, but here's the ticket because it's all I can really do for you.* – Urban, Police Department

The primary justifications officers gave for not issuing citations included the following:

- The officer can still share information about resources and treatment options without issuing the citation.
- Giving out citations is "*not worth the time*", as officers perceive there to be no accountability for follow-through for individuals.

> *But what I have noticed in talking with patrol officers is that they're much less likely to write that citation for PCS. Because it has no teeth, there's no follow up necessary on the part of the person who's suffering from substance use disorder…The officer feels like, okay, I take the drugs, and then why would I do this unnecessary paperwork that they're not going to follow up on anyway and there's going to be no like, any sort of punishment, quote unquote, right? So, why would I do that?* – Urban, Police Department

Quantitative Results

(Mis)Alignment of Law Enforcement Perception Themes with Quantitative Data

Interview Themes 1 – 6 from above suggest important implications that can be examined with law enforcement activity data. Themes 2, 3, and 5 suggest that because of changes in the decriminalization of PCS and search/seizure law, officers are less motivated and more reticent to make stops and engage in searches. In their view, this will ultimately lead to fewer overall PCS arrests. Themes 4 and 5 suggests that there is a connection between police proactivity (i.e., stops

and searches) with arrests for more serious drug crimes and other types of criminal offenses or collateral crimes that often accompany drug-related crimes (e.g., weapon offenses). Theme 1 suggests that the era of defelonization (2017 – 2021) should illustrate minimal disruption to law enforcement activity compared to both decriminalization and the recent changes in Oregon search/seizure laws. Finally, Theme 6 suggests the number of E-violation citations for PCS should be dramatically lower than pre-M110 arrest levels when PCS was a misdemeanor crime.

Fortunately, available aggregate data allows us to examine how officer perspectives align with observed trends across county- and state-levels during these periods. Importantly, incongruence between these data trends and officer perceptions does not imply that officers' perspectives are inaccurate. Rather, these perceptions reflect their unique, real-time interactions and insights, which are invaluable in assessing the practical impacts of policy changes. Any incongruence highlights the complex landscape in which these policies operate, providing an opportunity to explore where experiences on the ground may diverge from aggregate patterns. Moreover, these landscapes are perpetually dynamic in that they readily change as court decisions and new legislation alter, redirect, or strike down areas of a given law, policy, or practice. Thus, divergences between officer perceptions and aggregate data offer a nuanced view of how policies play out and influence daily policing practices and guide adjustments to ensure that we interpret how those tasked with enforcing the law reflect on how it impacts their practice.

Police Stop Trends

Police vehicle and pedestrian stops can represent a measure of police proactivity, which could be influenced by PCS criminal status and new case law for search/seizure procedures as our officer interviews indicate. Police stops also represent a potential point of contact or engagement opportunity with the public that could set in motion legal pressures that, in turn, may

lead to connecting someone with a substance use disorder into treatment. This "point of engagement" topic is more thoroughly discussed in our Year 2 Interim Report (Henderson et al., 2024). This was another topic that officers reiterated in their interviews. To gauge how police proactivity/potential contact points have changed over time, we examined law enforcement administrative data. Data collection on police stops, searches, and stop outcomes was requested via the Statistical Transparency of Policing (STOP) data which became mandated through Oregon State Legislation in 2017, and a phased implementation started in 2018.

Figure 2.1 provides 3-month moving average counts from the STOP data for the state and for the metro region. These STOP data are further explained and reviewed in Henderson et al. (2023) and on the Criminal Justice Commission website. Although we often rely on monthly data, here we use a 3-month moving average to filter random fluctuations and provide a smoothed, clearer picture of the trend in stops over time. Statewide trends were separated into two lines. One includes the combined trends of Tier 1 agencies (those with over 100 officers) and Tier 2 agencies (25 – 99 officers) captured in the solid black line. Tier 3 departments (1 – 24 officers) began reporting data in July of 2020, which is combined with the statewide stops and captured by the black dashed line. The metro region (solid grey line) includes Clackamas, Lane, Marion, Multnomah, and Washington counties, and is broken out to provide a contrast with the most populated areas in the state.

Figure 2.1. 3-Month Moving Average of Police Stops Statewide and Metro Region, 2019 to 2024

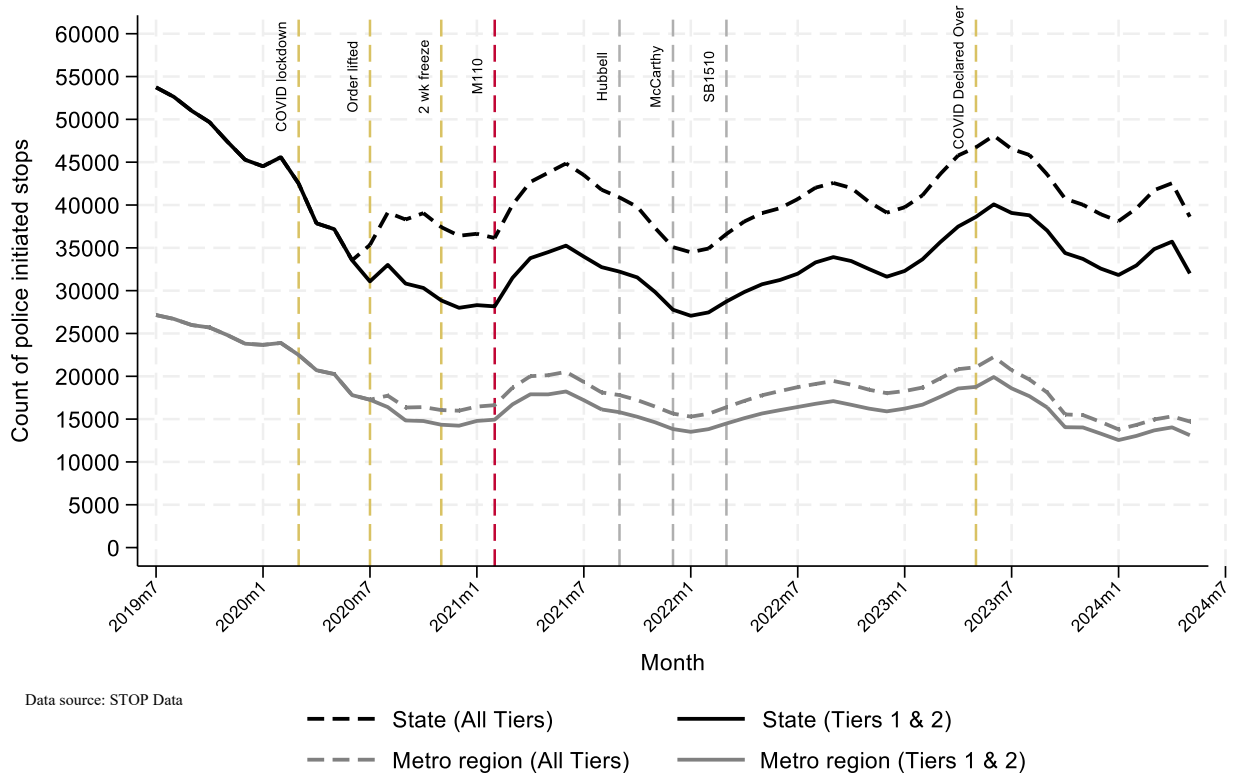


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and Appellate court cases (e.g., M110, *McCarthy*- motor vehicle warrant exception), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

► The key conclusions from Figure 2.1 are the following:

1. Police stops, which represent the most common type of non-voluntary police-public contact, were significantly declining in the months leading up to the COVID-19 lockdown. The declining trend in non-voluntary police contacts was particularly evident in the Metro counties and more urban/suburban departments. Between July 2019 and the start of 2020, Oregon law enforcement made an average of nearly 50,000 stops per month (49,956). Police stops have not returned to this pre-COVID-19 highwater mark. In the first few months (January through May) of 2024, the average monthly police stops are approximately 10,000 fewer stops (40,129 per month).

2. The trendlines also illustrate that M110 and the recent case law changes do not appear to influence police proactivity (i.e., stops and contacts with the public). After M110 implementation (red dashed vertical line), stops have seen both decreasing and increasing trends. In fact, stops came close to pre-COVID-19 levels (see May 2023), but have recently been declining again (see June 2024). Officer perceptions would suggest the existence of a steadily decreasing trend, but the stop trend started decreasing pre-COVID-19 and appears to be fluctuating around a consistent floor of 40,000 stops for over 3 years post-M110. Other factors predating 2019, and thus outside of COVID-19 and M110 effects, appear to have influenced a decline that created a relative consistent level in recent years.

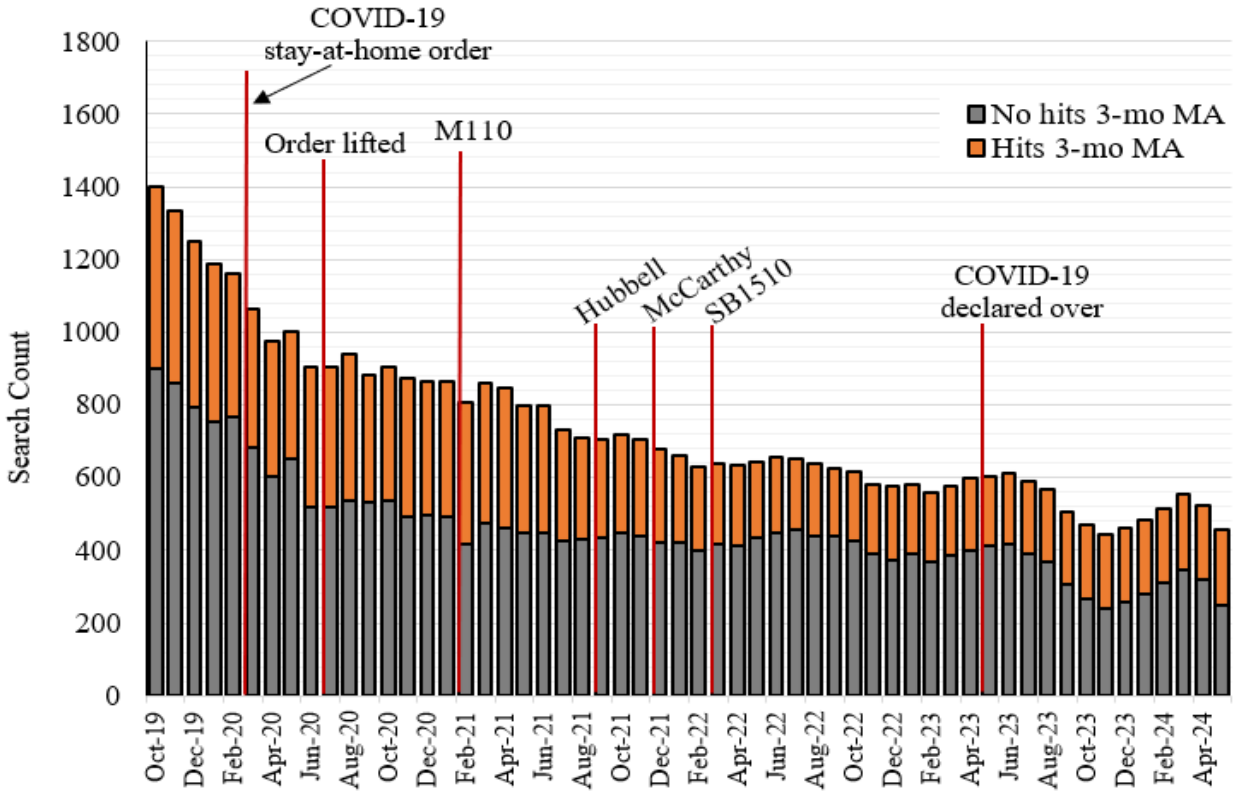
While there is likely to be regional, and even municipal variation, the law enforcement narrative that M110 and other recent case law changes have dramatically reduced proactivity, as measured by police stops, is not supported by the trends shown in Figure 2.1. Stops are lower today than in 2018, but the initial reduction appears to have occurred even before COVID-19. Judging by the trends in overall arresting charges and events (shown later in Figure 3.1), it is unlikely that a PCS-related policy shift (e.g., defelonization) was the driver of such a decline in proactivity. However, it is not possible to say for certain without more stop-related data beyond when the STOP data started in 2019 for only the largest agencies. It will be interesting to see whether the recriminalization of possession of controlled substances under HB4002 (September 2024) will result in officers making more stops. Based on the pre-COVID-19 trends, this is possible, but unlikely to be a driver in-itself. Regardless, Figure 2.1 shows that any increasing trends in police stops that may be observed after HB4002 began prior to the bill's passage and implementation. These data show that trends in public contacts with police (e.g., police

connecting persons in need to treatment opportunities) are complex and likely not a simple response to one legislative change (see the Year 1 Interim Report, Henderson et al., 2023).

Police Searches

Police searches following a vehicle or pedestrian stop represent another indicator of police proactivity that officers believe has been affected by M110 and recent search and seizure case law changes. Several officers we interviewed pointed to the importance of PCS criminality as a probable cause tool to engage in searches that could lead to evidence of more serious criminal behavior, such as stolen property or illegal weapons. If M110 and new case law make the legality of searches more ambiguous, there should be a corresponding reduction in search activity. Figure 2.2 provides a 3-month moving average count of searches across the state and if drugs, stolen property, or weapons were found ("hits", shaded orange) or nothing was found ("no hit", shaded gray) as a result of the search.

Figure 2.2. 3-Month Moving Average of Searches that Resulted in Hits or No Hits, 2019 to 2024



► The key conclusions from Figure 2.2 are the following:

1. Beginning before the COVID-19 stay at home order, the number of person and vehicle searches conducted started declining, like the decline in police stops. Since the COVID-19 lockdown, the average number of searches has continued a steady declining trend. Unlike the police stops trend, there is less fluctuation in police searches, just a consistent slow decline.
2. The "hit rate" or proportion of successful searches increased to reach a peak of 48.3% in February of 2021. This suggests that as proactive stops reached a multi-year low and thus fewer people were stopped, those who were stopped were more likely to have drugs, stolen property, or weapons in their possession. However, the success or accuracy of

searches has ebbed and flowed including a low of 29.4% by September 2022 and then returning to 45.3% in May 2024, with no apparent seasonal trend.

3. If we are to assume involvement with the criminal justice system through a search and "hit" could foster a pathway to treatment, then the potential occurrence of legal pressures to assist in connecting persons to treatment opportunities has been steadily decreasing since before COVID-19.

The search trend data presented in Figure 2.2, like the stop trends, does not fully support the law enforcement narrative that M110 is to blame for decreased proactive policing. Importantly, court decisions may have also further impacted such measures of proactivity. It is unclear whether HB4002's recriminalization of PCS will prompt police to conduct more searches given that searches were declining prior to M110 and were further impacted by judicial decisions. If police stops and searches are to be a potential conduit for connecting persons in need with treatment, this data shows that there are fewer than 200 persons per month throughout Oregon that are stopped by police and found with incriminating evidence ("hit").

Arrests for Possession of Controlled Substance and Collateral Crimes

Police arrest trends are another method of examining law enforcement proactivity. We would expect with decriminalizing PCS there would be an obvious drop in PCS arrests, which became a violation with M110. In addition to our Year 1 Interim Report (Henderson et al., 2023), other studies have demonstrated that the drop in PCS arrests was indeed associated with M110 (e.g., Russoniello et al., 2023). However, it is worth questioning if there are other important historical events and trend changes in PCS arrests prior to M110 implementation. In this section, we examine arrest trends for three crimes that officers believed represent a "drug-crime nexus":

PCS, theft/property, and drug manufacturing/sales/delivery arrests.[31] The choice of these three crimes was based on our officer interviews suggesting that criminal enforcement of PCS was an important tool for the discovery of more serious crimes like property and drug dealing and manufacturing offenses. With decriminalization of PCS, law enforcement officers felt an important investigatory tool for making other collateral crime arrests was lost.

Figure 2.3 presents LEDS statewide arrest data[32] of arresting charges or charges justifying arrests. "Charges justifying arrests" is an important distinction because it counts the number of times a given charge (e.g., PCS) was used in an arrest event because individuals can be arrested for more than one offense. While this count captures more than just arrest events, the trends are often quite close and have the same distribution over time. In using the arresting charges instead of the arrest events, we can examine when PCS was one charge in an arrest that also included other, potentially more serious offenses. When examining just the arrest events, often low-level PCS would not be detected because the arresting event takes the most serious offense resulting in an arrest of an individual. Figure 2.3 shows the observed monthly counts of arresting charges (scatter/circles) for theft/property (yellow/top trend), PCS (blue/middle trend), and drug manufacturing/sales/delivery (green/bottom trend) crimes. Each crime-type's scatter plot is accompanied by a smooth trend line that is the predicted value without controlling for any other measure,[33] and a spiked line that is the predicted value[34] including the following controls[35]:

- COVID-19 restrictions (from March 2020 through May 2023)

[31] Weapon offenses are often included in the "drug nexus" discussions, however, we opted to leave them out of this discussion. This is because the trends for weapons are stagnant in maintaining a slight, upward trajectory since 2008, and there are no indications that the PCS policy shifts have impacted them in any way.
[32] LEDS data only includes charges related to arresting events that result in a jail booking process that requires fingerprinting. The person may be released or held in jail until their arraignment.
[33] The only other measure in these models was the squared term of time. This allowed us to model the curved shape of the trend when necessary.
[34] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of certain control measures like unemployment.
[35] We refer readers to the Appendix for a more detailed description of the measures used in these analyses.

- Consumer Price Index (CPI, a measure of inflation)
- Unemployment rate (lagged by 1 month)
- Number of burdened households (paying 30% or more of their income on rent/mortgage)
- Ratio measure of income inequality
- Rate of single-parent households
- Percent of the population with the highest educational attainment is less than high school
- Kilograms of heroin seized by law enforcement (3-mo moving average, lagged 1 month, HIDTA)
- Kilograms of meth seized by law enforcement (3-mo moving average, lagged 1 month, HIDTA)
- Kilograms of fentanyl seized by law enforcement (3-mo moving average, lagged 1 month, HIDTA)
- Average number of officers per 1,000 citizens
- Month (to account for seasonality)

Figure 2.3. Monthly Arresting Charges by Theft/Property, PCS, and Drug Manufacture/Sales/ Delivery, 2008 to 2024

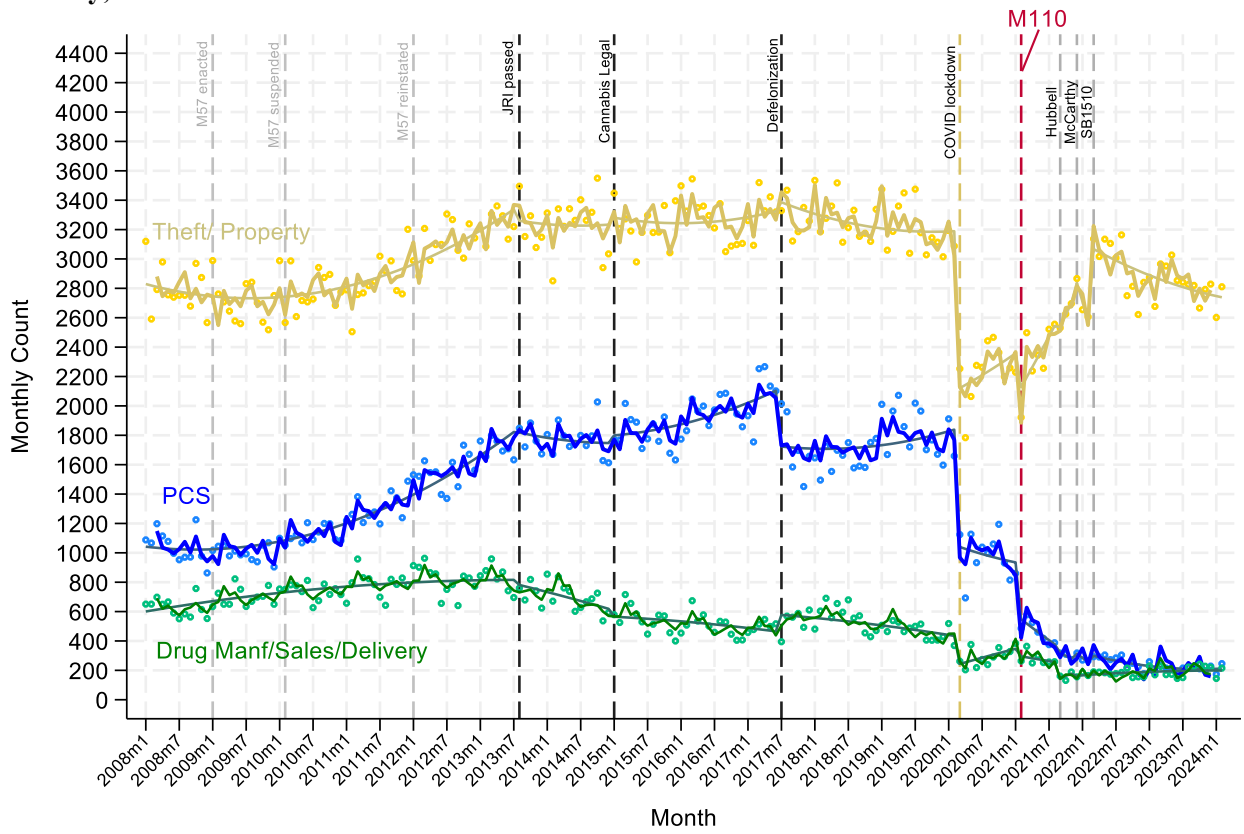


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and Appellate court cases (e.g., M110, *McCarthy*- motor vehicle warrant exception), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

The predicted lines shown in Figure 2.3 come from interrupted time-series (ITS) analyses that employ generalized linear model[36] using only statewide data. Our models show that there were multiple significant events affecting arresting charge trends for each of these three crime types, each trend responding to different shifts in policy and court decisions.

► The key conclusions from Figure 2.3 are the following:

1. PCS arrests were on a steady upward trajectory beginning in 2010 until defelonization in 2017. We are uncertain as to the specific cause of this steady increase in PCS arrests in the pre-defelonization era.
2. PCS arrests experienced significant decreases after three key events including defelonization, the COVID-19 lockdown, and decriminalization. The decreases slowed during each post-event period. This finding is at odds with officer perceptions that decriminalization was the key event reducing PCS arrests and police productivity. The impacts of defelonization and COVID-19 shutdown on the PCS arrest trend cannot be discounted.
3. The trends and associated analyses[37] that create Figure 2.3 suggest that arrests for property and drug manufacturing/sales/delivery crimes have independent trends compared to PCS arrests. For example, when PCS arrests were increasing pre-defelonization, drug manufacturing/sales/delivery arrests were declining. Property crime

[36] Generalized-least squares regression (Prais-Winsten and Cochrane-Orcutt models, AR=1) which improves accuracy when analyzing data over time by adjusting for autocorrelation (AR) where the immediate prior time point (AR1) influences the next. Methods like Cochrane-Orcutt and Prais-Winsten correct this issue, helping researchers better estimate the true effects of policies or events.

[37] To assess the relationship between the so-called "drug-nexus crimes" and PCS, we conducted a series of cross-correlations as well as time-series analyses on both the arresting charges trends as well as the arresting events. The analyses reveal that prior to the pandemic, which decreased nearly all crime detection equally, only weapon and property offenses had a similar trend and pattern to that of PCS arresting charges (r = .845 and .822 respectively). Following the passage of M110, the only offense that held a similar trend and pattern as PCS is drug manufacturing/sales/delivery (r = .776), the rest were either dissimilar (weapon offenses, r = .185) or opposite the pattern of PCS (e.g., DUII arresting charges, r = -.787).

arrests increased in a post-COVID-19 rebound, unlike PCS arrests that ultimately dramatically declined following M110. The independent trends of these arrests do not support a strong link between PCS, theft/property, and drug trafficking arresting charges.

4. The finding above is not to say that these crimes do not have a link, rather, it is an indication that law enforcement may have been able to adapt in some of their arrest practices despite M110.

PCS Arrests. For PCS arresting charges, the passage of defelonization was associated with a statistically significant initial decrease of 400 arresting charges ($p < .001$) and a sustained average decrease of 25 per month ($p < .001$) for most of the time until climbing slightly just prior to the COVID-19 lockdown. The COVID-19 lockdown was associated with a significant drop of 970 arresting charges of PCS ($p < .001$), but this drop slowed as restrictions were lifted. M110 was associated with an initial drop of 363 arresting charges ($p < .001$), and a sustained average decrease of about 36 per month ($p = .016$), until the trend slowed as the *Hubbell* decision was handed down. None of the two court decisions or SB1510 were associated with a change in PCS arresting charges.

Drug Trafficking Arrests. By and large, the same events had a much weaker association with changes in arresting charges for drug trafficking. While there was an average decrease of about 9 arresting charges per month ($p = .070$) associated with JRI, the slowed trend had a slight association with the legalization of cannabis to an average of 8 more per month ($p = .054$), although it was quite short-lived as shown in its slow downward slope toward defelonization.[38]

[38] Throughout this report we will discuss effect sizes and p values as we interpret our statistical models. In statistical analyses there are two ways to go about understanding the p values – the Neymon-Pearson approach and the Fischer approach. The Neymon-Pearson approach (also known as the null hypothesis test – i.e., assuming there is no relationship) relies on setting a pre-study alpha expectation of .05, meaning that if the statistical analyses yield a p-value that is lower than .05, then it is "statistically significant", and we gain confidence that the observed effect or relationship is not actually occurring by chance alone. If a p-value does not reach this threshold, then it is deemed "not significant" and is not interpreted or discussed. In contrast, the Fischer approach emphasizes that the p-value is

With the enactment of defelonization, arresting charges for drug trafficking had an initial increase of 108 (p = .002) and then stayed at a relatively consistent and slight downward trend until COVID-19. As with most trends, COVID-19 was associated with a drop of 275 arresting charges for drug trafficking (p = .031). This trend observed a quick rebound of 22 more arresting charges per month (p = .008) until M110. M110 was associated with a drop of 185 arresting charges for drug trafficking (p = .005), however, the measure did not have a sustained trend. The *Hubbell* decision was the only court case associated with a drop of 141 arresting charges for trafficking (p = .066) and remained at the level observed as of February 2024.

Theft/Property Arrests. Apart from COVID-19, arresting charges for theft/property offenses had a very different association with these same events. JRI was associated with a leveling-off of theft/property arresting charges by reducing the trend by an average of 21 per month (p = .051). The trend was rather stable until defelonization, which was associated with a downward trend, dropping an average of 23 arresting charges per month (p = .001). COVID-19 was associated with an initial drop of 635 arresting charges (p = .021), but this quickly rebounded by an average of 33 per month (p = .051) until M110. M110 was associated with an

a probability and should be interpreted with the effect size (Cumming, 2010; Cumming & Calin-Jageman, 2016). should be interpreted as the probability of obtaining a result at least as extreme as the one observed, assuming the null hypothesis is true. We opt for using the Fischer approach because there are many instances in which effect sizes are large enough to warrant a discussion as they have meaningful impact. For a hypothetical example, if there is an average effect that shows a decrease in the number of charges for PCS offenses per month by 84 charges, which cuts the charge count by 25%, but has a p-value of .165, then we argue that this is worth interpreting and discussing. Similarly, there may be some effects that are so small that they are meaningless even if they reach "statistical significance". For another hypothetical example, if the number of local control admissions for theft increases by 6 in a month due to a policy shift, and it has a p-value of .02, we would still interpret it but would need to discuss it in the context of the overall time series, highlighting that this may be statistically significant, but it is not very impactful. Using the Fischer approach gives us flexibility to interpret the impact of a given policy shift or event in its context. With all this said, for the sake of readership and comprehension, we provide the p-values along with all our interpreted coefficients, and we continue to use the term "statistical significance" when p-values reach .05. However, we also set one threshold of .30 beyond which we omit interpretation and discussion. This effectively means that under the assumption of the null hypothesis (there is no relationship), there is a 30% chance of seeing the observed effect (or something more extreme) purely due to random variation. If the null hypothesis is true (the drug policy truly has no effect), there is a 30% probability of observing the change in say charges or arrests (or a more extreme change) purely by chance.

initial drop of 291 arresting charges (p = .037), but this was short lived as the trend returned to its pre-M110 trajectory. Similarly, the *McCarthy* decision was associated with a brief overall average drop of 393 arresting charges (p = .055), SB1510 was associated with the first full return to pre-COVID-19 arresting charges for theft/property crimes with an initial increase of 631 (p = .004). The trend continued to slowly drop through the end of the dataset in February 2024.

There are a few key takeaway points from Figure 2.3 and its associated models. First and foremost, theft/property arresting charges in Oregon followed a trajectory and response to various policy shifts in a different pattern, independent of PCS. This finding runs counter to the perception that JRI, defelonization, and decriminalization contributed to law enforcement's decreased ability to investigate and arrest for theft/property offenses. Moreover, the relationship of theft/property arrests and M110 is weaker than many might realize. The perceived rise in property crime is closer associated with a rebound to pre-COVID-19 levels than a sustained impact of M110. The findings are consistent with Davis et al. (2023) who compared states with PCS decriminalization legislation to states without on arrests made 2019 – 2021 using National Incident-Based Reporting System (NIBRS) and state records. They found that compared to similar, statistically weighted states, Oregon and Washington had three and five fewer PCS arrest events per 100,000 in the population, respectively. Yet, Oregon and Washington did not have any significant change in non-drug or violent arrest rates (Davis et al., 2023). Importantly, without comparison states, in this project we cannot attribute causal links between the events examined and the trends. Rather, we can only speak about these trends and changes in terms of association within Oregon.

A final takeaway from Figure 2.3 is one of system adaptation. As observed with the short relationship between theft/property arrests and M110 as well as with the *McCarthy* decision, law

enforcement practices resumed the pre-event trajectory quite quickly. This suggests that in many cases, changes in policy are met with law enforcement adapting to their new working conditions. Such adaptations have long been a staple to consistently changing landscape of law and criminal justice procedure and indeed any public service position (see e.g., Lipsky, 1971, 1980). The question that remains is – *Has the change in arrests led to (1) fewer drug-possession defendants in the system and (2) any change in public safety?* We provide potential answers to these questions later in this final report.

County Level Variation in PCS Arrests

While examining state-level trends, it is equally important to understand how the effects of the policy shifts played out in each of the counties. The additional analyses and associated figures below show the different trends of PCS arresting charge rate per 100,000 people in the county population in each of the selected counties. Figures 2.4 and 2.5 are descriptive, they are not derived from any predictive models, while Figure 2.6 shows effects controlling for county differences. Regardless of the figure, the differing shapes of the trends demonstrate how each of the counties responded differently to policy shifts.

Figure 2.4. Monthly PCS Arresting Charge Rate per 100,000 in Population by Urban Select County, 2008 to 2024

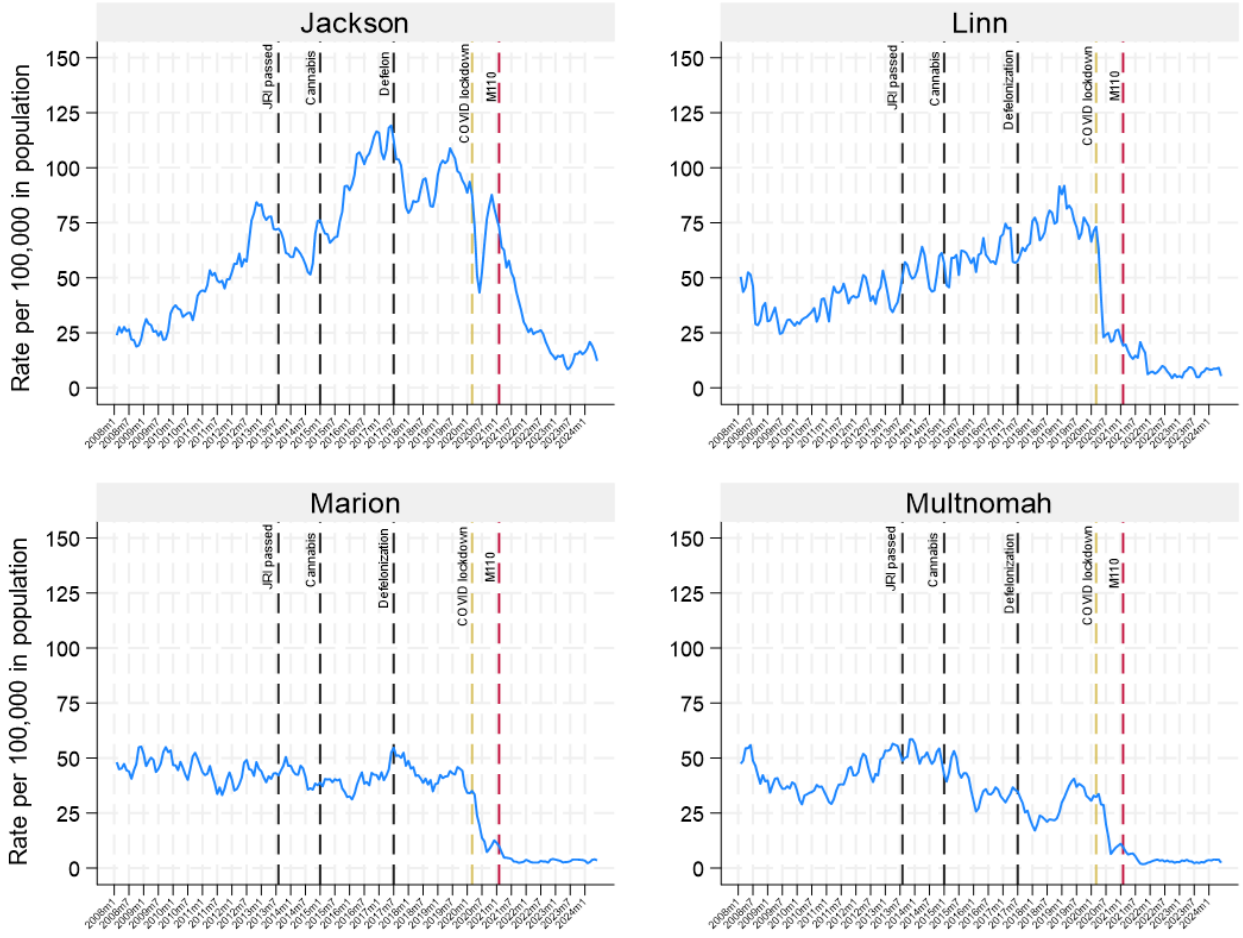


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon (e.g., M110) and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

One observation from Figure 2.4 is that the counties differ in their general shape largely because some counties saw a rise in PCS arrest charging rates prior to JRI (2013), while others did not – a change that was not specific to urban or rural settings. Another observation is that two of the larger urban counties (Multnomah and Marion) had the lowest rates of PCS arresting charges hovering around 50 per 100,000 across the trend timeframe. The PCS rate trend in Multnomah and Marion counties was generally more stable until defelonization in 2017 and did not experience the large spike in PCS rate pre-defelonization occurring in the state trend and other select counties. In contrast, Jackson and Linn counties exhibited increases during the same

time periods, lending credibility to the notion that each policy shift and event, played out differently across the counties.

Figure 2.5. Monthly PCS Arresting Charge Rate per 100,000 in Population by Rural Select County, 2008 to 2024

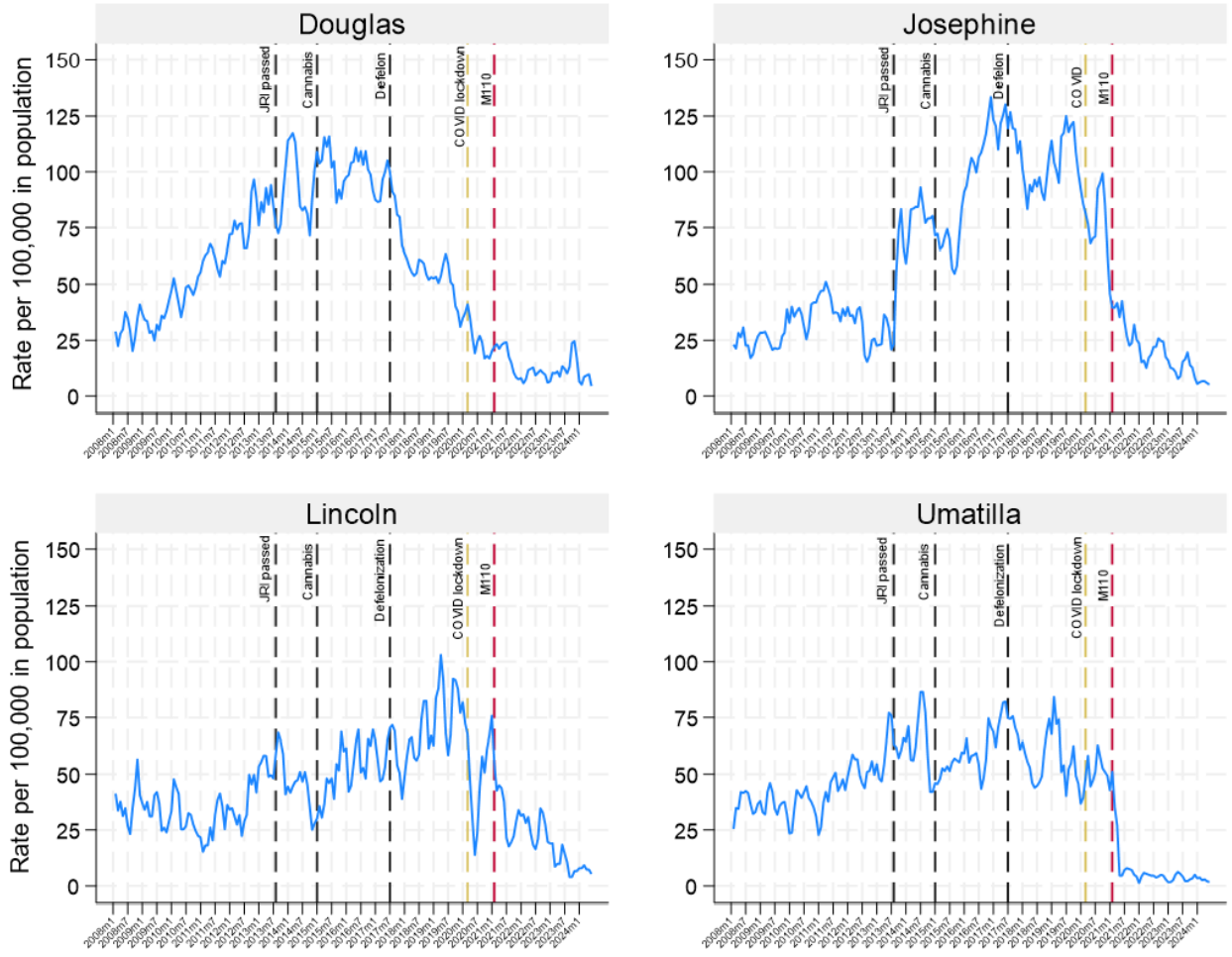


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon (e.g., M110) and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 2.5 shows the same descriptive trends for PCS arresting charge rates across our four rural select counties. An important aspect to note in Figure 2.5 is that while the volatility of rates (large jumps from high to low and back) over time is a product of smaller numbers in rural counties, the general trend should be the focus. Much like that observed in Figure 2.4 above, the rural counties show a likely differential effect of each policy shift, as PCS trends do not yield a

consistent shape, with Lincoln and Umatilla showing a far lower rate on average than Douglas and Josephine. These figures are descriptive and helpful in observing trends, but they do not tell us enough about the actual effects of these policy shifts.

To adjust for these differences, we conducted a second analysis in which we were able to account for the nested nature of the data within the respective counties. The model we used for this analysis was a hybrid mixed effects model testing three outcomes – arresting charge counts, arresting events, and arresting charge rates per 100,000 in the population.[39] When we account for the differences across the state, we find that the overall impact of defelonization, COVID-19, and M110 contextualized further as certain counties were responding to the shifts in different ways. Figure 2.6 shows a visualization of the marginal effects from our nested, mixed effects model. These are the differential effects of each policy shift and COVID-19 on each of the select counties in terms of arresting charge rates per 100,000 in the population.

We first explain the effects found in relation to arresting charge counts and arrest events. As detected at the state-level in the ITS analysis, defelonization was also found to be related to a significant decrease in PCS arrest events and arresting charges even when accounting for county differences. Defelonization was associated with a significant, average reduction of 16.7 arrest events (p = .002), and 21.3 arresting charges (p = .003) in the first month per county, followed by a plateaued, null effect in their subsequent trends. The effect of defelonization varies considerably across counties, with a standard deviation of 18.6 arrest events and 32.3 arresting

[39] Nested, maximum likelihood, hybrid mixed effects models (36 counties, n = 594 months) allow us to examine longitudinal data and derive intervention effects while adjusting for the nested nature of the data. Additionally, hybrid mixed effects models allow for us to estimate coefficients for random and fixed effects when they are significantly different, as well as test random slopes. For more, interested readers should see Firebaugh et al. (2013) and Twisk et al. (2019). For the first two models of arresting charge and arrest event monthly counts, the models were weighted using the proportion of the state population of which the county comprises. The third model of arresting charge rates per 100,000 in the population was not weighted.

charges. This variability indicates that some counties saw reductions much larger or smaller than the average, likely reflecting differing enforcement practices.

COVID-19 had a varying effect on PCS arrest events and arresting charges. While there were some differences associated with the lockdown severity (i.e., stay-at-home versus being allowed to go back to work if necessary), the overall effect of COVID-19 was an average county decrease of 54.6 arrest events ($p < .001$) and 68.4 arresting charges ($p < .001$) in the first month, with a rebound increase of 1.7 per month while any kind of restrictions were in place, per county. Only arrest events varied between 9 and 9.7 arrests on average across the counties during the highest restrictions in examining the random slopes.

Finally, M110 also had wide variation in its effects. On average, M110 was associated with a significant average county reduction of 28.9 arrest events ($p < .001$) and 36.4 arresting charges ($p < .001$) in the first month. These initial drops were followed by a reduction in the trend of 1.4 arrest events ($p = .035$) and 1.6 arresting charges ($p = .035$) per month, per county. This effect varies considerably across counties, with a standard deviation of 33.6 arrest events and 46.3 arresting charges. This variability indicates that some counties saw reductions much larger or smaller than the average, again likely reflecting differing enforcement practices.

To express the differences observed across counties in relation to the third outcome of arresting charge rates, we constructed Figure 2.6. Figure 2.6 shows the results of a hybrid, mixed effects model that tests how the interaction of the policy change period influences the change of arresting charge rates per 100,000 in the population among select counties. The plots show the average arresting charge rate (vertical, y-axis) during a given period examined (horizontal, x-axis), for select counties.

Figure 2.6. Estimated Effects of Each Policy Change and COVID-19 on PCS Arresting Charge Rates per 100,000 in Population by Select County, 2008 to 2024

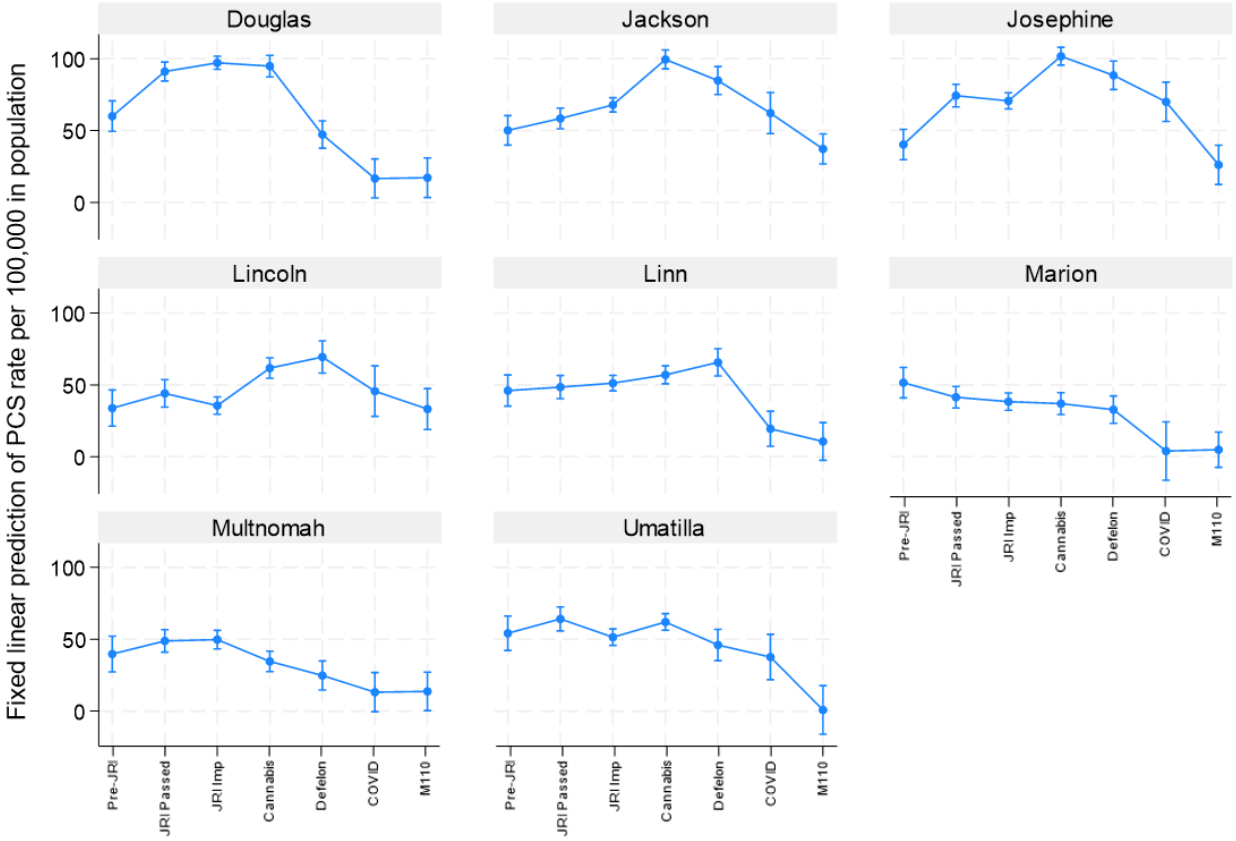


Figure Note: Y-Axis labels represent changes in drug policy in Oregon (e.g., M110) and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Although the figure shows that rates dropped across the select counties, the differences in degree to which the drop occurred, and when it occurred is depicted rather well. For example, defelonization appears to have had a rather large effect in Douglas County, but far less so in other rural counties. Unsurprisingly, but important to recognize, COVID-19 had far less of an impact in more rural areas such as Umatilla and Josephine Counties than it did in more densely populated, urban areas. Of the select counties, the only counties with arresting charge rates that were not impacted much by M110 were those counties that already saw a decrease in the rate due to COVID-19. The others appear to have dropped following M110, with exception to Lincoln and Jackson Counties which remain relatively elevated.

► The key conclusions from Figures 2.4 – 2.6 are the following:

1. All eight counties experienced declines in PCS arrest events and arresting charges after defelonization, COVID-19, and decriminalization. However, there were substantial county differences in the relative size differences and timing of PCS arrest events and arresting charges declines.
2. Given that these differences were still pronounced after controlling for within and between county differences, this suggests that the way counties enforced PCS-related policies were different. In other words, given an otherwise similar PCS offense, a defendant would likely experience a different process and outcome depending on the county in which the arrest occurs. While some of the discrepancies might be accounted for in unmeasured differences (e.g., average type and drug quantity in a PCS case), it is unlikely to change the overall differences between these counties and others.

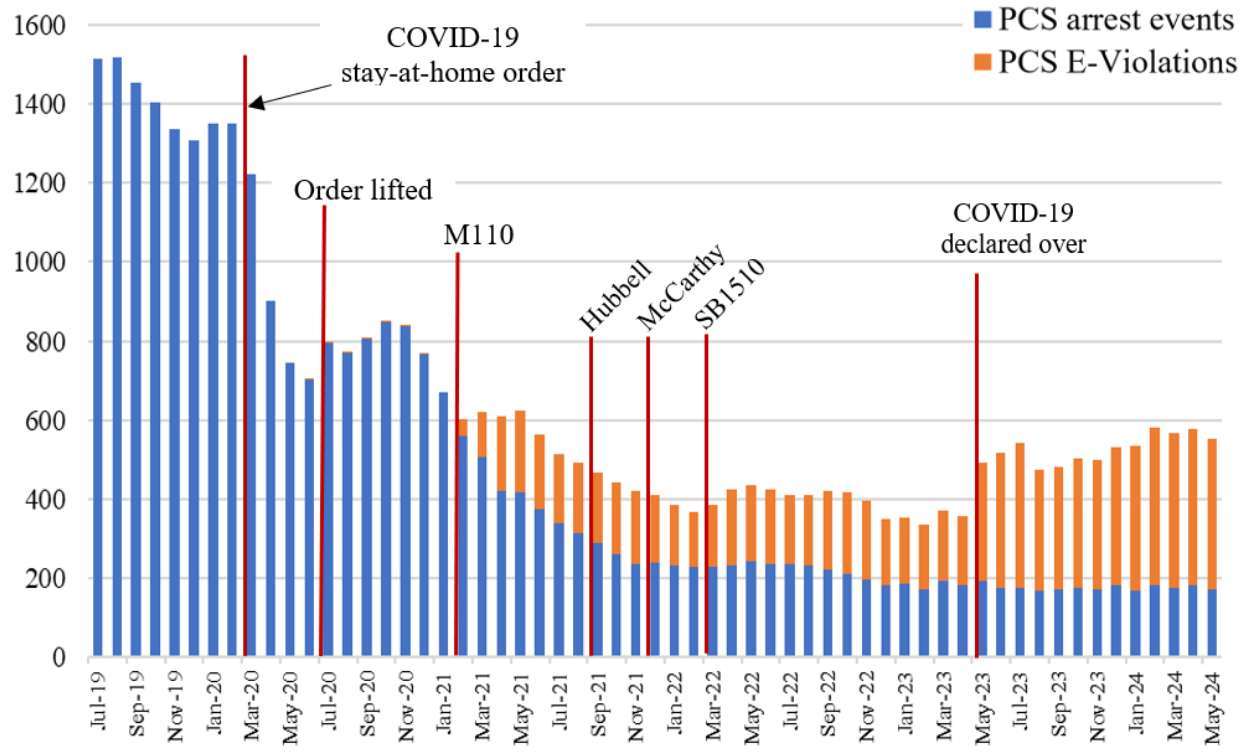
Measure 110 Citations (E-Violations)

A key theme discussed in our law enforcement interviews and multiple media stories[40] was a hesitancy among officers to issue citations (E-violations) for PCS under M110 decriminalization guidelines. In theory, officers could have given out as many citations for PCS as they previously made arrests for PCS when it was a misdemeanor. To examine this further, Figure 2.7 provides a coupling of data from the Oregon Judicial Department (PCS E-violations in orange) with that from the Law Enforcement Data System (PCS arrests in blue). Specifically, Figure 2.7 shows a 3-month moving average of PCS arrest events and E-violations (i.e., M110 citations). Events are shown here instead of arresting charges to emphasize interactions that ended in an arrest related to PCS. Additionally, it provides a more conservative line to which we

[40] See example: https://www.opb.org/article/2021/10/27/oregon-pioneering-drug-law-raises-more-questions-than-answers-early-months/.

can compare E-violations. In many ways we should expect to see the count of E-violations rivaling the same number of arresting events prior to M110, especially when considering violation counts could involve multiple per event and they are stacked on top of PCS arresting events occurring in the same month (i.e., arrest event + E-violation).[41]

Figure 2.7. Statewide 3-month Moving Average of PCS Arrest Events and E-Violations, 2019 to 2024



► The key conclusions from Figure 2.7 are the following:

1. The 3-month average of PCS arrests dramatically declined from around 1,300 arrests pre-COVID-19 and stabilized to around 700 arrests before M110. After M110, *PCS arrests plus E-violations* continued to decline to a 3-month average of around 400 arrests and E-violations. This decline corresponds with the law enforcement officer narrative that PCS citations were infrequently issued.

[41] We use arrest events, not arresting charges because it is unlikely that multiple violations were given out at the same arrest incident.

2. Starting in mid-2023, the 3-month average of PCS arrest plus E-violations increased to nearly 600, much closer to the pre-M110 arrest average, but significantly lower than the pre-COVID-19 average. Thus, something has occurred within the last year (summer 2023 – summer 2024) that led to an increase in issuance of M110 E-violations.

Prior to the COVID-19 stay-at-home order being lifted, the 3-month average of PCS arrests dropped from over 1,200 to 700. The 3-month average crested over 800 in October of 2020 before dropping again after M110. Once M110 became effective in February 2021, E-violations became a large proportion of what would otherwise be PCS arrests. While PCS arrests still occurred through May 2024, combined with the count of E-violations, the number began to stabilize from March of 2022 to March of 2023 with a 3-month average of 400 arrests and E-violations. Interestingly, E-violations experienced a dramatic rise beginning around May of 2023 through the end of our data collection in May 2024, while PCS arrests remained stable. PCS E-violations plus arrests reached a 3-month average of close to 600 by May of 2024.

It appears Oregon law enforcement started to issue E-violations more frequently during this past year (summer 2023 – summer 2024). One possible explanation is the consistency of media coverage on the lack of citation issuance and compliance, coupled with growing concerns over fentanyl use and overdose deaths. Subsequently, law enforcement may have felt increased local and internal pressures to issue more E-violations in recent months. The increase in E-violations is also another illustration of how criminal justice institutions adapt to policy changes and challenges and begin to return to prior levels of output. Despite recent increases in E-violation issuance, the monthly average of PCS violations and arrests since M110 is nowhere near the pre-COVID-19 timeframe, which was approximately double the current output.

Key Conclusions

In conclusion, we review these findings in relation to our initial research questions:

Research Question 1 - How have PCS changes impacted law enforcement practices related to drug crimes, among others?

Research Question 2 - How have PCS changes impacted law enforcement perceptions and decision-making related to drug crimes, among others?

Defelonization of PCS to a misdemeanor crime for low-level drug quantities first occurred in Oregon seven years ago in 2017 and lasted over three years until M110 decriminalized PCS in 2021. Based on our law enforcement interviews, officers did not express any concerns over defelonization, and some believed a misdemeanor is a more appropriate legal classification for PCS than a felony crime. After defelonization, there was an immediate reduction in PCS arrests, but a new stable baseline trend was quickly re-established which was slightly increasing until COVID-19. In fact, the new baseline 3-month average for PCS arrests *after defelonization was about 700 more PCS arrests per month than during the two-year period of 2008 – 2010*. Hence, we conclude that Oregon's defelonization of PCS only briefly changed law enforcement practices as measured by arresting charges and arrest events and then stabilized. Law enforcement quickly adapted to defelonization and reestablished a lower baseline of PCS arrests, but a baseline that was nowhere near the lowest in the historical trend and appeared to be increasing just prior to COVID-19.

The answer to these research questions for Oregon's period of decriminalization is a little more complex. First, law enforcement officers could no longer make arrests for low-level drug possession so there was an automatic reduction in official arrests. Second, in our interviews, law enforcement officers expressed a strong negative opinion about decriminalization creating gray

areas around probable cause and likely leading to less proactive law enforcement. Third, in our interviews, law enforcement officers also noted that they were generally disinterested in giving out E-violations for PCS in lieu of the arrests they perhaps would have made prior, because they did not see any effectiveness in citations. As PCS arrests declined after decriminalization, officers perceived themselves as being less proactive.

When looking at the quantitative data trends in police proactivity, a different more nuanced story emerges. Historically, Oregon PCS arrest trends show large upward and downward swings and periods of stabilization, and those trends appeared a little more volatile in rural counties. There was an unexplained doubling of PCS arrests from about 1,000 to 2,000 between 2010 and 2017, and significant drops after defelonization and COVID-19. Police stop and search trends since decriminalization have shown periods of increases and decreases, which suggests no clear impact from decriminalization on that measure of police proactivity. Finally, law enforcement started to increase their use of E-violations in the last year (2023 – 2024) almost reaching pre-M110 PCS arrest levels. The long-term quantitative trends of police activity do not neatly fit the perception that decriminalization alone has negatively impacted law enforcement.

A clear goal of M110 was to increase opportunities for those with a substance use disorder to be diagnosed and connected to treatment.[42] In our law enforcement interviews, several officers saw their role as a potential conduit for connecting persons in need to treatment. Officers believed that role was being diminished by decriminalization. Officers relayed anecdotes about specific individuals who are now sober due to treatment resulting from traditional law enforcement interventions pre-decriminalization. Those working in the criminal justice system and who research evidence-based supervision practices can attest that drug courts

[42] https://sos.oregon.gov/audits/Documents/2023-03.pdf.

can be a successful avenue for recovery, recidivism reduction (see Gibbs et al., 2019; Lowencamp et al., 2005; Wilson et al., 2006), and less prison use (Sevigny et al., 2013). The perceived negative side effect of decriminalization was that there would be fewer points of contact with the public and, more importantly in the eyes of officers, less legal pressure perhaps necessary to compel persons into treatment programs like drug courts (Henderson et al., 2023). The criminal justice system, beginning with police intervention, represents one type of public contact and pathway for those with substance use disorder to find treatment. From our law enforcement interviews it was clear that E-violations were perceived as an ineffective approach for linking the public to treatment opportunities. At the same time, officers often expressed a willingness to assist individuals to get the help they needed, without issuing a citation.

> *I will spend time with no criminal enforcement…just say, 'Do you want to get sober? Like I can see what's going on, let's be honest with each other, I'm not looking to write you $100 citation, but I am willing to help make phone calls and see if I can help you get off the street.'* – Rural, Sheriff's Office

As our research project unfolded, bigger questions arose that we did not set out to directly answer, but can be vital for future research – *What role should police and criminal justice play in addressing substance use disorder*? *Is a criminal arrest for possession necessary for increasing treatment opportunities? Are there other approaches and contact points with the population in need that are just as effective?* We address these topics broadly in our Year 2 Interim Report (Henderson et al., 2024) and in the final chapter of this report, we explore these research questions and future research needs in more detail.

We do not wish to discredit the professional opinions that Oregon law enforcement shared with us about the ineffectiveness of decriminalization. Most importantly, the officers we interviewed expressed their main goals of helping those suffering from substance use disorder and creating safer communities. Their perception was that M110, appellate court cases, and

legislative acts, have taken away some of their tools. The critical question is – *Can researchers assist the criminal justice, public health, political, and resident communities to identify and reach consensus on the most effective tools and partner roles necessary to maximize benefits while minimizing risks?* Along these lines, it is important to recognize that the implementation of M110 did not occur in a vacuum (a topic we take up in the final chapter of this report). Several observers of M110 have been keen to point out that M110 was surrounded by multiple other obstacles and struggles impacting Oregon communities, criminal justice institutions, and those with substance use disorder (see Zoorob et al., 2024). We believe the quantitative trends represent a more complex and nuanced period in history that is not necessarily the sole result of a decriminalization effect.

Results & Findings- Prosecution

The goal of this chapter is to examine the impacts of drug legislation changes related to possession of controlled substances (PCS) on prosecution in Oregon. Our initial research questions are:

1. How have PCS changes impacted *prosecutorial charging practices* related to drug crimes, among others?
    a. Analysis of officer referrals (arresting charge), charges filed, and type of charge
2. How have PCS changes impacted *prosecutorial charging decisions and use of diversion programs* within eight select counties?
    a. Analysis of charging trends (e.g., severity of charge), perceptions of diversion programs and case decision-making (qualitative interviews)

To address these questions, both quantitative and qualitative analyses were performed. Relying on our statewide aggregate data, we examine variations in charges (e.g., felony vs. misdemeanor vs. violation), congruency with PCS arrests, and co-occurring charges often associated with a PCS charge. In Year 2 of the grant, we interviewed prosecutors and court personnel in select counties to better understand the impacts of successive PCS law changes on referrals to the District Attorney's office, charging practices and/or policies, the courts, and diversion programs and treatment courts. Key themes were identified from these interviews that are expanded on below. As this chapter will reveal, drug policy shifts had immediate impacts on charging practices across the state, although the degree of impact varied across the counties.

Quantitative & Qualitative Methodologies

Quantitative Data

We used quantitative data to examine the potential change in key prosecutorial "practices" that could be influenced by changes in PCS laws. These practices represent charge decision-making related to drug offenses and include charges filed (by the District Attorney's Office) for PCS and related crimes.

Arrest Data: Like the law enforcement analyses, arrest analyses are based on LEDS data which includes information on all arrests across the state of Oregon by county from January 2008 to April 2024.

Charge Data: We partnered with the Oregon Judicial Department (OJD) to obtain Oregon charge information on all charges filed with the Oregon circuit courts from January 1, 2008, through April 30, 2024. The OJD Court information through Odyssey that we received includes information on all charges filed (e.g., charge level) and disposition outcomes (e.g., conviction, dismissal).

Prosecutor & Court Personnel Interviews

The Portland State University Institutional Review Board approved all materials and procedures involved in the collection of qualitative data. We recruited practitioners from District Attorney's Offices and the courts from the eight select counties: Douglas, Jackson, Josephine, Lincoln, Linn, Marion, Multnomah, and Umatilla. An initial email solicitation and one to two follow-up requests were sent out in April – August 2023. Importantly, interviews were semi-structured, and not all participants were asked the same questions (e.g., questions about charging practices were not asked to treatment court administrative staff). All participants were emailed the Informed Consent document and encouraged to ask any questions they had about the study.

To maintain anonymity, the signature portion of the Consent form was omitted, and scheduling the interview was indicative of consent to participate in the study. Additionally, all participants were asked at the beginning of the discussion for verbal consent to be recorded. With the individuals' permission, discussions were recorded for the purpose of transcription. Interviews averaged 54.5 minutes (min = 28 min, max = 71 min). Following transcription and de-identification, all recordings were destroyed.

Our qualitative data represent 14 interviews/focus group discussions with District Attorneys/prosecutors and court personnel (e.g., judges, specialty court administrators) from one federal agency and seven different counties (four categorized as "urban" and three categorized as "rural"). Of the roughly 26 email solicitations sent out, 14 interviews/focus groups were conducted (roughly 54% response rate). Data were split into responses from prosecutors and responses from court personnel and then examined for general themes within. Themes were discussed and agreed upon by the research team. Importantly, much of these data represent practitioners' perceptions and experiences, and might not be representative of all individuals. Quotes have been lightly edited to maintain anonymity, and for length and readability. Qualitative information from District Attorneys/prosecutors is included in this chapter, and information from court personnel interviews is included in the 'Courts and Sentencing' chapter.

Quantitative Results

We begin this chapter with a statewide, global examination of PCS charges and charges that "co-occur" (i.e., charges that are often filed with a PCS offenses). To start, Table 3.1 highlights the number of PCS charges, defendants with a PCS charge, and the number of charges per defendant over the study period. This descriptive look addresses the question of how many defendants are "justice-involved" because of a PCS charge, as well as if those defendants have

multiple PCS charges in a case. Table 3.1 depicts the measures of monthly central tendency (mean, standard deviation [SD], and range) of statewide PCS charges and defendants for each period we examined. "Defendants" represents the number of unique defendants charged, while "charges" represents the total number of charges during that period. As this table demonstrates, there are more charges than defendants because one defendant can have multiple PCS charges. "Average Charge/Defendant Differential ("Avg Charge/Def. Diff") breaks down the average number of PCS charges per defendant.

Table 3.1. Average PCS Charges and Defendants Across Intervention Periods, 2008 to 2024

Period	Count type	Monthly Central Tendency in Period			Avg Charge/ Def. Diff
		Mean [SD]	Min	Max	
Pre-JRI (2008 – 2013)	Charges	1,325.0 [190.5]	1,028	1,721	1.2
	Defendants	1,090.4 [134.3]	870	1,347	
JRI (2013 – 2017)	Charges	1,527.0 [128.8]	1,302	1,841	1.3
	Defendants	1,221.6 [93.3]	1,037	1,443	
Defelon (2017 – 2020)	Charges	1,487.9 [141.8]	1,259	1,929	1.2
	Defendants	1,202.7 [105.8]	1,016	1,552	
COVID-19 (2020 – 2021)	Charges	1,009.0 [154.7]	815	1,254	1.2
	Defendants	823.7 [129.8]	667	1,036	
M110 (2021 – 2024)	Charges	482.9 [106.7]	341	704	1.2
	Defendants	388.9 [67.6]	293	573	

Table 3.1 suggests steady increases in statewide PCS charges/defendants pre-defelonization and the sharper decline post-defelonization. Statewide, the number of PCS charges and defendants charged with a PCS offense increased leading up to defelonization, then began to decrease, and declined at a rapid rate following the COVID-19 lockdown. Post-M110, the number of PCS charges and defendants charged with a PCS offense were roughly one-third of what it was prior to defelonization. Despite this variation in charges, there is a steady average ratio of about 1.2 PCS charges for every PCS defendant. Table 3.1 suggests some relationship between drug policy shifts and the number of PCS charges and PCS defendants (a topic more thoroughly examined below in Figure 3.3).

Table 3.2 shows the most common charges that co-occur with a PCS charge (e.g., theft) across the different time periods. In referencing Table 3.2, within each column, the percent of PCS charges with a given co-occurring charge is noted, as well as the ranking (e.g., during the pre-JRI period, drug manufacturing/delivery/sale was the most common co-occurring charge).

Table 3.2. Top Co-Occurring Charges with a PCS Charge, 2008 to 2024

	Pre-JRI (2008 – 2013)	JRI (2013 – 2017)	Defelon (2017 – 2020)	COVID-19 (2020 – 2021)	M110 (2021 – 2024)
Drug/Manf/Del/ Sale	14.7% (1st)	10.5% (1st)	11.1% (1st)	11.2% (1st)	12.1% (2nd)
Marijuana Violation	13.2% (2nd)	4.7% (3rd)	3.3% (3rd)	-	-
Theft	6.7% (3rd)	7.3% (2nd)	6.8% (2nd)	7.5% (2nd)	5.1% (3rd)
Reckless Endanger	3.8% (4th)	3.0% (4th)	-	-	-
Weapon	1.7% (5th)	2.4% (5th)	2.8% (4th)	3.7% (4th)	4.2% (4th)
Failure to Appear	-	-	-	3.8% (3rd)	-
PCS Violation	-	-	-	-	26.2% (1st)
Theft- UUV	-	-	2.7% (5th)	3.4% (5th)	-
Attempt Conspiracy	-	-	-	-	3.6% (5th)

Note. "-" not recorded in top 5 charges.

Between January 2008 and April 2024, drug manufacturing/delivery/sale, theft, and weapon offenses were the top charges that co-occurred with PCS charges. For example, during the pre-JRI timeframe (2013), 14.7% of PCS charges also had a Drug/Manufacturing/Sale charge, which remained the number one co-occurring charge with PCS through COVID-19, although at a slightly smaller percentage around 11%. Across time periods, roughly 5.1% – 7.5% of PCS charges also included a theft charge. With the COVID-19 pandemic, marijuana violations dropped down and was replaced by failure to appear for a court hearing (FTA) charge. The increase in FTA charges during this period is likely a function of modifications in court operating procedures and the pandemic because FTA charges were not common prior to this

period. Since M110,[43] PCS violations have been the most common co-occurring charge with a PCS charge, signaling that defendants who are charged with a PCS criminal charge have mixed-levels of quantities of drugs at the time of arrest (e.g., user-level amount of cocaine = violation, above user-level amount of heroin = PCS charge). Violations for marijuana[44], while commonly associated with PCS charges from 2008 – 2020, were not as frequently issued post-COVID-19. Tables 3.1 and 3.2 provide descriptive information on PCS charges, defendants charged with a PCS offense, and the typical charges that "co-occur", but such examination provides little understanding of the impacts of PCS drug policy shifts on charging practices. We explore this in greater detail in the subsequent sections.

Congruency Between Law Enforcement Arrests & Prosecutorial Charging

One of the first questions to explore to better understand how PCS changes have impacted prosecutorial charging practices is: *How have successive PCS changes impacted the number of cases referred (i.e., arresting charges) for prosecution by police?* We begin with a graph depicting all arresting charges, arresting events, charges filed, and defendants arrested in the state from January 2008 – April 2024. Importantly, these are all charges, not specifically PCS-related, which will be described further below. The graph and examination of all charges in included to highlight trends in law enforcement arrests, prosecution charges, and congruency between the two to establish a baseline for these practices across the state. Figure 3.1 couples arresting information from LEDS and charging information from the OJD. The figure depicts the 3-month moving count of arresting charges (blue line), arresting events, (red line), charges filed (green line), and defendants (orange line). "Arresting charges" is an important distinction

[43] Measure 110 requires all Class E violations to be filed in circuit courts but prohibits penalties for failing to appear in court.
[44] See Appendix Figure A for a discussion of cannabis and PCS violations and citations.

because it counts the number of times a given charge (e.g., PCS) was issued in an arrest event because subjects can be arrested for more than one offense. "Arresting events" represent the single, arrest event (which could include multiple charges). "Charges filed" represent the charges filed by the District Attorney's Office and "Defendants" represent the count of defendants charged.

Figure 3.1. Monthly Arrest-Charge and Filed-Charge Trends, 2008 to 2024

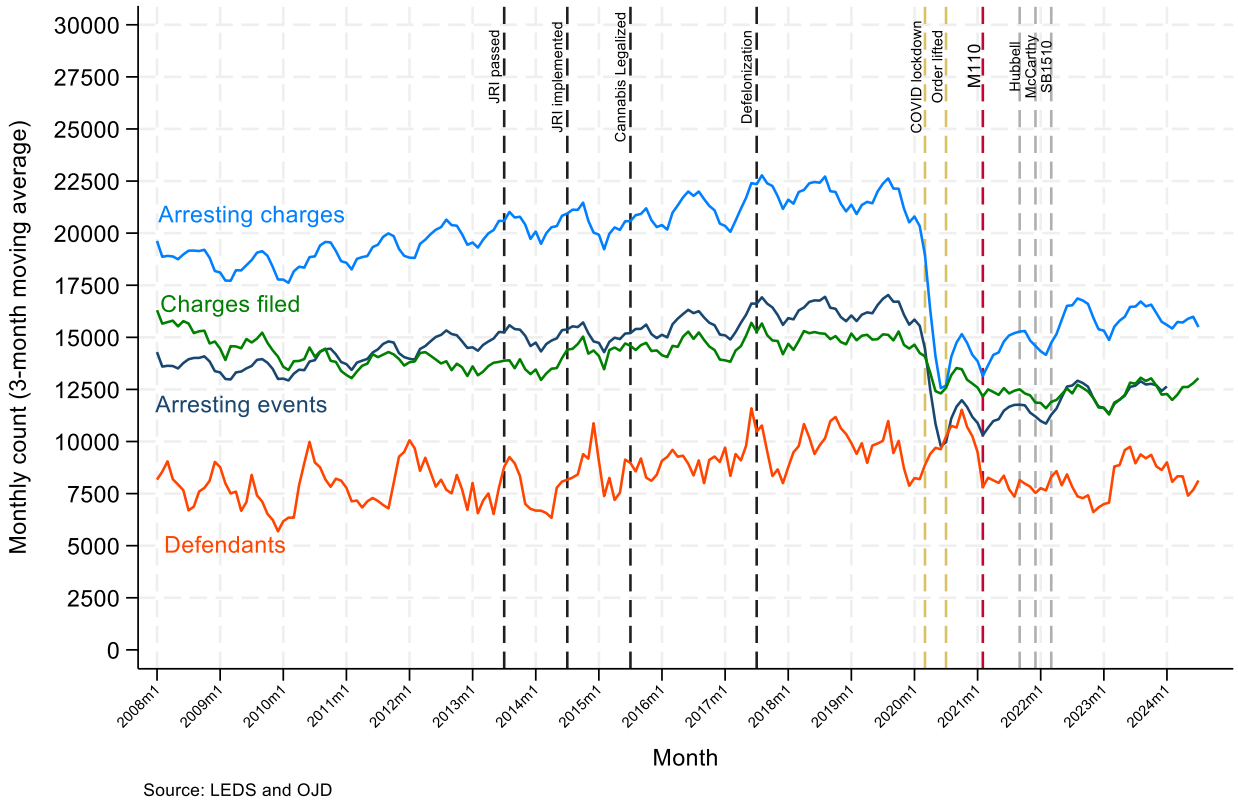


Figure Note. Dashed vertical lines represent changes in drug policy in Oregon (i.e., Justice Reinvestment, Marijuana Legalization, Defelonization, and M110), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

► The key conclusions from Figure 3.1 are the following:

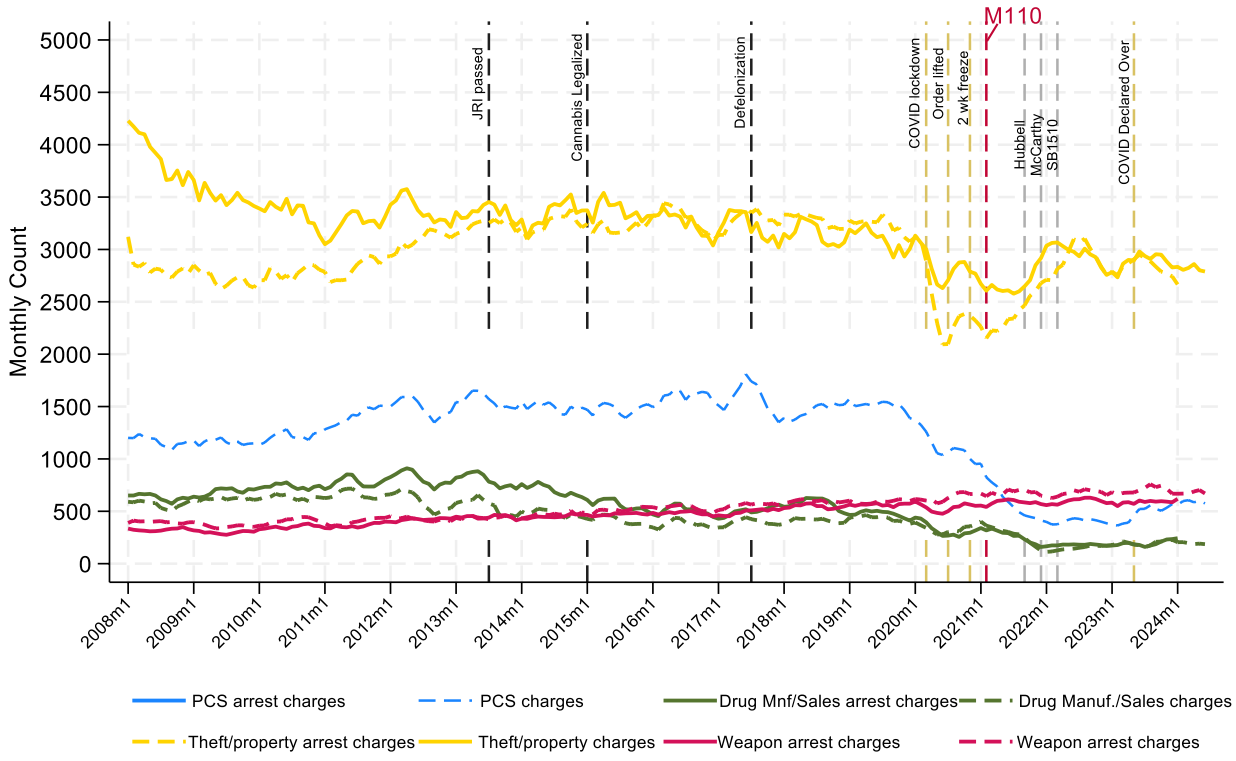
1. Arresting charges, arresting events, and charges filed remained relatively stable prior to the COVID-19 lockdown, and then all dropped precipitously. Arresting charges and events began to rebound in the following months, although at a lower level than pre-COVID-19. Arresting charges remained somewhat stable at the lower level post-COVID-

19. The number of defendants associated with charges has remained relatively stable over time.

2. There is a lack of congruence between arresting charges (law enforcement) and charges filed (District Attorney's office). Law enforcement makes a higher volume of arrests than prosecutors' file charges (i.e., prosecutors are not filing all the charges that law enforcement make an arrest for). It is not until the COVID-19 lockdown when arresting charges and charges filed align, at a record low.

An aggregated, descriptive assessment of the trends reveals that JRI and PCS defelonization had little effect on all arresting charges and charges filed. This suggests that if there is an impact of these two policies then it is likely to be only detectable at either a lower level of count (e.g., county differences) or within certain crime types (e.g., PCS or weapon offenses). On the surface, it appears that the only event that impacted these trends is the COVID-19 pandemic. The apparent drop in each of the trends somewhat rebounds in later months and years, but this seems less so with charges filed. The number of defendants in the system appears the least impacted, but this is likely because it includes all charge types and charge levels (e.g., felony and misdemeanor). Again, these are only descriptive trends that must be thoroughly examined in more robust statistical models, and differentiated by charge type, which we examine below.

Figure 3.2. Monthly Arresting Charges and Filed Charges by Type, 2008 to 2024



Source: Law Enforcement Data System

Note. Dashed vertical lines represent changes in drug policy in Oregon (i.e., Justice Reinvestment, Marijuana Legalization, Defelonization, and M110), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 3.2 depicts the 3-month moving count of PCS arrest charges (solid blue line) and charges filed (dashed blue line), theft/property arrest charges (solid yellow line) and charges filed (dashed yellow line), drug manufacturing/sale/delivery arrest charges (solid green line) and charges filed (dashed green line), and weapon arrest charges (solid red line) and charges filed (dashed red line).

► The key conclusions from Figure 3.2 are the following:

1. PCS arrests and charges filed increased substantially from 2011 to 2017. PCS arrests and charges filed declined after defelonization but began to rebound until the COVID-19 lockdown. The impact of defelonization on PCS arrests and charges filed appears short-lived.

2. Both COVID-19 and M110 had clear impacts on PCS arrests and charges filed leading to precipitous declines.
3. Arrests and charges filed of other crimes often associated with PCS have their own independent patterns. Property arrests and charges filed appear impacted by the COVID-19 lockdown but then begin to rebound towards pre-COVID-19 levels. Drug manufacturing/sale/delivery arrests and charges filed have been steadily declining since pre-JRI. Additionally, weapon-related arrests and charges filed have been steady, slightly increasing, over the last couple decades.
4. There is congruence between arresting charges (law enforcement) and charges filed (District Attorney's office) for property offenses, drug manufacturing/sale/delivery, and weapons offenses pre-JRI and during the COVID-19 lockdown period. But prior to JRI, there was stark incongruence between arrests and charges filed for property offenses. There is a slight incongruence for PCS arrests and charges filed that appears to minimize with the COVID-19 pandemic.

Unlike the overall trends shown in the Figure 3.1, Figure 3.2 indicates different trends depending on the type of crime examined (e.g., theft/property charges). While we cannot conclude association, we can see that there appears to be four independent trends that may be impacted differently by various policy shifts and events.

Impact of PCS Changes on Charging Practices in Oregon

The above tables and figures provide a descriptive depiction of the trends in PCS-related charging practices over the last 15+ years. In this section, we explore whether there are statistically significant shifts in charging practices related to the PCS policy changes in Oregon,

addressing a key research question of this project – *How have PCS changes impacted prosecutorial charging practices related to drug crimes?*

Figure 3.3. Estimated Effects of Policy Shifts on PCS Charge Type and Defendants, 2008 to 2024

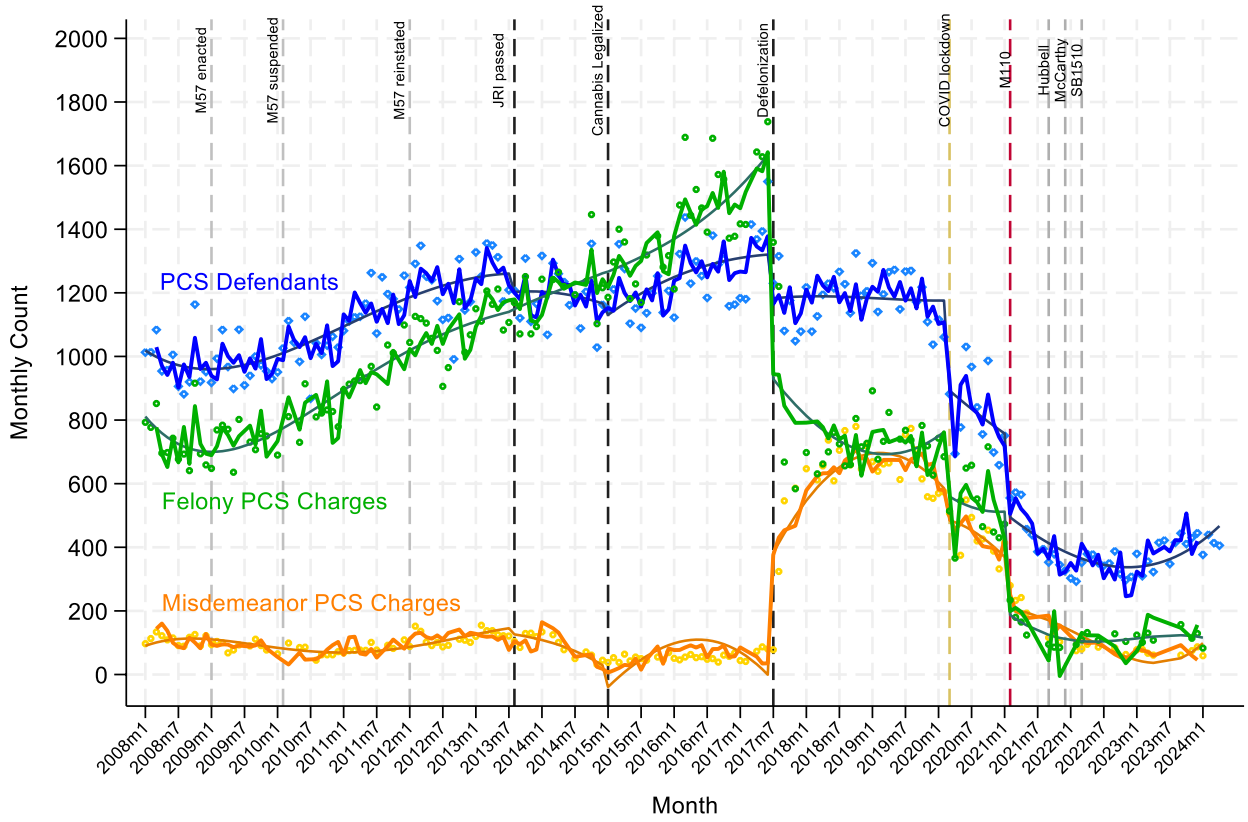


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and Appellate court cases (e.g., M110, *McCarthy*- motor vehicle warrant exception), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 3.3 shows the trends of PCS felony and misdemeanor charges filed as well as PCS defendants from 2008 through the first few months of 2024. Like the graph in the 'Law Enforcement' chapter depicting effect estimates for arresting charges, this graph consists of the actual/observed monthly counts (scatter points), a smooth trend line that is the predicted value

without controlling for any other measure,[45] and a spiked line that is the predicted value[46] including the following controls[47]:

- COVID-19 restrictions (from March 2020 through May 2023)
- Consumer Price Index (CPI, a measure of inflation)
- Unemployment rate (lagged by 1 month)
- Percent of disconnected youth (between 16 and 19, not enrolled in school and unemployed or not in the labor force)
- Number of burdened households (paying 30% or more of their income on rent/mortgage)
- Percent of population below the poverty line
- Ratio measure of income inequality
- Rate of single-parent households
- Percent of the population with the highest educational attainment is less than high school
- Kilograms of heroin seized by law enforcement (3-mo moving average, lagged 1 month)
- Kilograms of meth seized by law enforcement (3-mo moving average, lagged 1 month)
- Kilograms of fentanyl seized by law enforcement (3-mo moving average, lagged 1 month)
- Average number of officers per 1,000 citizens
- Month (to account for seasonality)

The predicted lines shown in the figure come from an interrupted time-series (ITS) analysis that employs a generalized linear model using only statewide data. Our models show that there were multiple significant events related to charge trends for each of these three outcomes, each trend responding to different shifts in policy and court decisions.

Felony Charges. Our analyses suggest that three events were significantly associated with changes in felony PCS charges filed (green). Although there was a slight decrease following JRI, this was not near reaching statistical significance until defelonization. The first significant event was defelonization. Defelonization was associated with an immediate decrease of 717 charges ($p < .001$), and a sustained average decrease of about 44 charges per month ($p = .007$). As the trend began to level out, it was impacted by COVID-19, the second significant event. In

[45] The only other measure in these models was the squared or cubed term of time. This allowed us to model the curved shape of the trend when necessary.
[46] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of some control measures such as unemployment rate.
[47] We refer readers to the Appendix for a more detailed description of the measures used in these analyses.

the month that COVID-19 restrictions began, there was a drop of 458 felony PCS charges filed (p = .058), but that quickly began to flatten out as the year went on. Finally, the implementation of M110 was associated with a drop in felony PCS charges of 289 (p = .006). However, the trend again plateaued for the rest of the observed period.

Misdemeanor Charges. Misdemeanor charges filed followed a different trajectory as the policies were enacted. Like felony charges, there was just a slight decrease following JRI that also did not come close to reaching statistical significance. Interestingly, in the month cannabis became legal there was associated with a short-lived drop of 146 charges (p = .008), which quickly gave way to a slow, steady climb of 30 more misdemeanor PCS charges per month (p = .006). Like the felony trends, our analyses suggest that the enactment of defelonization was associated with a large change in misdemeanor trends. Defelonization was associated with an immediate increase of 390 misdemeanors filed (p < .001), followed by a steady rise of 33 more misdemeanor charges a month (p < .001) until plateauing by late 2018. In the month that COVID-19 restrictions began, there was an immediate drop in misdemeanor charges by 216 (p = .110), then a slight decline until M110 was implemented. M110 was associated with an immediate decrease of 154 misdemeanor PCS charges (p = .010), followed by a plateaued trend through early 2024.

PCS Defendants. While defelonization was associated with a drop in the number of defendants by 214 in the first month (p = .002), it was from a gradual average rise of charges following the passage of cannabis legalization, for which the legalization of cannabis was unassociated (p = .321). Defelonization was weakly associated with a slight average decline of 13 defendants per month (p = .255), but by and large, the trend remained rather flat. COVID-19 was associated with a significant drop of 417 defendants (p = .023), which was followed by a

slowed average decrease of 28 per month (p = .184). M110 was then associated with an additional decrease of 120 defendants in the first month of implementation (p = .157), followed by an unassociated average decrease of 12 defendants per month (p = .510).

Overall, these analyses suggest that the successive policy shifts had rather specific impacts on charging trends. JRI and cannabis legalization had no detected effect on charges filed at the state-level. This is likely because JRI had little to do with charging practices (rather, primarily sentence outcomes) and cannabis possession never comprised much of the criminal charging practices during the study period. Only defelonization and M110 shifts had a large impact on how prosecutors charged PCS offenses. However, it is important to point out that despite the impacts of defelonization on charging (decrease in felonies and increase in misdemeanors), there was far less of an impact on the overall number of defendants implicated in the system. It was not until COVID-19 that we see an actual drop in the number of defendants. This drop in PCS defendants then closely followed the charging trends following M110, suggesting that M110 had a consistent suppression effect on charging and defendants implicated.

To express the differences observed across counties in relation to the outcome of charges filed, we constructed Figure 3.4. Figure 3.4 shows the results of a hybrid, mixed effects model that tests how the interaction of the policy change period influences the change of charges filed rates per PCS arresting charge. That is, for every PCS arresting charge (i.e., charges referred to the DA's office from arrests made by law enforcement), on average during a given period, what proportion of those were actually filed by the District Attorney's Office.[48] The plots show the average charge filed rate (vertical, y-axis) during a given time period examined (horizontal, x-axis), for each of our target counties. A value of one indicates that for every PCS arresting

[48] Importantly, this is not a case-level analysis, but rather a proportion of monthly aggregation of charges.

charge referred to the DA's office via a finger-printed arrest, there is one PCS charge filed. A rate less than one suggests that more charges are being dismissed than referred, and a rate greater than one suggests that more PCS charges are being filed that what are referred to the DA's office.

Figure 3.4. Estimated Effects of Each Policy Change and COVID-19 on PCS Charge Rates per 100 PCS Arresting Charges by Select County, 2008 to 2024

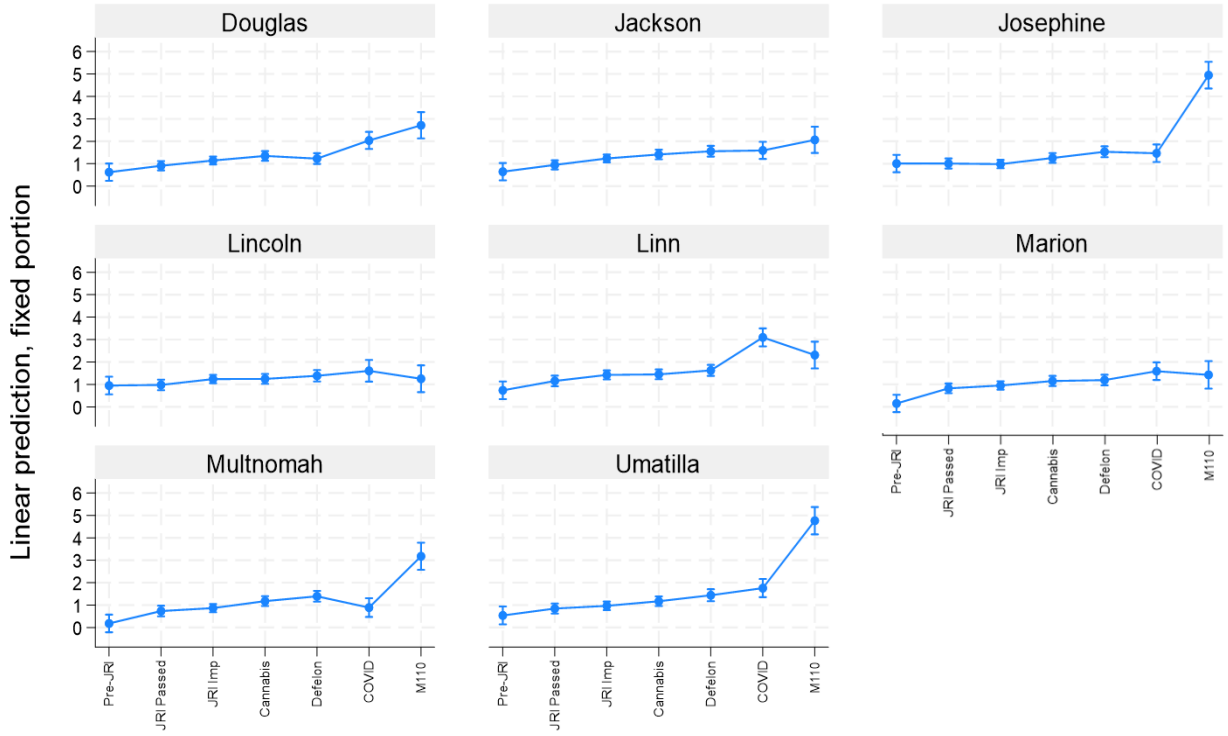


Figure Note: Y-Axis labels represent changes in drug policy in Oregon (e.g., M110) and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 3.4 shows a visualization of the differential effects of each policy shift and COVID-19 on each of our target counties in terms of the PCS charge rates. In contrast to the arresting charge rates (i.e., arresting charges made by law enforcement per population), there is less variation across the counties in terms of charge rates (i.e., charges filed per arrest). The figure shows that charge rates steadily increased over the years across each of the target counties, with most differences appearing in the degree to which the decrease/increase occurred. Defelonization and the COVID-19 pandemic were the two major policy shifts or events that had

an effect on the proportion of PCS charges filed after referral from law enforcement, and the effects were relatively minimal and inconsistent across counties. For example, Linn County experienced a steep increase in charges filed per arrests between defelonization and the COVID-19 lockdown, none of the other target counties experienced such a degree of increase (e.g., Lincoln County), if at all (e.g., Marion County). Interestingly, COVID-19 had far less of an impact on charging rates than on PCS arrest rates. Of our target counties, Douglas and Linn Counties were the only counties with PCS charge rates that significantly increased during COVID-19. While Douglas County was a substantially smaller change that grew into the M110 period, in Linn County, the rate with M110 reduced to be more comparable to pre-COVID-19 numbers. Despite the overall rise in PCS charge rates during some periods, most rates hover between one and two PCS charges filed for every 100 PCS arresting charges referred via fingerprinted arrest. These rates are indicative of two things. First, it is most likely, the rates above one demonstrates how a given county employs a cite-and-release policy at the law enforcement level. This ensures that a referral is still made to the DA's office, but the person is not booked and fingerprinted in the jail as they were in the past. Second, it highlights how counties exercised different approaches to dealing with cite-and-release efforts as well as filing overall charges related to PCS during the COVID-19 pandemic and M110.

Charging Decisions: Initial to Amended Charges

While Figure 3.4 is helpful in understanding charge referrals to the DA's office, the question remains of what happens to those initial PCS charges once a referral is made? One unique aspect of the charging data we received from the Oregon Judicial Department is the ability to monitor a case as it is initially charged by the District Attorney's Office, the types of charges filed within a given case, and then the final charges at disposition (i.e., resolution). This

examination of initial charge to amended charge, gives us a comprehensive look at how charges are bargained over the life of a case (e.g., charge bargained by downgrading a more serious charge to a less serious charge at disposition). To do this, we examined trends in charging decisions of PCS charges and violations (i.e., felony, misdemeanor, violation) across the different drug policy periods. In referencing Table 3.3, the top, horizontal axis lists the initial PCS charges (in red), and the left-hand, vertical axis lists the amended PCS charges in order of decreasing severity (e.g., felony at the top and violations at the bottom). Cells highlighted in green demonstrate the percentage of charges that remained consistent from the initial charge filed to the amended charge at disposition.

Table 3.3. Initial to Amended PCS Charges & Violations, 2008 to 2024

		Initial PCS Charge Level								
		Pre-JRI (2008 – 2013)			JRI (2013 – 2017)			Defelonization (2017 – 2020)		
		Felony	Misd.	Violation	Felony	Misd.	Violation	Felony	Misd.	Violation
		100,557	*43,344*	*29,136*	*96,702*	*36,478*	*8,293*	*42,480*	*42,421*	*3,622*
Amended PCS Charge Level	Felony	98.5%	1.9%	0.1%	96.1%	1.4%	0.1%	92.5%	0.6%	0.0%
	Misd.	1.5%	97.8%	0.2%	3.9%	98.1%	0.4%	7.3%	98.2%	0.2%
	Violation	0.1%	0.3%	99.7%	0.0%	0.5%	99.5%	0.2%	0.6%	99.8%
		COVID-19 (2020 – 2021)			M110 (2021 – 2024)					
		Felony	Misd.	Violation	Felony	Misd.	Violation			
		12,231	*11,563*	*651*	*14,577*	*10,059*	*10,859*			
	Felony	93.8%	1.1%	0.0%	97.2%	1.5%	0.0%			
	Misd.	4.9%	95.1%	0.3%	2.7%	97.5%	0.1%			
	Violation	1.2%	3.6%	99.7%	0.0%	1.0%	99.9%			

Note. Misd. = Misdemeanor. Cells highlighted in green demonstrate the percentage of charges that remained consistent from the initial charge filed to the amended charge at disposition.

In looking across periods, a consistent theme emerged – *Most of these charges remained the same from initial filing to disposition*. Across all periods (a 15+ year plus span), at least 92.5% of drug charges remained at the same level from filing to disposition. The biggest drop (i.e., charge downgrading) was during the post-defelonization through pre-COVID-19 period when 7.5% of PCS felony charges were downgraded to a misdemeanor or violation. This makes sense considering that with defelonization most PCS crimes became a misdemeanor-level. Prosecutors could have initially charged a PCS crime as a felony given information communicated via the police report, but then later realized the circumstances of the offense were more suited for a misdemeanor charge (e.g., the quantity of drugs). It is also possible that prosecutors were more willing to bargain/downgrade felony PCS crimes to a misdemeanor because that still resulted in a criminal charge, one that might have qualified the defendant for diversion or drug court program.

Another interesting thing that stands out is post-M110, prosecutors were less willing to downgrade felony-level PCS charges compared to the three preceding periods. Congruency percentages between the M110 period and pre-JRI look similar. Pre-JRI, prosecutors downgraded the smallest percent of felony-level PCS cases to a misdemeanor-level (1.5%); post-M110, 2.7% of felony-level charges were downgraded to a misdemeanor-level. Post-M110, District Attorney's Offices may be less flexible with the cases that are classified at the felony-level because of the severity of what constitutes a felony drug charge now (the quantity, commercial distribution factors, etc.). Prosecutors may be less willing to downgrade these felony charges post-M110 given that they are likely to be stronger cases (e.g., more evidence), and represent more severe drug possession cases (i.e., substantial quantities).

The high rate of congruence from initial to amended charge in Table 3.3 and low charging rate in Figure 3.4 suggest a high number of PCS dismissals might be occurring, and of those charges that remain, a stronger willingness to resolve them as charged. The topic of dismissals is examined more thoroughly in the 'Courts and Sentencing' chapter.

County Level Variation in PCS Charging Decisions

To better examine these aggregate trends, we focused on the eight select counties to explore if PCS changes have impacted *prosecutorial charging decisions.* Table 3.4 addresses the question of volume of PCS cases in a District Attorney's Office's caseload by comparing the percent of cases involving PCS (of the total number of cases) and the percent of PCS only cases (i.e., those cases that were only a PCS offense, no other charges) in each of the counties. Table 3.5 addresses the question of variation in severity across counties by comparing the percent of PCS charges at the felony level and the percent of PCS charges that were Manufacturing/Delivery/Sale in each county.

Table 3.4. PCS Case Filings with DA's Office (Eight Select Counties), 2008 up to 2024

	Pre-JRI (2008 – 2013)	JRI (2013 – 2017)	Defelonization (2017 – 2020)	M110 (2021 – 2024)
Douglas (R)	194	235	187	132
% of Cases Involving PCS	24.5%	34.5%	15.4%	6.3%
% of PCS Only Cases	46.1%	56.2%	44.8%	23.8%
Jackson (U)	451	523	577	423
% of Cases Involving PCS	17.3%	26.3%	26.7%	8.3%
% of PCS Only Cases	48.6%	50.2%	44.2%	27.7%
Josephine (R)	169	189	226	165
% of Cases Involving PCS	15.0%	28.7%	27.1%	6.3%
% of PCS Only Cases	35.3%	49.1%	46.5%	19.0%
Lincoln (R)	147	140	145	119
% of Cases Involving PCS	8.5%	11.8%	14.8%	3.3%
% of PCS Only Cases	36.5%	39.8%	32.4%	21.2%
Linn (U)	186	209	241	171
% of Cases Involving PCS	21.4%	29.7%	32.5%	6.7%
% of PCS Only Cases	28.5%	35.7%	26.2%	13.4%
Marion (U)	535	525	464	396
% of Cases Involving PCS	15.2%	15.5%	13.1%	1.5%
% of PCS Only Cases	36.2%	38.7%	30.5%	33.3%
Multnomah (U)	1325	1259	883	583
% of Cases Involving PCS	13.8%	15.3%	13.5%	3.2%
% of PCS Only Cases	44.9%	39.9%	32.6%	9.4%
Umatilla (R)	134	160	181	128
% of Cases Involving PCS	20.4%	20.1%	17.3%	4.0%
% of PCS Only Cases	42.2%	55.2%	52.0%	40.0%

Note. R = Rural; U = Urban. Number in column above percentages represents the average monthly number of PCS cases during that period. Blue = 10% increase from prior period. Green = 10% decrease from prior period.

In examining Table 3.4, it is evident that M110 influenced PCS charging decisions and PCS cases. Each of the eight select counties experienced a significant decline in the percent of cases involving PCS and PCS only cases. This is not unexpected as the main impact of M110 was to decriminalize PCS, while earlier policy decisions impacted charging (e.g., defelonization). The more interesting effects occur between the JRI (2013 – 2017) and defelonization (2017 – 2020) periods. Some counties saw variation prior to defelonization (e.g., Douglas County), while others remained relatively stable in their charging practices (e.g., Marion County). For example, the percent of cases involving PCS in Douglas County during the JRI period was 34.5%, which dropped to 15.4% during the defelonization period. In contrast, the percent of cases involving PCS in Marion County during the JRI period was 15.5%, which only decreased 2.4% during the defelonization period. Table 3.4 highlights that defelonization had a greater impact on some county's caseloads compared to others. We also see variation in base rates across counties during JRI – some county's caseloads were comprised of a higher percent of PCS offenses (e.g., one-third in Douglas County) versus others (e.g., one-tenth in Lincoln County).

This varying impact of defelonization bears out in referencing the percent of PCS only cases (i.e., those cases that were only a PCS offense, no other charge). During the defelonization period, there was at least a 10% decrease in PCS only cases in six of the eight counties (e.g., Douglas County saw a decrease from 56.2% to 44.8%). Prior to M110, the proportion of PCS cases that were possession only averaged from 30.1% (Linn County) to 49.8% (Umatilla County). As this range demonstrates, there are some interesting variations across the select counties. Three out of four *rural* counties are close to a 50/50 percent average split between PCS cases that are possession only versus possession + another charge up until M110. Three out of

four *urban* counties are close to a 40/60 percent average up until M110. It seems that rural counties tend to focus more on PCS only cases by roughly 5 – 15% more. With M110, this landscape changed drastically with the number of PCS cases in total declining, but with a larger percent of them possession + another charge (average = 76.53%), and not such a clear dichotomy between urban and rural counties.

Table 3.5. Severity of PCS Case Filings (Eight Select Counties), 2008 up to 2024

	Pre-JRI (2008 – 2013)	JRI (2013 – 2017)	Defelon (2017 – 2020)	M110 (2021 – 2024)
Douglas (R)	194	235	187	132
% of PCS Felony Level	72.0%	77.8%	68.8%	66.0%
% of PCS Mnf/Del/Sale	38.6%	18.3%	24.4%	45.1%
Jackson (U)	451	523	577	423
% of PCS Felony Level	76.6%	76.4%	54.5%	65.3%
% of PCS Mnf/Del/Sale	35.4%	21.7%	27.7%	50.0%
Josephine (R)	169	189	226	165
% of PCS Felony Level	76.1%	76.5%	47.9%	72.1%
% of PCS Mnf/Del/Sale	43.3%	16.9%	18.2%	43.1%
Lincoln (R)	147	140	145	119
% of PCS Felony Level	73.7%	70.7%	46.5%	53.6%
% of PCS Mnf/Del/Sale	50.0%	32.2%	32.2%	45.8%
Linn (U)	186	209	241	171
% of PCS Felony Level	62.8%	69.0%	30.7%	44.2%
% of PCS Mnf/Del/Sale	37.1%	22.2%	14.6%	41.7%
Marion (U)	535	525	464	396
% of PCS Felony Level	64.1%	67.6%	37.7%	64.4%
% of PCS Mnf/Del/Sale	40.9%	24.5%	27.7%	56.6%
Multnomah (U)	1325	1259	883	583
% of PCS Felony Level	68.6%	68.1%	57.3%	67.7%
% of PCS Mnf/Del/Sale	33.3%	25.2%	24.3%	59.3%
Umatilla (R)	134	160	181	128
% of PCS Felony Level	66.3%	70.5%	48.2%	53.6%
% of PCS Mnf/Del/Sale	25.1%	15.7%	24.3%	42.1%

Note. R = Rural; U = Urban. Number in column above percentages represents the average monthly number of PCS cases during that period. Blue = 10% increase from prior period. Green = 10% decrease from prior period.

In Table 3.5 we observe the relative consistency between the eight select counties in terms of the percent of PCS cases involving a felony charge during both the pre-JRI and JRI periods (felony PCS charges comprised of roughly 60 - 75% of PCS cases across counties). As expected, there is a decline in the percent of PCS cases involving a felony charge across counties during the defelonization period. Each of the eight counties experienced at least a 10% decline in the percent of PCS cases involving a felony charge, but the slope of the decline varies. For example, the percent PCS cases involving a felony charge in Linn County during the JRI period was 69.0%, which dropped to 30.7% during the defelonization period (over a 50% decline). In contrast, although the percent of PCS cases involving a felony charge declined with defelonization in Douglas and Multnomah Counties, it was to a smaller degree than in the other six counties.

This decline in the percent of PCS cases involving a felony charge must be contextualized within the average number of PCS cases per month in each county. In Douglas County, although the percent of PCS cases involving a felony charge remained somewhat stable (relative to other counties) from the JRI to defelonization period, cases involving PCS dropped (235 to 187 cases). In contrast, in Linn County, the number of PCS cases increased during the JRI to defelonization period, but the percent of PCS cases involving a felony charge dropped by roughly half. Some counties might have decided not to charge as many cases once the state shifted from a felony to a misdemeanor-level charge for user-level possession. Other counties might have followed a stricter interpretation of the law (i.e., maintaining the same number of average cases, but the charging severity shifted).

From the pre-JRI to JRI period, each of the eight select counties experienced a significant decline in the percent of PCS cases involving a drug manufacturing, delivery, or sale charge. For

example, in Lincoln County, 50% of PCS cases pre-JRI included a manufacturing/delivery/sale charge. That percentage dropped down during the JRI and defelonization period to 32.2% of cases. There are a few possible explanations for this decline. First, it is possible this is an artifact of "Oregon's Meth Wars Era" during the pre-JRI period; in the mid-2000s, Oregon experienced a "methamphetamine epidemic,"[49] which could have contributed to a higher baseline of manufacturing/delivery/sale charges in the pre-JRI period. Secondly, it is possible that during the JRI and defelonization periods, more user-level PCS cases were referred by law enforcement, and with the increase in PCS charges, a greater percent of those were comprised by user-level PCS. With the passage of JRI in 2013, counties might have chosen to implement treatment court and diversion opportunities to downgrade these offenses resulting in fewer manufacturing/delivery/sale charges. While the exact justification is not known, these are some possibilities to account for the decline in manufacturing/delivery/sale charges post-JRI.

One interesting observation to note is the increase in PCS cases involving a felony charge and manufacturing/delivery/sale charge during the M110 period. Every county, except for Douglas County's felony-level charges, experienced at least a 10% increase in these more severe drug charges post-M110. In some respects, this makes sense as M110 decriminalized PCS for user-level quantities, but not more substantial quantities. But every county's percent of PCS cases involving a manufacturing/delivery/sale charge increased post-M110, ranging from 41.7% of PCS cases (Linn County) to 59.3% of PCS cases (Multnomah County). This suggests that District Attorney's offices are focusing on more severe drug cases in the absence of what historically would have been user-level PCS cases. These select county analyses complement the

[49] https://www.osbar.org/publications/bulletin/08jul/methwars.html.

statewide, aggregate analyses presented above. We observe that often statewide policy changes impact regions or counties differently, and how counties adapt varies across the state.

Qualitative Findings

To supplement the quantitative data (both at the county-level and statewide), we conducted interviews with prosecutors to unpack the impacts of successive PCS law changes on referrals to the District Attorney's Office, charging practices and/or policies, and the courts. Our framework for the presentation of the findings is to break out the key themes in the prosecutorial narrative about the impacts of drug law changes from our interviews and connect them with related quantitative trends presented above. The interviews with prosecutors were meant to supplement the quantitative analysis and provide context and greater clarity about observed charging trends. We identified three common themes: responsible prosecution, charging focus on serious drug crimes, and programs allow the Criminal Justice System to play a role.

Theme 1: "Responsible Prosecution"

A common perception amongst the prosecutors interviewed was that, historically, user-level drug possession cases were handled with leniency in Oregon. Many prosecutors used variations of the phrase, "use our charging ability responsibly", especially when it came to drug possession cases. Prosecutors referenced historic practices such as not charging residue cases, downgrading drug cases to misdemeanors, diverting cases to treatment court, and dismissing cases after successful completion of a treatment court or if the defendant did not recidivate in a set period.

> *All of those cases would qualify for community court…so it would be diversion eligible. Plead to it and do either community service or some sort of treatment, we would dismiss it at the end.* – Prosecutor

> *We would charge the non-substantial quantity felony-level PCS crimes as misdemeanors. A lot of times our offers on those cases wouldn't even be for a conviction, it would be for*

> *what's called a deferred sentence, which is like, you get 18 months of court supervision and if you comply with the conditions, which usually involved engaging in outpatient drug treatment for that period, then your case could get dismissed.* – Prosecutor

In the context of making charging decisions, prosecutors emphasized that a PCS charge is often not the singular charge within a case. According to prosecutors, it was rare to have cases in which the only charge was a PCS offense. In examining the eight counties, we found the average percent of PCS cases that included additional charges (other than PCS) was 58.7% prior to M110 and increased to 76.5% post-M110. These statistics give some support to prosecutors' observations:

> *I would say more often than not, your PCS charges are going to have a felony elude,*[50] *a stolen vehicle, a criminal mischief, maybe a burglary attached to them and it's not just a standalone PCS charge.* – Prosecutor

> *Obviously, what would be better is if those sorts of resources were available long before someone gets into the criminal process. And I know that that's what [M110] is meant to do. But like I mentioned, by and large, people who get arrested for PCS are getting arrested for other reasons and then they just happen to be found with drugs.* – Prosecutor

In connecting these responses to the quantitative data, the story is somewhat more complex. For example, in referencing the statewide PCS charging data between JRI and defelonization, only 4.4% of PCS charges were downgraded from initial to amended charge. It could be that for some of these PCS charges, defendants entered a post-adjudication diversion program or specialty court, which then might not have impacted their charge severity, only their punishment. It could also be that prosecutors' perceptions of "leniency" are more appropriate for sole-PCS cases, than those with multiple charges (e.g., failure to charge at initial screening or charge dismissal). During that same JRI to defelonization period, the percent of cases involving a possession plus another charge in the eight counties ranged from 43.8% – 64.3%; as prosecutors noted, a sizeable percent of cases involving a PCS charge do have other charges as well.

[50] ORS 811.540 - Fleeing or attempting to elude police officer.

However, that generalization is dependent on the period and the county. For example, possession plus another charge constituted roughly three-fourths of PCS cases in the counties post-M110. Prosecutors' statements about the rarity of PCS only cases could have been due to a recency effect given that we interviewed them two years into M110's implementation (2023).

Theme 2: Charging Focus on Serious Drug Crimes

Prosecutors referenced that they focus their charging and prosecution efforts on high-level drug charges (i.e., substantial quantity, delivery or manufacturing of controlled substances, and commercial drug offenses). According to prosecutors, this has been especially true in recent years prior to M110, as user-level PCS referrals from police and issued charges by the prosecutor's office have decreased.[51] Since M110, all PCS charges will be for higher quantity amounts.

> *When I have cases where there's multiple drugs and there's evidence of drug dealing, I will still issue the misdemeanors along with the felony counts. It happens a decent amount. But a lot of the people that, when it's getting referred to felonies, you're oftentimes going to see felony level amounts because they're going to be tied in with other felony crimes, and its mostly alleged drug dealing that's taking place.* – Prosecutor

> *When a person is delivering a super substantial quantity, that's when I take out my wiggle room because there's a lot of public harm when a person is delivering 100 grams of meth or 500 grams of meth. With those charges, the legislature has put in a shell for what the sentence is. Courts are not allowed to depart out of that sentence. And we don't engage in a legal fiction to change the amount or anything like that, we stick with what the legislature said was what this crime should be.* – Prosecutor

In connecting these responses to the quantitative data, PCS cases involving a felony charge and manufacturing/delivery/sale charge have historically constituted a sizeable percentage of PCS cases. During the defelonization period (2017 – 2020) when user-level PCS

[51] In basic terms, a case *referral* is when police arrest someone on a given charge presumption, and the case is then referred to the District Attorney's Office for prosecution. Prosecutors then decide to reject the referral or move forward with it. When prosecutors move forward with the referral, it becomes an issued case; one that is filed with the circuit court.

offenses were misdemeanors, although every one of the select counties experienced a decline in the percent of PCS cases involving a felony charge, the average was still 48.95% of all PCS cases were felony-level. During that same period, the percent of PCS cases that included a manufacturing/delivery/sale charge ranged from 14.6 – 32.2% (average 24.2%) across select counties. Considering prosecutors' comments regarding leniency in prosecution (Theme 1) and focusing on more serious drug crimes (Theme 2), it does appear that there are different approaches in the charging of lower level versus more serious drug offenses. While this might not bear out in every county in the same way (we see variation above), these perceptions about charging variations are supported with the quantitative data.

Prosecutors noted that although their primary focus is on higher-level drug cases, they believed M110 and recent case laws have made it more difficult to enforce drug laws. On the aggregate view, some prosecutors worried these recent changes create a public perception of weak drug laws in the state. In some ways, this perception mirrored that of law enforcement (see Henderson et al., 2023) but was unique to prosecutors in that they spoke about a trend of apathy towards behaviors that are perceived as acceptable, even if not legal, and how that impacts jury decisions and the court's willingness to hold individuals pre-trial, despite the threat they pose to flee or to public safety.

> On reflection of possible perceptions held by the court - *'Maybe we should let the drug dealers out of jail too, right, because if possession is not that bad, then are the delivery of controlled substances really that bad?' And we're seeing a lot more drug dealers being [released on recognizance], so they don't even get in front of a judge, and then that makes things more difficult too for us because we're not getting them back in custody, they have a very high failure to appear rate.* – Prosecutor
>
> *Realistically what we're seeing is a lot of people, especially not from this community, taking advantage of very weak drug laws...We're seeing dealers or persons dealing dope that are younger and younger, sometimes under the age of 18...They know, if I'm dealing in [redacted] County, even if it's a manufacturing or a delivery of controlled substance within 1000 feet of the school, I'm going to be cut loose. And oftentimes we don't have a*

> *good grasp on this person's status, … they're in the wind, and then they're back out and there's this cycle of dealing dope and keeping people addicted. And then those people that are addicted, committing crimes to then further their habit and then it's just a never-ending cycle.* – Prosecutor

> *We have seen just a tremendous number of cases that warrant federal prosecution, that are significant quantities, that involve people that are drug trafficking in, with firearms, people that are connected to organizations. I do think that there has been a change in perception, just a belief by drug traffickers that enforcement is down.* – Prosecutor

Theme 3: Programs Allow the Criminal Justice System to Play a Role

A final theme that came up in the interviews with prosecutors was the question of 'What is the criminal justice system's role?'. Throughout the interviews, prosecutors referenced a range of historical and current programs and policies that have been designed to combat problems in the community and facilitate change, both in the lives of the defendants, and in the broader community. Most of these programs have targeted non-violent, property crimes (e.g., Law Enforcement Assisted Diversion for lower-level possession of controlled substance crimes). Over time, as the severity of punishment decreased for lower-level offenses (i.e., defelonization, M110), prosecutors perceived more difficulty in compelling individuals into treatment, and that without treatment, behavior would escalate to the point where a carceral sentence is warranted. In other words, if defendants are no longer mandated to attend drug treatment for low-level PCS, presumably *before* they commit a property crime or worse, then prosecutors fear defendants will ultimately escalate their criminal behavior to committing property crimes, etc. Like our law enforcement interviews, many prosecutors believed criminal prosecution and the courts were an effective point of engagement with treatment for individuals who committed lower-level offenses motivated by a substance use disorder. Upon reflection of this role, prosecutors largely viewed such engagement opportunities have decreased over the years.

> *We were effective in navigating people with criminal behavior into treatment to force them to kind of come to terms with their conduct and their addiction and their substance*

> *use disorder and get them into evaluations and get them in front of professionals that they can't afford, can't access, didn't know existed, etcetera. And we lost that leverage, so nobody wanted to participate.* – Prosecutor

> *[The State has] decreased our ability to intervene earlier on and use the criminal justice system as the bridge to recovery and treatment. And to better health. None of us in the criminal justice system, let me be clear, we don't want to be in the business of criminalizing addiction, that's why we had so many programs. But what Ballot Measure 110 did was dismantle an entire system that, though not perfect, it was working to try to intervene with people. And it replaced it with absolutely nothing. As a result, addiction and the attendant behavioral health problems, and the attendant consequence of other types of crime going up have created an entire lawlessness that is attendant to that. And our hands are really tied to intervene with it.* – Prosecutor

Post-M110, prosecutors perceived the broader message from the state and community was that the criminal justice system should be removed from the treatment and rehabilitation pathway. However, there was a perception amongst prosecutors that through a range of evidence-based programs and working with the defense bar, that the criminal justice system can play a role in facilitating change. This viewpoint aligns with the law enforcement perspective, which highlighted that the criminal justice system served as a pathway for individuals to connect with treatment resources (a discussion of the frequency of this point of engagement is taken up later in this report).

> *It's one thing to prosecute people and be at trial and advocate for conviction if that's the route it takes. It's a wholly separate role to be part of a treatment team to try to do what's best in order to make this person be drug free for a period of time. In that role, you really see how the criminal justice system, and I understand all of the arguments for why we shouldn't criminalize drug use, I get all the arguments. But I think that what's really difficult, unless you're seeing it on a daily basis, you don't understand the role that criminal justice really can play for a lot of people that might not be inclined to treat but for the criminal justice engagement.* – Prosecutor

Key Conclusions

In conclusion, we review our findings in relation to the initial research questions:

Research Question 1: How have PCS changes impacted prosecutorial charging practices related to drug crimes, among others?

Research Question 2: How have PCS changes impacted prosecutorial charging decisions and use of diversion programs within select counties?

When examining statewide, aggregate charging trends, we see evidence that drug policy shifts have impacted prosecutorial charging practices in Oregon. Specifically, defelonization was associated with a significant decrease in felony PCS charges (immediate decrease of 717 charges) and a significant increase in misdemeanor PCS charges (immediate increase of 390 charges). As we have noted in this report, defelonization should have had the largest and most immediate impact on prosecutorial charging because it solely impacted charge severity (whereas JRI largely impacted sentences and M110 impacted criminal status). Defelonization primarily resulted in a PCS charge severity switch, and it had far less of an impact on the number of defendants charged with any PCS which remained relatively flat after a significant drop in the first month of defelonization. With both the COVID-19 lockdown and M110, both felony and misdemeanor charges decreased significantly. Relative to the high peak in 2019 when there were between 600 – 700 misdemeanors PCS charges per month statewide, that number has leveled off at fewer than 200 per month.

With the recriminalization of PCS (HB4002, September 2024), it will be interesting to see what happens to user-level PCS cases now that District Attorney's Offices will again have more involvement and discretion in prosecution. As we noted in our Year 2 Interim Report (Henderson et al., 2024), counties have the option of creating deflection-type programming for user-level PCS charges, but the content of deflection programs was not outlined by the state, and more pertinent to the discussion of charging practices, participant eligibility criteria is not consistent across participating counties.[52] For example, in Multnomah County, individuals are

[52] https://www.opb.org/article/2024/08/29/measure-110-drug-law-deflection-posession-crime-law-oregon-recriminalization-decriminalization/.

eligible only if there was "no other criminal behavior at encounter." In Lane County, eligibly extends to "individuals who have committed a low-level 'quality of life' crime [e.g., PCS, trespassing, low-level theft], and those whose behavior is suspected to stem from an unmet behavioral health need and/or a co-occurring substance use disorder." As Oregon's decriminalization experiment comes to an end, it will be interesting to see how prosecutors adapt to the new "undesignated" misdemeanor charge for PCS and county-specific deflection programming. As is evident from the last 15+ years, with the recriminalization of PCS in 2024, we will likely see sweeping changes to prosecutorial charging practices in response.

Another take away message from these data is the complexity of PCS cases, and how that translates to difficulty in uniform charging practices. To begin with, a significant proportion of PCS cases include multiple charges, although this has varied over time. Prior to M110, the most common co-occurring charges were drug manufacturing/delivery/sale, marijuana violations, and theft, after M110, the most common co-occurring charge was a PCS violation. In examining those cases further, most of the PCS charges remained at the same charge severity level from initial filing to disposition. While it is possible they could have been downgraded from a Felony A to a Felony B and that would have been overlooked in this accounting, the larger theme remains true – drug cases are complex, often involving multiple charges, and prosecutors are reluctant to downgrade these offenses, <u>once charged</u>, particularly the more severe drug cases.

In following the subject of more severe drug charges, even after defelonization, a high percent of PCS cases in the eight select counties involved felony charges (30.7 – 68.8%). During this period, the average number of monthly cases declined, so it could have been that prosecutors were simply less willing to charge low-level misdemeanors. With M110, almost every select county experienced an increase in the percent of cases at the felony level (44.2 – 72.1%). Post-

M110, although the average number of monthly cases decreased, the percent of PCS cases that involved a drug manufacturing/delivery/sale charge increased in each of the select counties (41.7 – 59.3%). These percentages are higher than any other period recorded in our data. This highlights both a reaction to drug policy that emphasizes prosecuting more serious drug cases, but that often statewide policy changes impact regions or counties differently (as is evident from the wide ranges in these percentages), and how counties adapt varies across the state.

Results & Findings- Courts/Sentencing

The goal of this chapter is to examine the impacts of drug legislation changes related to possession of controlled substance (PCS) courts and sentencing outcomes in Oregon. Our initial research questions are:

1. How have PCS changes impacted *conviction types*, *drug courts*, *sentencing outcomes, and prison use?*
    a) Analysis of conviction trends (convictions and dismissals)
    b) Adult drug court enrollment and outcomes; perceptions of drug courts (qualitative interviews)
    c) Analysis of trends in sentencing (jail, prison, or probation) and carceral use (point-in-time population estimates)

To address these questions, both quantitative and qualitative analyses were performed. Relying on our statewide aggregate data, we examine variations in dispositions (i.e., convictions, dismissals), adult drug court participation and outcomes, and trends in sentencing outcomes (i.e., admissions and point-in-time estimates to local control, prison, or probation). Furthermore, we supplement the drug court quantitative data with interviews with court personnel (interviews conducted in Year 2 of the project; Henderson, et al., 2024). As this chapter will reveal, drug policy shifts impacted charge dismissals and convictions, and sentence outcomes, but the degree of impact varied between drug policy changes. While defelonization primarily impacted charging (as seen in the 'Prosecution' chapter) and M110 primarily impacted criminal status and arrests (as seen in the 'Law Enforcement' chapter), JRI's primary impact was on sentences and carceral use, a topic examined in this chapter.

Qualitative and Quantitative Methodologies

Quantitative Data

We used quantitative data to examine the potential change in key sentencing practices that could be influenced by changes in PCS laws. These practices represent conviction and sentencing outcomes for PCS offenses.

Conviction Data: Like the prosecution analyses, courts/sentencing analyses are based on charge and disposition information on all charges filed with the Oregon circuit courts from January 1, 2008, through December 31, 2023.[53]

Drug Court Data: We partnered with the Oregon Judicial Department (OJD) to obtain historical (Odyssey System, pre-2019) and modern drug court information (Specialty Court Management System, 2020 – May 2024). We obtained county-level information on monthly adult drug court counts, and statewide information on referrals to adult drug court, referrals accepted (i.e., participants accepted by the court), referrals not accepted (i.e., whether due to denial, participant decline, or transfer), graduation (i.e., participants graduating from the specialty court), and termination (i.e., participants terminated from the specialty court). Importantly, while other specialty courts in the state might assist populations in need (e.g., veterans courts), we were only provided data for those courts operationalized as "adult drug courts".

Prison Use Data: Oregon Department of Corrections data on the use of sentencing was retrieved via the Oregon Criminal Justice Commission. The data captured point-in-time estimates and admissions for people who were convicted and sentenced to serve time in local control, state

[53] The date is truncated slightly from charging and arrest data because cases take time to process and reach a disposition, thus, December of 2023 is the last month in these data we are willing to rely on as accurately capturing the convictions information.

prison, and/or on probation in the county of conviction. These data are described in more detail in the section on carceral use.

Court Personnel Interviews

We conducted 14 interviews/focus group discussions with District Attorneys/prosecutors and court personnel (e.g., judges, specialty court administrators) from one federal agency and seven different counties (four categorized as "urban" and three categorized as "rural"). See general methodology description in the 'Prosecution' chapter (Prosecutor & Court Personnel Interviews). The information included in this chapter relates to diversion programs and treatment courts.

Results

The above chapter ('Prosecution') included an examination of trends in PCS arresting charges (i.e., charges referred by law enforcement) and PCS charges filed (i.e., charges filed by the prosecutor) over the last 15+ years. The next logical questions to ask are – *What happened to those PCS charges? How were they resolved?* To examine this, we begin with an in-depth examination of PCS charges, convictions, and dismissals from January 2008 – December 2023. This is followed by more robust modeling of PCS dismissals, and the rates of PCS convictions versus dismissals. Then, we examine Oregon drug courts referral, graduation, and termination counts over the last 4 years (2020 – May 2024), coupled with interviews with court personnel to better understand the impacts of shifting drug policies on treatment courts. The latter half of this chapter includes admissions to local control, prison, or probation, and point-in-time population estimates. Importantly, these metrics indicate two different things; point-in-time estimates are a one-time monthly (first of the month) estimate of the number of individuals under supervision,

while “admissions” represent admission because of criminal conviction (importantly, the length of stay is unknown, and not including violations).

Figure 4.1 demonstrates the descriptive trends lines of PCS charges, convictions, and dismissals, including markers for policy shifts during that period (2008 – 2024). The figure is broken out by all PCS (top graph), felony PCS (middle graph), and misdemeanor PCS (bottom graph), and shows PCS charges filed (black line), PCS convictions (grey line), and PCS dismissals (blue line).

Figure 4.1. PCS Charge, Conviction, and Dismissal Trends, 2008-2024

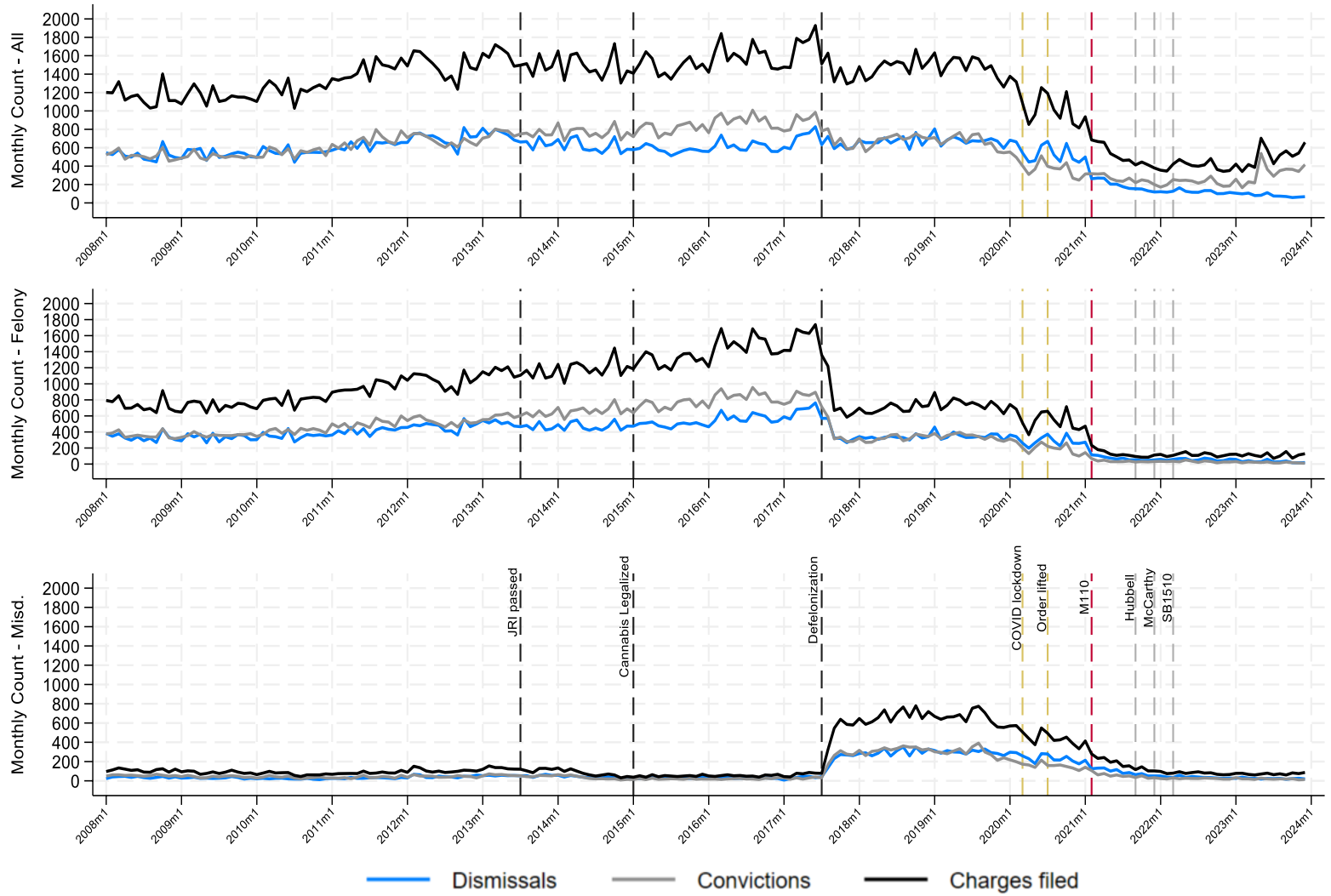


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and Appellate court cases (e.g., M110, *McCarthy*- motor vehicle warrant exception), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes. The monthly count for "All" includes misdemeanors, felonies, and violations.

In referencing Figure 4.1, beginning in 2008, there was a steady, small increase in PCS charges filed, the vast majority of those were felony charges until defelonization in 2017 (misdemeanors were rarely charged prior to this time). Prior to defelonization, there was an average of 1,070 PCS felony charges filed per month. With defelonization, there was an immediate drop off in felony PCS charges and an increase in misdemeanor PCS charges until all charges began to decline post-M110. Post-defelonization, misdemeanor PCS charges replaced most felony PCS charges, although the total count of monthly charges decreased. Roughly half of PCS charges resulted in a conviction, and half a dismissal. There does not appear to be much of a difference in conviction versus dismissal rates between PCS misdemeanors and PCS felony charges. However, these models do not control for any other relevant variables. Conviction rates versus dismissal rates are examined with more robust statistical models below.

Figure 4.2. Estimated Effects of Policy Shifts on PCS Charge Dismissals, 2008 to 2024

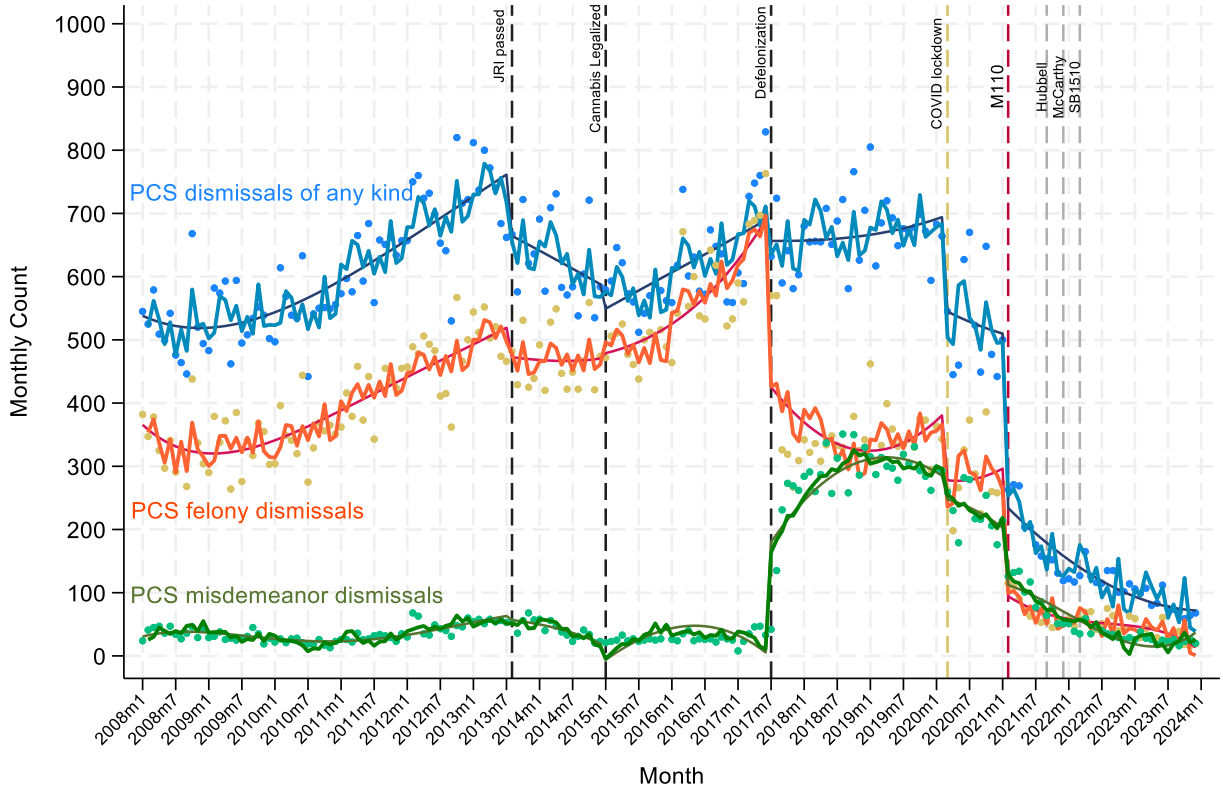


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 4.2 shows the statewide trends of PCS dismissals of any PCS charge and broken out by felony and misdemeanor charges from 2008 through the first few months of 2024. Like previous graphs of this nature, this graph consists of the actual/observed monthly counts (scatter points), a smooth trend line that is the predicted value without controlling for any other measure,[54] and a spiked line that is the predicted value[55] including the following controls[56]:

- COVID-19 restrictions (from March 2020 through May 2023)
- Consumer Price Index (CPI, a measure of inflation)
- Unemployment rate (lagged by 1 month)
- Percent of disconnected youth (between 16 and 19, not enrolled in school and unemployed or not in the labor force)
- Number of burdened households (paying 30% or more of their income on rent/mortgage)
- Percent of population below the poverty line
- Ratio measure of income inequality
- Rate of single-parent households
- Percent of the population with the highest educational attainment is less than high school
- Average number of officers per 1,000 citizens
- Month (to account for seasonality)

The predicted lines shown in the figure come from an interrupted time-series (ITS) analysis that employs a generalized linear model using only statewide data. Our models show that there were multiple significant events when it comes to charge dismissal trends for each of the depicted trends responding to different shifts in policy. In interpreting the dismissals trends, it is important to note that the inverse of dismissal counts almost always indicates conviction counts.

PCS Dismissals. Our analyses suggest several events were significantly associated with changes in PCS dismissal trends. Following years of an upward trajectory, JRI was associated with a decrease of overall dismissals, starting with an initial drop of 88.6 (p = .007) followed by

[54] The only other measure in these models was the squared or cubed term of time. This allowed us to model the curved shape of the trend when necessary.
[55] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of some control measures such as unemployment rate.
[56] We refer readers to the Appendix for a more detailed description of the measures used in these analyses.

10.9 dismissals per month ($p = .053$) leading up to 2015. Although dismissals dropped another 77.0 ($p = .077$) upon the legalization of cannabis, the trend began slowly rebounding but this was unassociated with the cannabis legalization ($p = .597$). After the passage of defelonization, the trend flattened out with an average decrease of 16.5 dismissals per month ($p = .028$). As with many trends, COVID-19 was associated with a large, significant, initial drop of 320.9 dismissals ($p = .012$), followed by a slight flattening before M110. The implementation of M110 was associated with another large, significant drop of 245.4 dismissals ($p < .001$), followed by an average decrease of 14.9 dismissals per month, although this relationship was not statistically significant ($p = .192$).

Felony PCS Dismissals. Most of the trend changes in overall dismissals was driven by changes in PCS felony dismissals. The felony trend shows a slight decrease of 43.6 dismissals ($p = .168$) weakly associated with JRI and then flattening of the dismissal trajectory. Although there is a gradual rise in felony dismissals until 2017, this rise was shown to be unrelated to cannabis legalization. Defelonization was associated with an immediate decrease of 260.9 dismissals ($p < .001$), and a sustained average decrease of 35.1 dismissals per month ($p < .001$). As the trend began to level out, it was impacted by COVID-19 with an initial drop of 258.2 fewer felony PCS dismissals ($p = .022$), which quickly flattened out as the year went on. M110 was associated with a third drop of 174.0 PCS dismissals ($p < .001$), followed by a sustained average decrease of 11.5 dismissals per month, although this relationship was not statistically significant ($p = .300$).

Misdemeanor PCS Dismissals. Misdemeanor PCS dismissals followed a different trajectory. Interestingly, the legalization of cannabis was associated with a short-lived drop of 33.7 misdemeanor dismissals ($p = .095$), which quickly gave way to a steady increase of 11.9 dismissals per month ($p < .001$). Like the felony trends, our analyses suggest that defelonization

was associated with a large change in misdemeanor dismissal trends. Defelonization was associated with an immediate increase of 168.7 dismissals ($p < .001$), followed by a steady rise of 21.6 dismissals a month ($p < .001$) until plateauing by late 2018, when the trend begins to slowly descend, unattributable to any policy shift. While COVID-19 had a slight impact, it was largely an acceleration of the same descent observed leading into the COVID-19 period. M110 was associated with an immediate decrease of 51.7 PCS dismissals ($p < .001$), followed by a plateau trend through early 2024.

Overall, these models suggest that the successive policy shifts had rather specific impacts on the dismissal trends like those observed in charges filed. The major differences being that nearly every policy shift and COVID-19 had some detectable effect at the state-level. The relative impacts on dismissal trends shed some light on how dismissals manifest for PCS charges. For example, JRI was passed to encourage counties to divert prison-bound cases to probation. In some ways, we can expect that this would be associated with fewer dismissals because there is less need to plea bargain the PCS charges as more people are diverted from custody. Defelonization and M110 had the largest impacts on PCS dismissals. Defelonization likely had an impact on dismissals because the number of charges filed shifted during this time, as noted in the previous analysis, and the dismissal trends followed in suit. The dismissals following M110, on the other hand, are likely because when a PCS charge is filed now (post 2020), it is one that involves substantial quantity or is charged alongside other crimes. In either scenario, the likelihood of a dismissal is diminished. In the next figure, we examine this further by unpacking the probability of a charge dismissal versus conviction.

Figure 4.3. PCS Charges Filed and Conviction and Dismissal Rates Over Time, 2008 to 2024

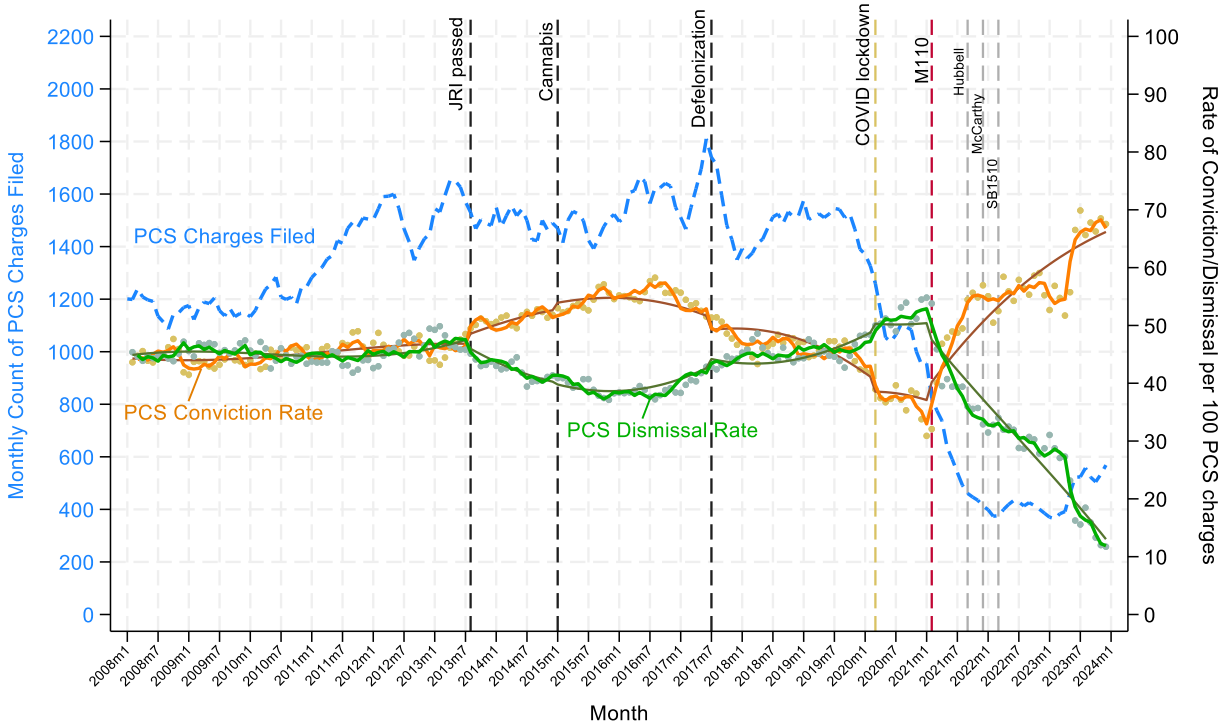


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 4.3 shows the statewide monthly count of PCS charges (blue, dotted line) corresponding with the left y-axis, along with the 2-month moving average of the rates of dismissals (green, solid line) and convictions (orange, solid line) per 100 PCS charges of any degree, both of which correspond with the right y-axis. The rate of conviction and dismissal is not a case-level measure. Each month records the count of charges filed and the dispositions for those charges, although dispositions often occur several weeks later in most instances. To address this, we use a 2-month moving average of dispositions to align with the Oregon Judicial Department's goal of resolving cases within 60 days,[57] and therefore better approximate when most charges reach disposition. This method smooths short-term fluctuations and aligns with

[57] The OJD describes their goal of 60 days to disposition for misdemeanors, which is the majority of cases filed, in their *Time to disposition standards* found here: http://www.courts.oregon.gov/rules/Other%20Rules/E7j99025.pdf. Two events may have impacted the lagged effects: The COVID-19 lockdown and the public defense staffing shortage, both experienced statewide. While both events led to increased backlog, the policy remained in effect and continues to be a standard the courts strive to maintain.

resolution standards, though it may not fully account for charges with longer processing times or seasonal caseload volume variations. Although convictions and dismissals are two broad categories of many disposition types, including acquittals, deferrals, and diversions among others, they are the two most common dispositions by far, with the rest of the types accounting for less than 5% of charges filed.

Like previous graphs of this nature, this figure consists of the actual/observed monthly counts (scatter points), a smooth trend line that is the predicted value without controlling for any other measure,[58] and a spiked line that is the predicted value[59] from an ITS analysis, including the following controls[60]:

- COVID-19 restrictions (from March 2020 through May 2023)
- Consumer Price Index (CPI, a measure of inflation)
- Unemployment rate (lagged by 1 month)
- Percent of disconnected youth (between 16 and 19, not enrolled in school and unemployed or not in the labor force)
- Number of burdened households (paying 30% or more of their income on rent/mortgage)
- Percent of population below the poverty line
- Ratio measure of income inequality
- Rate of single-parent households
- Percent of the population with the highest educational attainment is less than high school
- Kilograms of fentanyl seized by law enforcement (3-mo moving average, lagged 1 month)
- Average number of officers per 1,000 citizens
- Month (to account for seasonality)

Figure 4.3 highlights how the conviction and dismissal rates were relatively equal leading up to JRI, hovering around 45% each. Put another way, during the time prior to JRI, there were roughly 45 convictions and 45 dismissals out of every 100 charges that were filed. Our models

[58] The only other measure in these models was the squared or cubed term of time. This allowed us to model the curved shape of the trend when necessary.
[59] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of some control measures such as unemployment rate.
[60] We refer readers to the Appendix for a more detailed description of the measures used in these analyses.

show that three events had a significant association with conviction and dismissal rates – JRI, COVID-19, and M110. JRI was associated with an initial decrease of the dismissal rate by 3% (p = .038), followed by an additional average drop of 1% per month (p = .003) until cresting midway through 2016. Simultaneously, JRI was associated with an initial increase of the conviction rate by 4.5% (p = .012), with an average rise of 0.7% per month (p = .094). Although the two disposition trends converge following defelonization, they depart in the opposite direction during the pandemic. COVID-19 was associated with an increase in the dismissal rate of 1.2% per month on average (p = .045), and a similar 1.2% decrease in the conviction rate (p = .042). M110 was associated with the largest changes as the trends again flipped direction. Following M110, the dismissal rate dropped 3.3% initially (p = .056) and an average of 2.8% per month thereafter (p < .001), while the conviction rate increased 3.8% initially (p = .055) and an average of 3.4% per month thereafter (p < .001).

Overall, these models suggest that certain policy shifts had a differential effect on conviction and dismissal rates for PCS charges filed, and likely for very different reasons. Given that the nature of JRI was to promote diversion of possession cases among others, to probation or drug court instead of custody, the increase in convictions and decrease in dismissals makes sense. To be eligible for such programming, it is likely that defendants would have been required to plead guilty (i.e., conviction). The return to a 45/45 rate split of convictions and dismissals during the defelonization period may be attributable to the difference in how felonies versus misdemeanors are typically resolved (e.g., felonies more likely to be convicted).

The switch in trends for conviction and dismissal rates during the pandemic was likely attributable to court disruptions with COVID-19 safety precautions and the simultaneous public defender shortage in the state. These two issues likely increased the probability a PCS charge

would be dismissed during this time. After M110, the rate trends flipped again and continued in opposite directions. M110 nearly eliminated many misdemeanor PCS charges that were brought before the court since defelonization. Simultaneously, when PCS charges were filed with the court post-M110, they were more likely to be larger quantities, gross misdemeanors, or felony-level PCS charges (e.g., commercial distribution offense). This would increase the probability of conviction of a given PCS charge during this time. Hence, in the last few months of data (2023), nearly 70 of every 100 PCS charges were convictions.

Importantly, as we have seen with other analyses in this report, statewide trends are not necessarily indicative of county-level changes. Hence, there is a clear need to examine statewide impacts as well as county differences for a comprehensive discernment of outcomes.

Figure 4.4. County-Level Differences in PCS Conviction and Dismissal Rates by Select County, 2008-2024

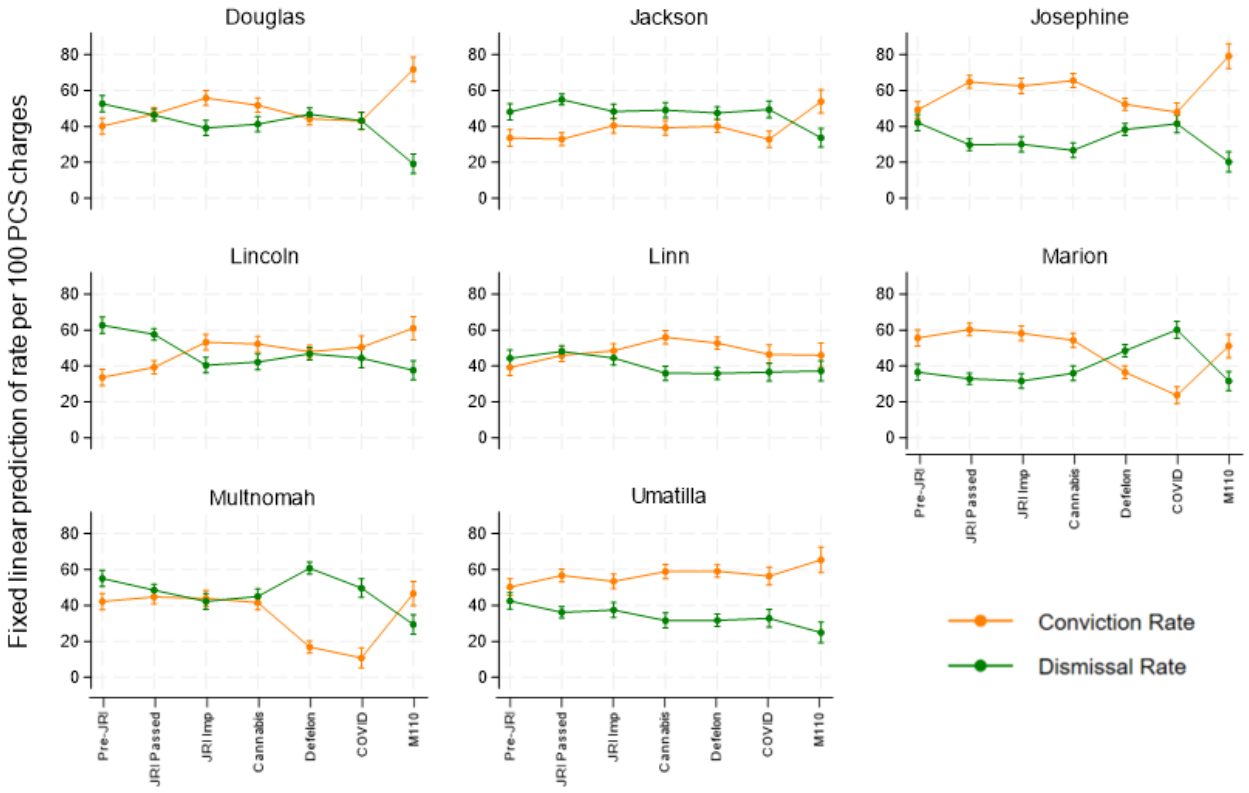


Figure Note. Dashed vertical lines represent changes in drug policy in Oregon (e.g., M110) and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 4.4 shows the predicted average PCS conviction and dismissal rates per 100 PCS charges for each of the eight select counties in a given period, after controlling for the seasonal change, the poverty index (unemployment rate, burdened households, percent below the poverty level), and the disadvantage index (income inequality, disconnected youth, single parent households, percent of population without a high school degree or GED) in a nested, mixed effects model.

The differences in patterns demonstrate how the rate of conviction and dismissals for PCS varied somewhat across the eight counties for each of the policy shift periods. Figure 4.4 highlights differences in conviction base rates across the counties. For example, Multnomah and Jackson County's conviction rates were consistently lower than the other counties, whereas Umatilla and Josephine Counties had consistently higher conviction rates. We see evidence of disproportionate impacts of the COVID-19 lockdown on some counties relative to others – Multnomah and Marion Counties experienced a sharp increase in dismissal rates during this time (Multnomah's PCS charge conviction rate dropped below 20% but has since rebounded). One common aspect across the select counties is the increase in conviction rates during the M110 period. This supports the notion that while the number of charges for PCS were far fewer than previous years, the type and severity of PCS charges likely increased the probability of conviction. The above analyses largely focus on filed charges, charge dismissals, and charge convictions, but do not speak to the distinct impact on individuals who are "justice-involved" because of a PCS charge (i.e., the number of defendants implicated in the system because of a PCS charge or conviction). We focus on this topic specifically below (Figure 4.5).

Figure 4.5. PCS Charges Filed with Defendants Charged, Convicted and Dismissed Over Time, 2008-2024

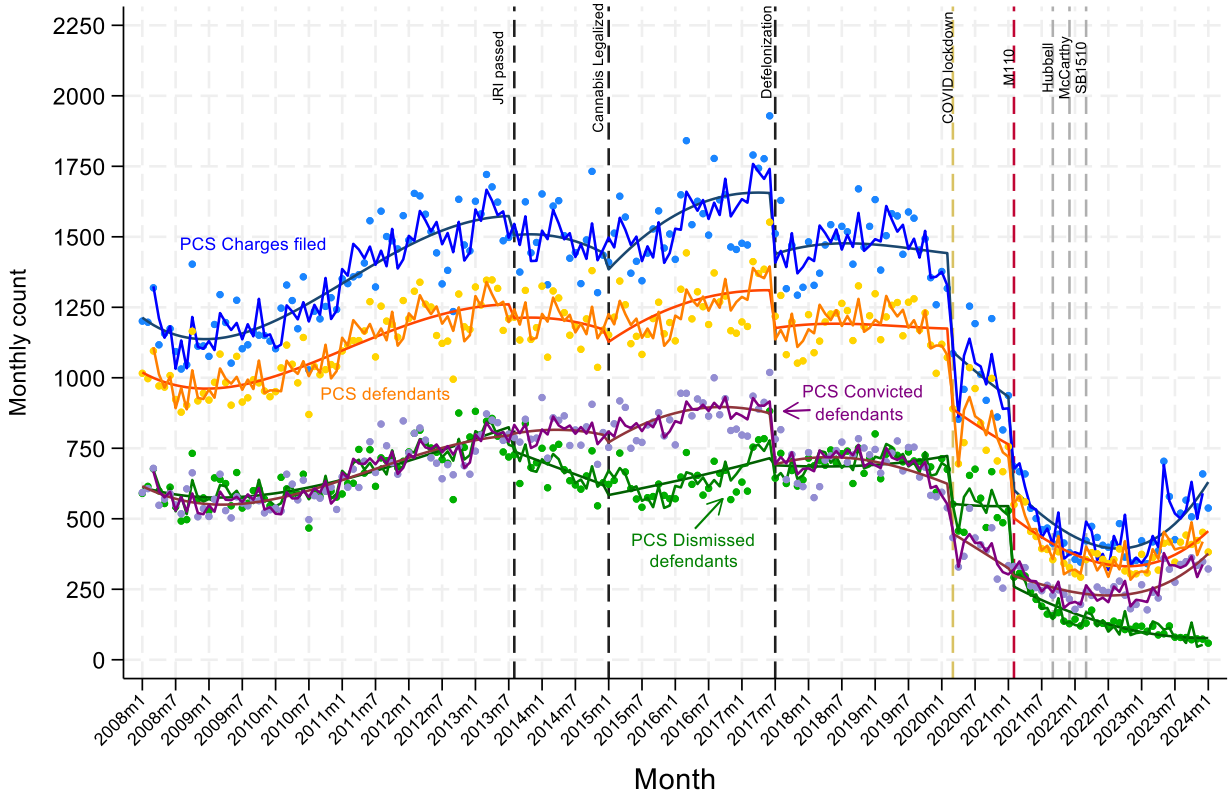


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 4.5 provides the monthly count of PCS defendants implicated in the charges filed, as well as the number of PCS defendants who were ultimately convicted or dismissed. Analyzing defendants rather than charges provides important insight into how successive policy shifts and contextual factors influenced the overall criminal justice system footprint. Unlike charges, which can be multiplicative for a single individual, defendant-level data more accurately represents the number of unique individuals affected.

Charges Filed. Defelonization was associated with an immediate reduction of 261.8 charges filed (p = .006), reflecting the downgrading of many possession charges from felonies to misdemeanors. Throughout the defelonization period, the trend flattened but began to decline in the last several months of 2019. COVID-19 was then associated with an initial drop of 559.1

charges filed (p = .022) within the first month, followed by an additional average decline of 68.1 charges per month (p = .028). M110 resulted in an initial decrease of 147.8 charges filed (p = .194), followed by a decline of 8.8 charges filed per month until the trend began to reverse in July of 2022 in a rebound of 9.2 charges per month (p = .003).

Defendants Charged. As noted in a prior model (see Figure 3.3), the models reveal that the policy shifts led to changes in the number of defendants charged with drug-related offenses. It is worth repeating here to highlight the differences with the other trends. Defelonization was associated with an immediate reduction of 215 defendants charged (p = .002). This was followed by a slow post-implementation decline of 14 defendants per month, although this relationship was not statistically significant (p = .303). COVID-19 also resulted in a significant short-term decline, with 418 fewer defendants charged at its onset (p = .023), reflecting reduced law enforcement and court activity during the pandemic. M110 was associated with an immediate drop of 120 defendants charged in the first months (p = .157), though this effect was less pronounced compared to defelonization.

Defendants Convicted. For PCS defendants convicted, defelonization again had a substantial effect, reducing convictions by 196.6 in the first month (p < .001). The initial drop was followed by a leveling trend, with no significant ongoing changes post-implementation. COVID-19 had a less pronounced effect on convictions than on charges, with a reduction of 249.4 convictions initially (p = .074), highlighting disruptions to court operations. M110 was weakly associated with an initial leveling off the drop in convictions (p = .381), though this effect was neither significant nor sustained.

Defendants Dismissed. For PCS defendants dismissed, defelonization was associated with a large immediate reduction of 111.9 dismissals (p = .016) followed by a decline of 16.8

dismissals per month (p = .033), indicating a continued downward trend in dismissals after the policy change. COVID-19 also contributed to a decline, with 272.9 fewer dismissals at its onset (p = 0.032), though the trend rebounded slightly in subsequent months. M110 was linked to a sharp decrease in dismissals, with 206.4 fewer dismissals at onset (p = .001), followed by a decline of 16.5 dismissals per month (p = .187).

As can be seen in Figure 4.5, the trends related to defendants were like those among charges filed, but the changes were less pronounced. Importantly, defelonization and COVID-19 contributed to a large reduction in the number of individuals who were "justice-involved" because of a PCS charge and conviction. With M110's implementation, the number of PCS defendants was half of what it was prior to COVID-19. Although the number of PCS defendants and PCS defendants convicted appears to be increasing (late 2023), we still observe record-low levels of individuals implicated in the system because of a PCS offense.

The dismissals and convictions trends across the last 15+ years demonstrate reactivity to shifts in drug policy trends. One large shift needs further exploration — the increase in conviction rate post-JRI (2013). We interpret this increase in convictions (relative to dismissals), to be likely related to the desire to divert eligible defendants to drug court and specialty programming rather than a carceral sentence. Importantly, most diversion and specialty court programs are "post-adjudication", meaning they require the defendant plead guilty to participate (i.e., conviction). Admission into a drug court, which almost always involves drug treatment, represents a popular method of how the criminal justice system mandates drug treatment services. This next section provides an in-depth examination of Oregon's drug courts over the last five years. For a discussion of the drug court population in relation to PCS arrests, and the overall population in need of services, see the final chapter of this report.

Drug Court Enrollment & Outcomes

Oregon has roughly 26 adult drug courts operating in the state, and one in each of the eight select counties for this project. In referencing Figure 4.6, the blue line represents historical data from OJD's Odyssey Data System, and the red line represents data from OJD's Specialty Court Management System (SCMS). The two systems are identified here because of validity issues in the older data. While it was possible to track specialty court use in the Odyssey system, it was inconsistently used rendering its data related to specialty court participation less than ideal. SCMS went live at the end of 2019 and was accompanied by a large effort to accurately collect specialty court data in the new system. These data represent a census of the number of individuals enrolled in drug court at the beginning of each month. As such, a single individual is counted at multiple points over the length of their participation in a program.

Figure 4.6. Statewide Trends in Drug Court Participants, 2019-2024

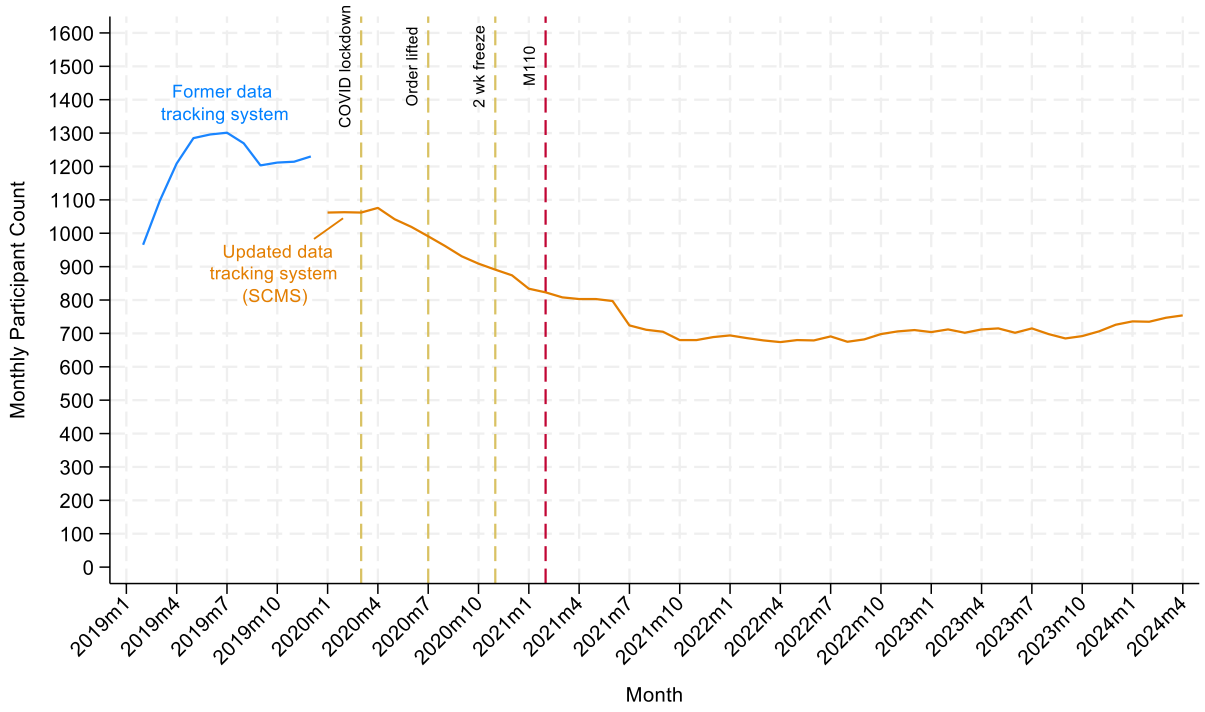


Figure Note. Dashed vertical lines represent changes in drug policy in Oregon (i.e., Defelonization and M110), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes. There was a greater effort of accurate data recording beginning in 2017, which spurred a large uptick in recorded participants. This is not indicative of an actual sharp uptick in participation/participants. In early 2020, courts began to use the

Specialty Court Management System (SCMS) to record specialty court information; trends at the end of 2019/beginning of 2020 are more likely to be due to differences in the data sets and changing practices in Odyssey than in actual changes in drug court participation.

► The key conclusions from Figure 4.6 are the following:

1. Drug court participation peaked (during accurate recording times) in 2019 at roughly 1,300 individuals a month.
2. There was a slow gradual decline in monthly participants following the COVID-19 lockdown that continued through M110.
3. There was an initial decline in drug court participants that began with the COVID-19 lockdown but has stabilized over the last 3+ years (2021 – 2024). Drug court participation has stabilized since late-2021/early-2022 at roughly 700 individuals a month. The narrative that M110 would lead to the demise of drugs courts is not supported by the stabilization of participants post-M110.

Figure 4.7. Regional Trends in Drug Court Participants, 2019-2024

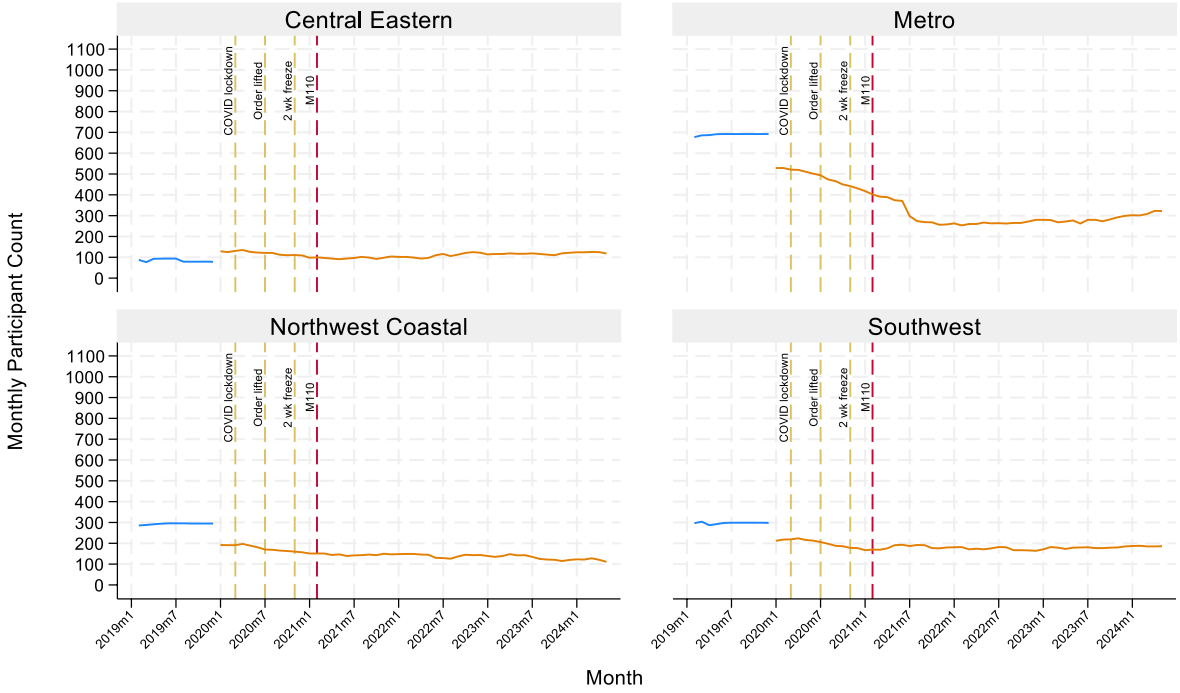


Figure Note. Dashed vertical lines represent changes in drug policy in Oregon (i.e., Defelonization and M110), and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 4.7 depicts the monthly counts of drug court participants broken out by different regions of the state. “Metro regions” is operationalized as Clackamas, Lane, Marion, Multnomah, and Washington counties. This figure further emphasizes what the statewide graph depicts. That is, the COVID-19 lockdown impacted the number of drug court participants in that it prompted a decline that continued until a strong stabilization in 2021 (see Northwest Coastal and Southwest regions). However, much of this decline was likely driven by the Metro regions. The Metro regions saw an immediate decline that continued for a longer period through M110 but has stabilized post-M110. This longer period to stabilization in the Metro regions may be somewhat attributable to the court backlogs because of COVID-19 and the public defender crisis (discussed above). It is also important to note that COVID-19 coincided with the switch in OJD data sources, so data recording during that period might have been impacted.

Participant Referrals, Acceptances, and Exits

Figure 4.8. Drug Courts Referrals, Acceptances, & Exits, 2020-2024

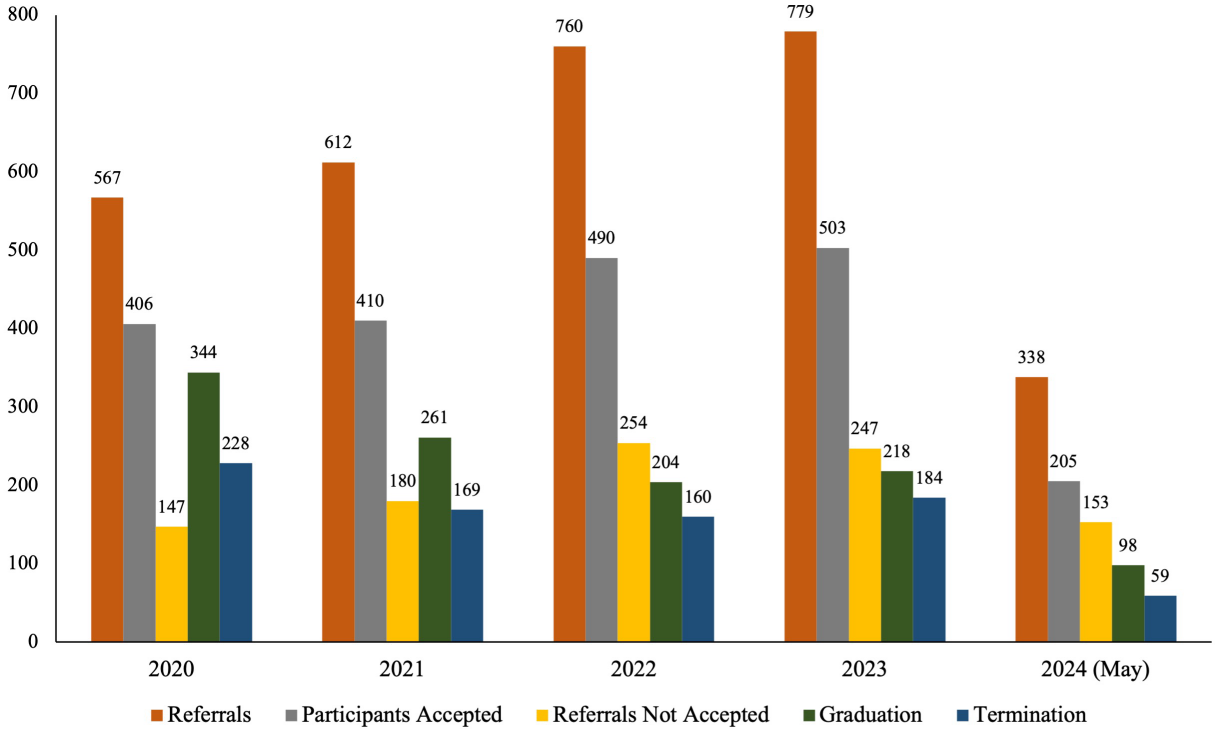


Figure 4.8 suggests that the number of drug court referrals and participants accepted into drug court programs have been increasing since 2020. Importantly, data for 2024 only includes January – May. If each of the categories continued at the same rate, then they would complete the year like that of 2023 numbers.[61] One thing these data provide is a snapshot of drug court referrals, denials, acceptances, and exits each year for the last four and a half years.

In the two years most likely to be impacted by the COVID-19 pandemic (2020 and 2021), drug courts received 1,179 referrals total; of those, 816 participants were accepted (71.4%), 605 graduated (51.1%) and 397 were terminated (33.6%). Isolating the two most complete years outside of COVID-19 (2022 and 2023), in 2022, 490 participants were accepted (65.9%), and in 2023, 503 participants were accepted (67.1%). Examining outcomes for the same years (2022 and 2023), the graduation rate for participants has remained stable. In 2022, 204 participants graduated successfully from the program (46.6%) and 218 in 2023 (46.9%). Termination rates were like that of the preceding two years, 36.5% of participants were terminated in 2022 and 39.6% in 2023. These data suggest that although referrals were lowest in 2020, likely because of the COVID-19 pandemic, acceptance, graduation, and termination rates have remained relatively stable over the last 4 years.[62]

Qualitative Data from Court Personnel Related to Drug Courts

To supplement our quantitative data related to the courts, we conducted interviews with judges and specialty court staff (e.g., administrators) to better understand how successive drug policy changes have impacted diversion programs and treatment courts. The data here are not

[61] For example, 338 referrals over five months equates to approximately 67 referrals a month. If the courts continued to receive 67 per month over the next seven remaining months, then they would close the year at about 807 referrals, which is above 2023 numbers.

[62] It is possible that during the COVID-19 pandemic, although referrals decreased, participants remained in the program longer so graduations may have been delayed. It is also important to consider that the growth in deflection and diversion programs in recent years likely has drawn the target population away from drug treatment courts. In such programs, the philosophy of treatment access may not be contingent on a conviction.

meant to be comprehensive or exhaustive, but rather to contextualize the quantitative data trends depicted above. Three key themes emerged from these interview data: impacts of the COVID-19 lockdown, shifting eligibility criteria, and wide reach of treatment courts (see Henderson et al., 2024 for a deeper discussion).

Theme 1: Impacts of the COVID-19 Lockdown

A common theme in these interviews was the impact that the COVID-19 lockdown had on treatment courts in Oregon. Many referenced the difficulty in untangling the changes that occurred around that time, but some explicitly noted that COVID-19 had a larger impact on drug courts than M110. For example, one court personnel noted that while shifts in participant eligibility insulated the court from M110 restrictions, it was still slowed substantially by COVID-19 protocols and backlog. Challenges stemmed from the continuous coordination often needed between partners to get an individual enrolled in the program (e.g., defense attorney recommendation, getting the defendant's needs assessed), and then engaged in check-ins and services during the program (e.g., court appearances and group therapy).

> *Our transition from that first time user to more of a downward departure focus really insulated us from a lot of the M110 changes because, the charges that M110 got rid of, we haven't seen in years. You know, those basic possession charges. I don't think we've had someone on a PCS meth charge alone in drug court in 5, 6 years, 5 years at least, really…COVID-19 impacted us far more significantly than M110 has and we're still seeing the impacts of COVID-19 and the things that happened around that period of time.* – Court Personnel

> *COVID-19 created a lot of absconding and inability to get somebody to show up to engage for their assessments. Or there was so much leeway that we didn't have a lot of ability to kind of monitor them, and they would just kind of fade away and go off on their own. And as a court, we didn't have a lot of tools that we could utilize because of COVID-19 to try to steer their behavior and help them.* – Court Personnel

Theme 2: Shifting Eligibility Criteria

In past years, most Oregon drug courts shifted toward emphasizing high risk/high need participants and drug adjacent crimes (e.g., property offenses). Because there are fewer

defendants who meet such criteria, this shift may also account for smaller cohorts in some counties compared to historical levels. Had that shift not occurred, it is likely that M110 would have had a larger impact on drug courts in Oregon. Some counties have dropped their traditional "drug court", and other counties have pivoted to different specialty courts that still target crimes committed by individuals with a substance use disorder (e.g., repeat property offender courts).

> *Adult drug court ended, maybe 5, 7 years ago it seems… When those first-time offenses became misdemeanors, where they got a conditional discharge that was a misdemeanor basically, there was no need for adult drug court. Adult drug court serviced low to medium [need] offenders. So, we kind of had that track for those first-time, not a lot of criminal history, not a lot of involvement in the system individual and [our specialty court] served the higher needs individual.* – Court Personnel

> *…We really turned that corner from we are a first-time offender only to we're gearing up to be a more high risk, high needs, downward-departure-focused program. And so, we were less concerned at that time with, 'is this a direct, immediate connection to drugs' and 'are there drug charges within this case' to, 'does this person have a drug issue and this is a crime'… We went from going, 'This is a downward departure, this person is very high risk, high needs, I don't know if this is a good mix for the folks who are in the program' to, 'this person is high risk, high needs, this is perfect for our program.'* – Court Personnel

Theme 3: Wide Reach of Treatment Courts

In Oregon, there is a wide range of treatment courts serving individuals with substance use disorder (e.g., Adult Drug, Mental Health/Wellness, and Veteran Courts). Although not necessarily an explicit eligibility criterion, substance use disorders and the need to provide rehabilitation and treatment services cuts across most of these courts. For example, one court personnel highlighted the fact that across the county's multiple treatment courts, every single participant has a substance use disorder.

> *Our population are all repeat property offenders or substantial quantity drug cases. They're all on a downward departure, meaning the DA has given them an offer to participate in [the specialty court] in lieu of going to prison…So, that is our target population, they all have substance use disorder, many of them have been to prison already, they're a very tough population with multiple traumas and a lot of needs.* – Court Personnel

> *Every single participant has a substance use disorder in all [multiple] of our specialty courts. Mental health court it is not required. However, I don't think we've ever had a participant that does not have a substance use disorder as their secondary diagnosis. Every participant is co-occurring [with a mental health disorder and substance use disorder] in that program.* – Court Personnel

This section on drug courts has focused on "eligible defendants." While eligibility criteria have shifted over the years, there are some PCS defendants who are not eligible for treatment courts or diversion programming because of the nature of co-occurring charges, criminal history, or maybe they are unwilling/unable to participate. The following section focuses on carceral and supervision outcomes and prison usage for PCS crimes.

Sentenced Admissions Outcomes (Carceral and Supervision)

All the data in this section comes from the Oregon Department of Corrections (DOC) and therefore does not include numbers kept exclusively by the counties. Importantly, there are two types of DOC data in this section – one type is that of admissions to a given DOC status (i.e., probation, serving their sentence in local control, or prison), and another type is point-in-time data. The measures provide insight into two different aspects of the corrections population and trends. Importantly, the admissions data that capture admissions to a given DOC status are not mutually exclusive. This means that someone who is admitted to jail and also must serve probation time after being released from custody will be counted twice; once on the month admitted to jail, and again on the month admitted to probation supervision. Finally, the crime types in the admissions data are counts that follow a hierarchy rule. Unlike the arresting charges and charges filed for which we could analyze every charge applied to a case (e.g., three counts of theft and a PCS charge would total four charges for a case), the DOC data provides information on what the DOC deems is the most serious charge driving the admission. Thus, admissions for

PCS capture the cases in which a person was admitted to one of the three DOC statuses with their most serious conviction being PCS.

The three figures in this section highlight the trends and impact of each policy shift on sentenced admissions to a given corrections area of probation, jail/local control,[63] and prison. Each figure below shows the statewide monthly count of admissions of all crimes (orange) and admissions in which the primary or most serious offense was a PCS conviction (blue). Like previous graphs of this nature, these figures consist of the actual/observed monthly counts (scatter points), a smooth trend line that is the predicted value without controlling for any other measure,[64] and a spiked line that is the predicted value[65] from an interrupted time-series (ITS) analysis, including the following controls[66]:

- COVID-19 restrictions (from March 2020 through May 2023)
- Consumer Price Index (CPI, a measure of inflation)
- A Poverty index[67] that combines:
    - Unemployment rate (lagged by 1 month)
    - Number of burdened households (paying 30% or more of their income on rent/mortgage)
    - Percent of population below the poverty line
- A Disadvantage index that combines:
    - Ratio measure of income inequality
    - Percent of disconnected youth (between 16 and 19, not enrolled in school and unemployed or not in the labor force)
    - Rate of single-parent households
    - Percent of the population with the highest educational attainment is less than high school
- Average number of officers per 1,000 citizens

[63] Local control refers to the population of convicted individuals sentenced to serving time in prison custody, but for various reasons, they serve their custody time at the local jail instead; that is, serving their time in "local control". Local control is called such by the state to distinguish it from any other jail admissions, and therefore it is not the entire jail population. Local control stays do not include pretrial populations, which is a large portion of the adults housed in local jails.

[64] The only other measure in these models was the squared or cubed term of time. This allowed us to model the curved shape of the trend when necessary.

[65] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of some control measures such as unemployment rate.

[66] We refer readers to the Appendix for a more detailed description of the measures used in these analyses.

[67] The poverty and disadvantage index are described in detail in the Appendix. We use it instead of each of the individual measures that comprise the index because the index reduces the number of variables in the model and allows the model to fit the data in a more appropriate way.

- Month (to account for seasonality)

To appropriately unpack these models, we examine each corrections admission type individually, and in relation to each of their respective totals.

Probation Admissions

Figure 4.9. Statewide Monthly Trends in Sentencing via Counts of Admissions to Probation Overall and for PCS-Principal Convictions, 2008-2024

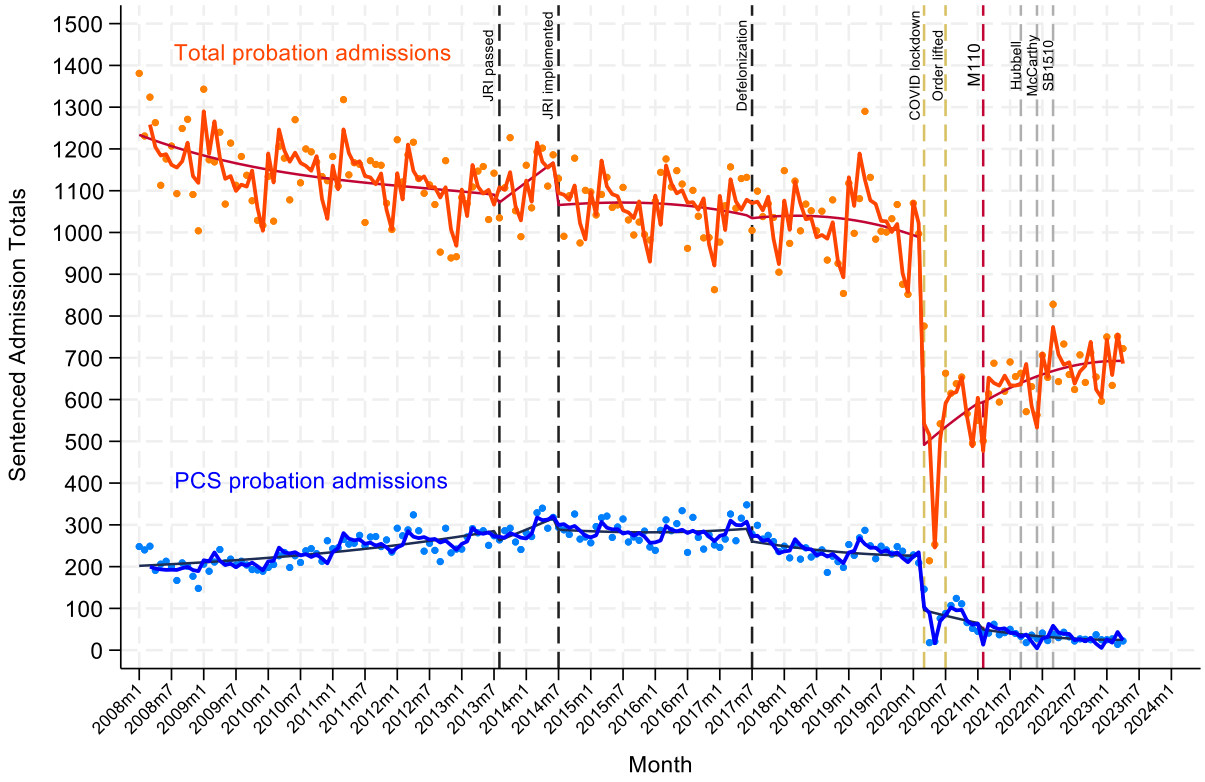


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

JRI Passage. As mentioned in this report, one of the primary goals of JRI was to reduce Oregon's prison population. As such we expect its impact to be most evident on sentencing outcomes. Throughout this report we operationalize "JRI" based on the 2013 HB3194 passage date, which redefined and reclassified sentencing of drug offenses (amongst other crime types). But importantly, in 2014, the state began awarding participating counties funds to implement evidenced-based policies and practices (e.g., expansion of short-term transitional leave

programs). With sentencing outcomes (admissions to probation, local control, and prison) most likely to be impacted by JRI funded programming, we examine both the effects of "JRI Passage" (2013) and "JRI Implementation" (2014).

Figure 4.9 shows that overall, Oregon probation admissions for any crime were declining steadily from 2008 into the passage of JRI in July and August of 2013. JRI passage was associated with a significant positive trend change of adding 13.4 new probationers every month (p = .046) until the JRI funds began rolling out in July of 2014. PCS admissions to probation followed a different trend, but JRI had a somewhat similar effect. From 2008 to 2013 admissions to probation for PCS offenses were on a slow and steady upward trajectory of 2.6 more admissions per month. We find that JRI passage was associated with an additional increase of 5.3 probationers a month (p = .044).

JRI Implementation. When JRI funds were rolled out to the counties, our models suggest that the implementation was somewhat associated with an immediate decrease of 46.2 total probation admissions (p = .291). This trend continued, although to a lesser extent via an average of 8.5 fewer probation admissions per month (p = .191). Overall, the combined effect of JRI on total probation admissions is that it helped to slow the earlier decline of probation admissions as more people were being diverted to probation than prior to JRI. For PCS admissions, JRI implementation was associated with a significant, but slow and steady reduction of 7.2 probationers per month (p = .005) until defelonization.

Defelonization. Defelonization had little effect on total probation admissions. No level change was detected, and following its passage, there was a subsequent plateau and then a slight downward trajectory that was unrelated to the defelonization. Likely due to the targeted nature of the policy, defelonization had a more notable, yet small, impact on PCS admissions to probation.

Defelonization was associated with an initial decrease of 28.8 PCS probation admissions in the first month (p = .008), followed by an average decrease of 7.2 probationers per month (p = .001) suggesting a sustained reduction due to the policy shift. In prior chapters, we demonstrated in our analysis of charges filed compared to defendants that although the charges changed after defelonization, it did not change the number of defendants during the defelonization era. It is possible that many defendants were receiving some kind of probation sentence for PCS prior to defelonization. Consequently, there was no substantive change in probation admission types – most of the people who were going to get probation were likely still getting probation after defelonization, they were just charged with a Class A Misdemeanor instead of a Class C Felony PCS.

COVID-19. As with most system practices, COVID-19 continued to have the largest effect. COVID-19 was associated with an immediate drop of 739.7 probation admissions (p < .001) in the first few months of the lockdown. The impact was short-lived, however, as the system quickly began to rebound. Similarly, PCS probation admissions also decreased, but not as severely. COVID-19 was associated with an initial decrease of 165.8 PCS probation admissions (p = .008). Unlike the total admissions, PCS admissions had a short rebound, followed by a negative slope change, dropping 8.2 probationers per month (p = .043) until M110.

M110. There was no significant relationship between M110 and total probation admissions. In fact, the trend of total probation admissions continued its post-COVID-19 rebound trajectory toward pre-COVID-19 numbers. In contrast, M110 was associated with an immediate drop of 48.3 PCS probation admissions (p = .038), but it was not a sustained decline as the trend flattened out. While a trend effect of M110 was not detected, it is possible that M110 had a suppression effect on PCS probation admissions. Both the total and PCS admission trends

experienced a seasonal dip just prior to the implementation of M110. As the total admissions rebounded at consecutively high levels, the PCS admissions remained at a low-level, suggesting a suppression effect attributable to M110.

Local Control (Jail) Admissions

This section examines sentenced jail admissions. It is important to note that our estimate does not include all jail sentences, intakes, or the entire population. Most counties have their own jail, typically operated by the Sheriff's Office, and if not, then it is likely a regional jail. Among these jails there are numerous operating systems that collect the county's data on the population lodged there. None of these data systems feed into a single system, and therefore the only way to know about the full jail population over time is to pull data from each county's system individually. Unfortunately, that was not feasible for this project. As a result, we rely on data from the DOC, which includes felony sentences that go to the DOC, but for various possible reasons are sent to locally controlled and managed jails to serve the sentence. Despite these limitations, it is important to analyze these numbers because they signify how much of the local control population that could be in prison. Additionally, the PCS admissions to local control are a prime population to target for diversion if the state intends to reduce its carceral use.

Figure 4.10. Statewide Monthly Trends in Sentencing via Counts of Admissions to Local Control Overall and for PCS-Principal Convictions, 2008-2024

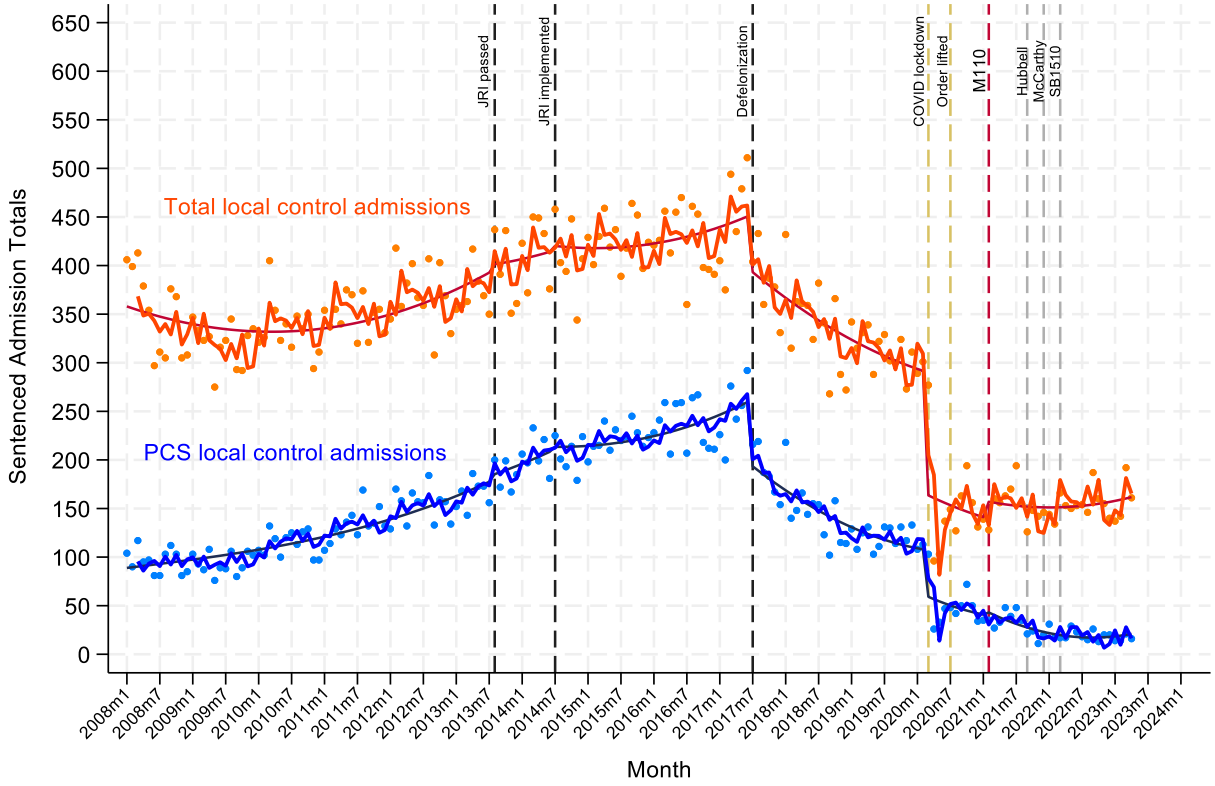


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

JRI Passage and Implementation. Figure 4.10 shows that Oregon local control (LC) admissions for any crime experienced a steady climb of approximately 3 admissions per month on average from January 2010 to JRI's passage in 2013. Neither JRI passage nor implementation were associated with notable changes in the trajectory of overall LC admissions. In many ways, PCS local control admissions followed a similar pattern as the total. PCS admissions were increasing steadily at about 4 admissions per month (p = .001) before JRI and continued through the passage of JRI. These findings suggest that JRI's implementation had little impact on PCS felony sentences served in local control.

Defelonization. Following the passage of defelonization, there was a sharp and significant decline in total LC admissions. Defelonization was associated with an immediate

decrease of 54.6 total admissions ($p < .001$), followed by a sustained trend reduction of 10.6 fewer admissions each month ($p < .001$). As expected, this effect was far more pronounced on PCS LC admissions than on total admissions. Defelonization was associated with a substantial immediate reduction of 67.4 PCS LC admissions in the first month ($p < .001$), and a significant downward trend of 9.2 fewer admissions per month ($p < .001$). The sustained decrease highlights the targeted nature of the policy and its effectiveness in reducing reliance on incarceration for PCS offenses. Considering that the trends for total LC admissions and PCS LC admissions mirror each other both pre- and post- defelonization is a good indication that the increase in the felony jail population up to defelonization was related to PCS convictions. Perhaps most interesting about the observed decline in LC admissions is the juxtaposition with the steady/slightly descending trend of probation admissions during the same period. This suggests that the practice of many jurisdictions was either to send the person to some form of custody for a PCS or place the person on probation, or both. The differences here are likely a combination of these factors and relying on split sentences (i.e., some jail time followed by probation), but with greater emphasis on probation. However, some of this could also be explained by the use of prison as explained in the next section.

COVID-19. Few areas of the system were as impacted by COVID-19 as much as carceral settings. Our models indicate that COVID-19 was associated with a drop of 196.1 LC admissions in the first month ($p = .010$), which was a 38% reduction in the numbers from 2019. Following this initial decline, LC admissions experienced a further trend decrease of 5.4 fewer admissions per month, although this relationship was not significant ($p = .230$). As with total LC admissions, COVID-19 resulted in a substantial decline in PCS LC admissions. There was an immediate

decrease of 110.5 PCS LC admissions (p = .015), followed by a slowed, but significant average negative trend of 4.8 fewer admissions per month thereafter (p = .089) leading into M110.

M110. Decriminalization was not associated with significant changes in total LC admissions but was associated with a cumulative effect of reducing the trend in PCS LC admissions. The post-M110 trend added to the COVID-19 trend to make it 10.7 fewer PCS LC admissions per month (p = .023). These findings suggest that by the time M110 was enacted, the number of PCS LC admissions had already been substantially reduced by prior policies like defelonization and COVID-19. While the model did not detect a direct effect of M110 on total and PCS LC admissions, the true impact is likely manifesting as a suppression effect for both admission types. Prior to COVID-19, PCS LC admissions made up approximately 48% of the LC total sentenced population. Without PCS returning as a major contributor to the total LC admissions, both trends are kept from rebounding after COVID-19 as most trends have shown to do (e.g., total probation admissions).

Prison Admissions

Figure 4.11. Statewide Monthly Trends in Sentencing via Counts of Admissions to Prison Overall and for PCS-Principal Convictions, 2008-2024

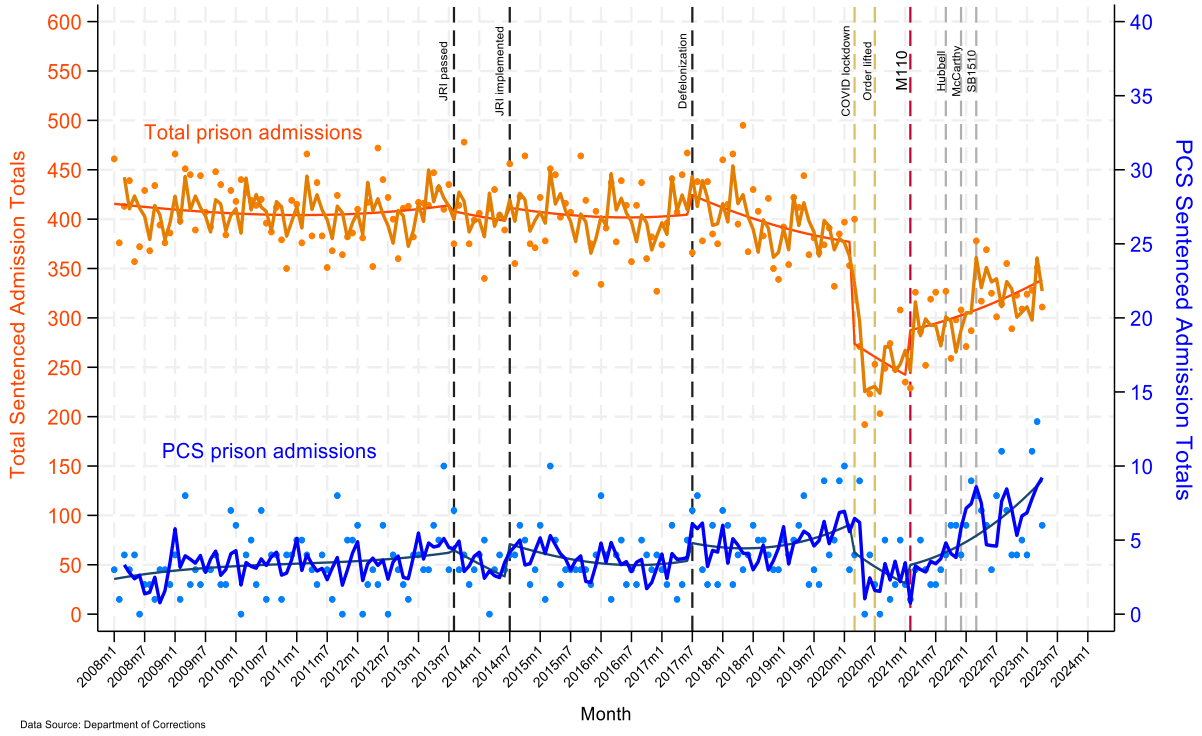


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 4.11 shows the monthly admissions to prison for all offenses (total) and PCS offenses. Again, these are counts of admissions in which PCS was the most-serious offense for which the person was admitted to prison. This graph is slightly different from the previous two on probation and local control admissions in that it uses two y-axes. The left (orange) y-axis corresponds with the total prison admissions, while the right y-axis (blue) corresponds with the PCS prison admissions plot. These two axes are necessary because there is such a sharp contrast between the two types of admissions. For instance, prior to JRI, there was an average of 407 monthly admissions to prison for any crime, ranging from 350 to 472. In contrast, there was an average of 3 PCS monthly admissions to prison during that same time, with a range from 0 to 10. This contrast highlights two important aspects of the PCS trends that must be kept in mind when

trying to unpack the effects of the policy shifts. First, since 2008, very few people were sentenced to prison with PCS as their most serious or lone offense, which includes when possession of small quantities of illicit substances was still a felony. Second, and relatedly, with such low numbers, there is an inherent floor as to policy effects. Therefore, the subtle effects of a policy must be interpreted in the context of very small numbers of PCS admissions to prison.

JRI Passage and Implementation. Figure 4.11 illustrates that prison admissions for all offenses were on a slow upward trajectory from 2011 to the passage of JRI in 2013, increasing by approximately 4.3 admissions per month ($p = .008$). By July 2014, when JRI funds rolled out, admissions returned to the pre-JRI count where it remained steady until defelonization. JRI passage and funding was not associated with PCS admissions, as the trend fell back to a pre-JRI average. These findings suggest that JRI had limited influence on PCS admissions to prison.

Defelonization. Defelonization was associated with an immediate increase of 42.3 prison admissions ($p = .003$), but this was followed by a statistically significant downward trend of 5.9 fewer admissions per month ($p = .031$). This suggests that despite defelonization, during the first year more people were sentenced to prison before the policy contributed to sustained reductions. An interesting pattern was also observed for the PCS prison admissions. Defelonization was associated with a small, but statistically significant increase of 2.9 admissions in the first few months ($p = .002$). This was followed by a plateau of 0.3 fewer admissions per month before increasing in the months prior to COVID-19 ($p = .051$). It is possible that the policy may have shifted some individuals initially into prison likely reflecting how felonies eligible for prison likely have greater quantities, or defendants with criminal histories that precluded them from being charged with a misdemeanor (rather than a felony).

COVID-19. There was an immediate decrease of 87.7 prison admissions after COVID-19, although this relationship was not statistically significant (p = .252). Although COVID-19 was found to have no impact on PCS prison admissions (p = .481), there was a decrease of 3.5 admissions per month which is substantial as it cuts the average monthly admissions during defelonization (32 months) from about 5 per month to 3 during the COVID-19 months (9 months). This drop was short-lived as the trend began to rebound just prior to M110.

M110. M110 had no measurable immediate or trend-level impact on total prison admissions. The effects of M110 were likely limited because drug possession makes up such a small proportion of prison admissions. Similarly, we also find no significant, immediate impact on PCS prison admissions. Interestingly, we find M110 to be weakly associated with a slow average rise of .5 PCS admissions per month (p = .180). The data suggest that M110's impact was minimal but potentially fostered a result that was counter to the initial goals of the law as more people are going to prison for PCS than before the pandemic. As context, during defelonization, from January 2019 to February 2020 (14 months) there was an average of 5.4 PCS admissions per month, ranging from 2 to 10. In the first year of M110 (from February 2021 to December of 2021), the average was 3.5 admissions, ranging from 1 to 6. By the second year, the average PCS admissions per month were up to 6.5, ranging from 3 to 11. In the first six months of 2023 (the end of the dataset for these measures), there were 8.7 PCS admissions per month on average, with a range from 4 to 13. While these remain low numbers, the trajectory of PCS prison sentences is worth noting and is counter intuitive to the goal of the measure.

Figure 4.12. Monthly Trends in Sentencing via Counts of Admissions to Local Control, Probation, and Prison for PCS by Select County, 2008-2024

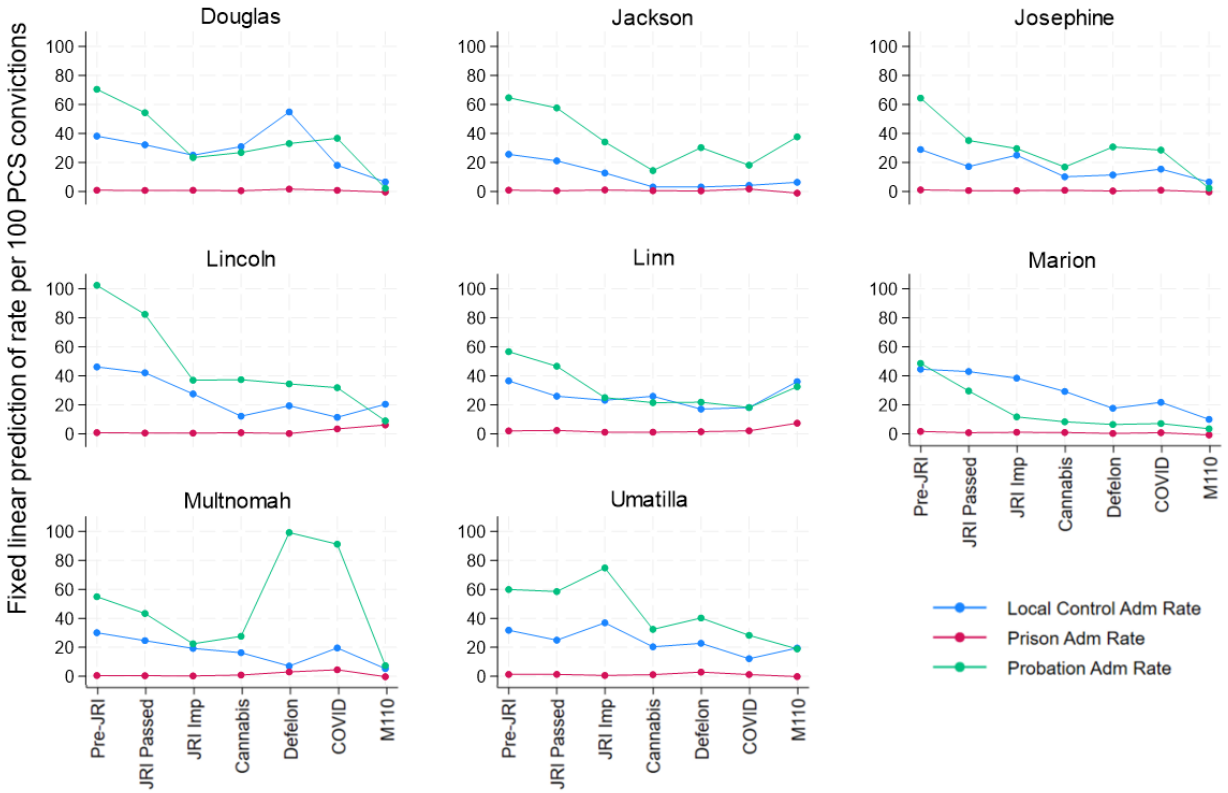


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Figure 4.12 shows the predicted average rate of PCS admissions per 100 PCS convictions for each of the eight select counties in a given period, after controlling for the seasonal change, the poverty index (unemployment rate, burdened households, percent below the poverty level), and the disadvantage index (income inequality, disconnected youth, single parent households, percent of population without a high school degree or GED) in a nested, mixed effects model. Each point (i.e., dot) provides an estimate of the percent of PCS convictions that are placed in each admission and attributable to the policy shift. It is important to keep in mind that the percentages are independent of one another, so they may not add up to 100. This is because admissions are counted separately, so people who receive a sentence of a local control stay and

probation, which is rather common in some counties, are counted twice – once for the local control admission and once for the probation admission.

There are a few important things to take away from these analyses. First, the prison admission rates for PCS are near zero for many counties, including the eight select counties. For some, such as Lincoln and Linn Counties, there has been an increase in the prison admission rate since COVID-19. Prior to COVID-19, Lincoln County had a rate near zero and Linn County hovered between 1 and 2 prison admission per 100 PCS convictions. COVID-19 was associated with an increase to 3.4 prison admissions in Lincoln County, and 2.2 in Linn County. M110 was associated with an even larger increase in this rate of PCS prison admissions, rising to 6.1 in Lincoln County and 7.4 in Linn County. Along with Umatilla, these three of the eight select counties show an increase in PCS prison admission rates during the M110 period. In some ways, this supports the notion that while the number of charges for PCS were far fewer than previous years, the type and severity of PCS convictions (i.e., greater quantities of a given substance) likely increased the probability of carceral stays. However, the fact that these increases were found in only some counties suggests that the increase may be related to differences in localized system practices (e.g., prosecution or sentencing).

As is evident in Figure 4.12, counties varied in the degree to which they relied on probation versus local control for PCS offenses. We observe a downward trend amongst all eight counties in the use of local control for PCS offenses. Where there exists less consistency across counties is in probation base rates for PCS offenses. Over the last 15+ years, probation rates for PCS have fluctuated widely across the eight select counties. Most notable in this area is Multnomah County, which has dramatically increased the use of probation for PCS beginning in the defelonization period. In the periods prior to defelonization, Multnomah County had an

average PCS probation admission rate between 22.5 and 27.6 per 100 PCS convictions. Defelonization was associated with a significant increase to an average of 99 per 100 PCS convictions, and 91.1 during the COVID-19 period. However, this trend ended with M110, dropping the average to 7.4 probation admissions. Like prior figures of this nature, the differences in patterns for each admission demonstrate how the rate of PCS admissions varied somewhat across the select counties for each of the policy shift periods.

Carceral Use

Figure 4.13. Monthly Trends in Sentencing via Counts of Point-in-Time Estimated Count of Local Control, Probation, and Prison for Any Crime, 2008-2024

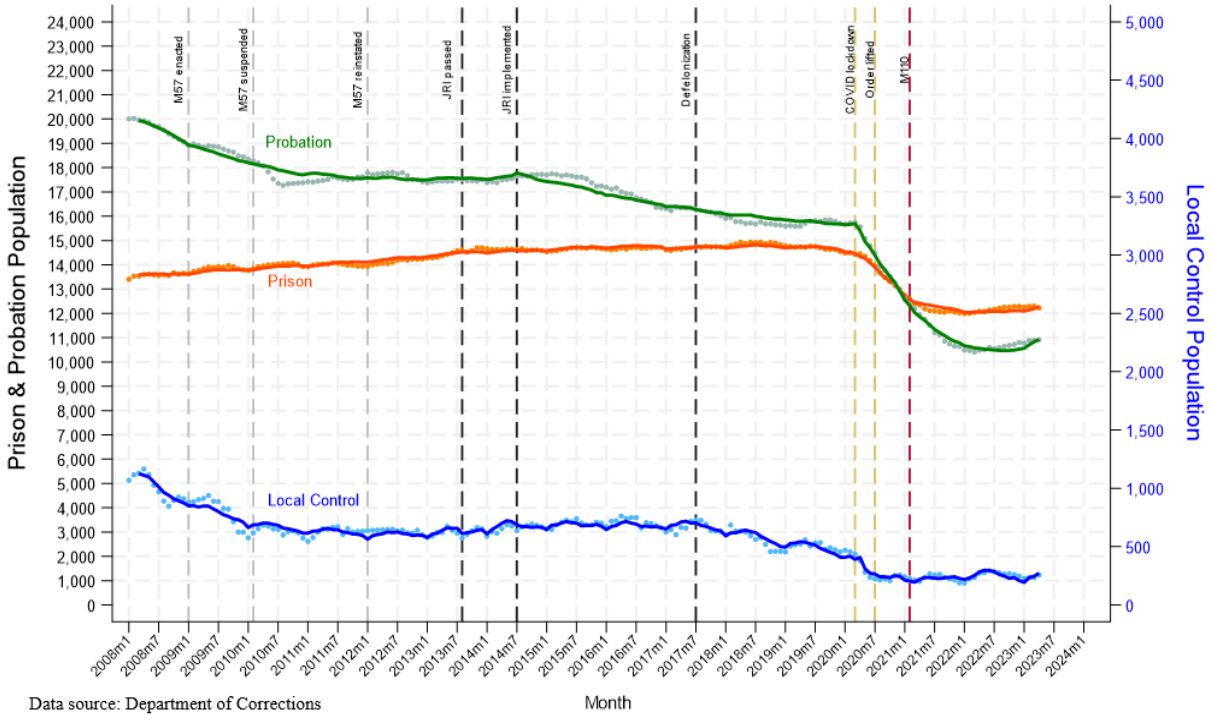


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

While examining admissions allows us to understand the impact of successive policy shifts on one aspect of the correctional population, admissions alone (without length of stay data) cannot provide a census or an estimate of the overall headcount of people in custody or under supervision. Given that much of the goal of these policy shifts were to reduce the social and

fiscal harm by reducing the number of people under correctional control, it is pertinent to also examine overall trends in the population. Figure 4.13 depicts the statewide trends of a point-in-time count of the probation, local control, and prison populations involving all crime types at the beginning of every month. Point-in-time counts provide a snapshot estimate of the correctional population that has monthly turnover (admissions and releases). To simplify the figure, we have removed the smoothed line that captures model predictions without controlling for other factors. Therefore, Figure 4.13 only shows the actual count (scatter dots), and the predicted line while controlling for other factors. Additionally, note that the local control (LC) population is represented by the right y-axis (blue) and the probation and prison populations are captured along the left y-axis.

Prior to JRI. Prior to JRI passage, the three populations shown were on slightly different trajectories. In 2008, each of these populations were at their highest point observed in this dataset. The probation population was at an average monthly count of 18,188 probationers, and 734 adults serving time in LC custody. As time went on from 2008, the probation and LC populations experienced a significant and pronounced decline into July of 2010 with an average monthly reduction of 98.3 probationers ($p < .001$) and 22.4 people in LC custody ($p < .001$). However, as these two trends approached JRI's passage in 2013, both largely plateaued with a slight, upward trajectory. Meanwhile, the prison population maintained a relatively stable and steady climb from 13,405 in January of 2008 to 14,578 in July of 2017. This growth of 9% marked a notable increase of over 1,100 people in prison during this nine-and-a-half-year period.

JRI Passage and Implementation. While the passage of JRI was not associated with a notable change in the any of the point-in-time counts for the correctional population, JRI implementation did have an effect. Implementation was associated with a reduction of the

probation population, slight reduction in LC population, and a flattening of the prison population trajectory. JRI implementation led to a temporary, though not significant, immediate increase of 129.2 probationers (p = .122). However, this increase did not last as the post-implementation trend showed a statistically significant decline of 72.5 probationers per month (p = .015). JRI implementation led to an immediate, though not significant, decrease in the local control population 36.9 people (p = .263) and the post-implementation trend suggested a slight monthly decline of 11.7 individuals (p = .119).

Despite the lack of detected effect of JRI on the prison population in our models, we have confidence that JRI implementation likely helped in slowing the upward trend in the point-in-time prison population. This is because of the context in which JRI was passed in 2013 and implemented in 2014. Two years prior to JRI passage (from July 2011 to June 2012), the average monthly prison count was 14,011, with the highest count reaching 14,109. One year prior to JRI passage (from July 2012 to June 2013), the average monthly count increased by 2.0% to 14,291, with the highest reaching to 14,500. In the first year after JRI was passed, the average monthly population increased another 2.4% to 14,630 and the highest count at 14,707. By the first year of JRI implementation, the average growth dropped to near zero (-0.1%) with the average monthly count from July 2014 to June of 2015 at 14,623 and the highest at 14,706. This continued to the second and third year post-JRI implementation as the average monthly count increased by 0.4% and 0.0%, respectively. This conclusion supports the findings of previous studies (Dollar et al., 2024; Matsuda et al., 2022) in that JRI was associated with a change in the prison population trajectory, ultimately helping to avoid building new facilities.

COVID-19. While the targeted policy of defelonization was not associated with any changes in the trends or levels in any of the populations, the COVID-19 pandemic had a large

impact on the correctional populations. Interestingly, COVID-19 was not associated with any statistically significant changes in the LC population in our models. This is likely because the LC population was on a downward trend leading into the pandemic period. From August of 2016 to February of 2020, the average monthly LC population dropped a collective 34.2% from 665 to 496. From March 2020 to the implementation of M110, the LC population dropped another 46.0% to a monthly average of 434. In the first year of M110 implementation, it dropped another 14.4% before stabilizing. Again, it should be noted that this point-in-time estimate is not the entire jail population. Local control refers to the population of convicted individuals sentenced to serving time in prison custody, but for various reasons, they serve their custody time at the local jail instead; that is, serving their time in "local control". Local control is called such by the state to distinguish it from any other jail admissions, and therefore it is not the entire jail population. Local control stays do not include pretrial populations, which is a large portion of the adults housed in local jails.

COVID-19 introduced significant disruptions in the probation and prison populations. This was marked by an immediate increase of 269.5 probationers ($p = .185$) in the first month, followed by a dramatic and significant downward trend 294.9 probationers per month ($p < .001$) associated with COVID-19. Similarly, COVID-19 had a significant and sustained impact on the prison population. The post-COVID-19 trend showed a substantial and significant reduction of 141.6 adults in custody per month ($p < .001$). This downward effect was later offset by a significant rebound in early 2021, where trends increased by 121.2 adults in custody per month ($p < .001$), suggesting a partial recovery.[68]

[68] See Appendix Figure B for statewide trends in the raw differential representation for admissions to probation, local control, and prison for all crimes.

Key Conclusions

In conclusion, we review our findings in relation to the initial research question: *How have PCS changes impacted conviction types, drug courts, sentencing outcomes, and prison use?*

When examining the impacts of progressive drug laws, one of the first questions to address before observing outcomes is – *Was there a reduction in the number of defendants who came into contact with the criminal justice system?* Our results suggest that defelonization, the COVID-19 pandemic, and M110 all contributed to decreases in the number of defendants charged with a PCS offense. The COVID-19 pandemic had the largest immediate impact on PCS defendants, PCS convictions, and PCS dismissals (all three of which decreased). Post-M110 there was decrease in defendants charged with a PCS offense and PCS dismissals (but not convictions). Although by late 2023, the number of PCS defendants appeared to be increasing (roughly 400 per month), although still at considerably lower levels that pre-M110 (over 750) and pre-COVID-19 (over 1110). Post-M110, the number of PCS convicted defendants appears to have rebounded to what it was prior to M110 (over 250 convictions per month). This analysis highlights the impacts of successive drug policy shifts on the number of defendants involved with the criminal justice system because of a PCS offense.

One of the key findings regarding the effect of drug policy shifts on conviction types is the decrease in dismissals (and increase in convictions rates) following the passage of the JRI in 2013. Similarly, there is a stabilizing effect of JRI on probation admissions, which had been declining prior to 2013. These two metrics combined demonstrate an increased willingness to divert eligible defendants away from prison, potentially to probation and/or programming. Over the last decade, the state has invested significant funds into building and supporting programs that are designed to reduce recidivism and decrease carceral use. Since 2014, the Oregon

Criminal Justice Commission (CJC) has awarded nearly $190 million dollars to JRI programming across the state through their Justice Reinvestment Initiative Grant Program (Matsuda et al., 2022; Oregon Criminal Justice Commission, 2024b). Since 2019, the CJC has awarded over $55 million dollars to treatment courts across the state through their Specialty Courts Grant Program.[69] These are just two sources of state-funding, amongst others. We assume that some eligible defendants are engaging in programming based on metrics observed here (e.g., stabilization of probation post-JRI), and see a concerted effort to reduce the carceral population by removing historically punitive sentencing laws (e.g., the reduction in PCS local control admissions post-defelonization).

Shifts in carceral use in Oregon reflect the interplay of policy changes and external events, highlighting the complexity of managing correctional populations. Admissions data and point-in-time counts reveal that while initiatives like JRI aimed to reduce correctional populations and associated harms, their impact varied across probation, prison, and local control populations. In looking at the carceral population specifically, the COVID-19 pandemic had the largest impact on Oregon's jails and prisons of any change observed over the last 15+ years. There was an immediate drop in total probation, local control, and prison admissions, none of which have fully rebounded back to pre-COVID-19 levels. During the COVID-19 pandemic, operational constraints and enforcement shifts resulted in a substantial reduction of PCS admissions. This trend was further reinforced by M110, which contributed to sustained decreases in PCS probation and local control admissions. External events and legislative measures have significantly influenced carceral practices, particularly for drug possession offenses.

[69] https://olis.oregonlegislature.gov/liz/2023I1/Downloads/CommitteeMeetingDocument/279466.

One somewhat surprising finding regarding carceral use is the slight increase in prison admissions for PCS offenses following defelonization (2017) and M110 (2021), although the numbers are low, and fluctuations may not be significant. Importantly, despite this increase in recent years, PCS prison admissions have been below 10 admissions per month over the study period, demonstrating that prison was not a likely sentence outcome for PCS offenses. Although the effect is small, it is counterintuitive to what most might expect given the goals of these legislative and citizen-lead ballot efforts. But it likely reflects the changing composition of PCS cases where an arrest is made, a charge is filed, and results in conviction (e.g., substantial quantities, lengthier criminal histories). And this is certainly true post-M110 as many user-level PCS offenses were no longer criminal. Other drug law changes (e.g., delivery) created unique charging practices for some substantial quantity possession offenses. As one prosecutor noted:

> *"With changes to case law, there's a lot of cases where drug possession is now potentially prison, where it didn't use to be. That's sort of been a false narrative from the beginning that people go to prison for possession, like you couldn't, it's literally impossible…I don't know if it's statewide or it's just here, but there are more people incarcerated now for possession than there ever were before Hubbell or M110 because for drug dealers who are actual dealers, instead of an attempted delivery which is harder to prove, we just charge a [commercial delivery offense] possession."*

These patterns illustrate Oregon's broader decarceration trajectory, marked by reductions in both front-end enforcement and downstream carceral admissions, aligning with national movements toward decarceration (Barker, 2011). However, challenges remain in sustaining long-term decreases, as seen in the partial rebound of prison populations following the COVID-19 pandemic. These analyses also suggest that the differential effect of a given policy may rely on the county's implementation, which is closely tied to resources and willingness to treat PCS cases in a less punitive and more treatment-forward way.

Results & Findings- Public Health and Safety

The goal of this chapter is to examine the impacts of drug legislation changes related to possession of controlled substances (PCS) on public safety and health in Oregon. Our initial research questions are:

1. Have successive PCS changes impacted *crime rates and drug-related overdose deaths*?
    a. Analysis of violent and property crime trends
    b. Analysis of drug-related overdose deaths trends

To address these questions, quantitative analyses were performed. Absent the interviews/focus groups with law enforcement officers, prosecutors, and court personnel (e.g., judges, specialty court administrators) reported above, we did not collect qualitative information on public safety and health outcomes. Relying on our statewide aggregate data, we examine trends in property and violent crime rates and drug-related overdose deaths. As this chapter will reveal, drug policy shifts did not have a large or sustained effect on property or violent crime rates, or drug-related overdose deaths. Rather, external factors such as the COVID-19 pandemic and the influx of fentanyl seem to have had a larger impact on negative observed outcomes – the increase in drug-related overdose deaths. Oregon's drug policy shifts over the past decade, culminating in M110, highlight complex interactions between public health and safety.

Quantitative Methodologies

We used quantitative data to examine the potential change in key public health and safety outcomes that could be influenced by changes in PCS laws. These outcomes encompass those related to key criminal justice system public safety measures (i.e., crime rates) and important public health measures (i.e., drug-related overdose deaths).

Crime Rates: We used property and violent crimes recorded by the police accessed from the Federal Bureau of Investigation's Uniform Crime Reporting Program (UCR) Summary Reporting System (SRS) and the Bureau of Justice Statistics' National Incident-Based Reporting System (NIBRS) from 2008 – 2024. The data is compiled and standardized by Jacob Kaplan, a data specialist at the School of Public and International Affairs of Princeton University. His work is often published in conjunction with the Inter-university Consortium for Political and Social Research (ICPSR). The files used involved comprehensive files of agency-level monthly counts (https://dataverse.harvard.edu/dataverse/ucrdata). Kaplan has published a book on his methods to standardize definitions of reporting agencies, and we refer interested readers there (2023).

Importantly, reported crime statistics from the UCR and NIBRS data have several well-documented shortcomings. These include underreporting by agencies, potential inconsistencies in reporting practices over time, and variations in participation rates, particularly for smaller jurisdictions. Additionally, differences in how agencies transition to NIBRS may introduce discrepancies. The transition to the NIBRS became the national standard for law enforcement crime data reporting in January 2021, aiming to enhance the detail and accuracy of data, but it has been met with many challenges with standardization and poor participation by states and jurisdictions such as California and New York (BJS, 2024).

Another shortcoming of these data is aggregating law enforcement data to the county-level. Doing so presents recognized challenges, including issues of jurisdictional overlap, variations in reporting practices among agencies within the same county, and the potential for population estimates failing to accurately reflect the geographic scope of reported incidents (Kaplan, 2023; Lum & Nagin, 2017; Maltz, 2006). These issues can introduce biases and inaccuracies that make county-level analyses less reliable for understanding broader crime

trends. However, aggregating to the state-level mitigates many of these concerns, as the larger scale reduces the impact of discrepancies between individual agencies. State-level aggregation tends to smooth out variations and provides a more comprehensive view of crime patterns, making it a suitable approach for evaluating trends over time and across broader contexts.

Despite these limitations, Oregon's crime data is considered reliable for the 2008 to 2023 period due to consistently high participation rates among its law enforcement agencies and strong adherence to FBI reporting standards. This makes the state's data well-suited for examining crime trends during this timeframe. As of 2023, 87.7% of Oregon's 236 law enforcement agencies reported crime data to the FBI's UCR Program, covering approximately 98.6% of the state's population (Oregon Criminal Justice Commission, 2023). While exact percentages of agency participation since 2008 are not readily available, the recent data indicates a positive trend towards comprehensive statewide reporting. Oregon has been actively working towards full compliance with NIBRS reporting standards, with the Oregon State Police providing resources and support to agencies during this transition (Oregon State Police, n.d.).

That said, the data we rely on is not without its flaws. Clackamas, Washington, and Multnomah counties, the largest counties in the state, had dramatic drops in their reporting during much of 2015 and all of 2016, before returning to the average trend for the county. To remedy this issue, we used autoregressive integrated moving average (ARIMA) forecasting to estimate the trend and seasonality for missing months in these counties. These forecasted months were included in the state estimate of the overall counts. As a result of this remedy, our crime rates and totals in Oregon are likely higher than those reported by the FBI. To standardize the state-level data, we calculated crime rates per 100,000 in population using population estimates from the Portland State Population Resource Center, which uses similar methodology to those

provided by the U.S. Census Bureau. Whenever we examined county-level data, we used the FBI crime rate denominator of the population served by reporting agencies. Our approach offers valuable insights by leveraging all available data and filling gaps, potentially providing a more complete, albeit higher, estimate of crime rates, which is arguably closer to the real count of crime due to the underreporting of crimes to the police by the public.

Drug-Related Overdose Deaths Data: We partnered with the Oregon Health Authority (OHA) to obtain information on drug-related overdose deaths from 2008 – 2023. Statewide counts of fatal overdose deaths have been verified by both the OHA and Centers for Disease Control and Prevention (CDC).[70]

***Drug Seizure Data*:** We obtained drug seizure information for the Oregon-Idaho High-Intensity Drug Trafficking Area (HIDTA) program from the Drug Enforcement Administration (https://www.dea.gov/operations/hidta). This datafile included individual drug seizures records with information on the type and quantity of the drug seized (i.e., fentanyl, cocaine crack, methamphetamine ICE, and heroin), and as well as the county in Oregon from 2010 – 2023. Twelve of Oregon's 36 counties participate in the Oregon-Idaho HIDTA program, and are located proximate to interstate highways bordering Idaho, Washington, and California.[71]

[70] The data we analyzed from the Oregon Health Authority only included drug-related fatal overdose information. As such, we were not able to capture nonfatal overdoses. Future research on this topic should attempt to gather a more robust measure of nonfatal drug-related overdoses, especially considering law enforcement reports of increased naloxone distribution.

[71] It is important to note that HIDTA data was collected and provided to us at the drug-level with a date seized, beginning in 2010 through 2023. To integrate this data into time-series models that spanned back to 2008, we aggregated seizure weights (grams and kilograms) to the county-month level and interpolated missing values for the pre-2010 period. For each drug category, we interpolated values using linear extrapolation (ipolate in Stata 18.5) within counties, constrained by observed minimums and maximums from adjacent years (2010–2012 for the floor and 2010–2023 for the ceiling). Where early extrapolated values exceeded local means, they were reset to plausible floor values to avoid implausible inflation of early-period values. We then applied a 12-month symmetric moving average to reduce short-term volatility and impute missing values with interpolated smoothed trends. Additional 3-month moving averages excluding the current month were calculated for both original and interpolated series to support forecasting and lag-sensitive modeling. To account for 2024 months where they were needed in certain models, we capped post-2023 estimates at county-specific means to avoid distortion in post-policy trend models due

Quantitative Results

We begin this chapter with a statewide examination of public safety outcomes, measured by property and violent crime rates in the state. The latter half of this chapter includes an examination of drug-related fatal overdoses deaths in Oregon. We contextualize these findings within the broader drug landscape in Oregon, by descriptively examining drug seizures (i.e., frequency and volume).

Crime Rates

The data used in the analyses that follow come from the FBI Summary Reporting System (SRS), which is part of the Uniform Crime Reporting (UCR) Program. The UCR program compiles data voluntarily submitted by municipal, county, and state law enforcement agencies across the country. In the SRS dataset called "Offenses Known and Clearances by Arrest," there are seven different datasets that cover various crime subgroupings. Traditionally, the UCR program reports on "Index" or "Part 1" crimes which consist of the following eight categories, and subcategories, broken down by the Hierarchy Rule of seriousness, where the most serious offense in a given arrest is traditionally the one recorded:

1. Homicide (including manslaughter)
2. Rape (including attempted rape)
3. Robbery (with or without a weapon)
4. Aggravated Assault (with a weapon or intent to cause serious injury)
5. Burglary (including attempted)
6. Theft (other than of a motor vehicle)
7. Motor Vehicle Theft (all types of vehicles)
8. Arson (often in a separate dataset)

Index crimes are commonly broken down into two larger groups property index crimes and violent index crimes. Each include a summed combination of the eight categories. While this

to extreme values in late-reporting fentanyl data. Details on the Oregon-Idaho HIDTA are available at https://oridhidta.org/.

approach has its limitations, it is still sufficient in understanding crime rate patterns in a given state, so long as the reporting is sufficient throughout the state's jurisdictions. Because of the voluntary nature of the program, there are often missing or incomplete data due to jurisdictions not participating for various (often capacity/personnel) reasons. Most jurisdictions in Oregon have been reporting to the UCR/SRS and the system states are encouraged to switch to, the National Incident Based Reporting System (NIBRS). While the annual data is easily accessible through the FBI data exploring tools, the monthly data is more difficult. The monthly data by jurisdiction is compiled and further standardized with data from NIBRS by Dr. Jacob Kaplan for researchers to use in various analytical efforts (see Kaplan, 2022, 2025).

Property Crimes

We examine property crimes in two ways via the UCR definitions: Index property crimes and "theft offenses". Index property crimes include burglary, larceny-theft, and motor vehicle theft. These offenses involve the unlawful taking or destruction of someone else's property. Larceny-theft (also known as theft) is a subset of property crimes and involves the unlawful taking of property without the use of force, such as shoplifting, pickpocketing, or stealing bicycles. Motor vehicle theft is a distinct category within property crimes. We include theft offenses both in the index property crimes and as a separate trend because this is the subcategory that is most likely to be impacted by drug-related crimes and drug enforcement policies.

Figure 5.1 presents statewide crime rates per 100,000 in Oregon via observed monthly property index offense rate (blue scatter/circles) and theft offense rates (green scatter/circles). Each offense-type's scatter plot is accompanied by a smooth trend line that is the predicted value

without controlling for any other measure,[72] and a spiked line that is the predicted value[73]

including the following controls[74]:

- COVID-19 restrictions (from March 2020 through May 2023)
- Consumer Price Index (CPI, a measure of inflation)
- Unemployment rate (lagged by 1 month)
- Number of burdened households (paying 30% or more of their income on rent/mortgage)
- Ratio measure of income inequality
- Rate of single-parent households
- Percent of the population with the highest educational attainment is less than high school
- Kilograms of heroin seized by law enforcement (3-mo moving average, lagged 1 month)
- Kilograms of meth seized by law enforcement (3-mo moving average, lagged 1 month)
- Kilograms of fentanyl seized by law enforcement (3-mo moving average, lagged 1 month)
- Average number of officers per 1,000 citizens
- Month (to account for seasonality)

[72] The only other measure in these models was the squared term of time. This allowed us to model the curved shape of the trend when necessary.
[73] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of certain control measures like unemployment.
[74] We refer readers to the Appendix for a more detailed description of the measures used in these analyses.

Figure 5.1. Oregon Property Crime Rate, 2008-2024

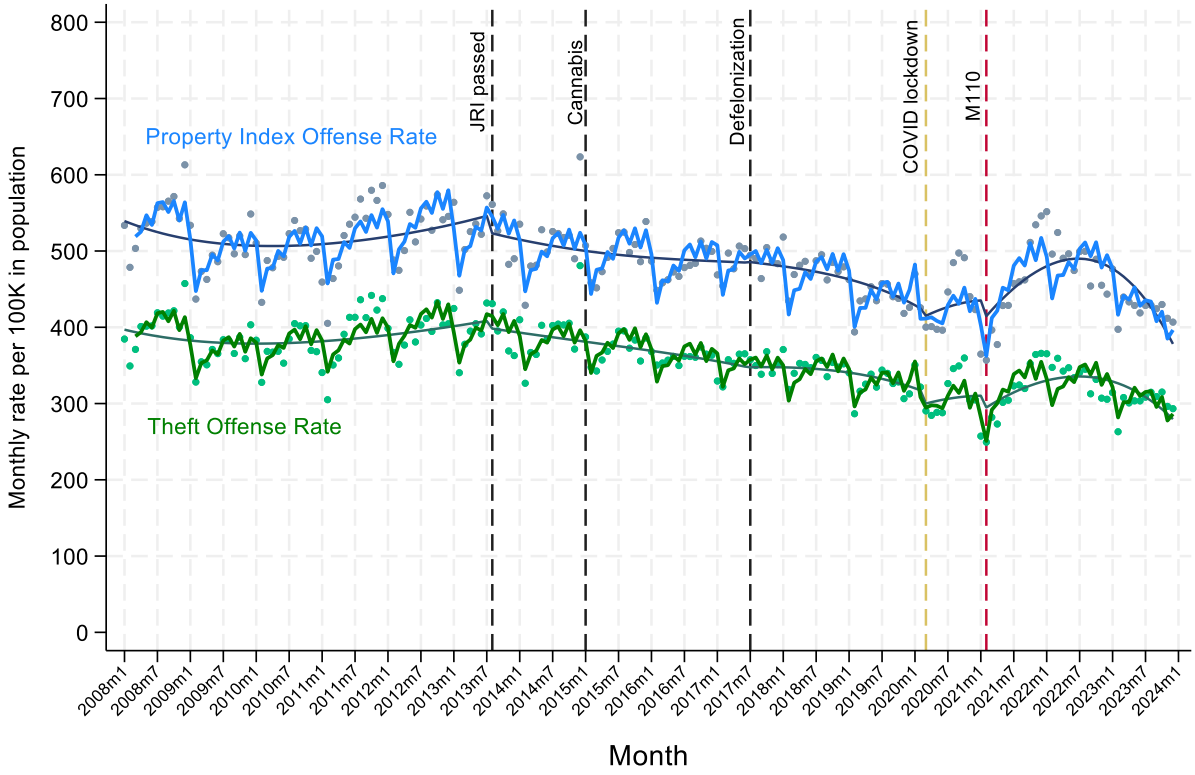


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

The predicted lines shown in Figure 5.1 come from an interrupted time-series (ITS) analyses that employ generalized linear model[75] using only statewide data. First, it is worth noting the overall trends for both measures of property crime. Figure 5.1 demonstrates that the trends in monthly statewide rates for both index property crimes and theft crimes reveal somewhat stable patterns over time, although some changes are shaped by the major policy shifts and external events. Prior to the passage of JRI, the statewide theft crime rate averaged 388, with seasonal fluctuations from 305 to 457. Following JRI's passage and up to defelonization, the theft crime rate declined slightly, averaging 374 with a range of 322 to 481. During the defelonization period, theft crime rates further decreased to an average of 339, with reduced

[75] Generalized-least squares regression (Prais-Winsten and Cochrane-Orcutt models, AR=1).

variability (ranging between 286 and 371). The COVID-19 pandemic marked another significant drop, with theft crime rates averaging 309, accompanied by wider variability (257 to 360) through February 2021. Since M110, theft crime rates have shown slight stabilization, averaging 318, with a standard deviation of 28.4 and rates ranging from 249 to 366.

For index property crimes, statewide rates were higher but displayed similar declining trends. Prior to JRI, the property crime rate averaged 519, with a range of 405 to 613. Between JRI and defelonization, the average property crime rate dropped to 498, with wider variability (429 to 624). During the defelonization period, property crime rates continued to decline, averaging 463, ranging from 394 to 518. Following the onset of COVID-19, property crime rates averaged 431, with a broad range (365 to 497). After M110, property crime rates showed a slight recovery, averaging 456, with greater variability (357 to 552).

Overall, Figure 5.1 demonstrates gradual reductions in both theft and property crime rates leading up to and during key policy interventions such as JRI and defelonization, along with notable decreases during the COVID-19 pandemic. Following M110, we observe a slight stabilization or modest increase in property crime rates. With these descriptive trends in mind, we developed our ITS models to help distinguish how much of the changes were attributable to the policy shifts and events. Ultimately, our models show that after including appropriate controls, property crime rates were only weakly impacted by changes in drug policy shifts.

Since the passage of JRI in 2013, there had been on a steady decline in property crime rates up to the COVID-19 lockdown, when there began an increasing trend in property crime rates. After accounting for control measures, our models suggest that JRI passage had a modest effect on property crime rates. JRI was weakly associated with an initial drop in index property crime rates of 23.0 per 100,000 (100K) (p = .206) followed by a steady average decline of 5.5

offenses per 100K per month (p = .061). There was no meaningful effect of JRI on theft rates. Neither defelonization, nor the COVID-19 lockdown were associated with sizable changes in the trends for both theft and property index crime rates. M110 was associated with a slight increase in the index property offense rate and weakly associated with a slight increase in theft offense rates, adding 14.2 index property offenses per 100K, per month (p = .051) and 9.5 thefts per 100K, per month (p = .082).

Interestingly, when inflation is not controlled for, M110 is associated with slightly stronger effects (increase between .3 and .4) that are statistically significant ($p < .05$). If using the Neymon-Pearson approach to interpreting p-values, the association would likely be presented as the only effects that matter, which would be misleading. Moreover, when we control for the semi-annual National Forensic Laboratory Information System (NFLIS) toxicology reports for fentanyl, the effects of M110 are further weakened by at least 1 less crime per 100K per month associated with the policy shift. These findings are consistent with findings from other studies that have also observed the importance of inflation (Nunley et al., 2016; Rosenfeld & Levin, 2016) and fentanyl in property crime trends (Giles & Malcolm, 2021).

The most important aspects of these models are understanding the effects of COVID-19 and the effects of M110 in the context of the overall trends. Although COVID-19 was not associated with the index property and theft rates, as shown in Figure 5.1, it marked the lowest observed monthly rates over the entire study period (e.g., average index property crime rate = 431 per 100K, minimum observed value = 365 and the maximum observed value = 497) leading into the implementation of M110. Between January of 2008 and March of 2020, the average index property crime rate was 16% higher than the COVID-19 period (average = 500, minimum observed value = 393 and the maximum observed value = 623 index property crimes per 100K).

With the totality of the evidence, this suggests that COVID-19 protocols may not have impacted the property crime rates directly, but the period demonstrated the bottom of a trend leading into a new policy change and the end of COVID-19 restrictions.

Similarly, the M110 effects need to be contextualized as well. The monthly theft rate post-defelonization (339 to 374 per month) and monthly index property crime rate (463 to 498 per month) is like that post-M110 (318 per month; 456 per month, respectively). As Figure 5.1 depicts, increases in property crime rates post-M110 were relatively short lived as both trends have decreased since reaching their peaks in 2022. This suggests that the increases observed during M110 were likely only partially related to the policy. If M110 was associated with increased property crime rates, then we likely would have observed this effect throughout the policy period. During the M110 period, property crime rates were just as low, if not lower, than the COVID-19 period (minimum observed value of index property crime rates = 357 per 100K). Observed effects suggest causation between M110 and property crime increases is unlikely. It was perhaps one of a multitude of factors that had some association with the initial rise in property crime, some we can control for and some we cannot.

Violent Crimes

To assess violent crime, we also examine two UCR defined categories: Index violent crimes and "simple assault". Index violent crimes include murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. These crimes involve force or the threat of force. Simple assault, however, is generally not included in the index violent crimes category. Simple assault refers to attacks without a weapon resulting in no injury or minor injury and is considered less severe than aggravated assault. We include simple assaults ("assaults") as a separate trend line, they are not included in the violent index offense rates.

Figure 5.2 shows the observed monthly violent index offense rate (orange scatter/circles) and assault offense rates (black scatter/circles). Like Figure 5.1, each offense-type's scatter plot is accompanied by a smooth trend line that is the predicted value without controlling for any other measure,[76] and a spiked line that is the predicted value[77] including controls. The predicted lines shown in Figure 5.2 come from ITS analyses that employ generalized linear model[78] using only statewide data.

First, we describe the overall trend shown in Figure 5.2. From January 2008 to July 2013, Oregon's index violent crime rates remained relatively stable, averaging 42 per 100K in the population, with seasonal fluctuations between 35 and 75. During this same period, simple assault rates averaged 131 per 100K, with more variability (ranging from 105 to 185). Following the passage of JRI, index violent crime rates showed little change, with an average rate of 42 per 100K and seasonal variation from 33 to 52. Conversely, simple assault rates slightly declined during this period, averaging 124 per 100K— 5.3% lower than the pre-JRI average—and ranging from 103 to 143. Defelonization marked a period of increasing index violent crime rates as the average rose to 47 per 100K, ranging from 41 to 53. Simple assault rates also saw a noticeable increase during this time, averaging 136 per 100K—a 9.7% rise compared to the JRI period—and ranging from 117 to 157. The COVID-19 period observed another increase in the index violent crime rates as they averaged 50 per 100K, with ranging from 40 to 58. Simple assault rates remained elevated as well, averaging 136 per 100K and ranging from 118 to 159. Since M110, index violent crime rates have continued to rise, averaging 57 per 100K with a range of

[76] The only other measure in these models was the squared term of time. This allowed us to model the curved shape of the trend when necessary.
[77] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of certain control measures like unemployment.
[78] Generalized-least squares regression (Prais-Winsten and Cochrane-Orcutt models, AR=1).

46 to 67. Similarly, simple assault rates reached their highest levels during this period, averaging 145 per 100K population and ranging from 118 to 168.

These descriptive trends illustrate that while index violent crime rates remained relatively stable during the earlier policy periods, both index violent crime and simple assault rates have increased in the last several years. With these descriptive trends in mind, we developed ITS models to help distinguish how much of the changes were attributable to the policy shifts and events. Ultimately, our models show that after including appropriate controls, violent crime rates were largely unaffected by changes in drug policy shifts.

Figure 5.2. Oregon Violent Crime Rate, 2008-2024

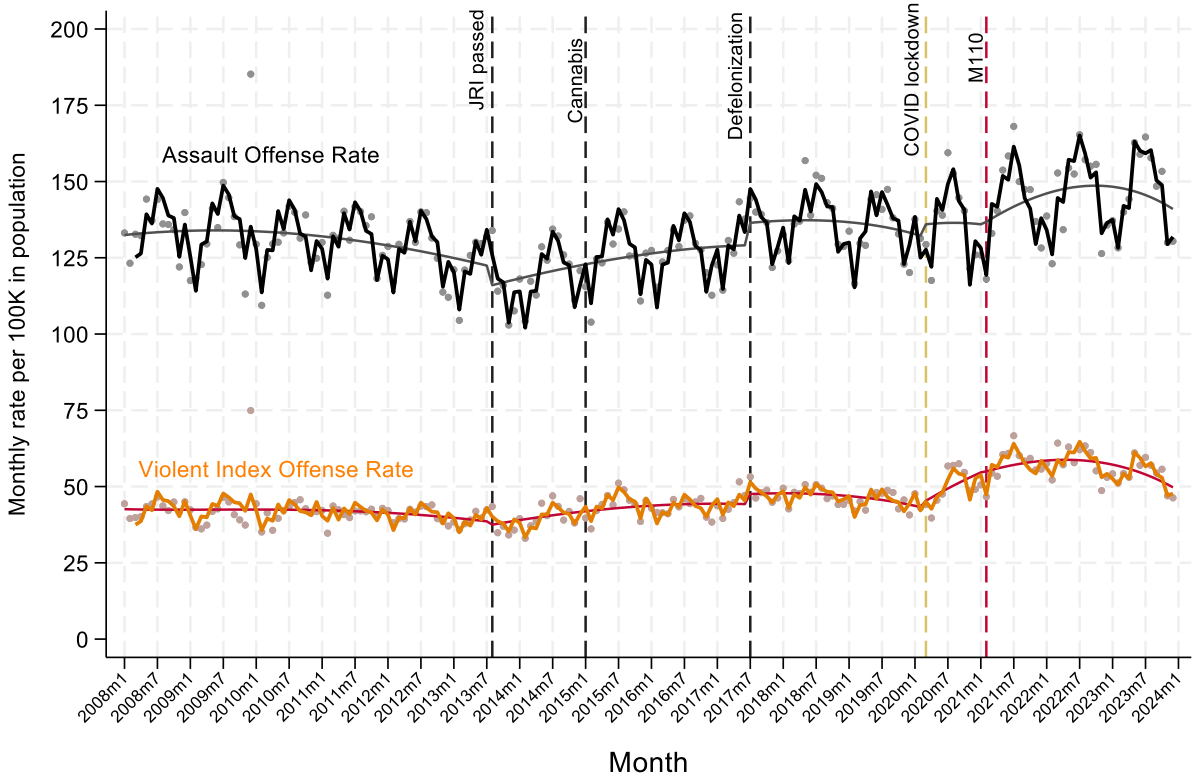


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

As Figure 5.2 depicts, the violent index offense rate and assault offense rate have been largely stable during the project period. Our models suggest that JRI and defelonization were not

associated with any change in violent crime rates. COVID-19 was found to be somewhat associated with the rise in index violent crime rates, both at the outset (increase of 13.7 offenses per 100K in the first month, $p = .102$) and the trend of an increase of 1.2 offenses per 100K per month, $p = .056$). In contrast to the index property offense rates above, there was no detectable effect on violent crime rates due to the passage of M110.

JRI's passage was not associated with immediate changes in assault rates ($p = .237$) but was weakly associated with an average increase of 0.7 offenses per 100K per month ($p = .176$). Defelonization was weakly associated with an initial increase of 5.4 offenses per 100K in the first month ($p = .137$), but it did not significantly impact the trend ($p = .886$). COVID-19 and M110 were not associated with any change in assault rates. It is worth noting that when we include semi-annual NFLIS toxicology reports for fentanyl in control variables, there were no changes observed in the association between the policy shifts and violent crime rates.

Overall, the findings underscore how violent index and assault crime rates were largely unaffected by the policy shifts. While the COVID-19 period corresponded with a weak rise in violent index crime rates, its effects on simple assault rates were negligible. These results highlight the relative stability of violent crime trends in Oregon during the study period, despite significant policy shifts and external disruptions. Moreover, these findings suggest that there are other factors that are likely driving more nuanced aspects of certain violent crimes that are not captured by these models, including the policy shifts, except when it comes to two measures.

Our analysis reveals notable associations between the disadvantage index measures of disconnected youth and unemployment and violent crime rates. Disconnected youth demonstrated a significant positive association with both simple assault and violent index crime rates. For simple assaults, higher disconnected youth rates corresponded to an average increase

of 14.3 offenses per 100K per month ($p < .001$) and an average increase of 7.8 offenses per 100K per month ($p < .001$) for index violent crimes. Similarly, unemployment rates exhibited a significant positive relationship with simple assault rates, with a one-unit increase in unemployment linked to 1.6 additional offenses per 100K ($p = .008$), although this was not associated with index violent crime rates. These findings underscore the importance of addressing economic disadvantage and social disengagement among youth as part of broader strategies to reduce violence. This discussion should address demand (e.g., structural disadvantage), improving access to care and treatment (e.g., reducing barriers to quality treatment and developing overdose prevention sites), all while continuing to disrupt the supply (i.e., drug interdiction).

Drug-Related Overdose Deaths

Using data from OHA,[79] Figure 5.3 presents statewide monthly counts of drug-related deaths (overdoses) in Oregon. The scatter plot (gray dots) represents the observed monthly count, and is accompanied by a smooth trend line (black line) that is the predicted value without controlling for any other measure,[80] and a spiked line (orange) that is the predicted value[81] including the following controls[82]:

- COVID-19 restrictions (from March 2020 through May 2023)
- Consumer Price Index (CPI, a measure of inflation)
- Unemployment rate (lagged by 1 month)
- Number of burdened households (paying 30% or more of their income on rent/mortgage)
- Ratio measure of income inequality
- Rate of single-parent households
- Percent of the population with the highest educational attainment is less than high school
- Kilograms of heroin seized by law enforcement (3-mo moving average, lagged 1 month)

[79] Details on Oregon Health Authority's drug overdose death data dashboard available at www.oregon.gov/oha/ph/preventionwellness/substanceuse/opioids/pages/data.aspx.
[80] The only other measure in these models was the squared term of time. This allowed us to model the curved shape of the trend when necessary.
[81] Readers might note that the predicted (spiked) line starts on the third month of 2008. This is due to the lagged nature of certain control measures like unemployment.
[82] We refer readers to the Appendix for a more detailed description of the measures used in these analyses.

- Kilograms of meth seized by law enforcement (3-mo moving average, lagged 1 month)
- Kilograms of fentanyl seized by law enforcement (3-mo moving average, lagged 1 month)
- NFLIS toxicology reports collected by state law enforcement laboratories[83]
- Average number of officers per 1,000 citizens
- Month (to account for seasonality)

The predicted lines shown in Figure 5.3 come from ITS that employ generalized linear model[84] using only statewide data. In referencing Figure 5.3, we can see certain patterns in the gray scatter plot. From 2008 to the passage of JRI in 2013, the monthly average of drug-related deaths in Oregon remained relatively stable at 33.0 deaths per month (standard deviation [*SD*] = 6.3), ranging from 18 to 49 deaths. This stability remained until defelonization, with an average of 33.1 deaths per month (*SD* = 6.2) and a similar range of 18 to 48 deaths. Following defelonization, from mid-2017 to the onset of COVID-19, there was a noticeable increase, with the average monthly deaths rising to 40.7 (*SD* = 6.8) and reaching a maximum of 53 deaths. The COVID-19 lockdown marked a sharp and significant increase in drug-related deaths, with the average monthly deaths climbing to 62.6 (*SD* = 12.7) between March 2020 and February 2021, peaking at 86 deaths in a single month. Since M110, the trend has continued upward, with an average of 110.9 drug-related deaths per month (*SD* = 29.6) and a range from 57 to 173 deaths per month. These data highlight a dramatic escalation in drug-related deaths, particularly since 2019.

[83] The National Forensic Laboratory Information System (NFLIS) program was established by the Drug Enforcement Administration (DEA) in 1997. It collects and analyzes data from state forensic laboratories about seized drugs, providing annual and midyear reports that highlight trends in drug seizures. This variable was a late addition to our analyses and specific to the drug-related deaths as per recent findings by (Zoorob et al., 2024).
[84] Generalized-least squares regression (Prais-Winsten and Cochrane-Orcutt models, AR=1).

Figure 5.3. Oregon Drug-Related Overdoses Deaths, 2008-2024

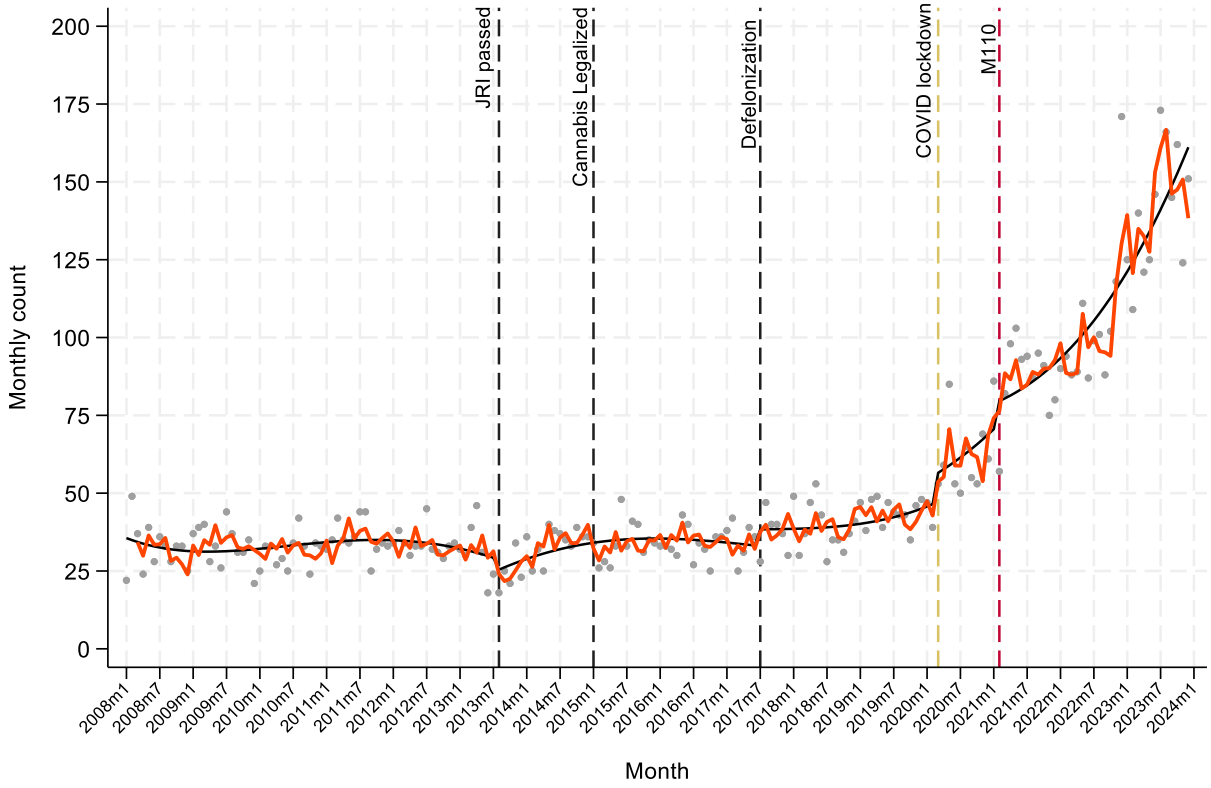


Figure Note: Dashed vertical lines represent changes in drug policy in Oregon and other historical events such as the COVID-19 lockdown that are likely to impact these outcomes.

Our models reveal that JRI was weakly associated with an initial decrease of approximately 8 deaths (p = .110) followed by an average increase of 1.6 additional deaths per month (p = .062), returning the trend to the pre-JRI average. Cannabis legalization and defelonization had no detectable effects on the number of drug-related deaths. In contrast, COVID-19 was associated with a sharp initial rise of 35.6 deaths in the first few months (p = .093) and was associated with trend changes through the relaxing of general restrictions. In the three levels we capture of easing restrictions over 2020, for each restriction lifted there was an average decrease of 10.4 drug-related deaths per month (p = .098). It is possible that as COVID-19 restrictions were lifted, the number of people increased who could intervene in a drug-related overdose. M110 was not associated with an initial increase in the first months (p = .382) and only weakly associated with a trend increase of 2.7 additional deaths per month (p = .133).

In addition to these primary models, we examined the effects of other covariates in the model and different models with and without these covariates, paying specific attention to the law enforcement seizure data related to HIDTA and National Forensic Laboratory Information System (NFLIS). The inclusion of HIDTA and NFLIS data provides nuanced insights but does not significantly alter the observed effects of major policy interventions on drug-related deaths. HIDTA seizure variables appear more sensitive than NFLIS fentanyl toxicology data in capturing the underlying trends. Across all models, the effects of JRI passage, defelonization, COVID-19, and M110 maintain their effects or lack thereof, highlighting the complexity of attributing changes in drug-related deaths to specific policy shifts.

Overall, these findings highlight that while certain policy interventions and events appear to align with shifts in monthly drug-related deaths, most effects were not strongly associated with changes once accounting for other important factors. This suggests that the observed increases in drug-related deaths may be driven by broader systemic or structural dynamics rather than isolated policy changes. Specifically, this upward trend post-COVID-19 in Oregon is similar to overdose trends reported by the National Center for Health Statistics across the nation (Spencer et al., 2022). Their report indicates that overdose deaths increased substantially from 2020 to 2021 for all age groups over 25 years old, with a 22% increase involving synthetic opioids (other than methadone).

Our findings on the effects of M110 align with recent literature examining Oregon's drug decriminalization policies. Zoorob et al. (2024) highlighted that synthetic opioids, particularly fentanyl, have driven increases in drug-related deaths following M110. Consistent with their observations, our findings demonstrate a strong association between fentanyl seizures and monthly drug-related deaths. Our results show that for every kilogram of fentanyl seized in the

month prior there is an increase of 4.2 deaths in the next month ($p < .001$), underscoring the specific role of fentanyl rather than decriminalization broadly. Joshi et al. (2023) attributed rising drug-related overdose deaths to delays in the allocation of M110 funding for treatment services. This suggests the lack of immediate treatment infrastructure during the policy's early implementation may have limited its effectiveness. To further illustrate this, we created a graph provided in the appendix (see Appendix Figure C), which depicts the relationship between the count of fentanyl toxicology reports from NFLIS, and drug seizures reported by HIDTA, and Oregon's increase of drug-related death monthly counts.

It is important to note that there continues to be ongoing research on the relationship between decriminalization and drug-related overdose deaths. One of the more robust designs is the synthetic control design which weights and compares similar states or jurisdictions over time to a given treatment state/jurisdiction such as Oregon. This effectively creates a quasi-experimental design with similar comparison groups for a time-series analysis. We have conducted and reported on such analyses in our prior reports (Henderson et al., 2023) and presented on updated findings at recent conferences (e.g., Annual Conference of the American Society of Criminology of 2024, see Appendix Figure D). The results from these more robust analyses underscore the need to consider overlapping effects of M110 and COVID-19.

Drug Seizures

Although prescribed and diverted prescription drugs contribute to drug-related overdoses, it is important to contextualize these findings within Oregon's illicit drug market landscape. As highlighted in our Year 1 Interim Report (Henderson et al., 2023), interviews and focus group discussions with law enforcement officers suggested an increase in drug-related deaths and influx of illicit drugs (particularly, fentanyl) in recent years (interviews conducted in summer

2022). Law enforcement officers perceived an increase in drug flow/volume into Oregon, and referenced the increase in fentanyl use and seizures in the state as a strong concern for the safety and well-being of community members. Given the increase in drug-related overdose deaths in Figure 5.3 and law enforcement officers' perceptions, we conducted a descriptive examination of drug seizures in Oregon using data provided by the Oregon-Idaho HIDTA program. Figure 5.4 depicts a count of drug seizures (i.e., count of a law enforcement stops resulting in drugs seized) for fentanyl, cocaine crack, methamphetamine ICE, and heroin in Oregon from 2010 – 2023. These data represent a count of seizures (i.e., frequency), not the volume of drugs seized.

Figure 5.4. Oregon HIDTA Drug Seizures, 2010-2023

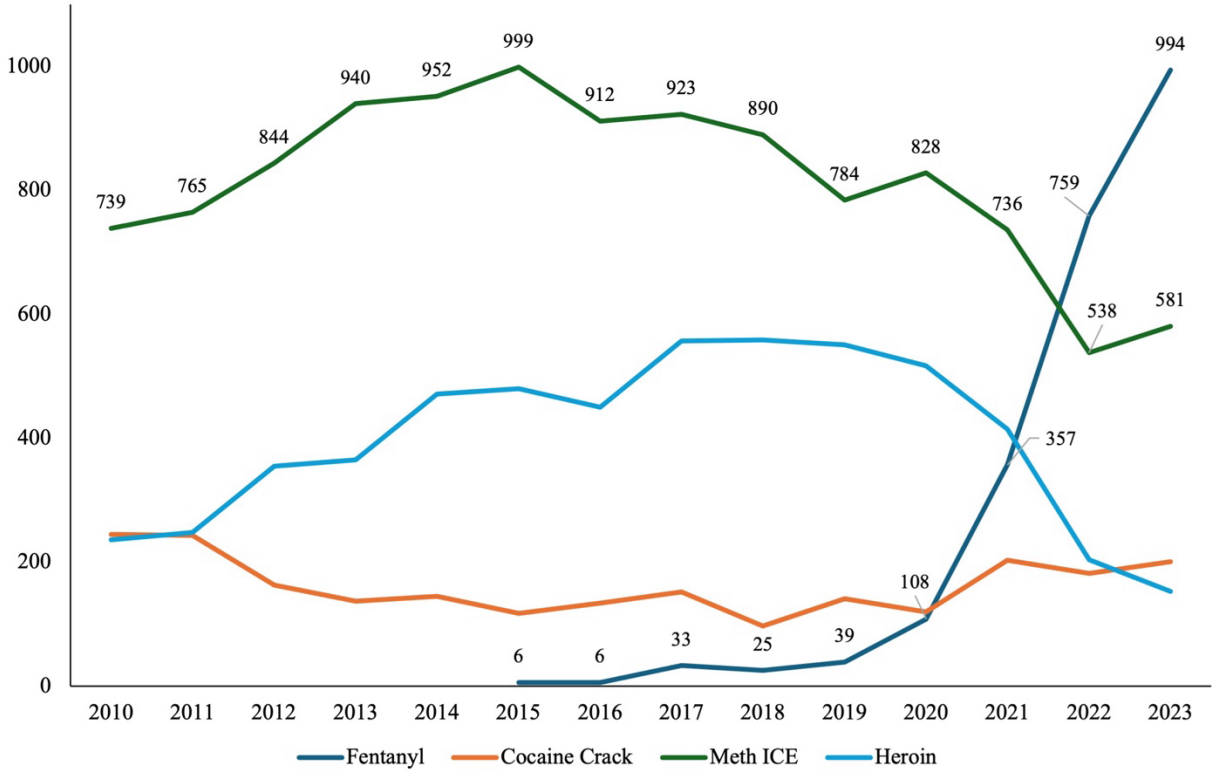


Figure Note. Counts for the most common drugs seized: Meth ICE and Fentanyl reported only for ease of interpretation.

Between 2010 – 2020, methamphetamines were the most seized drug in Oregon; after 2021, the number of seizures began to decline. Fentanyl was not recorded until 2015; in 2020, seizures of fentanyl began a precipitous upward trend that has not stalled as of the end of 2023.

In 2022, there were 108 fentanyl seizures made (varying quantities), and 994 in 2023, which represents an 820% increase over the 4-year period. Table 5.1 depicts the number of fentanyl seizures (in counts) and the volume of seizures (in grams). As Table 5.1 illustrates, the increase in seizure counts is mirrored in a precipitous increase in the volume of fentanyl seized.

Table 5.1. Fentanyl Seizures by Counts and Volume, 2015-2023

	2015	2016	2017	2018	2019	2020	2021	2022	2023
Seizure Counts	6	6	33	25	39	108	357	759	994
Volume (Grams)	145	6	2609	1406	1255	87	1046	44233	176986

Table Note. Grams rounded to nearest whole number.

These descriptive data from HIDTA on drug seizures aligns with officer perceptions about the rise of fentanyl (Henderson et al., 2023) as well as data trends of when fentanyl saturated Oregon's drug market (Zoorob et al., 2024).

Key Conclusions

This chapter addressed the key research question of – *How have successive PCS changes impacted crime rates and drug-related overdose deaths?* The ITS results presented in this chapter on the impacts of Oregon's drug policy changes over time illustrate the importance of using multi-year, longitudinal analysis to study drug law changes. Given the global rarity of Oregon's decriminalization of drug possession in 2021, there was immense pressure by the media, public, politicians, and advocacy organizations to understand the impact M110 had on key public health and safety outcomes. As Figure 5.1 illustrates, property crime rates increased within the first year of M110 implementation. We noted this trend in our Year 1 Interim Report (Henderson et al., 2023) but urged caution because it is difficult to reach definitive conclusions with only 12 months follow-up of a major statewide policy change. Beginning in 2022, the property crime rate trend started to decline and appears to have stabilized in the last 6 months of 2023. Overall, the ITS results, which control for other factors that may influence property and

violent crime rates, show that Oregon's key drug policy changes (JRI, defelonization, and decriminalization) did not – by and large – have any *lasting* significant impacts on property or violent crime rate trends. There were, however, minor impacts of drug policy changes on property crimes (small decrease with JRI; small, short-lived increase with M110) and violent crimes (small increase with COVID-19).

According to the Centers for Disease Control and Prevention (CDC) there have been three distinct waves of overdose deaths in the U.S. (2019). The first wave began in the 1990s when prescription opioid overdoses increased, and the second wave began in 2010 when heroin-involved deaths increased. More recently, the third wave began in 2013 as synthetic opioid (e.g., illicit fentanyl) and cocaine overdose deaths increased (CDC, 2019). From 1999 to 2017 the rate of overdose deaths in the U.S increased from 6.1 per 100,000 to 21.7 per 100,000 (CDC, 2019, p. 110). Only recently have national fatal overdose trends reversed with Naloxone distribution and other public health and safety approaches.[85] Oregon's rate of drug overdose deaths per 100,000 in 2017 was 12.4 and on the lower end of the spectrum nationally (CDC, 2019, p. 128). Law enforcement officers overwhelmingly perceived that overdoses in their communities have increased (Henderson et al., 2023). Our findings support these perspectives. Furthermore, according to a report produced by the Oregon Health Authority (OHA, 2022), overdose deaths have increased in Oregon over the last decade; the most recent rise is likely related to overdoses from synthetic drugs such as fentanyl.

Since early 2020, fentanyl-related overdose deaths in Oregon have increased by 1000%, more than any other state (McMullen, 2024). Looking specifically at the period when M110 was implemented, Oregon ranked 38th out of 48 states in terms of fentanyl-related overdose deaths; 3

[85] Centers for Disease Control and Prevention (2025). https://www.cdc.gov/media/releases/2025/2025-cdc-reports-decline-in-us-drug-overdose-deaths.html/.

years later, Oregon ranks 13th (McMullen, 2024). Using data from the Oregon-Idaho HIDTA program, it is estimated that "the number of times each Oregonian could be killed by seized fentanyl rose 10,279% from 0.2 in 2019 to 22.2 in 2023" (McMullen, 2024, p. 6). Clearly, the confluence of drug decriminalization and fentanyl's surge in the state created detrimental effects for public health in Oregon. The fentanyl surge, coupled with the unprecedented impacts of the COVID-19 pandemic, are discussed in the following chapter as historical events that confounded the implementation and effects of Oregon's decriminalization effort.

Importantly, each of the drug policies discussed here should be considered in the context of the pre- and post-implementation trends, as well as the aim of the policy. The policies aimed to reduce the number of people implicated in the criminal justice system while emphasizing diversion and treatment for people in need. Arguably, one of the most critical aspects of M110 was improving the overall access to substance use treatment across the state, through funding treatment and other services under the Behavioral Health Resource Networks (BHRNs).[86] Under M110 decriminalization, user-level PCS was punishable with a Class E Violation. However, the Oregon Judicial Department reported that 704 (7%) of the 10,028 cases with only Class E Violation charges were dismissed; of these, 85 filed a substance use assessment verification.[87] This policy analysis does not include a process or implementation evaluation, but OJD's figures are consistent with the qualitative interviews where law enforcement had mixed opinions regarding issuing citations and observed less demand for assessments than planned.

However, as addressed in our Year 2 Interim Report (Henderson et al., 2024), M110 citation assessments are not the only pathway to treatment and other services funded by the

[86] Oregon Health Authority, Drug Addiction Treatment and Recovery Act (Measure 110), https://www.oregon.gov/oha/hsd/amh/pages/measure110.aspx.
[87] Oregon Judicial Department (2024) Measure 110, https://www.courts.oregon.gov/about/Documents/BM110Statistics.pdf.

BHRNs. Namely, peer support services represent a large component of M110 funded programming (Donheffner, 2024); peers may have experience with incarceration and can use that shared experience to help link individuals to treatment and recovery services and navigate community supervision requirements (Stack et al., 2022). As services through the BHRNs are built up and supported, client contacts for substance use disorder treatment, harm reduction, and peer support services funded through M110 have increased quarter-over-quarter (see Donheffner, 2024; Henderson et al., 2024). Despite the lack of engagement through E-violations, since implementation, thousands of Oregonians have received services (e.g., harm reduction, housing, substance use disorder treatment) through the BHRNs.[88]

Arguably, an effective policy would require a higher level of treatment readiness among persons charged with PCS, and furthermore, M110 targets one aspect of drug control while the influx of fentanyl and other drug market forces counter drug demand intervention efforts. Our findings indicate that any future policy shifts (e.g., HB 4002) must integrate strong community-based treatment supports, such as those offered through the BHRNs, and address systemic challenges to drug enforcement and service delivery.

[88] See Oregon's Behavioral Health Resource Networks data dashboard: https://app.powerbigov.us/view?r=eyJrIjoiODU1NDNlNzUtMDBkNy00NTM1LWE4NzgtNGEyNzQxYWY0NTU2IiwidCI6IjY1OGU2M2U4LThkMzktNDk5Yy04ZjQ4LTEzYWRjOTQ1MmY0YyJ9.

Expected Applicability of the Research

The purpose of this research study was to examine impacts on the criminal justice system and public health and safety that can be attributed to changes in Oregon's legal and strategic approaches to possession of controlled substances over time. In this section we briefly summarize the research findings related to three significant changes in Oregon PCS laws and strategies: 1) Justice Reinvestment Initiative (House Bill 3194 in 2013), 2) Defelonization (House Bill 2355 in 2017), and 3) Decriminalization (Drug Addiction Treatment and Recovery Act or Measure 110 in 2021). For each of these policy changes we briefly summarize our empirical findings and highlight important lessons learned for Oregon and other states interested in similar policy changes. After which, we share the limitations of our project and challenges we faced in conducting this research.

Table 6.1 provides a quick reference of the summary impact of these drug law changes on specific outcomes we reported on throughout this final report. It should be noted that our findings can be nuanced and difficult to pinpoint with a single outcome descriptor. Thus, we have settled upon the following descriptors: "large" (i.e., steep slope change, green), "moderate" (i.e., sizeable slope change, blue), "small" (i.e., small slope change, red). Importantly, these descriptors do not refer to the statistical significance or size of the effect (i.e., p-value or effect size), but rather are descriptive so that readers can better understand the slope of the trend. General direction is described as increase, decrease, or no detectible effect, as well as no data or not applicable. We recommend readers refer to accompanying chapter discussions to explore these findings in more detail. Table 6.1 also includes impact findings for the COVID-19 lockdown. This is included because our results indicated that COVID-19 consistently had the

largest immediate impact on many of our outcomes but that was often followed by a trend towards pre-COVID-19 levels, although not always the case (e.g., PCS arrests).

Table 6.1. Summary Results Table

		General Effects Found to be Associated with Policy/Event			
Key Outcome	**Figure**	**JRI Passage (2013)**	**Defelonization (2017)**	**COVID-19 (2020)**	**M110 (2021)**
PCS Arrests	2.3	NE			
PCS Felony Charges	3.3	NE			
PCS Misdemeanor Charges	3.3	NE			
PCS Dismissals	4.2				
PCS Conviction Rate	4.3		NE		
PCS Defendants Charged	4.5	NE			
Drug Court Population	4.6	-	-		NE
PCS Probation Admissions	4.9				
PCS Local Control Admissions	4.10	NE			
PCS Prison Admissions	4.11	NE		NE	NE
Property Crime Rate	5.1		NE	NE	
Violent Crime Rate	5.2	NE	NE		NE
Drug-Related Overdose Deaths	5.3	NE	NE		

Table Note. "NE" = No Detectible Effect. "-" = No Data. Arrows indicate the direction of the trend. **Red** = small slope change. **Blue** = moderate slope change. **Green** = large slope change.

Justice Reinvestment Impacts

Key Findings

Our statewide analyses of the impact of JRI do not find it had a significant effect on arrest and charging trends (Figure 2.3 and Figure 3.3), although county-level analyses do exhibit some unique variations, namely in arrest rates (Figure 2.4 and Figure 2.5). Differing from defelonization (2017) and M110 (2021), which targeted arrests (i.e., removing criminal

punishments with M110) and charging practices (i.e., downgrading PCS offenses from felony to misdemeanor), JRI predominately impacted sentencing and targeted stabilizing the prison population. Thus, somewhat expectedly, we did see impacts of JRI on courts and sentencing, specifically an increase in the PCS conviction rate (Figure 4.3) and PCS probation admissions (Figure 4.9). Two ITS analyses revealed that there was a significant upward trend in PCS convictions (relative to dismissals) and PCS probation admissions at the passage of JRI (2013). While the conviction rate continued to increase in the following years, probation admissions somewhat plateaued. We interpret this initial increase in PCS convictions and probation admissions to be indicative of a concerted effort to divert eligible drug offenses into specialized programming and supervision.

An ITS analysis revealed a slight upward trend in PCS local control[89] admissions (Figure 4.10), which continued through the passage of JRI (2013), until a significant decline in PCS local control admissions with defelonization (2017). There was no effect of JRI on PCS prison admissions, which is somewhat understandable given that JRI primarily targeted presumptive prison cases, and most PCS offenses did not fall into that category (Figure 4.11). In examining correctional population point-in-time estimates (Figure 4.13), we see that JRI implementation contributed to a decrease in probationers and suppressed what had been a rising prison population up until that point. In examining public health and safety outcomes, JRI was associated with a small decrease in property crimes rates (Figure 5.1) but had no significant relationship with violent crime rates (Figure 5.2) or overdose deaths (Figure 5.3). In sum, JRI

[89] Local control refers to the population of convicted individuals sentenced to serving time in prison custody, but for various reasons, they serve their custody time at the local jail instead; that is, serving their time in "local control". Local control is called such by the state to distinguish it from any other jail admissions, and therefore it is not the entire jail population. Local control stays do not include pretrial populations, which is a large portion of the adults housed in local jails.

represented a minor, non-controversial change in the law, with the expected quantitative effects on sentencing outcomes. Importantly, JRI had a smaller impact on PCS carceral outcomes than it did on local control and prison admissions for all crimes because of the infrequency with which PCS-principal offenses were prison bound historically.

Key Lessons

Oregon's Justice Reinvestment Act (HB3194) did not directly change the statutory classification of PCS offenses in Oregon like defelonization and decriminalization later achieved. Instead, JRI gave judges, and subsequently counties, greater discretion to not apply mandatory sentencing laws (i.e., Prison Sentences for Certain Drug and Property Crimes or Measure 57 in 2008) for repeat drug offenders. Oregon's JRI model allowed for county autonomy in both the direction, mechanisms, and intensity in which they sought to meet JRI goals like stabilizing prison usage. Research examinations of JRI's impact show there was significant county variation in both its implementation plans and impacts (Matsuda et al., 2022). County monetary reinvestments and autonomy in implementation helped make JRI a less controversial policy change. In addition, there was significant legislative planning involving key stakeholders convened by a Governor's commission beginning a year prior to the passage of HB3194, review by a bipartisan legislative committee, and broad support from law enforcement, district attorneys, and community corrections associations (Pew Charitable Trusts, 2014). Note Oregon's Justice Reinvestment Program remains active with support for counties under competitive and formula grants.[90]

Defelonization Impacts

Key Findings

[90] Oregon Criminal Justice Commission, https://www.oregon.gov/cjc/jri/Pages/default.aspx.

Based on analyses using statewide aggregate data and interviews with law enforcement officers, we can conclude that Oregon's experience around defelonization did not appear problematic for the state. None of the officers we spoke to expressed concerns about defelonization and its impact on their law enforcement functions or on community public health and safety. An ITS analysis (Figure 2.3) revealed that there was a significant downward trend in PCS arrests at the beginning of defelonization, but the decrease slowed and was gradually increasing up until the COVID-19 lockdown. This short-lived downward trend needs to be placed in context though, because the monthly count of PCS arrests post-defelonization *was actually higher* than monthly counts across the entire timeframe of 2008 to 2012 when PCS was a felony. Thus, any concerns that defelonization of PCS would reduce overall PCS arrests were not realized in Oregon's experience.

However, the statutory seriousness of these PCS arrests did change as evidenced by a significant reduction in felony PCS charges coupled with a significant increase in misdemeanor charges (Figure 3.3). With this we observed a decrease in the number of defendants charged with a PCS offense (immediate reduction of 215 defendants) and convicted of a PCS offense (immediate reduction of 196 convictions) (Figure 4.5). Post-defelonization there was a small decline in *overall* PCS dismissals (Figure 4.2), but this was largely attributable to a sizeable decrease of PCS felony dismissals in the immediate aftermath of defelonization (roughly 260 fewer) and in the months to follow (roughly 35 fewer per month). Misdemeanor PCS dismissals increased at this same period, which is why the effect on *overall* PCS dismissals was not as sizeable. This shift in charging and dismissal patterns demonstrates a somewhat seamless adaptation to the new law – that is, misdemeanor charges went up (in lieu of felony charges) and

misdemeanor dismissals followed (while felony dismissals dropped), highlighting the shift in prosecutorial charging decision-making towards misdemeanor cases.

ITS analyses revealed that there was a significant downward trend in PCS probation and local control admissions (Figure 4.9 and Figure 4.10), and a significant increase in prison admissions post-defelonization (2017). The immediate and long-lasting impacts of defelonization on probation and jail usage is somewhat unsurprising given the legislation's target focus of reducing the criminal justice footprint for low-level drug charges (e.g., defendants could have been sentenced to "unsupervised probation" or agreed to a stipulated sentence where there were only sentenced if they were re-arrested). There was a small, short-lived increase in PCS prison admissions post-defelonization (Figure 4.11). This may be evidence of the beginning of the shift in focus, both by the District Attorney's Office and the courts, to more serious PCS cases, such as higher quantity (as suggested by the interviews with prosecutors).

Regarding public health and safety impacts, our analyses reveal that defelonization was not associated with the trends in property or violent crime index rates (Figure 5.1 and Figure 5.2). Like JRI, there was no effect of defelonization on drug-related overdose deaths in Oregon (Figure 5.3). In sum, defelonization represented a minor, non-controversial change in the law, with the expected quantitative effects on charging (e.g., decrease in felony charges), and most law enforcement officers supported the change and believed it had little impact on proactivity, enforcement, and public safety.

Key Lessons

Defelonization of PCS (passed in 2017), although still relatively uncommon in the U.S., did not radically change the day-to-day routines and activities of the criminal justice system in Oregon. PCS was still a criminal offense and had no impact on probable cause requirements for

law enforcement to perform stops, searches, and arrests. For the courts, PCS cases, given their less weighted severity of offense, would change the starting grid "criminal seriousness" score for defendants under Oregon's sentencing guidelines.[91] However, the courtroom workgroup in each county still had a variety of options and discretion, given defendants criminal history and county programing (e.g., drug courts) to resolve PCS cases in a manner best suited to local needs and practice. Relatedly, it is important to note that we did find evidence of important county variations and we expect other states would find similar variation in implementation and effects across counties. For example, there were substantial county differences in the relative size differences and timing of PCS arrest events and arresting charges declines. On the other hand, our analyses found less county variation when looking at trend changes in PCS charging. We conclude that the way counties enforced PCS and adapted to defelonization were different.

Perhaps more important, is the fact that defelonization was non-controversial in Oregon (especially in comparison to decriminalization). HB2355 downgraded PCS from a felony to a misdemeanor in specified circumstances. Defelonization was supported by the Oregon Association of Chiefs of Police and the Oregon State Sheriffs' Association.[92] And while some District Attorneys opposed the bill, the Oregon District Attorney's Association did not submit testimony in support or opposition. HB2355 came about after an 18-month long process of "consensus-building and information-gathering from a wide range of criminal justice professionals, civil liberties experts, and community members."[93] HB2355 passed with broad bipartisan support. Defelonization was not a policy change that received widespread public attention, and most Oregonians were likely not aware that PCS had been a misdemeanor offense

[91] As a reminder, Oregon's sentencing guidelines use a grid framework based on criminal history and crime seriousness with departures: https://www.oregon.gov/cjc/resources/documents/guidelinesgrid.pdf.
[92] https://olis.oregonlegislature.gov/liz/2017R1/Measures/Testimony/HB2355.
[93] https://www.prainc.com/race-equity-p5/.

since 2017. When there is political and organizational leadership buy-in across the system and state, such changes are less likely to experience obstacles and resistance and perhaps provide a smoother transition.

Decriminalization Impacts

Key Findings

From our law enforcement interviews there was a strong negative perception that decriminalization hindered officers' capacity to effectively do their jobs, ultimately decreasing overall police proactivity. Law enforcement suggested reduced proactivity created a harmful public safety impact through the "drug-nexus" of related criminal offenses they were now unable to successfully make arrests on including property and drug manufacturing/sales/delivery offenses. This perception was not fully supported or represented in the statewide arrest data trends we examined (Figure 2.3). As expected, PCS arrests significantly decreased post decriminalization. However, defelonization and COVID-19 were also related to significant decreases in prior PCS arrests, which cannot be discounted. Historically, arrests for property crimes, and drug manufacturing/sales/delivery have independent trends compared to PCS arrests (e.g., PCS arrests were trending upward leading up to defelonization, whereas drug manufacturing/sales/delivery arrests were trending downward). These arrest trends do not support the police perception that there is a strong link between PCS arrest capabilities and property and drug trafficking offense arrests.

Decriminalization was related to an initial significant drop in both misdemeanor and felony PCS charges (Figure 3.3), but both trends have subsequently leveled out/stabilized. Like PCS arrests, this decline in prosecutorial charges was preceded by significant declines in charges filed after the COVID-19 lockdown (2020). Unsurprisingly, the number of PCS charges

continued to decline with the implementation of M110 (2021). Of those PCS charges that remained, fewer and fewer resulted in a charge dismissal (Figure 4.2), while the rate of PCS charge convictions increased (Figure 4.3). These observations are echoed by looking at the decrease in the number of defendants charged with a PCS offense post-M110 and the decrease in the number of PCS defendants dismissed, but a lack of significant effect on the number of PCS defendants convicted, which remained flat (Figure 4.5). As we discussed in preceding chapters, we interpret this increase in the rate of convictions to be indicative of the types of PCS offenses that remained criminal post-M110 (i.e., larger quantities), and the effort placed on prosecuting and convicting those defendants.

While M110 did not have a significant effect on prison admissions (Figure 4.11) and the counts are small, we did observe a slight upward trend over the last couple years before recriminalization (September 2024). We do find that with decriminalization there is an accompanying reduction in average monthly PCS probation admissions (Figure 4.9) and local control[94] (jail) admissions serving a PCS sentence (Figure 4.10). Pre-COVID-19 the number of PCS probation admissions averaged 200 per month and local control PCS felony sentence admissions another 100. At the end of our study those numbers are in the tens and close to zero. This raises some interesting questions for further research. First, are similarly situated defendants being admitted to probation or serving a local control sentence for other crimes that may be PCS-related? Second, were PCS defendants serving probation and local control pre-COVID-19 more likely to be offered treatment or successfully engage with treatment for a substance use disorder

[94] Local control refers to the population of convicted individuals sentenced to serving time in prison custody, but for various reasons, they serve their custody time at the local jail instead; that is, serving their time in "local control". Local control is called such by the state to distinguish it from any other jail admissions, and therefore it is not the entire jail population. Local control stays do not include pretrial populations, which is a large portion of the adults housed in local jails.

than similarly situated defendants who are not arrested and convicted, only cited under decriminalization?

Regarding public health and safety, decriminalization was related to a significant increase in theft and property crime index rates (Figure 5.1), however this increase was short-lived after peaking in 2022. Decriminalization was not related to any significant trend changes in violent crime index rates (Figure 5.2). Similarly, it was weakly associated with an increasing trend in drug-related deaths (Figure 5.3), which had been on a steep rise since COVID-19 and the nationwide influx of fentanyl. In sum, despite the negative law enforcement perception and media stories about decriminalization's impacts, this study's examination of statewide aggregate trends demonstrate either: 1) Decriminalization did not appear to have major negative impacts on police proactivity, arrests for drug-nexus crimes, and public safety; and 2) It is difficult to isolate any decriminalization impact from the unprecedented impact that the COVID-19 pandemic had and the more recent influx of fentanyl to Oregon's drug market.

Key Lessons

Decriminalization represented a major, controversial change in the law (M110 passed in 2020, was implemented in 2021). A key difference between decriminalization and both defelonization and JRI is that it was the result of a citizen-initiated ballot measure. A key component of the legislative process, when done correctly, is to seek buy-in from as many stakeholders as possible prior to policy/law implementation. Widespread buy-in sometimes only comes after a policy has been fully investigated, debated, and concessions made. Buy-in is critical because it provides a motivating inertia to ensure a policy is implemented effectively.

From our law enforcement interviews, many members of the criminal justice community became confused about their role in PCS enforcement, and they did not perceive that their views

and experiences had been taken into consideration in the planning and implementation phases of M110. Law enforcement officers felt that decriminalization represented the public telling them that the criminal justice system should play no part in responding to drug use in the community. A text search of the 19-page ballot initiative does not mention any expected role that police or courts would play in decriminalization. Criminal justice representation was excluded from the allowable categories of membership on the Oversight and Accountability Council in charge of implementing M110.

Differing again from defelonization, decriminalization represented a significant change to the day-to-day operations of the criminal justice system. Routines and practice would be disrupted and different after the law was implemented. It created gray areas in probable cause related to law enforcement stops, searches, and arrests. Because PCS became a violation, it should have been expected that it would impact court caseloads related to PCS. There was no significant planning for both law enforcement and local courts on how best to proceed under this change. These statements are not meant to denigrate citizen ballot initiatives as we know traditional legislation can also be passed expediently with little planning. However, given the extent of the change and the gravity of the underlying issue, decriminalization requires significant planning. For example, after a failed decriminalization attempt in 2021 (LD967), Maine's legislature passed LD1975 in 2024, which tasks the state with *studying* changing the legal status of scheduled drugs. Such preemptive planning did not occur in Oregon.

Important also when considering the citizen-initiated ballot measure process is the expediency with which decriminalization took effect in Oregon. By July 2nd, 2020, the measure had the required number of signatures to get an initiated state statute certified (i.e., 6 percent of

the votes cast in the most recent gubernatorial election).[95] The measure was approved by voters (58.5%) in November 2020, and decriminalization took effect on February 1st, 2021 (less than 3 months later). M110 allocated roughly $265 million in cannabis tax revenue to fund recovery services and treatment through the BHRNs, and funding began in May 2022−over a year after decriminalization took effect. As of January 2024, 244 organizations had received funding.[96] This timeline ties into officer frustrations that Oregon "put the cart before the horse" and should have built the treatment infrastructure prior to decriminalizing drugs and dismantling an existing pathway (Henderson et al., 2023). Law enforcement training was handled at the local level, so there was variability in discussions about the law itself (e.g., what happens to defendants given an E-violation), how to write E-violations, and how the policy shift impacted enforcement (e.g., search incident to arrests).

Decriminalization calls into question the traditional role of the criminal justice system. However, the proximity and frequent interaction between the criminal justice system and substance use disorder populations makes criminal justice a critical partner in our opinion. Given the associations between substance use and mental illness (Common Comorbidities with Substance Use Disorders Research Report, 2020) and criminal behavior (Bennett et al., 2008), it is an unfortunate reality that law enforcement are possibly the first interaction people using substances have with the system, and those interactions tend to be the most consequential. With M110, there was this notion that law enforcement would not need to interact with this population at all, as the bill's explicit goal was to "[shift] the state's response for "drug possession from

95 https://ballotpedia.org/Oregon_Measure_110,_Drug_Decriminalization_and_Addiction_Treatment_Initiative_(2020).

96 OHA Measure 110 Behavioral Health Resource Network (BHRN) Dashboard: https://app.powerbigov.us/view?r=eyJrIjoiMTA1MGZkYjYtNjVhNy00Y2VlLWE1ZmMtZGI2YWIzN2VhZjFkIiwidCI6IjY1OGU2M2U4LThkMzktNDk5Yy04ZjQ4LTEzYWRjOTQ1MmY0YyJ9.

criminalization to treatment and recovery." As we noted above, in most cases, law enforcement was not provided with sufficient information about how to successfully intervene and connect individuals to treatment assistance, and how to coordinate with treatment and service providers. This created a vacuum where M110 funds to support treatment infrastructure had not yet been distributed, and law enforcement did not have the necessary tools, but they were undoubtedly still encountering persons in need (see Smiley-McDonald et al., 2024 for an accounting of how people who use drugs in Oregon were heavily policed). Future efforts attempting decriminalization should engage in extensive planning to unpack these key challenges of Oregon's decriminalization implementation.

It is also important to remind readers that an estimated 327,157 Oregonians have an illicit substance use disorder, yet there is a 49% gap in substance use disorder services (Lenahan et al., 2022). This accounting of the population in need and the gap in treatment availability was undoubtedly a main motivation for the passage of M110 in 2020. Although M110 may have taken away some tools from law enforcement regarding user-level PCS enforcement, it is important to note that in the most proactive arrest year, 23,127 individuals were arrested for PCS, constituting 7% of the overall population in need. Furthermore, in the highest enrolling month, 1,300 Oregonians were enrolled in drug courts, constituting 5.6% of PCS arrests (for the highest year). Even if the criminal justice system could funnel every drug-related arrest into treatment successfully (assuming the individual needed and wanted treatment), it would only address a fraction of the population with an illicit substance use disorder. Historically the criminal justice system has connected only a small proportion of those in need with treatment services. The criminal justice system has an important role to play, but more services and methods of

engagement are needed to address the totality of need in Oregon (see our Year 2 Interim Report for a more thorough discussion of this topic).

Post-Decriminalization Policy

Not long after the implementation of M110 did discussions begin about modifying or repealing the measure altogether. Criticisms of decriminalization cited the increase in overdose deaths in the state and the low number of individuals calling the Lines for Life hotline to resolve their M110 E-violations. In 2024, this movement resulted in HB4002, which recriminalized PCS, and was signed into law by the Governor on April 1, 2024. Oregon's experiment with decriminalization ended, and a new era of recriminalization began on September 1, 2024. Importantly, HB4002 modified the decriminalization aspect of M110, but left alone the funding stream that supports substance abuse treatment and resources (BHRNs). HB4002 made the following key changes to drug enforcement and prosecution:

1. User-level PCS formerly a Class E-violation (under M110) was recriminalized to a Misdemeanor, punishable by up to 180 days jail.
2. Offers a local-level option of deflection-type programming (to avoid criminal penalty) made available by participating counties. The bill defines deflection programs as: "A collaborative program between law enforcement agencies and behavioral health entities that assists individuals who may have substance use disorder, another behavioral health disorder or co-occurring disorders, to create community-based pathways to treatment, recovery support services, housing, case management or other services."
3. As noted in the finalized bill, "Law enforcement agencies in this state are encouraged to, in lieu of citation or arrest, or after citation or arrest but before referral to the district attorney, refer a person to a deflection program when the person is suspected of

committing, or has been cited or arrested for, unlawful possession of a controlled substance constituting a drug enforcement misdemeanor." Furthermore, "District attorneys in this state are encouraged to divert for assessment, treatment and other services, in lieu of conviction, cases involving unlawful possession of a controlled substance constituting a drug enforcement misdemeanor." We highlight more details on deflection programming across counties below.

As of HB4002's implementation (September 1st, 2024), 28 of Oregon's 36 counties had applied for funding to build/support deflection programs. Deflection is voluntary on the part of the individual, if they refuse, other options include a conditional discharge by the prosecutor's office, or typical carceral punishments. Importantly, as deflection is a locally driven program, eligibility criterion and the process differ across counties, with no universal standards set by the state at this time. Among our eight select counties, Josephine County is using deflection funds to expand existing services through the county's sobering center, where officers will escort individuals who are arrested for PCS.[97] In Multnomah County, deflection funds will be used to build a behavioral health center, essentially a stabilization or crisis-response facility in the community.[98] To be eligible for deflection in Multnomah County, drug possession must be the only charge associated with the arrest and the individual cannot have any outstanding warrants. In contrast, eligibility in Marion County is not just limited to possession of controlled substances arrests and instead includes low-level property crimes as well.[99]

In our Year 2 Interim Report (Henderson et al., 2024), we recommended that the state

[97] https://www.ijpr.org/politics-government/2024-08-29/josephine-county-to-use-deflection-funds-for-expanding-sobering-center-resources.
[98] https://www.opb.org/article/2024/09/01/oregon-starts-drug-possession-recriminalization/#:~:text=Deflection%20is%20a%20collaborative%20effort,of%20the%20criminal%20justice%20system.
[99] https://www.opb.org/article/2024/08/29/measure-110-drug-law-deflection-posession-crime-law-oregon-recriminalization-decriminalization/.

consider structuring the involvement of the criminal justice system as one component of a broader system and increase community outreach and client connection to M110 funded programs. We highlighted existing law enforcement and first responder deflection programs as a guide for the state (e.g., Law Enforcement Assisted Diversion). Importantly, deflection and pre-arrest diversion programs differ from prosecutorial diversion or post-adjudication programming in that deflection and pre-arrest diversion programs occur before criminal charges are filed. These approaches are "referred to as pathways because, in contrast to justice system interventions in which individuals are mandated to attend treatment, first responders and community response teams are instead offering access, or pathways, to community-based treatment and resources through proactive outreach and support to individuals in need (BJA, 2023)."

One method of deflection is through officer referral pathways (i.e., an officer refers an individual to treatment or a case manager) and officer intervention pathways (i.e., in circumstances in which charges would normally be filed, officers provide referrals to treatment or case manager, or issue non-criminal citations; charges are suspended until treatment of service plan is completed). This is somewhat consistent with Oregon's new deflection program, which gives individuals the option of engaging in treatment (i.e., pathway), in leu of going to jail. However, Oregon's deflection model differs somewhat in that it seems individuals are still arrested for the PCS crime. Within the first month of the law's implementation, over 1,100 individuals were arrested for PCS in the state, rivaling the monthly average in the months leading up to M110 (just after the COVID-19 lockdown).[100] Some counties are making a disproportionate number of PCS arrests since the law took effect; for example, Jackson County

[100] https://www.opb.org/article/2024/10/16/multnomah-county-drug-deflection-portland-treatment/.

made 257 PCS arrests within 1 month while Multnomah County made 137 arrests (despite Jackson County having roughly a third of the population). Of the 137 PCS arrests made in Multnomah County, 70 individuals have been deflected (a roughly 50% rate).

For those individuals who are deflected, it is not clear what happens to their PCS arrest/charges, and whether they complete drug treatment or other requirements to avoid criminal charges?[101] Only time will tell regarding the effectiveness of deflection, and much like the impacts of M110, we are likely to see variation across counties. Like evaluating M110, "effectiveness" is a complex word as jurisdictions need to be clear about what is measured as success – *Is it the number of individuals deflected? The number of individuals who engage with the program and graduate? The rate of individuals who do not recidivate within a 3-year period? The rate of individuals who remain "clean and sober" after a set period?* Program challenges include setting clear metrics to be tracked and examined against outcomes identified as indicators of success. Oregon's deflection programs might face some of the same challenges as decriminalization without sufficient financial support, consistent best practice guidelines across the state, and clear definitions and metrics for evaluating participant and program "success".

Another recommendation from our Year 2 Interim Report was that the state should consider setting up a system where law enforcement officers respond to calls in tandem with service providers and/or peer support mentors (Henderson et al., 2024). This is one of the six pathways of deflection (BJA, 2023), community response, in which "a team comprising community-based behavioral health professionals and/or other credible messengers—individuals with lived experience—sometimes in partnership with medical professionals, engages

[101] https://www.opb.org/article/2024/10/30/memo-to-oregon-gov-kotek-shows-first-statewide-look-at-drug-deflection/.

individuals to help de-escalate crises, mediate low-level conflicts, or address quality-of-life issues by providing a referral to treatment, services, or to a case manager." Peer support services can assist individuals while incarcerated and after release from jail or prison. Evaluations for peer support post-incarceration suggest decreased rates of emergency department use (Wang et al., 2012), and lower odds of substance use and criminal offending (Mowen & Boman, 2018).

It is also possible that for some interactions, law enforcement need not respond at all and instead there is a more appropriate mechanism. As we recommended in our Year 2 Interim Report (Henderson et al., 2024), the state should consider establishing non-law enforcement professionals to help address people in crises or exhibiting troublesome behavior.[102] We can look to the CAHOOTS (Crisis Assistance Helping Out on the Streets) program in Eugene, Oregon and Portland's Street Response programs as guides. The CAHOOTS program is a collaboration between law enforcement and the CAHOOTS team; crisis workers and medics respond to 911 calls involving individuals in behavioral health crisis, and law enforcement officers respond only if there is a crime in progress or an imminent threat of danger/violence.[103] Similarly, Portland's Street Response (PSR) responds to 911 calls assisting people experiencing mental health and behavioral health crises.[104] An evaluation of the program found that PSR responded to over 7,000 calls in the second year of the program, resulting in a 3.5% reduction in total calls traditionally responded to by police (Townley & Leickly, 2023).

As the above discussion highlights, a lack of coordination between law enforcement officers and treatment providers can hamper the best efforts of any policy (e.g., if officers do not

[102] See examples of recent NIJ-funded diversion evaluation projects: https://nij.ojp.gov/funding/awards/15pnij-22-gg-03575-ress and https://nij.ojp.gov/funding/awards/15pnij-22-gg-03580-ress.
[103] www.vera.org/behavioral-health-crisis-alternatives/cahoots; www.eugene-or.gov/DocumentCenter/View/66051/CAHOOTS-program-analysis-2021-update#:~:text=CAHOOTS%20divert%20rates%20remain%20between,higher%20in%20natures%20of%20calls.
[104] https://www.portland.gov/streetresponse.

know where the nearest sobering center is, or treatment providers are not available in real-time). For example, in Multnomah County, if an individual agrees to deflection, the arresting officer will call a treatment provider, if they do not show up within 30 minutes, the defendant goes to jail, according to local policy. This is understandable when considering the value of law enforcement time and resources, however, jurisdictions should invest in ample treatment resources to ensure that providers are available to assist persons in need in an expedient manner. Similarly, there may be better alternatives than law enforcement intervention in some situations, as the Portland Street Response evaluation suggests. States considering decriminalization should invest in considering alternatives to law enforcement interventions in certain situations (as was a main goal of M110, but without some of the planning), and supporting collaborations between law enforcement and treatment providers in the remaining situations.

Broader Lessons Learned for Policy

Importance of Community Partner Buy-In

One of the biggest lessons learned from this research project is that with major policy changes, there needs to be uniform buy in from all involved stakeholders. Along with that, policy proposers and implementers need to overcome resistance in all parties, especially in the planning and implementation phases. With the passage and implementation of M110, some of that work was forgotten. This created unnecessary friction, tension, and backlash amongst community partners. With such a short time between passage and implementation, there was not widespread buy-in of decriminalization in the criminal justice system, key stakeholders responsible for implementing the policy. Decriminalization poses significant challenges because the agency mandates and ideologies of a collaboration comprised of criminal justice, behavioral health, and non-profit agencies are likely so divergent and the policy itself quite controversial. There are

however successful models of agency collaboration around similar goals (e.g., prison reduction) that involve trust, risk-sharing, and respect of differences, but are more likely to manifest within unique local/county dynamics as opposed to statewide agreement (Renauer et al., 2023).

Importance of Data Sharing & Operationalization of Outcomes

Data availability continues to be a problem that impacts researchers' ability to conduct timely evaluations of shifting drug policies. Specifically, the link between the criminal justice system and behavioral health treatment and outcomes. In our Year 2 Interim Report (Henderson et al., 2024), we examined pathways to treatment through non-voluntary engagement based on external legal pressures resulting from arrest and conviction (e.g., drug courts). But we could only examine *opportunities* for engagement, not necessarily outcomes, as there is little to no centralized data on who gets a given treatment, what treatment one receives, and whether that treatment was successful. Without this link between data systems, multiple important questions remain untested – *Are defendants receiving the services they need? How effective are various treatment options in reducing criminal justice involvement? What treatment plans work for some defendants versus others? What is the proportion of justice involved individuals that make up part of the client load for treatment service providers?* Linking these two systems is difficult because of HIPAA protected medical information. But moving forward, to better evaluate public safety outcomes (e.g., recidivism), we need better tracking of criminal justice involvement (e.g., deflection, arrest, drug court participation, and probation as usual) and services (e.g., residential, outpatient, or medically assisted treatment).

Throughout this project, we observed conflict between definitions of "success" across community partners. For the criminal justice system, outcomes are typically clear (e.g., arrests, recidivism), but in examining the impacts of drug policy, "successful" outcomes might not be as

clear (e.g., treatment, sobriety, rehabilitation). Amongst media outlets and public perception, there has been this rhetoric that "Oregon's decriminalization experiment failed"[105], but it is important to ask – *Which part failed?* In looking at the statewide quantitative measures, decriminalization did not have much of an effect above and beyond a continuation of some COVID-19 effects. One agreed upon negative observation in Oregon was the increase in drug-related fatal overdoses in recent years. This unfortunate trend was often cited as a justification for repealing M110. But as demonstrated in this section and the preceded chapter, that observed trend was more strongly associated with the saturation of Oregon's drug market with fentanyl that occurred during the same time period. Defining metrics of success, gathering reliable data from community partners, and conducting appropriate analyses that eliminate the role of any confounding variables are essential to any policy evaluation.

Limitations of this Project

Although researchers cannot control the historical events that transpire during various policy periods, it is important to note how these events can transform and mask policy implementation, efforts, and ultimately, effects. In examining M110 *post hoc*, it cannot be ignored the timeframe in which this policy transpired. To begin with, M110 was passed by voters in November 2020 with 58.5% of the state in support. Support for decriminalization was largely splintered across the state, with urban counties more in favor than more rural counties. The county with the highest approval – Multnomah – with 74.4% of voters in support[106], is also a county that in the preceded months went through a tumultuous time in the aftermath of George Floyd's murder. That is, relations and trust between the populous and law enforcement were likely fractured after months of civic protests, during which time, President Trump sent federal

[105] https://www.theatlantic.com/ideas/archive/2024/03/oregon-drug-decriminalization-failed/677678/.
[106] https://gov.oregonlive.com/election/2020/general/measures/.

law enforcement to Portland to respond. This context is important to keep in mind when considering the environment in which M110 was passed and implemented.

Arguably, the most pressing historical event that transpired during M110's passage and implementation was the COVID-19 pandemic and resulting lockdowns. As articulated at the beginning of this report, Oregon's response to the COVID-19 pandemic was dynamic and long-lasting. The courts were still dealing with delays and case backlogs years after the Governor's stay-at-home declaration in March 2020. We observed a decrease in PCS arrests (Figure 2.3), PCS charges (Figure 3.3), the number of PCS defendants charged and convicted (Figure 4.5), and PCS admissions to probation (Figure 4.9) and local control (Figure 4.10). These findings underscore an immediate and, in some cases, long-lasting shrinkage of the criminal justice system in Oregon, as a result of the pandemic. And unfortunately, like states across the country, we observed a substantial, sustained increase in drug-related overdose deaths in Oregon beginning with the COVID-19 pandemic (Figure 5.3).

The impacts of the COVID-19 pandemic on the criminal justice system have been the subject of intense and increasing empirical study (we refer readers to the *Journal of Crime & Delinquency*'s special edition on COVID-19's Impact on Crime and Delinquency, Reid & Baglivio, 2022). Overall, the COVID-19 pandemic had sweeping impacts on law enforcement stops and arrests, pretrial detention[107], case processing, and sentencing practices. Furthermore, analyses of drug-related overdoses from across the country demonstrate that the pandemic and lockdowns negatively impacted public health outcomes (see Imtiaz et al., 2021). As many of our analyses show, the "story of the pandemic" almost overshadows the story of M110 in terms of its impact on arrests, charges, and sentencing. An analysis of decriminalization without controlling

[107] COVID-19 Sparks 'Unprecedented' Pretrial Reforms, Survey Shows (2020). https://www.arnoldventures.org/stories/covid-19-sparks-unprecedented-pretrial-reforms-survey-shows/.

for and isolating the impacts of the COVID-19 pandemic fails to portray the true effects of this policy shift.

And lastly, a factor that confounded the efforts and effects of M110 was the unfortunate impact of the fentanyl crisis in Oregon. Rapid spread of fentanyl into Oregon's unregulated drug market occurred in early 2021 (Zoorob et a., 2024), while M110 was implemented in the state. The timing of the three factors – COVID-19 lockdowns, M110, and increased fentanyl access – hinder the ability of isolating M110 impacts and instead suggest a convergence of factors that contributed to an increase in drug-related overdose deaths. Analyses suggest that including the influx of fentanyl into Oregon's drug market washes away any initial association between M110 and drug-related fatal overdoses (Zoorob et al., 2024). Results presented in the preceded chapter of this final report support these key takeaways regarding the impact of the fentanyl crisis. As these above paragraphs have demonstrated, there were severe confounding impacts that occurred during Oregon's decriminalization "experiment" that undoubtedly negatively impacted the policy's implementation and effects.

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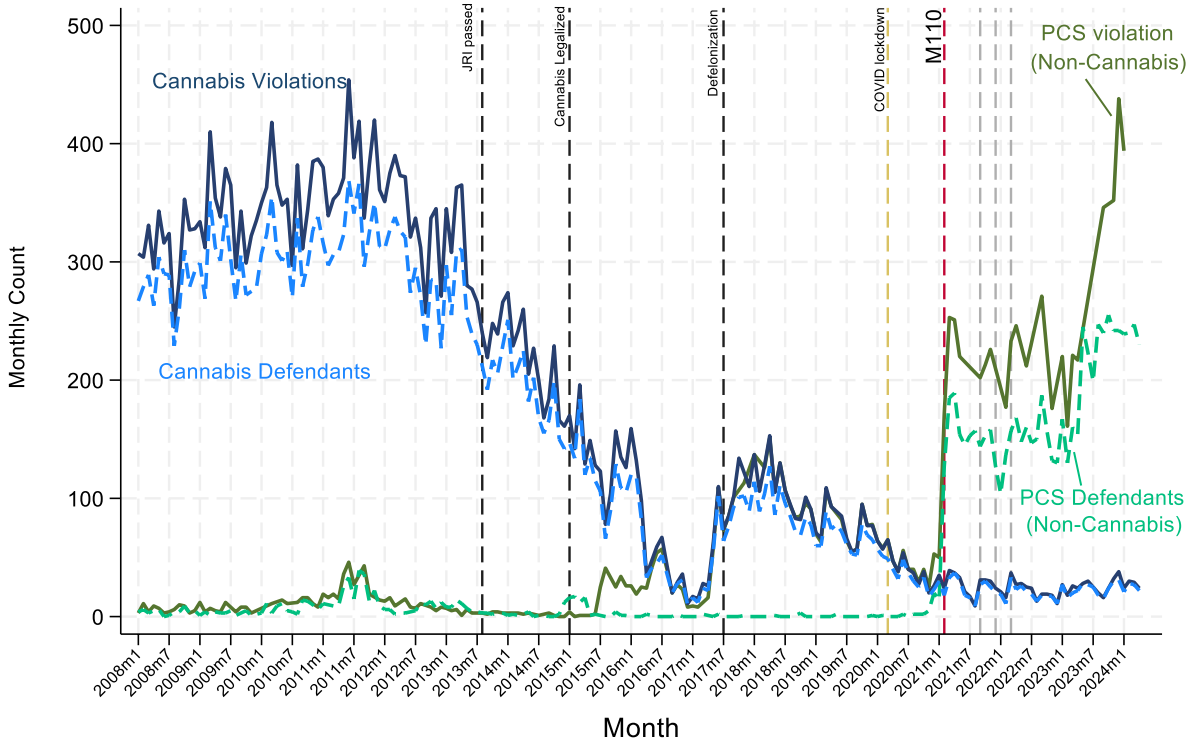
Appendix Materials

Cannabis and PCS Violations & Citations

Drug violations and citations have been used historically in Oregon and were not a new phenomenon with the advent of drug decriminalization. Figure A depicts the monthly counts of PCS violations (green) and defendants (dashed green), and cannabis violations (blue) and defendants (dashed blue) from 2008 – 2024.

Appendix Figure A. Statewide Count of Violations/Defendants for PCS and Cannabis, 2008-2024



In Figure A we can see that cannabis violations were common up until JRI, after which there was a precipitous drop in violations that continued through cannabis legalization. Importantly, cannabis is legalized at the user-quantity amount (e.g., 2 ounces or less in public and 8 ounces or less in private[108]), so violations can be given to individuals in possession of larger quantities, depending on the location. Cannabis violations continued to drop until they reached a low of fewer than 50-per month, statewide. In early 2017, there was a large uptick in cannabis violations that continued through defelonization, but since then the number of cannabis violation has declined. In contrast, prior to 2017, PCS violations were largely non-existent. The emergence of PCS violations came about around the defelonization period and mirrored the issuance of cannabis violations. Many law enforcement officers we interviewed perceived felony charges disproportional to the possible punishment; it is possible that law enforcement officers started leaning on the lower-level charges and violations for drug crimes because they felt they were proportional in severity for drug offenses. With M110 (2021), there is a massive increase in

[108] https://norml.org/laws/oregon-penalties-2/

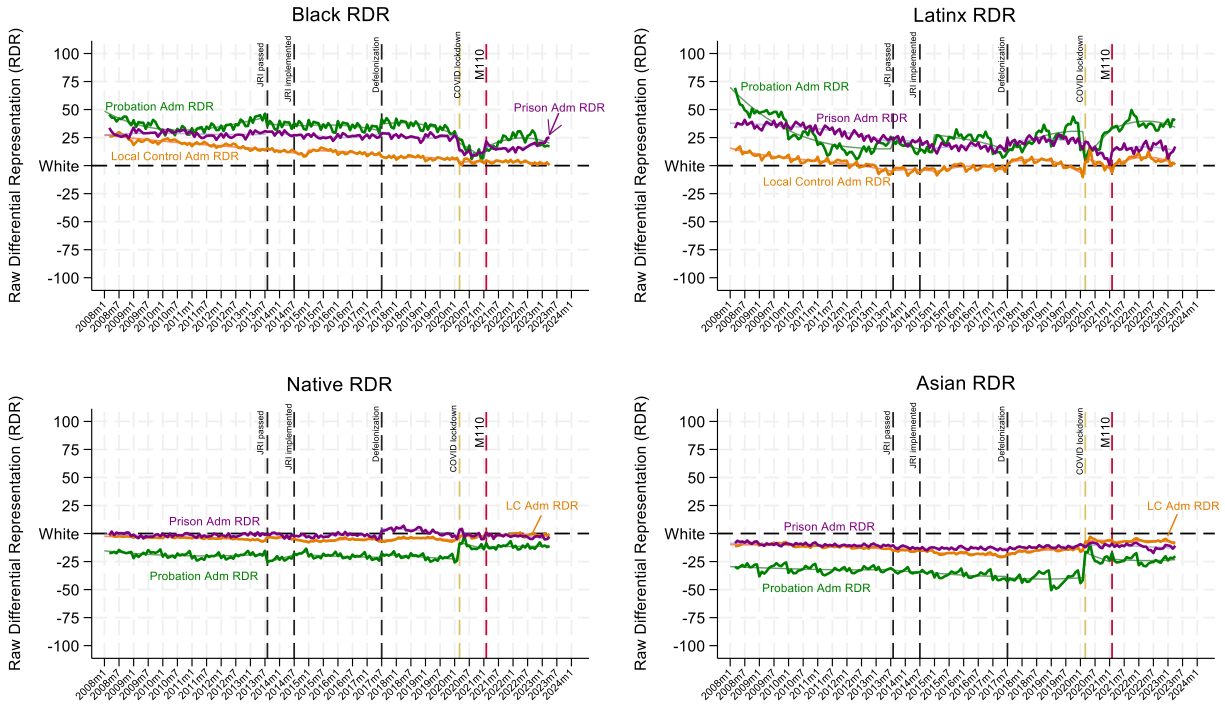
the number of PCS violations issued. This makes sense given the reclassification of user-level PCS to a violation. Differing from the congruence between violations and defendants exhibited for cannabis violations, there is a big gap between then number of PCS violations issued and the number of defendants. This suggests that the same defendants are receiving more than one PCS violation, and the Oregon Judicial Department noted that 1288 persons have multiple Class E violation cases among the 10,028 post-M110 cases.[109] There is a large uptick in the number of PCS violations issued in 2023 from a relative stable number in the first two years following M110; potential justifications for this surge are discussed in the 'Law Enforcement' chapter.

Raw Differential Representation for Admissions

The Raw Differential Representation (RDR) is a commonly used metric employed to measure the degree of over- or under-representation of a specific group in a particular outcome (e.g., prison admissions) relative to their representation in a reference population. The RDR is a critical tool for identifying and understanding racial or ethnic disparities in criminal justice outcomes, as it provides a standardized way to compare disproportionality across different groups and regions. It is calculated as the ratio of the group's share in the outcome (e.g., prison admissions) to their share in the state population (Girvan et al., 2019; Oregon Criminal Justice Commission, 2024a). If the value of a given RDR is 0 then the given group is represented in the outcome at a rate proportional to their share in the population, indicating no disproportionality. The RDR for White is set to zero as it is the RDR to which all other racial/ethnic RDRs are compared. If the RDR for a non-White racial group is greater than 0, it indicates that the group is over-represented compared to White individuals. The magnitude of the RDR can be seen as the factor by which the rate of that group's outcome (e.g., prison admissions) exceeds the rate for White individuals. A reduction of the RDR by the same amount would align their rates with that of White individuals. If the RDR for Black individuals in prison admissions is 25, it means there would need to be a reduction of 25 Black individuals admitted to prison per month to reach parity with that of the White population (OCJC, 2024). Conversely, an RDR of -25 for Asian individuals would indicate that they are admitted to prison at a much lower rate based on their population size and compared to White individuals.

[109] Oregon Judicial Department (2024). Measure 110, https://www.courts.oregon.gov/about/Documents/BM110Statistics.pdf.

Appendix Figure B. Statewide Trends in the Raw Differential Representation for <u>Admissions</u> to Probation, Local Control, and Prison for All Crimes, 2008-2024



Appendix Figure B provides the RDR for each of the four main racial/ethnic groups collected by the Oregon Department of Corrections and cleaned by the Criminal Justice Commission. The graphs show two lines for each admission. A smooth line which is the interrupted time-series analysis without controls/covariates, and a jagged line which is the predicted values with covariates. Each graph in the figure shows the output from models examining the correctional population admissions for probation, local control[110] and prison as they compare to White admissions. Most notable among these are the Black and Latinx RDR.

The analysis of racial/ethnic disparities through RDR metrics revealed nuanced effects across prison, local control, and probation admissions. For Black populations, disparities remained relatively consistent and high across policy shifts in prison and probation admissions. JRI passage was associated with reductions in the probation admissions initially reducing it by 8.3 RDR (p = .083) and by 1.0 per month after passage (p = .086). Only COVID-19 showed a major, immediate reduction in prison admission disparities (-26.6 RDR, p = .109) and probation admission disparities (-45.3 RDR, p = .048). However, neither of these had a sustained trend. Since COVID-19 both the prison and probation admissions have been on a steady rise back to pre-COVID levels of disparity. M110 was associated with an immediate increase of 11.6 RDR for prison admissions (p = .069), which was likely connected to the post-COVID rebound. The graph suggests the potential of a suppression effect that may be attributable to M110 as the

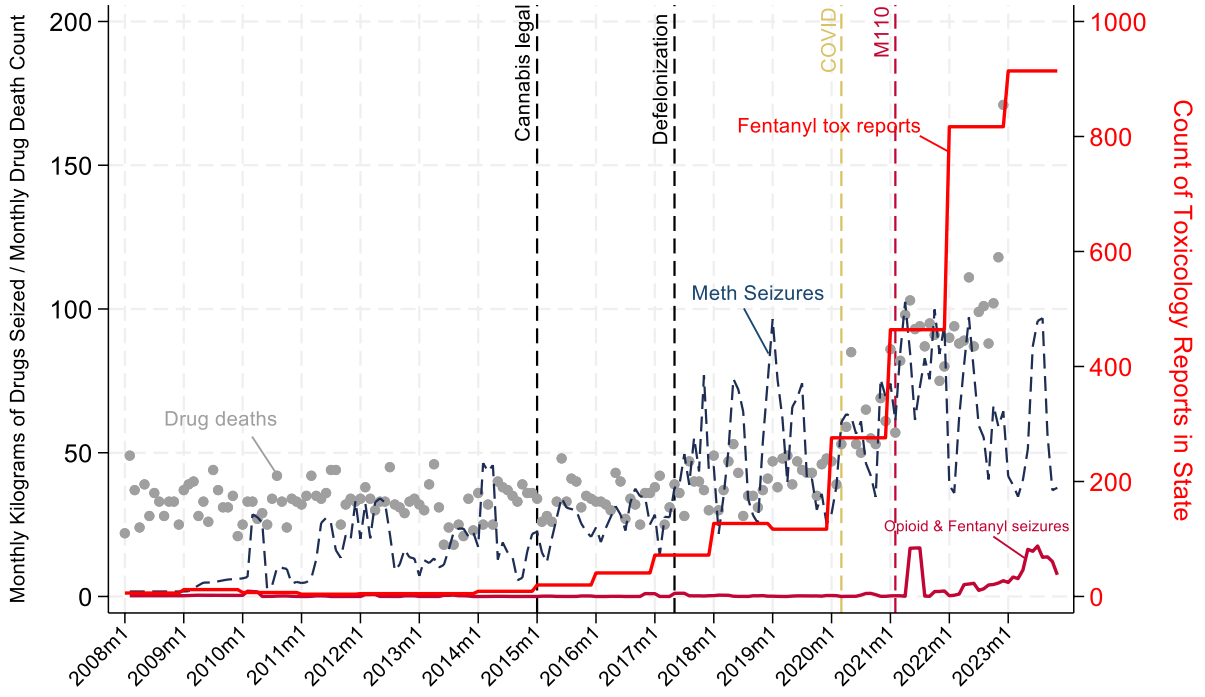
[110] Local control refers to the population of convicted individuals sentenced to serving time in prison custody, but for various reasons, they serve their custody time at the local jail instead; that is, serving their time in "local control". Local control is called such by the state to distinguish it from any other jail admissions, and therefore it is not the entire jail population. Local control stays do not include pretrial populations, which is a large portion of the adults housed in local jails.

prison admission disparity plateaued immediately after the implementation of M110. Local control admissions displayed sporadic effects, with JRI, defelonization and M110 showing no significant changes. These results highlight the systemic persistence of disparities for Black populations, especially for prison and probation admissions.

For Latinx populations, defelonization emerged as an inflection point across all models. Local control RDR remained quite stable and near parity with White admissions for most of the study period. Prison admissions remained relatively stable but were still affected by some shifts. M110 was associated with an immediate impact (+15.6, $p = .085$) and a weak trend (+2.3, $p = .211$) following the COVID-19 period and rebound. Probation RDR followed a slightly different trajectory, with defelonization showing no notable association to the changes, though COVID-19 changes were weakly associated with reducing RDR values by 20.3 initially ($p = .555$), followed by a slow increasing rebound trend (+4.1 per month, $p = .072$) as the pandemic restrictions were lifted.

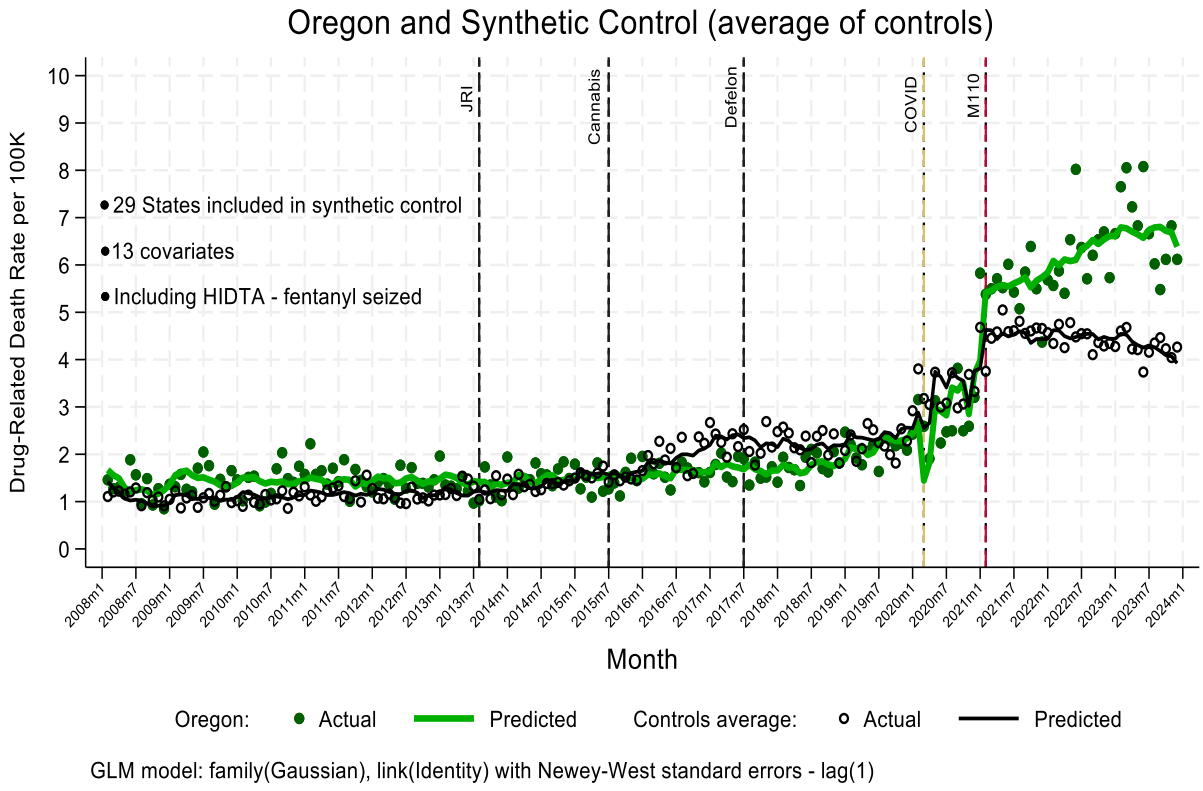
For Asian and Native populations, policy shifts had limited immediate or trend impacts, and COVID-19 had the largest effects on the probation admissions. Probation models showed a notable decrease in RDR following the COVID-19 lockdown for Asian admissions (+29.9, $p = .023$) and for Native American admissions (+23.8, $p = .035$), both of which were short-lived. Overall, these results highlight the complex and often unintended consequences of criminal justice policy shifts on racial and ethnic disparities across incarceration types. While some policies, such as JRI and COVID-19, showed potential for reducing disparities in probation and prison admissions, others, notably defelonization and M110, appear to have added to disparities for certain groups and in certain admission types. These findings underscore the necessity of incorporating equity-focused evaluations into future policy development and implementation to mitigate unintended disparate impacts.

Appendix Figure C. Relationship Between Drugs Seized and Overdose Deaths, 2008-2023



In contrast to the other recent literature, Spencer (2023) argued that M110 directly caused an increase in overdose deaths by reducing deterrence and accountability for drug use. While we did not observe a statistically significant rise in monthly deaths associated with M110, the absence of a detectable positive impact supports concerns that the policy's benefits may have been undermined by insufficient support systems. Most notably is the potential stall in the exponential rise of monthly deaths which has maintained the same trajectory since COVID-19 began. Figure C shows a potential ceiling around 175 deaths per month and a floor around 125 throughout 2023, which suggests that as more services get rolled out and established, we could begin to see a decrease in the number of drug-related deaths. Similarly, Sigaud et al. (2024) found mixed outcomes of M110, noting reduced homicides but increases in property crimes and no direct changes in drug-related deaths, echoing our findings of complex, mediated effects. Lastly, the Common Sense Institute (2024) emphasized the intersection of rising overdose deaths and violent crime post-M110, aligning with our conclusion that M110 alone did not alleviate monthly drug deaths. Collectively, these findings highlight the complexity of decriminalization efforts and underscore the urgent need for targeted interventions addressing fentanyl and synthetic opioid surges within decriminalization frameworks.

Appendix Figure D. Overdose Deaths in Oregon Compared with Synthetic Control, 2008-2024



Using a synthetic control technique, we generated optimal weights for 29 states,[111] including 13 covariates (mainly 6 main terms and multiple quadratics) such as HIDTA data on fentanyl seized. Like our other analyses presented here, we used data going back to 2008, which is further than most other studies on this to create a synthetic control that pre-dates most fentanyl issues across the country. Once the optimal weights were identified, we included the weights in an interrupted time series analysis to account for COVID lockdown effects. We found that after the implementation of M110, Oregon drug-related death rates significantly declined from its post-COVID trajectory. It declined at an average rate of approximately .19 per 100,000 people in the population, per month, which translates to a reduction of about 2 deaths per million people, per month. However, the decline was significantly smaller than the decline observed in the synthetic control group, which is a weighted average of all 29 states. The models suggest that the easing of COVID-related restrictions may have contributed to reductions in drug-related deaths. Oregon's relatively smaller decline could reflect unintended consequences of M110 such as the slow rollout of treatment availability. The results underscore the need to consider overlapping effects of M110 and COVID-19.

[111] States included in the synthetic control: Colorado, South Carolina, Montana, Vermont, District of Columbia, Nevada, Rhode Island, Illinois, Alabama, Arkansas, Connecticut, Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, Oklahoma, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming.

Appendix Table A. Description of Measures Used

Measure	Definition	Calculation	Source
Outcomes			
Arresting Events (i.e., Arrests)	Event in which someone is arrested by police and fingerprinted.	Count of fingerprinted arrests per month	Criminal Justice Commission (CJC), Law Enforcement Data System (LEDS)
Arresting Charges	Charges associated with a given arresting event.	Count of charges entered by police per month	CJC, LEDS

Arrest rate per 100,000	Rate at which a given *county's law enforcement (local, county, and state) arrests a subject* for every 100,000 people in the county.	(County count of arrests per month / County population) x 100,000	- County count
			  ○ CJC, LEDS
			- Population
			  ○ Census & Portland State University Population Resource Center (PRC)

Charges filed	Charges filed with the courts by the county prosecutor's office.	Count of charges filed per month by the prosecutors	Oregon Judicial Department (OJD)
Charges rate per 100 arresting charges	Rate at which a given county prosecutor files charges per 100 of a given arresting charge type.	(County count of charges filed per month / arresting charges of same type) x 100	OJD - Population ○ Census & PRC
Defendants	Defendants associated with given charges filed with the courts.	Count of defendants per month filed by the prosecutors	OJD
Disposition	Dismissals or convictions by given charges filed with the courts.	Count of disposition type per month by charges filed with courts	OJD
Disposition rate per 100 charges filed	Rate at which a given county court disposes a given charge type per 100 of a given charge type filed with the court.	(County count of disposition type per month / charges filed of same type) x 100	OJD
Local control admissions	Convicted defendants sentenced to serve time and admitted to local /county jail facilities	Count of convicted and admitted jail population per month	- County count ○ CJC, ODOC
Prison admissions	Convicted defendants sentenced to serve time and admitted to state prison facilities	Count of convicted and admitted prison population per month	- County count ○ CJC, ODOC
Probation admissions	Convicted defendants sentenced to serve probation	Count of convicted jail population per month	- County count ○ CJC, ODOC

Sentencing rate per 100 convictions	Rate at which a given county sends convicted defendants to a given sentence (local control, prison, or probation) for every 100 convictions.	(County count of sentenced population per month / convictions) x 100	- County count
			  ○ CJC, ODOC
			- Population
			  ○ Census & PRC

Appendix Table A. Description of Measures Used, Continued…

Measure	Definition	Calculation / Coding	Source
Intervention Measures			
JRI Passage	Dichotomous indicator designating when HB 3194 was passed.	Pre-July, 2013 = 0 Post-July, 2013 = 1	Oregon State Legislature
JRI Implementation	Dichotomous indicator designating when HB 3194 began to provide funding to counties.	Pre-July, 2014 = 0 Post-July, 2014 = 1	Oregon State Legislature
Cannabis Legalization	Dichotomous indicator designating when Measure 91 was enacted.	Pre-January, 2015 = 0 Post-January, 2015 = 1	Oregon State Legislature
Defelonization	Dichotomous indicator designating when HB 2355 took effect.	Pre-July, 2017 = 0 Post-July, 2017 = 1	Oregon State Legislature
COVID-19 Lockdown	Dichotomous indicator designating when most restrictions took effect, and when restrictions were eased.	Pre-March, 2020 = 0 March to July, 2020 = 3 Aug to Oct, 2020 = 2 November, 2020 = 3 Dec, 2020 to Feb, 2021=2 March, 2021 to April, 2023 = 1 Post-April, 2023 = 0	National Governors Association
Measure 110 (Decriminalization)	Dichotomous indicator designating when Measure 110 took effect.	Pre-February, 2021 = 0 Post-February, 2021 =1	Oregon State Legislature
Intervention Trends	Continuous count of months after the intervention step measure (i.e., indicator of when it was passed, or enacted, or implemented, depending on the focus of the analysis)	Count of months since passage/implementation	Same as step indicators
Control measures			
County Population	Total count of county population. Used in creating rates.	County count	Census & PRC
Region Type	Dichotomous measure indicating if the county is deemed as Rural/Non-Metro or Urban/Metro according to the Census Bureau.	Rural/Non-Metro = 0 Urban/Metro = 1	Census Bureau
Proportion 15 to 24 years old	Proportion of county population between the ages of 15 and 24 years old	County count of 15-24-year-old youth / County population	PRC
Proportion 55 years old and older	Proportion of county population between the ages of 55 years old and older	County count of 55+ year-old / County population	PRC
Proportion Non-White	Proportion of county population who are Black, Hispanic, Native American, or Asian.	County count of minority groups / County population	PRC
Racial Dissimilarity Index	The percentage of non-Hispanic White population in a county which would have to change to equalize the racial distribution between White and non-White population groups across all tracts in the county.	Percent of county provided at annual estimate	U.S. Census Bureau, Racial Dissimilarity Index (5-year estimate) FRED, Federal Reserve Bank of St. Louis

Appendix Table A. Description of Measures Used, Continued…

Measure	Definition	Calculation / Coding	Source
Control measures			
Spatial weight	Spatial weight constructed using GeoDa software which captures the relationship of the Euclidean distance between counties and the outcome measure. A spatial weight is calculated for each outcome type. Though largely not interpretable, the weight indicates the degree to which counties closer to are similar to one another.	Each outcome variable multiplied by county-specific weights.	Combination of CJC and GeoDa Software
Inflation (Consumer Price Index)	Measure of the average change in prices (food, clothing, shelter, fuels, transportation fares, charges for doctors' and dentists' services, drugs, and the other goods and services) over time in the Western Region.	Monthly price changes from a designated reference date; for most of the CPI-U the reference base is 1982-1984	The Bureau of Labor Statistics, Inflation CPI – West, (monthly) FRED, Federal Reserve Bank of St. Louis
Percent High School Grad	Percent of county population who is a High School Graduate or Higher, includes GED.	Percent of county population provided at annual estimate (2010-2023)	U.S. Census Bureau, High School Graduate or Higher (5-year estimate) FRED, Federal Reserve Bank of St. Louis
Disconnected Youth	Percentage of youth in a county who are between the ages of 16 and 19, who are not enrolled in school and who are unemployed or not in the labor force.	Percent of county population provided at annual estimate (2009-2023)	U.S. Census Bureau, Disconnected Youth (5-year estimate) FRED, Federal Reserve Bank of St. Louis
Income Inequality	Ratio of the mean income for the highest quintile (top 20 percent) of earners divided by the mean income of the lowest quintile (bottom 20 percent) of earners in a particular county.	Ratio of county mean income for highest quintile of earners divided by the mean income of the lowest (2010-2023)	U.S. Census Bureau, Income Inequality (5-year estimate) FRED, Federal Reserve Bank of St. Louis
Single Parent Household	Sum of male and female single-parent households with their own children who are younger than 18-years of age divided by total households with their own children who are younger than 18-years of age	Rate of single-parent households divided by total households with children <18-years old (2009-2023)	U.S. Census Bureau, Single-Parent Household (5-year estimate) FRED, Federal Reserve Bank of St. Louis
Disadvantage Index	Proportion of the population that is experiencing economic and social disadvantage	Sum of Income inequality, Disconnected youth, Single-parent households, and High school graduation	Researcher constructed

Appendix Table A. Description of Measures Used, Continued…

Measure	Definition	Calculation / Coding	Source
Control measures			
Unemployment Rate	Percent of county population receiving unemployment benefits in a given month.	Percent of whole county population (2008-2024)	U.S. Bureau of Labor Statistics, Unemployment Rate (Monthly) FRED, Federal Reserve Bank of St. Louis
Burdened Households	Sum of households with a rent or mortgage spending 30% or more of their income on gross monthly owner/rent costs	Percent of households paying 30% or more of income on rent/ mortgage (2010-2023)	U.S. Census Bureau, Burdened Household (5-year estimate) FRED, Federal Reserve Bank of St. Louis
Percent Below Poverty	The Official Poverty Measure and the Supplemental Poverty Measure to calculate the percentage of the population living below the poverty line, which is the minimum income level a family needs to meet basic needs, such as food, shelter, and clothing. It is calculated based on pre-tax cash income and adjusted by family size, with the official poverty measure being three times the cost of a minimum food diet, adjusted for inflation.	Percent of population below the poverty level (2012-2023)	U.S. Census Bureau, Percent below Poverty (5-year estimate) FRED, Federal Reserve Bank of St. Louis
Poverty Index	Proportion of the population that is experiencing poverty characteristics	Sum of the Unemployment Rate, Burdened Households, and Percent Below Poverty	Researcher constructed
Drug Seizure Information	Drug seizures reported to the DEA by local and state law enforcement across Oregon counties partnering with HIDTA. The data included date of seizure, location, drug type, and amount. We standardized the dosage units across over 150 drug types and cross walked the data with Oregon Health Authority's (OHA) drug categories. Our measures focus on three primary drug types: Heroin, methamphetamine, and fentanyl.	Monthly count of a given drug quantity seized by law enforcement in a given county or across the partnering Oregon counties. (2010-2024)	U.S. Drug Enforcement Agency, Oregon-Idaho's High Intensity Drug Trafficking Area (HIDTA)
National Forensic Laboratory Information System (NFLIS)	Drugs identified by Federal, State, and local forensic laboratories after being secured in law enforcement operations across the country. It includes information on the specific substance and the characteristics of the drugs such as purity, quantity, and type.	Semi-annual (twice per year) quantity and type seized/ screened at the state-level. (2008-2023)	National Forensic Laboratory Information System (NFLIS)

Appendix Table A. Description of Measures Used, Continued…

Measure	Definition	Calculation / Coding	Source
Control measures			
Officer Staffing rate	Average count of sworn officers who ordinarily carry a firearm and a badge, have full arrest powers, and are paid from governmental funds set aside specifically to pay sworn law enforcement per 1,000 people in the population.	(Annual sum of all agencies in a given county or in the state / population) x 1,000 (2008-2023)	FBI crime data explorer
Index Property Crime Rate	Index property crimes include burglary, larceny-theft, and motor vehicle theft, per 100,000 people in the population	(Count of given arrests per month / population) x 100,000 (2008-2023)	Kaplan, Jacob, 2024, "Summary Reporting System (SRS) - Offenses Known and Clearances by Arrest (Return A)", Harvard Dataverse, V4 & Census/PRC
Theft Rate	Subcategory of Index Property Crime – Larceny-Theft offenses per 100,000 people in the population		
Index Violent Crime Rate	Count of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault per 100,000 people in the population		
Simple Assault Rate	Count of attacks without a weapon resulting in no injury or minor injury, and is considered less severe than aggravated assault, per 100,000 people in the population		
Drug Overdose Deaths	Count of drug-related deaths involving one or more of the ICD-10 substance codes. According to the Oregon Health Authority, Oregon has a centralized medical examiner system. A standard postmortem toxicology test is routine for suspect overdose deaths. By the state law, whether a death is caused by drug overdose or not is determined by a medical examiner. Oregon drug overdose data are consistent and reliable.	Monthly count of drug related deaths for a given county (2008-2023)	Oregon Health Authority